

(2010) 02 P&H CK 0343

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Sukhvinder Singh

APPELLANT

Vs

Commissioner of Income Tax
(Appeals) and Another

RESPONDENT

Date of Decision: Feb. 1, 2010

Acts Referred:

- Central Excises and Salt Act, 1944 - Section 35, 35B
- Income Tax Act, 1961 - Section 143, 249, 260A
- Limitation Act, 1963 - Section 5

Hon'ble Judges: Rakesh Kumar Jain, J; M.M. Kumar, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

M.M. Kumar, J.

This appeal filed u/s 260A of the Income Tax Act, 1961 challenges the order dated 4-7-2008, passed by the Income tax Appellate Tribunal, Chandigarh Bench "A", Chandigarh (for brevity, "the Tribunal") in I.T.A. No. 1048/Chandi/2007 in respect of the assessment year 2004-05. The only question of law which arises for determination of this Court is as under:

Whether the delay in filing of the appeal beyond the period of 120 days prescribed by Section 260A(2)(a) of the Income Tax Act, 1961, could be condoned by entertaining an application u/s 5 of the Limitation Act, 1963?

2. Along with the appeal an application invoking the provisions of Section 5 of the Limitation Act, 1963 (for brevity, the "Limitation Act"), seeking condonation of 2 days delay in filing the appeal, has also been filed.

3. The aforesaid question is no longer res integra as the honble Supreme Court in the case of [Commissioner of Customs and Central Excise Vs. Hongo India \(P\) Ltd.](#)

and Another, while interpreting the provisions of the Central Excise Act, 1944 (for brevity, "the Excise Act") has laid down that it is a complete code by itself which alone is to govern the matters provided by that Act. It has further been held that in the presence of special law providing for limitation with regard to filing of appeal, the court could examine the extent of exclusion of the Limitation Act by such special law. On examination of the language used in Sections 35, 35B, 35EE, 35G and 35H of the Excise Act, it has been concluded in paragraphs 32 and 33 that the provisions of the Limitation Act were not to apply. The view expressed by the honble Supreme Court in the aforesaid paragraphs reads thus (page 459):

As pointed out earlier, the language used in Sections 35, 35B, 35EE, 35G and 35H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the Legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any Clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days. Even otherwise, for filing an appeal to the Commissioner, and to the Appellate Tribunal as well as revision to the Central Government, the Legislature has provided 60 days and 90 days respectively, on the other hand, for filing an appeal and reference to the High Court larger period of 180 days has been provided to enable the Commissioner and the other party to avail of the same. We are of the view that the Legislature provided sufficient time, namely, 180 days for filing reference to the High Court which is more than the period prescribed for an appeal and revision.

4. When we examine the provisions of the Income Tax Act, 1961 (for brevity, "the Act"), the position is no different than the one prevailing under the Excise Act. In that regard it would be profitable to refer to the unnumbered second proviso to Section 143(1), Section 249(3) and Section 260A(2)(a) of the Act, which reads thus:

Second unnumbered proviso to Section 143(1) of the Act.

Provided further that no intimation under this Sub-section shall be sent after the expiry of one year from the end of the financial year in which the return is made.

Section 249(3)

The Commissioner (Appeals) may admit an appeal after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

Section 260A(2)(a)

260A. Appeal to High Court.- ... (2) The Chief Commissioner or the Commissioner or an assessee aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this Sub-section shall be-

(a) filed within one hundred and twenty days from the date on which the order appealed against is received by the assessee or the Chief Commissioner or Commissioner;

5. A perusal of the abovequoted provisions would show that wherever the Legislature desires to provide for condonation of delay, a specific provision has been made in the Act and, therefore, if no such provision has been made, then no application u/s 5 of the Limitation Act could be filed as the Act itself is a complete code like the Excise Act, which has been considered by their Lordships of the honble Supreme Court in [Commissioner of Customs and Central Excise Vs. Hongo India \(P\) Ltd. and Another,](#) . The reasoning adopted by the honble Supreme Court in the case of [Commissioner of Customs and Central Excise Vs. Hongo India \(P\) Ltd. and Another,](#) is fully applicable to the question raised in the present appeal. Therefore, we are of the view that the application seeking condonation of delay filed u/s 5 of the Limitation Act cannot be accepted.

6. For the reasons aforementioned, the application filed u/s 5 of the Limitation Act seeking condonation of 2 days delay in filing the appeal is dismissed. Consequently, the appeal also fails and the same is dismissed being time-barred.