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Saurashtra Cement and Chemical Industries Ltd. Vs Commissioner of Income Tax, Gujarat

Court: Gujarat High Court

Date of Decision: Feb. 16, 1978

Acts Referred: Income Tax Act, 1961 â€" Section 264

Citation: (1978) 115 ITR 27

Hon'ble Judges: B.J. Diwan, C.J; P.D. Desai, J

Bench: Division Bench

Advocate: K.C. Patel, for the Appellant; N.U. Raval, for the Respondent

Judgement

B.J. Divan, C.J.
The petitioner before us is a public limited company and has its registered office at Ranavav-2, Gujarat State. The

respondent is the Commissioner of Income Tax having jurisdiction over the case of the petitioner. The petitioner has its factory for manufacturing

cement at Ranavav. For its cement plant at Ranavav, the petitioner required power supply for working this plant and the electricity was to be

supplied by the Gujarat Electricity Board (hereinafter referred to as ""the Board""). The Board agreed to supply electric power to the petitioner on

condition that the petitioner bore part of the cost of laying service line to the factory of the petitioner. An agreement was arrived at between the

petitioner-company and the Board on September 23, 1959, and as a result of that agreement the Board was to be the owner of the service line

and not the petitioner. In accordance with the terms of that agreement of 1959 the petitioner contributed a sum of Rs. 3,00,600 during accounting

year ending on June 30, 1964, and this payment was made so that the electric power line could be laid to the factory of the petitioner-company.

The year of account of the petitioner is from 1st July of each year to 30th June of the following year. Hence, for the accounting year 1963-64, the

assessment year would be 1965-66. The petitioner capitalised the sum of Rs. 3,00,600 and claimed depreciation at the rate of 10 per cent. on this

amount for the assessment year 1965-66. The Income Tax Officer concerned allowed depreciation at the rate of 10 per cent. on the said

capitalised sum of Rs. 3,00,600. The order was passed on July 21, 1969.

2. For assessment year 1966-67, the petitioner again claimed depreciation at the rate of 10 per cent. on the written down value of the capitalised

sum of Rs. 3,00,600, that is, 10 per cent. of Rs. 2,70,540. However, the Income Tax Officer assessing the petitioner for the year 1966-67

disallowed the claim for depreciation on the ground that the petitioner was not the owner of the power line under the terms of the agreement

between the petitioner-company and the Board dated September 23, 1959. The petitioner challenged this order of the Income Tax Officer

disallowing the claim for depreciation before the Appellate Assistant Commissioner but by his order dated December 21, 1970, the Appellate

Assistant Commissioner dismissed the appeal and confirmed the order of the Income Tax Officer holding that there was no capital asset owned by

the petitioner on which depreciation could be granted.

3. Against order of the Appellate Assistant Commissioner the petitioner carried the matter in further appeal to the Income Tax Appellate Tribunal.

when the matter came up for hearing before the Tribunal, in the course of the arguments the petitioner''s counsel realised the difficulty of allowability

of depreciation and accordingly requested the Appellate Tribunal to allow the petitioner to withdraw the appeal filed before the Tribunal. The

Tribunal by its order dated November 23, 1972, allowed the petitioner to withdraw the appeal for the assessment year 1966-67. This order of the

Tribunal was received by the petitioner on December 7, 1972.

4. On December 26, 1972, the petitioner filed a revision application u/s 262 before the respondent contending that in view of the facts which have

been set out hereinabove and which were also set out in the revision application, the petitioner should be allowed to treat the amount of Rs.

3,00,600 as revenue expenditure for the assessment year 1965-66. The petitioner prayed for condonation of delay. As there was delay in filing of

the revision application and pleaded that in the circumstances of the case there was sufficient cause for condonation of delay. As there was delay in

filing the revision application, the Commissioner, the respondent herein, by his letter dated October 15, 1974, called upon the petitioner to show

cause why the revision application should not be rejected as out of time and in the said letter the petitioner was also asked to produce evidence in

support of its claim in the event of the delay being condoned. The petitioner by its letter dated October 19, 1974, explained that the petitioner was

prevented by sufficient cause as the petitioner had filed an appeal to the Appellate Assistant Commissioner and thereafter to the Income Tax

Appellate Tribunal and till the final decision was conveyed, the matter could be said to be pending with the respective authorities. The petitioner,

therefore, contended that the time for pursuing the appeal should be excluded. In any event, the petitioner contended that there was sufficient cause

for the delay in filing the revision application to the respondent. By his order dated March 29, 1975, the respondent rejected the application for

condonation of delay holding that there was no sufficient cause for the delay in preferring the revision application. Exhibit E to the petition herein is

a copy of the order passed by the respondent herein holding that there was no sufficient cause for delay in filing the revision application and

rejecting the revision petition as time barred. After setting out the facts which we have narrated above and after referring to the provisions of

section 264(3), the respondent proceeds in the exhibit E :

The assessee''s contention that the date of communication of the Tribunal''s order for the subsequent year should be considered for the purpose of

filing the revision petition is, therefore, not tenable. It is true that the Income Tax Officer has taken a different view in the subsequent assessment

year. The assessee, however, could have filed the revision petition immediately on completion of the assessment for the subsequent year. The

assessee, having not done so, cannot be considered as prevented by sufficient cause from making the petition within time.

5. This passage from paragraph 4 of the order of the respondent clearly shows that, according to the respondent, if the assessee, that is, the

petitioner herein, had gone in revision immediately after the Income Tax Officer passed the assessment order for assessment year 1966-67, on

September 30, 1969, the respondent would have considered the delay as ""sufficient cause"" within the meaning of the proviso to section 264(3) and

would have condoned the delay. The whole question, therefore, is, whether the time spent in pursuing the appeal before the Appellate authorities,

even in the cause"".

6. The provision for revision has been set out in section 264 of the Income Tax Act, 1961. We are concerned with sub-section (3) and the proviso

thereto. Sub-section (3) provides :

(3) In the case of an application for revision under this section by the assessee, the application must be made within one year from the date on

which the order in question was communicated to him or the date on which he otherwise came to know of it, whichever is earlier :

Provided that the Commissioner may, if he is satisfied that the assessee was prevented by sufficient cause from making the application within that

period, admit an application made after the expiry of that period.

As to what is meant by the words ""sufficient cause"" in the context of periods of limitation prescribed by one statue or another, the matter was

examined in the light of the latest decisions of the Supreme Court by one of us (P. D. Desai J.) in Hiraben v. Ishwarbharti [1977] 18 GLR 467

(Guj). In paragraph 7, at page 472, in the light of the decision of the Supreme Court, the legal position has been summarized as follows :

The statutory perspective of the power of the court to condone delay in institution of proceedings on sufficient cause being shown and the

principles regulating the exercise of such power are also well settled. In Sarpanch, Lonand Grampanchayat Vs. Ramgiri Gosavi and Another, , in

the context of a similar provision contained in the second proviso to section 20(2) of the minimum Wages Act, 1948, the Supreme Court observed

as follows (in para. 3) :

''This discretion like other judicial discretion must be exercised with vigilance and circumspection according to justice, common-sense, and sound

judgment. The discretion is to know through law what is just : See Keighely''s case [1609] 10 Co. Rep. 139a; 77 ER 1136.''

It was further observed that the words ''sufficient cause'' which occurred in section 5 of the Limitation Act had received liberal construction and

that similar interpretation should be placed upon those words in cognate statutory provisions like the one under consideration in that case. In this

connection the following passage from the decision of the Madras High Court in Krishna v. Chathappan ILR [1889] Mad 269 (which had earlier

received approval in Dinabandhu Sahu v. Jadumoni Mangaraj AIR 1954 SC 411 and Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.,

was cited with affirmance :

''We think that section 5 gives the courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and

discretion ought to be exercised upon principles which are well understood; the words ''''sufficient cause'''' receiving a liberal construction so as to

advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellate.''

In Union of India (UOI) Vs. Ram Charan and Others, , certain pertinent observations are made with regard to the nature of proof required for

establishing the suggested ''sufficient cause'' in a proceeding under order XXII, rule 9, Civil Procedure Code, for setting aside abatement and those

observations would with equal force even to any other proceeding where such cause is to be established. It was there observed (at page 219) :

''The provisions of the Code are with a view to advance the cause of justice. Of course, the court, in considering whether the appellant has

established sufficient cause for his not continuing the suit in time or for not applying for the setting aside of the abatement within time, need not be

over-strict in expecting such proof of the suggested cause as it would expect for holding certain fact established, both because the question does

not relate to the merits of the dispute between the parties and because if the abatement is set aside, the merits of the dispute can be determined,

while, if the abatement is not set aside, the appellant is deprived of his proving his claim on account of his culpable negligence or lack of vigilance.

This, however, does not mean that the court should readily accept whatever the appellant alleges to explain away his default. It has to scrutinize it

and would be fully justified in considering the merits of the evidence led to establish the cause for the appellant"s default in applying within time for

the impleading of the legal representatives of the deceased or for setting aside the abatement".

7. It is clear from the observations of the Supreme Court in Sarpanch, Lonand Grampanchayat Vs. Ramgiri Gosavi and Another, , that wherever

there are cognate statutory provisions providing for limitation and also providing condonation of delay in adopting appropriate proceedings within

the period of limitation if sufficient cause is made out, the principles to be applied are same as laid down by the Supreme Court and culled out in

the passage set out herein. The main question in the light of the decision of the Madras High Court in Krishna v. Chathappan ILR [1889] Mad 269

is whether negligence or inaction or want of bona fides is imputable to the party concerned and whether substantial justice would be advanced by

condoning the delay and again in exercising the judicial discretion in condoning the delay, this discretion like the other judicial discretions must be

exercised with vigilance and circumspection according to justice, commonsense and sound judgment.

8. It may be pointed that the principles which have been culled out with reference to exercise of discretion by regular courts have been applied to

quasi-judicial Tribunals as well. In Sarpanch, Lonand Grampanchayat Vs. Ramgiri Gosavi and Another, , the Supreme Court was dealing with the

provisions of that Act. The case of Hiraben v. Ishwarbharti [1977] 18 GLR 467 (Guj), was a case of a Tribunal functioning under the Motor

Vehicles Act. The Supreme Court has observed in paragraphs 5 and 6 of its judgment that the power of superintendence over the Tribunals vested

in the High Court under article 277 of the Constitution is not greater than the power under article 226 and is limited to seeing that the Tribunal

functions within the limits of its authority. The High Court will not review the discretion of the authority judicially exercised, but it may interfere if the

exercise of the discretion is capricious or perverse or ultra vires. The High Court may refuse to interfere under article 227 unless there is grave

miscarriage of justice.

9. It is obvious that the different authorities like the Income Tax Officer, the Appellate Assistant Commissioner, the Commissioner and the

Appellate Tribunal functioning under the provisions of the Income Tax Act are quasi-judicial Tribunals and hence the observations of the Supreme

Court in Sarpanch, Lonand Grampanchayat Vs. Ramgiri Gosavi and Another, , will apply to these quasi-judicial Tribunals functioning under the

provisions of the Income Tax Act as well.

10. In the instant case, we find that the Commissioner having recognised that it would have been a sufficient cause if the petitioner-company had

approached the Commissioner immediately after the order of the Income Tax Officer with reference to assessment year 1966-67, yet declined to

condone the delay on the ground of sufficient cause just because the petitioner-company took the matter in appeal first before the Appellate

Assistant Commissioner and thereafter before the Appellate Tribunal. That approach cannot be said to be in exercise of sound judicial discretion

and the decision becomes illogical once the two conclusions reached by him are examined closely. Once it is conceded that it would have been

sufficient cause if the Commissioner had been approached immediately after the order passed by the Income Tax Officer in connection with

assessment year 1966-67, merely because the matter was taken in appeal, it does not change the complexion and it would be impossible to come

to the conclusion that because he has done that there was no sufficient cause. Under these circumstances, it must be held that the discretion vested

in him has not been exercised in judicial manner and the result is that a substantial inquiry has been caused to the petitioner-company so far as the

consideration of the question regarding the revenue expenditure of Rs. 3,00,600 is concerned.

11. Under these circumstances, this special civil application is allowed and the order of the Commissioner date March 29, 1975, exhibit E to the

petition, is quashed and set aside. The Commissioner in the light of his own reasoning is directed to proceed on the footing that there was sufficient

cause and the delay must be condoned. He must now proceed to dispose of the revision application on merits. The rule is made absolute

accordingly with costs.