(1973) 07 KL CK 0008

High Court Of Kerala

Case No: O.P. No. 3680 of 1971

Varkey Ouseph		APPELLANT
	Vs	
Agricultural Income Tax Appellate Tribunal Trivandrum and Another		RESPONDENT

Date of Decision: July 24, 1973

Acts Referred:

- Evidence Act, 1872 - Section 76
- Limitation Act, 1963 - Section 12

Citation: (1975) 101 ITR 334

Hon'ble Judges: M.U. Issac, J

Bench: Single Bench

Advocate: T.L. Viswanatha Iyer and E.R. Venkiteswaran, for the Appellant;

Judgement

M.U. Isaac, J.

The petitioner was assessed under the Agricultural Income Tax Act, 1950 for the years 1964-65 and 1965-66. He filed appeals from the said assessments before the Appellate Assistant Commissioner concerned, who by a common order dated 11-2-1969 dismissed them. A copy of the order was served on the petitioner on 9-9-1969. On 22-9-1969, he applied for a certified copy of the order, which was furnished to him on 8-11-1969. On the basis of this copy, he filed a common appeal before the first respondent, the Agricultural Income Tax Appellate Tribunal, Trivandrum on 18-11-1969. By a notice Ex. P1 dated 26-11-1969, the Secretary of the Tribunal informed the petitioner that the appeal filed by him would be treated as relating to the year 1964-65, and that he had to send one more set of appeal memo and the appellate order for the appeal for the year 1965-66. The petitioner was given five days from the date of receipt of Ex. P1 to cure the defects. It was also pointed out by Ex. P1 that there was a delay of ten days in filing the appeal. The petitioner immediately complied with the notice, and the requisite papers were filed

on 6-12-69. The petitioner also filed two applications for condoning the alleged delay in filing the appeals. The Tribunal by its order, Ex. P2, dated 8-7-1970, dismissed the appeals as time barred, stating that the grounds stated by the petitioner for condoning the delay were vague. The petitioner then filed two applications under S. 36 of the Act stating that the period of limitation for filing the appeals had to be reckoned with reference to the certified copy of the order of the Appellate Assistant Commissioner obtained by the petitioner, and that, if the time taken for obtaining that copy was excluded, the appeals were not time barred, and praying to rectify the Tribunal''s Order Ex. P2, since the dismissal of the appeals as time barred was due to an error apparent on the face of the record. The Tribunal dismissed these applications, by a very detailed order, Ex. P4 dated 5-2-1971, holding that the certified copy obtained by the petitioner cannot be taken into account in reckoning the period of limitation, since a copy of the appellate order had been communicated to him by the Appellate Assistant Commissioner, and that S. 36 of the Act under which the petitioner applied for rectification of its previous order had no application to the case. The petitioner has then filed this writ petition to quash Exs. P2 and P4, and to issue a writ of mandamus directing the Tribunal to hear and dispose of the appeals on the merit. Two points were raised by counsel for the petitioner. One is that the Tribunal acted arbitrarily in not condoning the alleged delay in filing the appeals and in rejecting them as time barred. The other point is that there was no delay at all in filing the appeals. This point is not free from difficulty; but the first point is very simple. The time within which an appeal has to be filed before the Appellate Tribunal is fixed in S. 32(1) of the Act; it is sixty days of the date on which the Assistant Commissioner''s order is communicated to the assessee. Sub-S. (3) of S. 32 reads:

The Appellate Tribunal may admit an appeal after the expiry of the sixty days referred to in Sub-S. (1) and (2), if it is satisfied that there was sufficient cause for not presenting it within that period.

Sub-S. (4) provides that the appeal shall be in the prescribed form. R. 26 of the Agricultural Income Tax Rules, 1957 prescribes the forms for filing appeals to the Tribunal. The form for appeal from the Assistant Commissioner''s order in an appeal against an assessment is Form B (T). That form states, among other things, that the appeal must be accompanied by a certified copy of the order appealed from. Regulation.8 of the Kerala Agricultural Income Tax Appellate Tribunal Regulation.1965 provides that the appeal petition shall be accompanied by four copies of the order appealed from, one of which shall be the certified copy. S. 69 of the Act reads:

In computing the period of limitation prescribed for any appeal under this Act or for any application under S. 60, the date on which the order complained of was made and the time requisite for obtaining copy of such order shall be excluded.

2. In the instant case, there was genuine controversy whether the copy of the order communicated by the Assistant Commissioner to the petitioner as required by S. 31(7) of the Act would serve the purpose of a certified copy to accompany the appeal petition, or he should apply for and obtain a certified copy to be attached to the appeal petition. It is obvious that the petitioner bona fide thought that the appeal petition should be accompanied by a certified copy of the order obtained from the Assistant Commissioner on application and payment of the requisite fee in the ordinary course. It is seen that he applied for such a copy within 13 days after the order of the Appellate Commissioner was communicated to him; and he filed the appeal accompanied by this certified copy within 10 days of receiving the same, though he had on the whole 60 days to file the appeal, after excluding the time taken for getting the certified copy. All these things were done through an advocate, which means that the petitioner acted on legal advice, though as it happened ultimately that the advice was wrong in the opinion of the Appellate Tribunal. There has not been even a suggestion at any stage that the petitioner had anything to gain, or he acted with any secondary motive in not filing the appeal on the basis of the copy of the order communicated to him by the Assistant Commissioner. After all, the delay in filing the appeal on reckoning the period of limitation from the date of communication of the order was only 10 days. There is no case that the petitioner did not cure the defects of not filing the requisite number of copies of the appeal petition and the order appealed from within the time allowed to cure the said defects as per Ex. P1. The petitioner also pleaded that due to the explosive and dangerous situation faced by the agriculturists in that area on account of labour agitation, he could not meet his advocate and arrange for the filing of the appeals more expeditiously. It is unfortunate that the Tribunal considered that this ground was vague; and it rejected the applications for condoning the alleged delay on this sole ground. The question whether there is sufficient cause to admit an appeal filed out of time is purely a matter for determination in exercise of the discretion of the appellate authority, but the discretion has to be exercised judiciously. If there is no exercise of the discretion at all, or it is exercised arbitrarily or whimsically, it would be a case of failure to exercise jurisdiction or an illegal exercise of it. That is precisely the case here. I am unable to understand what the Tribunal meant by saying that the ground alleged by the petitioner for condoning the delay was vague. It is very definite, and if it is true, there can be no doubt that it would be a sufficient cause. The Tribunal has no case that the ground alleged was not true. Apart from any of these considerations, it is obvious from the facts and circumstances of the case, which I have referred to above, that this was a case where there was genuine controversy whether the copy of the order communicated by the Assistant Commissioner to an assessee is a certified copy of that order, or the assessee should apply for and obtain a certified copy for being produced along with his appeal petition, and the assessee bona fide considered that it was necessary. The Appellate Tribunal failed to exercise its discretion in totally ignoring this obvious aspect of the matter and not condoning the delay, which in its opinion had occurred,

in filing the appeal. The impugned orders are liable to be quashed on this sole ground.

3. I shall now consider the second question namely whether a copy of the order communicated by the Assistant Commissioner under S. 31(7) of the Act is a certified copy. The term certified copy is not defined in the Act or the Rules made thereunder. But it is defined in S. 76 of the Indian Evidence Act, 1872. That definition reads:

Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorised by law to make use of a seal, and such copies so certified shall be called certified copies.

Explanation:-- Any officer who, by the ordinary course of official duty is authorised to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

The above provision creates an obligation on the public officer concerned to give a certified copy of a public document in his custody to a person who is entitled to inspect it on his application for the same and on paying the requisite fee, and it also states what all things such a copy should contain. The first part of the section creates the obligation to give a certified copy; and the second part says what would be called a certified copy. In other words, the second part defines a certified copy. According to that definition, the copy shall have a certificate written at the foot of it that it is a true copy of the document and that certificate shall be dated and subscribed by the officer issuing it with his name and official title and shall be sealed, whenever that officer is authorised to make use of a seal; and such a copy alone shall be called a certified copy. It is not necessary for such a copy to be a certified copy that it should have been one obtained on an application made and the requisite fees paid for that purpose. That is only the procedure prescribed for obtaining a certified copy. There are instances where a person is entitled to obtain under law certified copies of orders and judgments free of costs, and even without an application being made for that purpose. If such a copy satisfies all the requirements of what a certified copy should contain under S. 76 of the Evidence Act, it does not cease to be a certified copy for the reason that it was not obtained on application and payment of the legal fees. I think that, in the absence of a definition of the term "certified copy" in Agricultural Income Tax Act or the rules thereunder, the definition in the Evidence Act must apply. Then it is only a question of fact whether the copy of the order communicated by the Assistant Commissioner to the. petitioner under S. 31(7) of the Agricultural Income Tax Act was a certified copy within the meaning of the above definition. The Appellate Tribunal has no case that it was such a copy. It has not adverted to that question. All that the Assistant

Commissioner is obliged to do under S. 37(7) is to communicate the order to the assessee, and he usually does it by sending a copy of the order to the assessee. I do not think that he certifies that copy in the manner required by S. 76 of the Evidence Act. It means that, under law, an assessee who desires to file an appeal from the Order of an Assistant Commissioner, must apply for and obtain a certified copy of the order, and produce the same along with the appeal petition. That is what the petitioner did in this case; and admittedly the appeal was filed far within the prescribed period; if the production of such a copy was necessary, and the time requisite for obtaining that copy is excluded.

4. There is also another aspect of the matter, which the Appellate Tribunal has totally forgotten to consider. As rightly pointed out by the Tribunal, though the appeals were disposed of by the Assistant Commissioner by a common order, separate appeals had to be filed before the Tribunal in respect of each of the two assessments concerned in that common order. And each appeal petition has to be accompanied by a certified copy of the order appealed from. Admittedly, one copy of the common order was alone communicated to the petitioner. Therefore, even assuming that the said copy would be certified, he had to apply for and obtain another certified copy to file the two appeals. In that view of the matter, at least one of the appeals had been filed within the prescribed period of limitation; and the only defect in respect of the other appeal would be that he did not produce a separate appeal memorandum and other necessary papers. The Tribunal rightly treated this as a defect; and the petitioner was called upon to cure that defect within a given time. The petitioner complied with the requisition, which means that the said appeal was within time. In this view of the matter also, there was no limitation for any of the appeals.

5. A Division Bench decision of this Court in Malayalam Plantations Ltd., Quilon Vs. Commissioner of Income Tax, Mysore, Travancore-Cochin and Coorg, Bangalore, . was cited before the Appellate Tribunal in support of the petitioner''s contention that it is only a copy applied for and obtained as provided for in S. 76 of the Evidence Act that can be called a certified copy, and that since the petitioner was bound to produce a certified copy of the order appealed from along with the appeal petition, he was entitled to have the time taken in obtaining such a copy excluded in reckoning the period of limitation. That authority was summarily disposed of by the Tribunal stating that the said decision related to a case under the Travancore Income Tax Act, that the whole question therein was as to what would be a certified copy within the meaning of S. 76 of the Evidence Act, and that the said decision had no application to the case, as the Agricultural Income Tax Act was a self contained statute. The manner in which the Appellate Tribunal has distinguished the above decision gives little credit to its capacity for understanding a decision, if not a tendency to disregard a ruling of this Court which was binding on it. The relevant provision in the Travancore Act is S. 115; and it provides that S. 12 of the Limitation Act shall apply in computing the period of limitation for an appeal under that Act.

The relevant part of S. 12 of the Limitation Act corresponds to S. 67A of the Indian Income Tax Act, 1922, which is identically similar to S. 69 of the Agricultural Income Tax Act, 1950. The Division Bench decision of this Court has referred to and followed a decision of the Madras High Court in Rasipuram Union Motor Service Ltd. Vs. Commr. of Income Tax, Madras, . and a decision of the Calcutta High Court in In Re: Ruby General Insurance Co. Ltd. , which dealt with the corresponding provisions in the Indian Income Tax Act. So the observation made by the Tribunal that the Agricultural Income Tax Act was a self contained Act, and the decision of the Kerala High Court could not apply to the case before it was meaningless. The Travancore Income Tax Act, and the Indian Income Tax Act, 1922 were as much self contained as the Agricultural Income Tax Act, 1950.

6. Before I close this Judgment, I may also make a few observations regarding the provisions contained in the Agricultural Income Tax Act on the subject under discussion. One thing is that it is a true copy of the assessment order or the appellate order that is communicated by the Agricultural Income Tax Officer or the Assistant Commissioner, as the case may be, to the assessee. Both under S. 31 and 32 of the Act, the period of limitation for an appeal is from the date of communication of the order to the assessee. In the light of such a provision, the further provision in S. 69 of the Act that, in computing the period of limitation, "the time requisite for obtaining a copy of such an order shall be excluded" seems to be unnecessary. In the case of appeals to the Appellate Assistant Commissioner, there is no provision requiring the production of a certified copy of the order appealed from. S. 69 will have no operation in such cases. It is the form prescribed for an appeal to the Tribunal that requires a certified copy of the order appealed from to accompany the appeal petition. S. 69 can have application to such a case only if the copy of the order communicated to the assessee is not a certified copy. That is why it has been held that the copy of the order which the assessee is bound to produce along with the appeal petition must be a certified copy as defined in S. 76 of the Evidence Act. Another anamoly in S. 69 is that it provides that, in computing the period of limitation, the date on which the order complained of was made should also be excluded. This is meaningless, since in the matter of appeals under the Agricultural Income Tax Act, the period of limitation is to be reckoned from the date of communication of the order appealed from, and not from the date of the order. Unlike the case of a judgment or order of a civil Court, which has to be pronounced in open Court on a day fixed for that purpose, the orders of the income tax authorities are made in their office and communicated to the assessees concerned in the regular course. That is why the date of communication of the order is made the relevant date. S. 69, as it is framed, leads to another difficulty. It is only the date on which the order was made and the time requisite for obtaining a copy of that order that are excluded in computing the period of limitation. This would mean that the period between the date of the order and the date of its communication to the assessee is not liable to be excluded. This is inconsistent with the provisions in the

Act, which make the date of communication of the order to the assessee the date from which the period of limitation is to be reckoned. So the words "the date on which the order complained was made" occurring in S. 69 may have to be read as "the date on which the order complained of was communicated". It has been the practice of the Income Tax authorities Central as well as State to accept the copy of the order communicated to the assessee as certified copy and reckon the period of limitation from the date of service of that copy on the assessee. This is a commendable practice from all points of view; and it is necessary in the light of that practice to consider whether a provision like S. 69 of Act is at all necessary, and if so to make the requisite amendments in that Section, and also in Form B (T) prescribed for an appeal to the Appellate Tribunal in so far as it provides that the appeal petition shall be accompanied by a certified copy of the order appealed from. In the result, I quash the impugned orders Exs. P2 and P4, direct the Appellate Tribunal to restore the two appeal to its file, and dispose of them on the merits according to law. There will be no order as to costs.