

Before Mr. Justice Mukerji and Mr. Justice Bennet.

IN THE MATTER OF GULAB CHAND CHHOTAY LAL.*

1931
February,
26.

Income-tax Act (XI of 1922), sections 66(3) and 67A—Application by assessee to High Court to require the Commissioner to state a case—Limitation—Period spent in obtaining copies of orders.

In computing the period of limitation prescribed for an application under section 66(3) of the Income-tax Act by an assessee to the High Court to require the Commissioner of Income-tax to state a case, the period spent in obtaining the copies of the orders of the Income-tax Officer and the Assistant Commissioner of Income-tax is not to be excluded, although the rules framed by the High Court prescribe the necessity of filing such copies as well as the copy of the order of the Commissioner of Income-tax.

Mr. *Gopi Nath Kunzru*, for the applicants.

Mr. *U. S. Bajpai*, for the Crown.

MUKERJI and BENNET, J.J. :—This is an application by an assessee to the High Court asking that the Commissioner of Income-tax should be required to state a case under section 66 of the Income-tax Act. The learned Government Advocate has taken a preliminary objection that the application is time barred. Section 66(3) of the Income-tax Act states: "If, on any application being made under sub-section (2), the Commissioner refuses to state the case on the ground that no question of law arises, the assessee may within six months from the date on which he is served with notice of the refusal apply to the High Court."

Now it is admitted that the Commissioner refused to state a case on 19th April, 1930, and that the notice of refusal was communicated to the assessee on 3rd May, 1930. The application to the High Court was made on 12th November, 1930, and was not accompanied by any copies of the order of the Commissioner or of the Assistant Commissioner or of the Income-tax Officer. Under

*Miscellaneous Case No. 649 of 1930.

section 67A, "in computing the period of limitation prescribed for an appeal under this Act or for an application under section 66, the day on which the order complained of was made, and the time required for obtaining a copy of such order, shall be excluded."

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It is admitted that application for a copy of the order of the Income-tax Commissioner was not made until 22nd November, 1930, that is, after the application under section 66(3) was filed in this Court. Accordingly, the period for obtaining a copy of the order of the Commissioner cannot be applied to extend the period of limitation. But it is contended that two other periods should be used for extension of limitation, namely from the 26th to the 29th of May, 1930, a period of four days occupied in obtaining a copy of the order of the Income-tax Officer, and from the 14th to the 18th of March, 1930, a period of five days, in obtaining a copy of the order of the Assistant Commissioner on appeal. If these two periods of nine days in all were added, it is true that the application to this Court would be within time. The question therefore is whether any rule exists under which these two periods can be used to extend the period of limitation. Section 67A of the Income-tax Act refers merely to the time required for obtaining a copy of "such order," that is, of the order which is the subject of a reference under section 66(3). Accordingly, it is clear that this section does not authorise the extension of the period of limitation by the time required for obtaining the copies of the other two orders in question. Reference was also made to the Limitation Act, section 12 but that does not apply to a proceeding under section 66(3) of the Indian Income-tax Act. It was also argued by learned counsel that there would be some analogy with the case of a second appeal being filed in the High Court under the Civil Procedure Code. If that be so, then the analogy is unfortunate for the applicant, because it has been held by a Full Bench of this

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Court in *Narsingh Sahai v. Sheo Prasad* (1) that although a rule of this Court with reference to the presentation of an appeal from an appellate decree required that the memorandum of appeal should be accompanied not only by a copy of the decree or order, but, where it exists, a copy of the judgment of the court of first instance, still this rule did not connote that the appellant had a right to exclude from the period of limitation for filing his appeal the time requisite for obtaining a copy of the judgment of the court of first instance.

It is a fact that among the rules framed for procedure of this Court in regard to income-tax references, rule 1 states that where an application is made under section 66(3) of the Income-tax Act, there should be copies of the order of the Income-tax Officer, the Assistant Commissioner of Income-tax and the Commissioner of Income-tax disposing of the case. But the mere fact that these orders are required does not connote that the applicant has a right to extend the period of limitation by the period required for obtaining copies of orders other than those of the Commissioner of Income-tax under reference.

Under these circumstances, we consider that this application is time barred and we therefore dismiss it with costs. We assess the fee of the Government Advocate at Rs. 100 and allow him one month for the filing of the certificate.

(1) (1917) I.L.R., 40 All., 1.