

Daya Shanker vs Commissioner, Agricultural ... on 1 April, 1953

Equivalent citations: AIR1953ALL622, AIR 1953 ALLAHABAD 622

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This is an application under Section 24 Sub-section (4), U. P. Agricultural Income-tax Act, 1948 (Act 3 of 1949). Sub-section (4) of Section 24 provides that:

"If the Board reject the application under Sub-section (2) or refuse to state the case on such application, the assessee may within three months of the communication of the order under Sub-section (3) apply to the High Court and the High Court may, if it is not satisfied about the correctness of the decision of the Board, require the Board to state the case and refer it and on receipt of such requisition the Board shall state and refer the case to the High Court."

The only point that the Board was called upon to consider was whether the applicant had filed his return within time. Learned counsel has contended that the Board as well as the assessing authority were in error inasmuch as they thought that the period within which the return was to be made was thirty days but the period really was forty-five days. The facts are that a notice was issued under Section 15(3), Agricultural Income-tax Act requiring the assessee to file his return within thirty days of the date of delivery of notice. The notice was received by Baij Nath, cousin of the applicant Daya Shanker, on 24-2-1949. No return was filed within thirty days and on 7-4-1949, the assessment was made. The assessee admitted that his cousin had handed over the notice to him but he said that his cousin did not mention the date on which the notice had been so given to him. It was not till 9-4-1949, that the return was made and it was rejected as having been filed beyond time and on the ground that the assessment had already been made. Rule 22 framed under the Agricultural Income-tax Act provides that the period within which the return has to be made has to be specified in the notice & it should not be less than thirty days nor more than forty-five days from the date of the delivery of notice. The period specified being thirty days in the notice given to the assessee the return was filed clearly beyond time. The order of the Board is, therefore, correct.

2. We may in this connection mention that a number of applications have been filed in this Court under Section 24(4), Agricultural Income-tax Act. The opposite party in such cases should be the U.

P. Government and not the Commissioner, Agricultural Income-tax, who is merely an appellate Court from an order made by the assessing authority. The office should take care to see that if the Commissioner, Agricultural Income-tax, is impleaded, the applicant should be required to make the necessary correction and notice should go to the Standing Counsel for the U. P. Government.

3. This application is, therefore, dismissed with costs which is assessed at Rs. 50/-.