J.B. Advani And Co. (P.) Ltd. vs R.D. Shah, Commissioner Of Income-Tax, ... on 22 August, 1968

Equivalent citations: [1969]72ITR395(SC), AIRONLINE 1968 SC 5

Author: A.N. Grover

Bench: A.N. Grover

JUDGMENT

Grover, J.

1. This is an appeal by special leave against the order dated April 24, 1965, made by the Commissioner 01 Income-tax, Bombay, on an application under Section 33A(2) of the Indian. Income-tax Act, 1922, hereinafter called the Act, by which the application was dismissed or, the ground that it was out of lime and no satisfactory explanation had been given for the delay.

2. The facts which are not in dispute are that the appellant-company was dealing in a large number of commodities like paper, machinery, cotton textiles, tea, etc. In the financial year 1951-52, relevant for the assessment year 1952-53, the company started making transactions in jute. The turnover of the export of jute during that year amounted to about Rs. 42 lakhs. As the company was receiving a large number of enquiries from foreign countries in connection with the supply of jute, it entered into a contract on December 28, 1951, for forward purchase of jute. Similar contracts were entered into in January, 1952, at different rates. The total quantity involved was 30,00,000 yds. By the end of January, 1952, jute prices started falling heavily. The transactions were consequently closed by a corresponding loss in March, 1952. Under these settlements the company had to make payments totalling Rs. 4,71,375 which was recorded in its books for the year ending March 31, 1953 The company claimed the loss to the extent of the aforesaid amount in its return for the assessment year 1953-54. The Income-tax Officer was of the view that it was a speculative loss and could not be set off against other income. The company preferred an appeal to the Appellate Assistant Commissioner who held that the loss in question was not a speculative loss and it could be set off against the income from the other business of the company. The Income-tax Officer tiled an appeal to the Appellate Tribunal and, at the time of the hearing of the appeal for the assessment year 1953-54, the departmental representative sought permission to raise a new point, namely, that the loss in jute was not allowable in the assessment year 1953-54 as the settlements were made in March, 1952. which would be relevant for the assessment year 1952-53. The Tribunal permitted the department to raise this point and allowed the department's appeal. The company had submitted returns for the two assessment years 1952-53 and 1953-54 on March 3, 1953, and March 6, 1954, respectively. The

assessment for the assessment year 1952-53 was completed on January 21, 1956, and for the assessment year 1953-54 on February 27, 1958. After the decision of the Tribunal for the assessment year 1953-54, which was given on July 7, 1964, the company filed an application dated August 21, 1964, before the Commissioner of Income-tax under Section 33A of the Act giving all these facts and pointing out that the Tribunal had itself realised the disadvantage to which the assessee would be put by the new point having been allowed to be raised and the appeal having been decided on that point with regard to the assessment year 1953-54. It was emphasised in this application that the revision of the Income-tax Officer's order for the assessment year 1952-53 became necessary as,, admittedly, the loss to the tune of Rs. 4,71,375 had been suffered by the company which it had sought to set off during the assessment year 1953-54. The Commissioner of Income-tax made an order on April 24, 1965, dismissing the application on the ground already mentioned.

3. The learned counsel for the appellant-company has laid a great deal of stress on the hardship involved in the case. It can hardly be gainsaid that the company, even according to the order of the Tribunal, could have claimed a set-off of the loss in question during the assessment year 1952-53. It was only for the first time before the Tribunal during the hearing of the appeal relating to the assessment year 1953-54 that the question was raised on behalf of the department that this loss was not allowable in the assessment year 1953-54. The company had, for good reasons, thought that, since the payment which had been made in settlement of contracts were recorded in the books for the year ending March 31, 1953, the loss was claimable during the assessment year 1953-54. The company had a good case for invoking the revisional jurisdiction of the Commissioner under Section 33A of the Act. Unfortunately the company did not disclose any ground whatsoever for the delay between July 7, 1964, when the order of the Tribunal was announced and the date of the application, which was August 21, 1964. According to Sub-section (2) of Section 33A the Commissioner may, on an application by an assessee for revision of an order passed by any authority subordinate to him, made within one year from the date of the order or within such further period as the Commissioner may think fit to allow on being satisfied that the assessee was prevented by sufficient cause from making the application within that period, call for the record of the proceedings and make such order as he may think fit subject to certain restrictions which it is unnecessary to mention. The company, in the present case, can be said to have been prevented for sufficient cause from making an application under Section 33A within a period of one year from the date of the order of the Income-tax Officer in respect of the assessment year 1952-53 because of the decision of the Tribunal in respect of the assessment year 1953-54 in which for the first time the department was allowed to raise a new point as a result of which it was held that the company was entitled to set off the loss in question during the assessment year 1952-53 and not 1953-54. The serious hurdle in the way of the company is the period between the decision of the Tribunal and the date of the application (from July 7, 1964, to August 21, 1964). The application which was filed under Section 33A of the Act is completely barren of any explanation for this delay which had to be properly and satisfactorily explained. In Sitaram Ramcharan v. M.N. Nagarshana, while considering the question of condonation of delay with reference to the second proviso to Section 15(2) of the Payment of Wages Act, it was observed by this court:

> "The proviso with which we are concerned has prescribed the limitation of six months for the institution of the application itself, and so the principle laid down in

> Lingley's case, [1921] 1 K.B. 655 can have no application to the question which we have to decide. Indeed, the present proviso is in substance similar to the provision in Section 5 of the Limitation Act and Mr. Phadka has fairly conceded that there is consensus of judicial opinion on the question of the construction of Section 5. It cannot be disputed that, in dealing with the question of condoning delay under Section 5 of the Limitation Act, the party has to satisfy the court that he had sufficient cause for not preferring the appeal or making the application within the prescribed time, and this has always been understood to mean that the explanation has to cover the whole of the period of delay (vide Ram Narain Joshi v. Parameshwar Narain Mehta, [1903] I.L.R. 30 Cal. 309). Therefore, the finding recorded by the authority that the appellants have failed to establish sufficient cause for their inaction between May 2, 1952, and the respective dates on which they filed their present applications is fatal to their claim."

4. These observations are fully applicable to the facts of the present case. The appeal fails and it is dismissed but, in view of the entire circumstances, the parties are left to bear their own costs in this court.