

Karnataka High Court

Banglore Bottling Co. P. Ltd. vs Commissioner Of Income-Tax, ... on 13 November, 1980

Equivalent citations: 1981 127 ITR 862 a KAR, 1981 127 ITR 862 a Karn

Author: S Iyengar

Bench: M S Iyengar

JUDGMENT Srinivasa Iyengar, J.

1. The order of the Commissioner of income-tax dated February 23, 1979 (Ex.E), dismissing the revision petition filed by the petitioner against the order of the AAC in relation to the assessment year for 1975-76, refusing to condone the delay in filling the revision petition is challenged in this writ petition.

2. The order of the AAC was made on May 27, 1977, and had been served on the assessee on June 9, 1977. The assessee could have filed a revision petition within one year from that date. However, the assessee had preferred an appeal to the Income-tax Appellate Tribunal. That appeal, however, had not been filed within time and there appears to have been a delay of 35 days. The Tribunal took up that matter on December 4, 1978.

3. According to the petitioner from the trend of discussion on that day before the Tribunal, it appeared that the Tribunal was not inclined to condone the delay and would reject the appeal. It transpires that actually the Tribunal refused to admit the appeal condoning the delay and made an order on December 12, 1978. The assessee, however, even before the receipt of the order of the Tribunal preferred the revision petition before the Commissioner. That was dated December 5, 1978, but actually filed in the office on December 8, 1978.

4. The assessee sought for the condonation of the delay and the reason given was that an appeal had been filed before the Tribunal and it was not known whether it would condone the delay and this aspect of the matter became clear only on or about December 4, 1978, and without further loss of time the revision petition had been filed. The reason given by the Commissioner to reject the revision petition and not to condone the delay was that the mere pendency of the matter before the Tribunal was not a sufficient cause for the assessee cannot wait till he knows the fate of the appeal and seek to file the revision after an adverse order by the Appellate Tribunal.

5. In my opinion, the reason given is wholly untenable and the Commissioner has failed to exercise the jurisdiction in this behalf in accordance with law. Under s. 264(4)(c) of the I.T. Act, if an order had been the subject of an appeal before the Appellate Tribunal, the jurisdiction of the Commissioner could not be invoked and he could not exercise the jurisdiction. Only if the Tribunal refused to entertain an appeal and thereby the order of the AAC would not have been the subject of an appeal to the Tribunal, the assessee could approach the Commissioner and the Commissioner could exercise his jurisdiction under s. 264 of the I.T. Act. The fact that the assessee sought to prefer an appeal to the Tribunal cannot be a factor affecting him adversely in the circumstances. The fact that the Tribunal took up the matter for hearing only in December, 1978, cannot be counted against the petitioner and the petitioner cannot be imputed with lack of bona fides in pursuing its remedy. It is clear that soon after the first hearing of the matter before the Tribunal, the assessee approached

the commissioner without much loss of time. The refused to condone the delay cannot be said to be in due exercise of judicial discretion. The Commissioner ought to have, in the circumstances, condoned the delay and disposed of the revision petition on merits. In similar circumstances the Gujarat High Court has also taken the same view; vide Saurashtra Cement and Chemical Industries Ltd v. CIT [1978] 115 ITR 27. Accordingly, the rule issued is made absolute. The order of the Commissioner, Ex. E, is quashed and he is directed to proceed on the footing that there was sufficient cause for the delay in preferring the revision petition and that the delay must be condoned and dispose of the revision petition on merits. No costs.