IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Income Tax Appeal No. 30 of 2011
With
Delay Condonation Application No. 3188 of 2018

Director Income Tax (International Taxation)

...Appellant

Vs.

M/s Hyundai Heavy Industries Co. Ltd.

...Respondent

Mr. Hari Mohan Bhatia, Advocate for the appellant.
Mr. P.R. Mullick, Advocate for the respondent.

Coram: Hon'ble K.M. Joseph, C.J.
Hon'ble Sharad Kumar Sharma, J.

Dated: 17th May, 2018

K.M. JOSEPH, C.J. (Oral)

This appeal is filed against a common order of the Income Tax Appellate Tribunal (*hereinafter referred to as the "Tribunal")* relating to Assessment Years 1997-98 onwards, for a period of eight years, till 2004-05. On the filing of the Appeal, an objection was raised by the respondent/assessee, represented by Mr. P.R. Mullick, Advocate, that the Appeal is filed beyond time.

2. Before proceeding to hear the parties on merits of the appeal at admission stage, we would deem it appropriate to hear the preliminary objection raised by respondent on delay.

3. We heard Mr. H.M. Bhatia, learned counsel on behalf of the appellant/Revenue and Mr. P.R. Mullick, learned counsel on behalf of the respondent/assessee.

4. The case of the appellant is that the appellant in this case, namely, the Director of Income Tax (International Taxation) Delhi-II, New Delhi, has filed the Appeal on 13.7.2011. As the copy of the impugned order was received in the office of the appellant only on 16.3.2011. An Appeal under Section 260A of the Income Tax Act, 1961 (*hereinafter referred to as the "Act")* is to be filed within a period of 120 days from the date of receipt of a copy of the order. Therefore, learned counsel for the appellant would submit that the Appeal has been filed within time. In fact, he points out that even the Office has not raised any objection that the Appeal is barred by limitation and it is the respondent/assessee, which has raised this contention.

5. The appellant, in fact, has also filed an Application seeking condonation of delay of 653 days by way of abundant caution so that, in case if the court finds that there is delay in filing the appeal, an order may be passed condoning the delay.

6. Section 260A of the Act provides for an Appeal to the High Court from an order of the Appellate Tribunal on substantial question of law. The actual provision, with which we are concerned at this juncture, is sub-section (2)(a) of Section 260A. It reads as follows:

"260A. Appeal to High Court.-

(2) The Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner or an assessee aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be—

(a) filed within one hundred and twenty days from the date on which the order appealed against is received by the assessee or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner;"

7. The principal contention of Mr. P.R. Mullick, learned counsel for the respondent/assessee, is that, in response to a query under the Right to Information Act, the Tribunal has given information to the effect, under Receipt no. 1199 that the order of the Tribunal dated 29.5.2009, which is the impugned order in this case, was in fact dispatched by the Tribunal to the office of the Deputy Commissioner of Income Tax on 09.9.2009. It is submitted by Mr. Mullick, that it is the said authority, which was arrayed before the Tribunal; the order was communicated to him; it was received by him; and if the receipt by the said officer is treated as a receipt within the meaning of sub-section (2)(a) of Section 260A, the present Appeal is barred by limitation, as it is filed much thereafter. The appellant joins issue in regard to the receipt of the order of the Tribunal in the office of the Commissioner of Income Tax, Dehradun, with which the Deputy Commissioner of Income Tax is attached. In this regard, the appellant to substantiate his case has produced documentary evidence in the form of registers and contends that registers would show that the impugned order of the Tribunal, which is

alleged to have been sent by the Tribunal to the office of the Commissioner of Income Tax, Dehradun, was never received by it and there is no such entry of receipt recorded in the registers. In fact, the appellant points out the contradiction in the case set up by the respondent/assessee. At one place, it is mentioned that, under the Right to Information Act, information has been given by the Tribunal that the impugned order was dispatched on 09.9.2009; yet, at another place, it is contended that the said order was served on 09.9.2009. This is sought to be brushed aside as a mistake by the respondent/assessee.

8. The respondent/assessee would also contend that much water has flown under the bridge after the passing of the order in terms of various litigations and other developments, which have taken place. He enlists the filing of Writ Petition No. 2070 of 2009 by the respondent/assessee on 07.12.2009. It related to a challenge to proceedings under Section 147 of the Act in relation to Assessment Year 2002-03. This is after the impugned order was passed on 29.5.2009. He would submit that a counter affidavit was filed by the Director of Income Tax (the appellant in the present case) on 23.12.2009. Mr. P.R. Mullick would seek to impute knowledge of the impugned order by the contents of the counter affidavit filed. Still later, there is reference to another Writ Petition filed in respect of Assessment Year 2004-05. Therein also, it is stated that a counter affidavit was filed on 19.02.2010, wherein also, the appellant has referred to the impugned

order in this case. There is also reference to proceedings before the Dispute Resolution Panel for the Assessment Years 2005-06 and 2006-07, where also there is reference to the impugned order and, in the same, the appellant was a Member, it is alleged. Still later, on 29.7.2009, which is two months after the date of the impugned order, it is contended that proceedings were commenced under Section 263 of the Act, which were based on the impugned order. In the proceedings dated 31.12.2009, there is reference to draft assessment order, which refers to the impugned order.

9. The sum and substance of all these developments being referred to is the contention that the appellant must be imputed with the knowledge of the impugned order.

10. Next, learned counsel for the respondent/assessee would point out Circular dated 24.05.2011, as also Circular dated 11.08.2011. Circular dated 24.05.2011 is referred to contend, therein, a time-frame is fixed for monitoring the timely filing of the appeals before the High Court. What is alleged to be Circular dated 11.08.2011 pertains to proceedings before the Tribunal. The latter is relied upon to contend that, whenever there is a change in the jurisdiction of the Commissioner, it is to be brought to the notice of the Tribunal. Since there is allegation of change in the jurisdiction of the Commissioner, it was incumbent upon the appellant to bring it to the notice of the Commissioner, runs the

argument. He also did seek support from the judgment of the larger Bench of the Delhi High Court and he would submit that the Application for condonation of delay also, which is filed, must not be accepted having regard to the delay.

11. As far as the statutory provision in question is concerned, it is relevant to notice certain other cognate provisions. Section 254 of the Act comes under the heading "Orders of Appellate Tribunal". Sub-section (3) of Section 254 reads as follows:

> **"254. Orders of Appellate Tribunal**
>
> (3) The Appellate Tribunal shall send a copy of any orders passed under this section to the assessee and to the Principal Commissioner or Commissioner."

12. Section 260A is a provision, which appears later in the Act and it is under Section 260A that the law contemplates that the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner, besides an assessee, may file appeal to the High Court within 120 days from the date on which the order appealed against is received by *inter alia* the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner. It may also be apposite that we refer to the definition of the word 'Commissioner'. The word 'Commissioner' is defined under Section 2(16) as follows:

> "2(16) "Commissioner" means a person appointed to be a Commissioner of Income-tax or a Director of Income-tax or a

> Principal Commissioner of Income-tax or a Principal Director of Income-tax under sub-section (1) of section 117;"

13. "Chief Commissioner" is defined under Section 2(15A) as follows:

> "2(15A) "Chief Commissioner" means a person appointed to be a Chief Commissioner of Income-tax or a Principal Chief Commissioner of Income-tax under sub-section (1) of section 117;"

14. "Commissioner (Appeals)" is separately defined under Section 2(16A) as follows:

> "2(16A) "Commissioner (Appeals)" means a person appointed to be a Commissioner of Income-tax (Appeals) under sub-section (1) of section 117;"

15. Section 116 of the Act deals with Income Tax Authorities. Section 117 of the Act deals with appointment of Income Tax Authorities. Sub-section (2) of Section 117 reads as follows:

> **"117. Appointment of income- tax authorities. -**
>
> (2) Without prejudice to the provisions of sub- section (1), and subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, the Central Government may authorise the Board, or a Principal Director General or Director General, a Principal Chief Commissioner or a Chief Commissioner or a Principal Director or Director or a Principal Commissioner or Commissioner to appoint income-tax authorities below the rank of an Assistant Commissioner or Deputy Commissioner."

16. As we have noted, Section 2(16), which defines the word "Commissioner", includes a Director of Income Tax also as a Commissioner. In the context of Section 260A, therefore, the Director would be treated as a Commissioner. He would, therefore, be one of the persons,

who could maintain an appeal under Section 260A within a period of 120 days from the date of receipt by him of the order passed by the Tribunal.

17. As far as the contention of the assessee that, under the information furnished under the Right to Information Act, it must be taken that the Commissioner of Income Tax at Dehradun received the copy of the order, as it is seen dispatched by the Tribunal on 09.9.2009 is concerned, we are unable to accept the said contention. It is true that answer to the query under the Right to Information Act is made available. There is reference to Receipt No. 1199. The specific case of the appellant is that, though it may have been shown as dispatched, the registers would bear the appellant in his contention that no such document was actually received. The appellant has volunteered with the offer that the Court may order any inquiry, go through any record which they are also prepared to produce and it will confirm the case of the appellant that, on 09.9.2009, it was dispatched and, therefore, it was received, is not correct. We also find fortification in our view from the contradictory stand taken by the respondent/assessee; on the one hand, it is stated that it is dispatched on 09.9.2009, thereafter, it is stated that it was served on same date i.e. 09.9.2009 is practically impossible. In this context, it is relevant to notice that the respondent/assessee has not, apparently, made any efforts to ascertain whether the impugned order, which is alleged to have been dispatched on 09.9.2009, has actually been served, which could have been done by way of making

queries with the post-office. Therefore, we would think that we may not be justified in rejecting the case of the appellant that the impugned order was not received, as claimed by the respondent/assessee.

18. As regards the knowledge of the order, which is attributed to the appellant by virtue of various proceedings, which we have made reference to, we would think it may be beside the point, as Section 254(3) contemplates a duty with the Tribunal to communicate the order. Section 260A creates a right of appeal and provides that appeal is to be preferred within a period of 120 days. The appeal is to be lodged within 120 days of the receipt of the order. Reading these provisions together, it is clear that what is contemplated by the law giver is that an appeal must be lodged within a period of 120 days from the date of receipt of the order and receipt is to be understood as meaning that there is a duty also on the Tribunal to communicate the order to the person, who is entitled to lodge the appeal. In this case, the person, who is to file the appeal, is the Director and it is the definite case of the appellant that the order was communicated and received by the office only on 16.3.2011. The appeal is filed within 120 days from the date of receipt, namely, 16.3.2011. Therefore, having regard to the statutory provisions in question, the knowledge attributed to the appellant earlier than 16.3.2011, by virtue of its being party to various proceedings or even proceedings under Section 263 being commenced with the Commissioner, may not help the respondent/assessee to contend that the appeal is beyond

time. As it would not be an actual accrual of cause of action to file an appeal as provided under law, unless received.

19. As regards the Circulars relied on by the respondent/assessee, we may straight away notice that they are dated 24.5.2011 and 11.8.2011. Though Mr. P.R. Mullick did point out that Circular dated 24.5.2011 was issued before the appeal is filed, we do not think that it can assist the respondent/assessee having regard to the fact that it was issued only on 24.5.2011, as we are proceeding on the basis that the impugned order was received on 16.3.2011, since the appeal has been filed within the time provided counting the date of receipt as 16.3.2011. No doubt, it is the duty of the Department, if it wishes to lodge an appeal, to take steps in terms of what is announced as part of the litigation policy. This is rather important that controversies relating to revenue are given a quietus within a reasonable time-frame, be it from the stand point of the Department or from the perspective of the assessee.

20. Regarding the reliance placed on what is described as a Circular dated 11.8.2011 relating to the obligation to intimate the Tribunal about the change of jurisdiction, we notice two aspects. In the first place, what the said communication contemplates is, if there is a change of jurisdiction during the pendency of the appeal, there is a duty to bring it to the notice of the Tribunal. It is not clearly established before us as to whether the so-called change of jurisdiction is something, which was brought about during the pendency of the appeal. Secondly, it is

also not clear as to whether what is described as a Circular is one, which is issued under any statutory provision obliging the authority to follow it or making it mandatory.

21. We also do not find with merit the argument based on the decision of the larger Bench of the Delhi High Court. The issue, which has been raised in this case, must be dealt-with with reference to the facts obtaining in this case. Therefore, since we are inclined to take the view that the order dated 29.5.2009, namely, the impugned order of the Tribunal was received on 16.3.2011 by the appellant and the appeal is lodged within 120 days, the appeal cannot be treated as barred by limitation.

22. It is also relevant to bear in mind, in the context of the framework of the Act in question, that unlike other law, the law giver does not contemplate the aggrieved party making an application and obtaining the certified copy as a condition for preferring an appeal. The order is to be mandatorily communicated by the Tribunal to the persons entitled. Since there is a specific mode, which is provided under the Act, we would think that the appellant may not be unjustified in contending that the appeal is within time from the date of receipt of the order by the appellant.

23. In such circumstances, we repel the contentions of the respondent/assessee and hold that the appeal is within time. In view of this conclusion of ours, we close the Application for condonation of delay as unnecessary.

24. At the request of Mr. H.M. Bhatia, learned counsel for the appellant, list the appeal on 22.5.2018 in the Supplementary Cause List along with connected matters for hearing on admission.

(Sharad Kumar Sharma, J.) **(K.M. Joseph, C.J.)**

17.05.2018

Pooja