

{IN THE HIGH COURT OF JUDICATURE, LAHORE}

MUHAMMAD ABDULLAH AND SONS, LAHORE

v.

COMMISSIONER OF INCOME-TAX, LAHORE

Present: AKHLAQUE HUSAIN and MUHAMMAD YAQUB ALI, JJ

Civil Miscellaneous No. 363 of 1953, decided on 18-2-1955.

A. D. Malik, Advocate, for the Appellant.

K. B. Malik Muhammad Husain, Advocate, for the Respondent.

JUDGMENT

{The judgment was delivered by AKHLAQUE HUSAIN, J.}---An appeal of the assessee Messrs. Muhammad Abdullah & Sons, Lahore, against an order of the Appellate Assistant Commissioner having been dismissed by the Appellate Tribunal, the assessee applied to the Tribunal under Section 66(1) of the Income-tax Act for referring to this Court the question of Law arising out of its order. This application was rejected in limine by the Tribunal by its ex-parte order, dated the 1st of July 1953 wherein it was held that the assessee's application is barred by time by two days. The assessee has now come up to this Court under sub-section (3) of the Section 66 praying that the Appellate Tribunal may be required to treat its application as made within time.

Section 66(1) lays down --

`Within sixty days of the date upon which he is served with

notice of an order under sub-section (4) of Section 33 `` (in this case the order of the Appellate Tribunal dismissing the appeal)',', the assessee or the Commissioner may.....require the Appellate Tribunal to refer to the High Court any question of law arising out of such order.....''

Section 63 provides the procedure for service of notices under the Act and runs as follows :--

``63. (1) A notice or requisition under this Act may be served on the person therein named either by post or, as if it were a summons issued by a Court, under the Code of Civil procedure, 1908.''

In this case notice of the appellate order of the Tribunal was given to the assessee by means of a registered letter which was delivered on the 4th of April 1953 to one Ghulam Muhammad, who signed the acknowledgment receipt thus :

``Ghulam Muhammad for Mian Muhammad Abdullah.''

Treating the 4th of April 1953 as the date of service on the assessee, the letter's application under section 66(1) is barred by time, as stated by the Tribunal, by two days. The assessee's contention, however, is that Ghulam Muhammad is a domestic servant of Mian Muhammad Abdullah and not an employee or agent of the firm Messrs. Muhammad Abdullah & Sons; that the said Ghulam Muhammad has nothing whatever to do with the business affairs of Mian Muhammad Abdullah and that the letter was actually delivered by Ghulam Muhammad to Mian Muhammad Abdullah on the 6th of April 1953 and thus its application under Section 66(1) was within time.

The question for our determination, therefore, is whether in the circumstances stated above it can be predicated that the assessee was served with notice of the order on the 4th of April, as held by the Appellate Tribunal or on the 6th as alleged by the

petitioner. We may at the very outset refer to a curious feature of the Income-tax Act which has some bearing on the question before us. By sub-section (2) of Section 30 the Appellate Assistant Commissioner is empowered to admit an appeal to the him after the expiry of the period of limitation if he is satisfied that the appellant has sufficient cause for not presenting it within that period. Similarly, under sub-section (2a) of section 33 the Appellate Tribunal may admit an appeal after the expiry of the period of limitation on similar ground Subection (7a) of Section 66 makes the provisions of Section 5 of the Limitation Act applicabile to applications to the High court under sub-section (2) and (3) of Section 66. It is only in respect of an application under sub-section (1) of Section 66 that the Act does not expressly provide for condonation of the delay in making it. The reason is neither apparent nor imaginable. The attention of the Legislature has been repeatedly drawn to this serious lacuna in the Act without avail {vide ITIC Report, 1948, Page 146, paragraph 328} and Bansilal Gulabchand v. Commissioner of Income-tax, Bombay {A I R 1948 Bom 431}. We are clearly of the opinion that in the circumstances it is the obvious dulty of the Courts to construe the provisions of sub-section (1) of Section 66 as strictly in favour of, an applicant under that Section as may be reasonably possible.

As we have already stated notice of the order in this case was served by post Section 27 of the General Clauses Act (X of 1897) provides that ``the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the doucument.....'' This presumption is, on the language of the section itself, rebuttable {In re. L. C. DeSouza, Cawnpore (A I R 1932 All. 374)}. We have the unrebutted affidavit of Mian Muhammad Abdullah showing that he actually received the notice on the 6th of April 1953. It was contended by the respondent's learned counsel that in the circumstances of this case Ghulam Muhammad should be treated as

an agent of the assessee. Without deciding whether service on an agent would be sufficient for the purpose of Section 66(1) of the Act, we reject this contention in view of the affidavits filed both by Mian Muhammad Abdullah and Ghulam Muhammad. It can hardly be believed that in a case where a person has to comply with provisions as stringent as those of Section 66(1) of the Act are contented to be, he would authorise, explicitly or impliedly, a mere domestic servant to receive notices as his agent. The Posts and Telegraph Rules authorise the delivery of registered articles only to the addressee or his agent authorised in writing. The circumstances of this case do not incline us to the conclusion that Ghulam Muhammad was an agent of the assessee at all, far less an agent authorised in writing.

For the foregoing reasons we accept this application and direct the Appellate Tribunal to treat the petitioner's application under Section 66(1) as made within time. Parties to bear their own costs.