

1953

May 27th

## CIVIL MISCELLANEOUS

*Before Falshaw and Kapur, JJ.*MESSRS KHUSHI RAM RAGHUNATH SAHAI,  
JULLUNDUR CITY,—*Petitioners**versus*THE COMMISSIONER OF INCOME-TAX, PUNJAB,  
PEPSU, HIMACHAL PRADESH and BILASPUR,  
SIMLA,—*Respondent.*

Civil Miscellaneous No. 450 of 1951

*Indian Income-tax Act (XI of 1922)—Section 66(1)—  
Income-tax Appellate Tribunal Rules (1946)—Rules 7 and  
36, construction of—Period of Limitation for moving the  
Tribunal under Section 66(1), when commences.*

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- (1) A.I.R. 1935 Lah. 939  
(2) 62 P.R. 1888

Appellate Tribunal decided the assessee's appeal on the 29th August 1950. The copy of this decision was received by the assessee on the 28th September 1950. Assessee posted their application requiring the Appellate Tribunal to refer certain questions of law under section 66(1) on the 27th November 1950, which was received in the office of the Tribunal on the 28th November 1950, and was rejected by the Tribunal as barred by time. The assessee moved the High Court under section 66(3) of the Income-tax Act against this decision.

*Held*, that the application under section 66(1) was barred by time. The phrase "*mutatis mutandis*" has its usual meaning, that is, that only such verbal changes are to be made in the rules mentioned in Rule 36 as would make the principles embodied in those rules applicable to applications under section 66(1). The only change necessary is the substitution of the words "application under subsection (1) of section 66" for the words "memorandum of appeal" wherever they occur. Thus any one moving the Tribunal under section 66(1) is required to post his application in time for it to reach the office of the Tribunal within 60 days of receipt by him of a copy of the appellate order of the Tribunal.

*Shri Posing Rice Mills v. Commissioner of Income-tax, Bihar and Orissa* (1), distinguished. *Motilal-Hiralal Shisodia Firm v. Commissioner of Income-tax, C. P. and Berar* (2), followed.

*Petition under section 66(3) of the Income-tax Act, 1922, praying that the Delhi Bench of the Income-tax Appellate Tribunal be required to treat the application as made within the time allowed under subsection (1) of section 66, and it may be disposed of according to law.*

TEK CHAND, for Petitioners.

S. M. SIKRI and HEM RAJ MAHAJAN, for Respondent.

#### JUDGMENT

FALSHAW, J. This is a petition by the firm Khushi Ram-Raghunath Sahai of Jullundur under section 66(3) of the Income-tax Act. The only question involved is whether the petitioner firm's application under section 66(1), made to the Income-tax Appellate Tribunal at Delhi was rightly rejected as barred by time.

Falshaw, J.

(1) A.I.R. 1949 Orissa 53

(2) I.L.R. 1950 Nag. 816.

Messrs Khushi  
 Ram Raghu-  
 nath Sahai,  
 Jullundur  
 City  
 v.  
 The Commis-  
 sioner of  
 Income-tax,  
 Punjab,  
 Pepsu,  
 Himachal  
 Pradesh, and  
 Bilaspur,  
 Simla

Falshaw, J.

The decision of the Appellate Tribunal regard-  
 ing the petitioner's assessment was delivered on  
 the 29th August, 1950, and a copy of this decision  
 was received by the petitioner on the 28th Septem-  
 ber 1950. Their application requiring the Appel-  
 late Tribunal to refer certain questions of law  
 arising out of the order was posted at Amritsar on  
 the 27th November 1950, and arrived in the office  
 of the Appellate Tribunal on the 28th November  
 1950. Section 66(1) reads—

“66(1) Within sixty days of the date upon  
 which he is served with notice of an  
 order under subsection (4) of section 33  
 the assessee or the Commissioner may,  
 by application in the prescribed form,  
 accompanied where application is made  
 by the assessee by a fee of one hundred  
 rupees, require the Appellate Tribunal  
 to refer to the High Court any question  
 of law arising out of such order, and the  
 Appellate Tribunal shall within ninety  
 days of the receipt of such application  
 draw up a statement of the case and  
 refer it to the High Court”.

The relevant rules of the Appellate Tribunal are  
 rules 7 and 36 which are in the following terms :—

“7(1) A memorandum of appeal to the  
 Tribunal shall be presented by the Ap-  
 pellant in person or by an agent to the  
 Registrar at the headquarters of the  
 Tribunal at Bombay, or to an officer  
 authorized in this behalf by the  
 Registrar, or sent by registered post  
 addressed to the Registrar or to such  
 officer.

(2) A memorandum of appeal sent by  
 post under sub-rule (1) shall be deemed  
 to have been presented to the Registrar  
 or to the officer authorised by the  
 Registrar, on the day on which it is  
 received in the office of the Tribunal at  
 Bombay or, as the case may be, in the  
 office of such officer.

\* \* \* \* \*

36. Rules 7, 8, 13, 20, 21, 22, 23, 26 and 33 Messrs Khushi shall apply, *mutatis mutandis*, to an ap-<sup>Ram Raghunath Sahai,</sup> plication under subsection (1) of nath Sahai, section 66". Jullundur City

There would seem to be no doubt that in this context the phrase "*mutatis mutandis*" has its usual meaning, that is, that only such verbal changes are to be made in the rules mentioned in rule 36 as would make the principles embodied in these rules applicable to applications under subsection (1) of section 66. The only change which appears to me to be necessary is the substitution of the words "application under subsection (1) of section 66" for the words "memorandum of appeal" wherever they occur. The net result would thus appear to be that anyone who wishes to move the Tribunal under section 66(1), is required to post his application in time for it to reach the office of the Tribunal within sixty days of the receipt by him of a copy of the appellate order of the Tribunal and, indeed, I should hardly have thought that the point admitted of any doubt, or was even capable of argument, if the learned counsel for the petitioner had not produced a decision of the Orissa High Court to the contrary. This is the case of *Sri Popsing Rice Mill v. Commissioner of Income-tax, Bihar and Orissa* (1). In that case an application under section 66(1) was posted to the Tribunal on the 60th day and it reached the office to which it was addressed three days later, and thus was *prima facie* filed three days after the expiry of the period of limitation. The application was, however, held by Ray, C. J., and Panigrahi, J., to be within time. I regret that I have not been altogether able to understand the reasoning of the learned Judges in coming to this conclusion but it would seem that they did not regard the words "*within sixty days*" and "*by an application in the prescribed form*" as the operative words of section 66(1), but instead regarded the word "*require*" as the operative words, and, by drawing some analogy with the Law of Contract as far as it relates to the posting of an acceptance of an offer, seem to have concluded that

v.  
The Commissioner of Income-tax, Punjab, Pepsu, Himachal Pradesh, and Bilaspur, Simla

Falshaw, J.

(1) A.I.R. 1949 Orissa 53

Messrs Khushi the "requirement" in section 66(1) was completed  
 Ram Raghu- by the posting of the application. . They have in  
 nath Sahai, this manner extended the meaning of the phrase  
 Jullundur "mutatis mutandis" in rule 36 so as to exclude  
 City altogether the application of sub-rule (2) of rule 7  
 v. to applications under section 66(1) of the Act. It  
 The Commis- does not, however, seem to me that by any stretch  
 sioner of of imagination the use of the phrase "mutatis  
 Income-tax, mutandis" is capable of being so extended as to  
 Punjab, exclude altogether the provision in the rules,  
 Pepsu, regarding what constitutes the date of institution  
 Himachal when either an appeal or an application under  
 Pradesh, and section 66(1) is filed through the post, and with  
 Bilaspur, due respect I consider that the view taken by these  
 Simla learned Judges in this matter is incorrect. This  
 ——— view of mine is also shared by Hidayatullah and  
 Falshaw, J. Kaushalendra Rao, J.J., in the case of *Motilal-  
 Hiralal Shisodia firm v. Commissidner of Income-  
 tax, C. P. and Berar* (1), in which they also have  
 expressly dissented from the view of Ray, C. J.,  
 and Panigrahi, J. I thus consider that the peti-  
 tioner's application under section 66(1) was rightly  
 dismissed as barred by time by the Tribunal and  
 would accordingly dismiss the present petition  
 with costs which I assess at Rs. 200.

Kapur, J.

KAPUR, J. I am of the same opinion and there  
 is nothing useful that I can add.