

IN THE HIGH COURT OF FIJI
SUVA

CIVIL JURISDICTION

CIVIL ACTION NO. 192 OF 1990

BETWEEN :
GURBACHAN SINGH AND COMPANY LIMITED

PLAINTIFF

AND :
THE COMMISSIONER OF INLAND REVENUE

DEFENDANT

Mr Nagin for Plaintiff
Mr Hayhow for Defendant

J U D G M E N T

This Judgment is in respect of an Originating Summons filed by the Plaintiff Gurbachan Singh and Company Limited supported by an affidavit seeking the following orders:-

- (i) an ORDER that the Objection dated 31st October, 1989 lodged by the Plaintiff with the Defendant is valid under the provisions of Section 62(1) of the Income Tax Act;
- (ii) an ORDER that the Defendant do consider the said objection of the Plaintiff and either allow or disallow the same;
- (iii) an ORDER that the Final Notice dated 14th December, 1989 is not valid and lawful;
- (iv) alternatively an ORDER that the Defendant acted unreasonably in the circumstances is not extending the time under Section 60(2) of the Income Act.”

Affidavit in reply was filed on 18th of June, 1990. Daya Singh, a Company Director of the Plaintiff company has filed another affidavit in reply. On the 3rd of September 1990, Mr Nagin appearing on behalf of the plaintiff filed an amended Originating Summons which does not bear any date. It was handed over to the bench across the bar table on this day. Mr Howard opposed the production of an amendment without notice. But later he accepted it on the plaintiff's undertaking to pay \$55 as costs for the late amendment without notice. The amendment is an additional alternative relief in the form of an order that the Defendant acted unreasonably in the circumstances in not extending the time under Section 62(2) of the Income Tax Cap 201 (hereinafter referred to as the Act.).

The Plaintiff's affidavit dated 25th of May, 1990 reveals the following depositions which I put down in a nutshell.

The Defendant had sent to the plaintiff Notices of assessment for the years 1983, 84, 85, 86, and 87. The notices of assessment bore dated ranging from 1985 to 1989; that the defendant arbitrarily amended the Assessments of the years just above mentioned on 14.9.89 as shown in the annexures F.G.H.I.J. and the original assessments are shown in Annexures A,B,C,D & E; through Kapadia Singh & Co the plaintiffs had prepared the objection to the amended assessments on 31.10.89. The said objection was posted to the defendant on 9.11.89; that the Defendant informed the plaintiff that the objection was received on 15.11.89; therefore the objections was out of time under Section 62(1) of the Act (a copy of the letter is annexed marked 'L'); that the Defendant sent a final Notice dated 4.12.89; the plaintiff protested against the final notice by letter; that the defendant placed two caveats on two properties of the plaintiff.

The Commissioner of Inland Revenue (hereafter referred to as CIR) replied by affidavit dated 8.6.90 the increase in the liability of plaintiff to tax was not done arbitrarily; that he had the right to do so under Section 58 of the Act, it became necessary resulting from the investigations carried out by the Investigation Officers; the plaintiff had the right only to object to the increase in the liability between the original assessment and the amended assessment under Section 62(1) of the Act; that the objection to the amended assessment was received by him on 15.11.89; the dated of the amended assessment was 14.9.89; a final notice was sent showing the breakdown as to the amount payable by the plaintiff, including penalty; he placed two caveats as a means of security; Daya Singh's affidavit of 27.6.90 reveals that the plaintiff had paid amounts shown on the original assessment and therefore the plaintiff could raise a full objection. He has further deposed to the fact that the objection was received by the defendant much earlier than the alleged date of 15.11.89 and that the amended assessments were posted later than 14.9.89.

The trial commenced on 3.9.90. Daya Singh already referred to as director of the plaintiff's company, quoting briefly from his evidence said that there were no objections to the original assessments (vide annexures A B C D E); in 1986 the investigating officers of the Inland Revenue Department started investigating the accounts and in the process removed various files, stock books. Arun Prasad and Rajesh Karan were the two inspectors they last visited Labasa on 1.1.87 and checked the stock books on the

premises; they said that there was nothing wrong, but in September 1989 he received further assessments for 1983-1987 marked F G H I J (already referred to). He further said that he was unhappy about the new assessments and he went to the Commissioner's office where he had met with Arun Prasad. After his visit to Suva he had obtained the objection prepared by his Accountants Kapadia Singh on 31.10.89. He did not post it because Arun Prasad had told him that he would be coming to Labasa. Arun Prasad came to Labasa with Rajesh Karan; they came to the shop; He had asked them to reconsider assessments. He further testified that if he could give some personal consideration, they could consider. He said he felt that personal consideration referred to a bribe. He said he was not willing to give it. He further said that it was not willing to give it. He further said that it was in the region of \$10,000.00. He posted the objection by registered post on 9.11.89. There was a final notice which he conveyed to his accountants. In answer to cross examination he said he knew about the 60 day period. He further said he had no objection to the 83-87 assessments.

Next witness was his accountant, Kapadia. He said he prepared the returns for 83-87 of the company of which he was the accountant; CIR made the assessments on the returns; he heard of the investigations done by the Department; in 1989 fresh assessments were sent for 1983-87 fresh assessments were sent for 1983-87. He further said that there was to be noticed an upward trend of \$10,000.00 not based on the income of the company. It was an arbitrary increase; chargeable income was not mentioned; he said he was surprised; he prepared an objection on 24.10.89. In answer to cross examination he admitted that the CIR was not bound to accept the assessments under Section 58 of the Act. He further said that a letter takes a few days to come from Labasa to Suva – 7 days was not unusual. The next witness was Sekonaia Tui Mailekai. He was questioned on some figures on the assessments. He further said that it was the Investigating Officer who worked on these investigation and they do not work with him. He said he was not summoned to bring the ledger card. He said that the date is put on the ledger card by an officer. At this stage Mr Nagin wanted time to produce the ledger card. It was allowed. He gave evidence on the ledger card. He said that amended assessments were posted on 14.9.89 – prepared the day before. He was not in a position to say who typed it. He said it could have been possibly typed on the 13th and posted on the 14th. He said there is a private mail box; mail boy goes to empty the mail box twice a day; at 8.15am and 2.15pm; slip is there for registered articles; if there is a slip to an officer he will go on the following day. He will collect it at 2.15 trip.

The letters are opened and the stamp is put on them – no envelopes are preserved – Stamp is put by the officer of Records; he said the objection letter was late by two days; he was not aware whether 13.11.89 was a public holiday. Even if the 13th was a public holiday, it was still late by one day. He further said that 60 day rule could not be relaxed. He said he had no power under the law to do so. In answer to cross examination he said that no extension of time to objected was sought either before or after the 60 day period. No 'care of' letters were written on the Registered Article Book. Mail Boy takes the private letters to the individual; the date stamp is changed everyday; the company was not correctly reporting the income; there was suspicion started investigating; he referred to D1 – he said he had the power under Section 58 to assess again; there was an allegation

against the officers Anuj Prasad and Karan last year; inquired into it, there was nothing against them whatever. He further said that tax payers make allegations against officers to discredit them; they are honest officers.

Daya Singh was recalled as a witness on the adjourned day of 4th September. He was questioned on his signature appearing on D1 and D2. He said the signature missing words/ looks like his but not very clear. The counsel for the defendant suggested to him that somewhere in October and November 1989 due to a family dispute he wrote D1 asking the Commissioner of Inland Revenue to investigate. In point of fact D1 contains an allegation against his own company stating that the figures given to the Department of Inland Revenue were false and the actual stock of the company exceeded one million mark. He said he never wrote it and it was a surprise to him. He further said it was an inside job. In answer to re-examination he said he never used photocopied letter heads. On D1 there was no seal. He further admitted that he signed the returns in 1983 and 1984. Plaintiff's case was closed.

Anuj Prasad was called as the first witness on behalf of the defendant. He was an Investigation Officer attached to the Inland Revenue Department with years of experience. He said he investigated the affairs of the plaintiff company. I shall refer to his evidence very briefly. He said that the original assessments were on the returns of the income shown by the company; amended assessments are F to J which were based on investigation. He said he received the objection letter on the 15 November 1989. It was sent care of the Commissioner of Inland Revenue to his personal name. He said he may have gone to the post office later in the afternoon. He found that it was an objection letter. He further said that normally they are addressed to the CIR – P1 is the objection. It bears the stamp 15.11.89, He further said that he gave it to his fellow officer. He said that Daya Singh did not tell him that he would address the letter to him. He said that he may have thrown away the envelope. He was referred to the minute made in pencil on P3 dated 28.11.85 and the stamp of 29.10.85. When questioned on the letter of objection, he said he received the registered slip on the 14th. He said that the arrow on the stamp does not indicate time. He said that Daya Singh came to him in October 1989. He (Daya Singh) promised to make the information about the Bank accounts in India, Canada, Property details in India available to him. He was questioned on the stock books that were uplifted in the course of the investigations. D5 was shown to him with the envelope. He said he normally preserves the envelope. He said in answer to re-examination that the details of foreign accounts were never furnished to him.

The next witness was Rajesh Karan. He too was an experienced investigating officer. He was referred to Daya Singh's affidavit there too. I refer to his evidence very briefly. He said that P3 had understated stock and they (I. Re. Com. Dept.) had heard the plaintiff company had other foreign investments and also Bank accounts in other foreign countries. He further said that they (CIR Dept.) requested him for the stock books. He said that the amended assessments were based on the million dollar stock and other properties. He said that the amended assessments were based on the million dollar stock and other properties. He said amended assessment F to J were posted on 14.9.89. D2 ledger card bears the date 14.9.89 (Page 2). On 15.11.89 the objection letter was

received in the office. The envelope was addressed to Anuj Prasad, It was a registered letter.

The taxpayer could ask for time within the sixty days. He said he calculated the time and found that he was out of time. He said he visited Daya Singh's Labasa office and had a discussion re-overseas bank accounts. He said original assessments were not in dispute.

On being questioned about the envelope which contained the objection letter he said he saw the envelope himself and Anuj Prasad's name was there, He said he got it stamped. Referring to P3 he said he was not aware whether any signature could be transplanted. The counsel for the plaintiff suggested that the amended assessments were based on one million dollar stock. He denied and said he considered other information too. He could not get all the information. The plaintiff company was not cooperative. The defendant's case was closed.

The written submissions came in as undertaken by both counsel. I drew much assistance from them indeed. I shall refer to the points in them which they considered important and persuading in respect of their respective cases. All the same there are some facts about which there is no controversy. I may enumerate them first: the assessments for the years 1983 to 1987 (A,B,C,D,E) – annexures to the affidavit of Daya Singh dated 22.5.90; letter of objection dated 31.10.1989; - it was posted on 9.11.1989; it was received on the 15.11.1989.

Centrally what the plaintiff was trying to prove was that the letter of objection marked P1 was received by the CIR within the stipulated period of 60 days. Consequently the amended assessments F G H I J (annexures to the same affidavit spoken to by Daya Singh. It is a secondary issue based on the success or failure of the first issue whether the objection was within time.

Sec. 62(1) of the Act allows every tax payer to lodge his objection within 60 days. For greater emphasis, I shall repeat Section 62(1) of the Act here:

“Any taxpayer dissatisfied with an assessment may personally or by his agent, within 60 days of the date upon which the notice of assessment has been served upon him or his agent or, where such notice of assessment has been served upon him or his agent or, where such notice has been posted, the date of posting, lodge with the Commissioner an objection in writing to the assessment in the form set out in Form 2 in the First Schedule stating the ground on which he relies. Provided that, where the assessment is an amended assessment, the taxpayer shall have no further right of objection except to the extent to which, by reason if the amendment, a fresh liability in respect of any particular is imposed on him or

an existing liability in respect of any particular is increased.”

As the Section reads, it provides for the lodgement to be made either by personal delivery or by post. The proviso to the Section is applicable to the amended liability which is not an issue. It is in evidence that the plaintiff under the hand of Daya Singh had sent the objection addressed to the CIR under registered cover. It is also not disputed that one Kapadia prepared the letter of objection was addressed to Anuj Prasad personally care of the CIR or to the CIR direct. The proof of this fact will greatly affect the computation of the required 60 days. The proof of this fact also, no doubt, will depend on the amount of credence the court can place on their evidence and that of the CIR.

The counsel for the plaintiff has cited Section 51(a) and (b) of the Interpretation Act. They read as follows:

- (a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusively of the day on which the event happens or the act or thing is done.”
- (b) if the last day of the period is a Saturday, Sunday or a public holiday (which days are in this section referred to as excluded days) the period shall include the next following day, not being an excluded day.”

Applying the contents of the above mentioned Section, the counsel argues that 14th as the date of posting and amended assessment has to be excluded. Sub. Section (b) provides for the exclusion of Saturdays, Sundays and public holidays as excluded days. Granting the favour of all the exclusions sought by the plaintiff in the computation, the plaintiff is of the view that he was within 60 day period in lodging the objection.

The plaintiff further states that as far as Section 2(5) of the Interpretation Act goes, the objection is deemed to have been effected on the 11th of November in the ordinary course of postal communications between Labasa and Suva. Due to the intervention of the public holidays and Saturdays and Sundays, the registered slip had been collected on the 14th of November, for which the plaintiff was not blamed.

The counsel for the plaintiff states that the two witnesses, Anuj Prasad and Rajesh Karan were interested in the result of the case. He went on to state that the witnesses were keen to see the court holding that the objection was received after the period of 60 days. He further said that the evidence of the two witnesses were contradictory to each other and they could not be relied upon. The counsel’s contention is that the envelope carrying the objection letter was addressed to the CIR.

The plaintiff’s counsel cited Section 62(2) of the Act which gives the discretionary power to extend the time to lodge the objection. I give below Section 53 of the Interpretation Act which can be read in conjunction with Section 62(2).

Section 53: “Where in any written law a time is prescribed for doing any act or taking any proceeding, and power is given to a court or other authority to extend such time, then, unless a contrary intention appears, such power may be exercised by the court or other authority although the application for the same is not made until after the expiration of the time prescribed.”

He further states that if the objection was not within the time of 60 days – the CIR was unreasonable is not exercising a discretion in favour of the plaintiff by granting time to lodge it.

The counsel for the defendant in his written submissions states that the reliefs sought by the plaintiff except the order in (e) is on the basis that the objection was lodged within time. He states that it was not lodged within time. He accepts the fact that the objection letter was posted by the plaintiff on 9.11.1989. He states that what was of sequence was not the date of posting the letter but the day it reached the CIR which was the 15th of November, 1989. On that regard, the counsel largely depends on the oral evidence of Anuj Prasad and Rajesh Karan as to their having seen the envelope in which the objection letter came. On this crucial matter, we don't have the envelope to corroborate their story to the effect that it was personally addressed to A Prasad.

Not that I do not believe Anuj Prasad and Rajesh Karan but one day's difference in the computation would make a world of difference to the tax payer in getting the relief sought. I find that D along with the envelope is retained. No doubt the envelope is addressed to Anuj Prasad. Likewise P1 may have been in an envelope addressed to him personally. But in the absence of the envelope itself before me, I begin to doubt whether it was addressed to him personally or to the CIR.

Being thrown into this doubt, I plunged greater into the doubt to hear that Anuj Prasad threw the envelope away. Experience investigator as Anuj Prasad was, he should have known that such objection letters had to be preserved along with envelopes for litigation was very likely on such matters.

The following two possibilities would have brought the plaintiff within the 60 day period in the lodging of his objections. If the letter was addressed to the CIR direct, the mail boy would have brought it on the 14th and it would have borne the stamp of the 14th or even if the letter was addressed to Anuj Prasad care of CIR if Anuj Prasad collected the registered article on the 14th as soon as he was handed over the slip on the 14th. I also do not understand the reason why he should wait to collect a registered packet till the next day when he can lawfully authorise someone to collect it on his behalf.

The counsel for the defendant is of the view that the 60 day period includes the 14th but not the 15th.

Add to the bargain, a series of holidays intervene interrupting the delivery of the letter to the CIR. That was unfortunate. It is also clear that the plaintiff has given six days time for this letter to reach the addressee. That I consider more than enough for a letter to come from Labasa to Suva. Leaving all the possible allowances for postal communication hazards, I consider the plaintiff has acted with prudence to see that the letter goes to the addressee within the 60 days.

Analysing the evidence of the CIR, I fully believe his evidence that D2 bears the date of 14.9.1989 as the date on which amended assessments were posted. That is the date that concerns the computation of the 60 days. It remains undisputed. He did not speak to the exact delivery date of P1. He only spoke to the procedure adopted by the officer in marking D2 and the delivery of letters by the mail boys. He spoke to the integrity of the two investigators. I believe his evidence on all those aspects. There is no reason whatsoever for him to speak an untruth. Kapadia's evidence only relates to the alleged high tax, which, he says does not tally with the actual income. He says it was arbitrary.

The CIR in clear terms said that the plaintiff did not ask for extension of time within the 60 day period or after. I believe it. The Commissioner cannot invoke Section 62(2) of his own volition. A request has to be there. Therefore he cannot be said to have acted unreasonably.

The counsel for the plaintiff has not made any submissions on the caveats placed on the property of the plaintiff. There are provisions of the Land Transfer Act and the Income Tax Act to charge the properties of the tax payer as security for the tax due to the Department of Inland Revenue.

If the amended assessments are liable to be challenged under my order, there is no room for a final notice. A final notice is possible if finality is reached on the assessments.

In summary, this is a fit case to consider that the objection was lodged to the CIR within the 60 day period as contemplated under Section 62(1) of the Act. Following on my finding, I give Judgement to the plaintiff, that objection dated 31.10.89 is validly lodged;

- (2) that the objection be considered; Final notice is not valid. I also allow the two caveats to continue in its operation on the properties of the plaintiff. The plaintiff is entitled to costs.

L M JAYARATNE
JUDGE

At Suva

