

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Raja Saeed Akram Khan, J.

Civil appeal No.66 of 2017
(PLA filed on 28.12.216)

M/S Kashmir Paints Limited (Formerly J&N Paint Mirpur) NTN NO. 02-01-0013197 through Muhammad Akhter, Chief Executive Registered Office 48, Bhurgary Road Near Old Exhibition Karachi C/O Raja Muhammad Hanif Khan, Senior Advocate, Supreme Court, Muzaffarabad.

.....APPELLANT

VERSUS

1. Income Tax Appellate Tribunal, Azad Jammu and Kashmir, Muzaffarabad.
2. Inspecting Additional Commissioner Income (Range) Camp Mirpur/ Muzaffarabad (formerly Additional Commissioner Income Tax).

.... RESPONDENTS

(On appeal from the judgment of High Court dated 08.11.2016 in reference Nos. 76, 77 and 78 of 2006)

FOR THE APPELLANT: Raja Muhammad Hanif Khan, Advocate.

FOR THE RESPONDENTS: Mr. Babar Ali Khan, Advocate.

Date of hearing: 14.11.2017

JUDGMENT:

Raja Saeed Akram Khan, J.— This appeal by leave of the Court has been directed against the consolidated judgment of the High Court dated 08.11.2016, whereby the reference applications filed by the appellant, herein, have been dismissed.

2. The brief facts of the case are that the appellant, herein, is a limited Company by the name of M/s Kashmir Paints Limited (formerly) J&N Pakistan Ltd., and was functioning and running business at Mirpur.

Through the assessment order dated 19.02.1997, the Deputy Commissioner Income Tax (Companies Circle), Mirpur, exempted the appellant from assessment for the years 1994-95 to 1995-96. A show cause notice was issued to the appellant by Inspecting Commissioner Income Tax on the ground that assessment made by the Deputy Commissioner Income Tax Companies Circle, Mirpur for the year 1994-95 to 1995-96, having been found erroneous and prejudicial to the interest of revenue, needs revision. The appellant submitted reply to the aforesaid notice, however, the Inspecting Commissioner revised all the assessment orders passed by the Deputy Commissioner Income Tax and passed a fresh assessment order for the aforementioned years including the assessment for the year 1997-98, vide order dated 19.08.1999. The appellant challenged

the order of the Inspecting Commissioner before the Income Tax Appellate Tribunal by filing three separate appeals. The Income Tax Tribunal dismissed all the three appeals for want of prosecution vide order dated 26.07.2002. Feeling aggrieved, the appellant filed three reference applications before the High Court which have also been dismissed through the impugned judgment dated 08.11.2016, hence, this appeal by leave of the Court.

3. Raja Muhammad Hanif Khan, Advocate, the learned counsel for the appellant filed written arguments in which he took the stance that the impugned judgment is against law and the facts of the case which is not sustainable in the eye of law. He contended that the appellant has been condemned unheard by the Income Tax Appellate Tribunal as no fair opportunity of

hearing was provided to him to plead the case. Nothing is available on the record that any notice regarding the hearing of appeals was ever served upon the appellant, therefore, the ex-parte judgment/order passed by the Income Tax Appellate Tribunal, against the appellant, was bad in law, but the learned High Court has not considered this aspect of the case. He further added that the ex-parte order dated 10.07.2002, was never communicated to the appellant and when he came to know in April, 2006 that the appeals have been decided on 10.07.2002, he submitted applications for obtaining the certified copies. The copies were received through registered post on 6th April, 2006, whereupon, the appellant immediately filed references before the High Court while explaining the delay of each and every day in filing the references. In such state of affairs, the learned High Court

was not justified to hold that the references have been filed beyond the prescribed period of limitation. He further contended that in accordance with the Article of Association of the Company read with the relevant provisions of the Companies Ordinance as well as the provisions of Code of Civil Procedure, the appellant authorized its representative for filing the reference applications as well as the representative was also holding general power of attorney and authorized to institute all kinds of legal proceedings before the High Court. In this regard, the contents of the Resolution of the Board of Directors of the company as well as the letter of authority has not been taken into consideration by the High Court and wrongly held that the references have been filed by an unauthorized person. He added that the order passed by the Income Tax Appellate Tribunal on the face of it is a telegraphic order.

The Income Tax Appellate Tribunal while passing the order even has not considered the memoranda of appeals which show that the appellant was "M/S Kashmir Paints Ltd." formerly "MS J&N Pakistan Ltd." The tribunal wrongly mentioned in the title of appeal as MS J&N Pakistan Ltd (Formerly M/S Kashmir Paints). Furthermore, the Inspecting Additional Commissioner of Income Tax was arrayed as party before the Income Tax Appellate Tribunal but the Tribunal while deciding the matter omitted to mention the same in the title. The learned High Court while handing down the impugned judgment has held that the Inspecting Additional Commissioner has not been arrayed as party, without taking into consideration that before the Income Tax Appellate Tribunal the Inspecting Additional Commissioner was arrayed as party and under law it was not essential to implead him as

party before the High Court. The valuable rights of the appellant were involved in the matter but the learned High Court passed the impugned judgment on technical grounds without touching upon the merits of the case. He submitted that the findings recorded by the learned High Court regarding filing of references by an incompetent person appear to be the result of non-appreciation of the record as the Resolution of the Board of Directors, available on record, is very much clear in this regard.

4. On the other hand, Mr. Babar Ali Khan, Advocate, the learned counsel for the respondents strongly controverted the arguments advanced by the learned counsel for the appellant. He submitted that the impugned judgment is perfect and legal which is not open for interference by this Court. He contended that admittedly M/s J&N Pakistan

Ltd., was established in Azad Jammu and Kashmir on 01.01.1993. The name of the company was changed from M/s J&N Pakistan Ltd. to Kashmir Paints Ltd. on 26.11.1998. The Inspecting Additional Commissioner passed the order against the appellant on 19.08.1999. The appellant filed appeals before the Income Tax Appellate Tribunal after the change of the name on the strength of the power of attorney executed by M/s J&N Pakistan Ltd., whereas, that company with such name was not in existence after 26.11.1998. In such state of affairs, even the appeals before the Tribunal were filed incompetently. He forcefully submitted that the appellant challenged the orders of the Income Tax Appellate Tribunal dated 26.07.2002, after a lapse of more than 4 years on 03.07.2006 before the High Court and no plausible explanation regarding the delay in filing the references has been

furnished. The references were hopelessly time barred which have rightly been dismissed by the High Court. He further added that nothing is available on record to show that any authority was given to the person who filed references before the High Court, for filing same; therefore, the reference applications were filed by an authorized person. He referred to and relied upon the case law reported as *Manzoor Begum v. Haji Fazal Ellahi* [2012 SCR 70].

5. We have heard the arguments of the learned counsel for the parties and gone through the record along with the impugned judgment. Without attending the merits of the case, we would like to attend the preliminary objections raised by the counsel for the respondents at first. In the matter in hand, admittedly the Income Tax Appellate Tribunal dismissed the appeals filed by the appellant-

company vide order dated 10.07.2002. According to the record, the said order was communicated to the appellant on 26.07.2002, whereas, the appellant challenged the same by filing reference applications before the High Court on 03.07.2006. Under the provisions of section 133(1) of the Income Tax Ordinance, 2001, the appellant had to file the reference applications within 90 days from the communication of the order of the Income Tax Appellate Tribunal before the High Court, whereas, the reference applications were filed after lapse of more than 4 years. The learned counsel for the appellant has taken the stance in paragraph "G" of the written arguments that "the appellant has followed the case from time to time and it was revealed to the appellant in April, 2006 that the appeals have already been decided on 10.07.2002." It is very astonishing that the appellant has been following the case

even then he did not know for such a long time that the appeals have been dismissed in the year 2002. The learned counsel for the appellant submitted that no opportunity of hearing was provided to the appellant, whereas, the record shows that the notices were duly issued to the appellant-company. The learned Tribunal also mentioned in the order dated 10.07.2002 that even after the service of notice nobody appeared on behalf of the appellant. Thus, it cannot be said that opportunity of hearing has not been provided to the appellant. It is settled principle of law that law always helps the person who is vigilant and not the indolent. The appellant himself filed appeals before the Income Tax Appellate Tribunal and remained unaware about the proceedings and the fate of appeals for such a long time which does not appeal to a prudent mind and shows the negligence on

the part of the appellant. As it is evident from the record that the appellant slept over his right being negligent, therefore, under law he also does not deserve for condonation of delay. The explanation offered by the appellant regarding the delay in filing references was not plausible, therefore, the learned High Court has rightly held that the references are hopelessly time barred.

6. We have also examined the objection regarding the construction of power-of-attorney. The record shows that the references before the High Court were filed by a person, namely, Shamim A.Mian. According to the learned counsel for the appellant the said person was authorized to file the reference applications through a Resolution of the Board of Directors of the company. At the leave granting stage the main argument of the learned counsel for the appellant was that the

original resolution was annexed with one of the references, whereas, along with other two references the copies of the same were attached, but the learned High Court without appreciating the record, recorded the findings that only a photocopy of a resolution is available on record which is not permissible under law. To appreciate this version of the learned counsel for the appellant, we have minutely perused the record, however, failed to find out any original copy of the Resolution of the Board of Directors on record. Along with all the three references and unattested photocopy of the alleged resolution of the Board of Directors of the company is attached which cannot be considered as a valid authorization. The argument of the learned counsel for the appellant appears to be misconceived and the learned High Court rightly recorded the findings in this regard

after examining the record. In such state of affairs, it can safely be said that the appellant failed to substantiate that Mr. Shamim A. Mian, was duly authorized by the company to file the references before the High Court. Under the provisions of section 2(21) of the Stamp Act, 1899, the power-of-attorney includes any instrument empowering a specified person to act for and in the name of the person executing it. However, in the instant case as has been observed hereinabove that nothing is available on record to show that the alleged authorized officer was empowered to file the reference applications. It is well settled principle of law that the power of attorney must be strictly construed. In this regard, the learned counsel for the respondents has rightly relied upon the case law reported as *Manzoor Begum v. Haji Fazal*

Ellahi [2012 SCR 70], wherein, this Court while dealing with the proposition has held that:-

“Before proceeding further it may be stated that a power-of-attorney should be construed strictly. A power-of-attorney gives only such authority as it confers expressly or by necessary implication and it cannot empower beyond that what it really conveys. The most important rule for construction of power-of-attorney is that regard must be had to the recitals which, as showing the scope and object of power, will control all general terms in the operative part of the instrument. Authority is given to do a particular act followed or preceded by general words. General words are restricted to what is necessary for proper performance of a particular act and general words in no way confer general powers, but are limited to the purpose for which the authority is given. Where special powers are followed by general words and vice versa, the general words re construed

as limited to what is necessary for proper exercise of special power.

6. A power-of-attorney is not open to liberal interpretation. It is subjected to strict interpretation because it delegates powers which are to be interpreted in strict terms and in such a way as should be necessary to carry into effect the authority that is expressly given."

Similarly, in another case reported as *Muhammad Mehrban v. Sadrud Din and another* [1995 CLC 1572], it has been held by this Court that:

"10. Reading para No.7 as a whole, we have come to the conclusion that this para, authorizes the attorney to purchase take on lease or otherwise acquire land or property in the name of principal and to institute any action of other legal proceedings necessary to preserve his rights in the property and to defend all actions that may be brought against the executant in connection with such property.

Obviously no power vests in the attorney to institute any legal proceedings with regard to the suit land on the strength of the power contained in recital No.7 of the attorney.

11. The General rule of construction is that powers of attorney must be constructed strictly as giving only such authority as those confer expressly or by necessary implication."

As no valid document is available on record to show that wherefrom the alleged authorized officer derived the powers to file references before the High Court, therefore, we agree with the argument of the learned counsel for the respondents that the reference applications were filed incompetently by an unauthorized person and the learned High Court attended to and resolved this point in accordance with law.

7. As the appellant failed to cross the barrier of limitation and also failed to substantiate that the reference applications were filed competently by an authorized person, therefore, there is no need to discuss the merit of the case as well as the other objections raised by the respondents' counsel that the reference applications were filed without annexing the certified copies of the mandatory documents and without impleading the necessary party as the same will be a futile exercise and it is now settled that judgment cannot be recorded mere for academic discussion.

In view of the above finding no force this appeal is hereby dismissed with no order as to costs.

Muzaffarabad, **JUDGE** **CHIEF JUSTICE**

Date of announcement 18.11.2017