

Daya Ram,  
etc.  
v.  
Gurteg Singh  
minor, and  
others  
—  
Khosla, J.

did exist among the Jats of Rupar Tahsil. In addition to this case, there are two other reported decisions—one of the Lahore High Court and the other of the Punjab Chief Court. *Kalu and others v. Sardara and another* (1), is also a Division Bench ruling which has dealt with a case arising out of the judgment of the District Judge of which the copy is Exh. D. 18. This case also related to Jats of Rupar Tahsil. The third case is *Suba and others vs. Gurdit Singh* (2). Then there are three instances of adoption mentioned in the pedigree-tables. These are Exhs. D. 7, D. 9 and D. 17 and finally there are three other instances, namely, Exhs. D. 10, D. 20 and D. 22. There are thus nine distinct cases in which adoption was recognized as sanctioned by custom among Jats of Rupar Tahsil. As against these instances there are seven instances in which adoption was held to be invalid under custom. In a case of this type where one party seeks to prove a special custom the onus lies heavily upon him and if we find that there are no less than nine instances which go to rebut the special custom the onus becomes all the heavier and in the present case the weight of evidence is clearly in favour of the custom of adoption obtaining among the Jats of Rupar Tahsil. I am, therefore, of the view that the collaterals have failed to prove their case and their suit is liable to be dismissed. I would accordingly dismiss the appeal with costs throughout.

Soni, J.

SONI, J.—I agree.

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.*

(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 Popsing 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.

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(1) A.I.R. 1949 Orissa 53  
(2) I.L.R. 1950 Nag. 816.

Messrs Khushi Ram Raghunath Sahai, Jullundur City v. The Commissioner of Income-tax, Punjab, Pepsu, Himachal Pradesh, and Bilaspur, Simla  
 Falshaw, J.

The decision of the Appellate Tribunal regarding 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 September 1950. Their application requiring the Appellate 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 Appellant 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 shall apply, *mutatis mutandis*, to an application under subsection (1) of section 66".

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nath Sahai,  
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City

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The Commis-  
sioner of  
Income-tax,  
Punjab,  
Pepsu,  
Himachal  
Pradesh, and  
Bilaspur,  
Simla

Falshaw, J.

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

(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, JJ., in the case of *Motilal-  
 Hiralal Shisodia firm v. Commissioner 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.

#### APPELLATE CIVIL

Before Falshaw and Kapur, JJ.

MURARI LAL,—Plaintiff-Appellant

versus

CHET RAM AND OTHERS,—Defendants-Respondents.

Regular Second Appeal No. 822 of 1948

*Punjab Courts Act (VI of 1918)—Section 39—Forum of  
 appeal—What determines—Suit for redemption—Amount  
 found due more than Rs. 5,000—Jurisdictional value of  
 the suit less than Rs. 5,000—Appeal filed in the Court of the  
 District Judge—Competency of—.*

In the suit for redemption the Sub-Judge passed a  
 decree on payment of Rs. 5,767-15-3. Both the plaintiff

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