S. R. KALANI Vs Income Tax OFFICER, ADDL., A WARD, CIRCLE-I, INDORE and OTHERS.

Court: Madhya Pradesh High Court

Date of Decision: Nov. 29, 1979

Acts Referred: Constitution of India, 1950 â€" Article 226, 227
Income Tax Act, 1961 â€" Section 143, 147, 148, 250

Citation: (1981) 132 ITR 600

Hon'ble Judges: Vijayvargiya, J; Vijayavrgiya, J

Bench: Division Bench

Judgement

VIJAYVARGIYA J. - This is a petition under arts. 226 and 227 of the Constitution of India.

The facts giving rise to this petition may briefly be stated as follows : The petitioner was assessee as an HUF for the assessment year 1973-74, the

accounting year having ended on March 31, 1973. The original assessment was made by the ITO, A-Ward, Indore, on December 28, 1974,

under s. 143(3) of the I.T. Act, 1961 (hereinafter referred to as ""the Act""). The order of the ITO was confirmed in the appeals preferred by the

petitioner to the AAC and the Income Tax Appellate Tribunal. On March 13, 1975, the petitioner received a notice (annex, E) under s. s. 148 of

the Act for reopening of the assessment for the year 1973-74, under s. 147(a) of the Act. The petitioner objected to the issuance of the said notice

on June 26, 1975, and also filed return under protest in pursuance of the said notice. The objections of the assessee were not decided by the ITO,

A- Ward, Indore, and the case was transferred to the ITO, B- Ward, on July 20, 1978, and also challenged his jurisdiction to reopen the

assessment. Thereafter the case was transferred to the ITO, Addl. A-Ward, Indore. The petitioner repeated the objections before him also on

December 5, 1978. The petitioner also requested the ITO to disclose to him the reasons for the reopening of the assessment. On January 15,

1979, the ITO issued a notice to the petitioner to explain as to why the income alleged to have been derived by Smt. Badamibai and grandsons of

the petitioner from whatever business be not added to the income of the assessee. It was stated that pursuant to the finding given by the ITO in

regard to the assessment of the petitioner for the year 1962-63, that a sum of Rs. One lakh alleged to have been given to Badamibai as her share

in a partial partition or family arrangement having not been accepted by the department the income of Badamibai and the donees to whom the

amounts were gifted by Badamibai has to be treated as the income of the petitioner. On this account, the assessment of the petitioner for the

assessment year 1962-63 and onwards were reopened.

The petitioner further stated that without deciding the objections of the petitioner the ITO passed an order dated February 22, 1979, under s.

143(3) /250 of the Act which was received by the petitioner along with a forwarding letter on March 12, 1979. In the forwarding letter it was

stated that the order was a draft of the proposed order of assessment under s. 144B of the Act. The petitioner has challenged the reassessment

proceedings and the draft order sent to him on the ground that the ITO had no jurisdiction to issue notice under s. 148 of the Act purporting to be

under s. 147(a) thereof and that in reassessment proceeding under s. 147 of the Act a draft order under s. 144B of the Act is not contemplated

and, therefore, the draft order is illegal. It assessee and that from the record it cannot be said that the assessee had failed to disclose primary facts

which he was required to do under the Act. It was further contended that all the requisite information was with the ITO who made the original

assessment for the year 1962-63 and onwards and on account of a mere change of opinion the ITO gets no jurisdiction to proceed under s. 147

of the Act. The department has controverted the contentions of the petitioner and also prayed for dismissal of the petition on the ground of

availability of alternative remedy under the provisions of the Act and inordinate delay in the filing of the petition.

Having heard learned counsel for the parties we have come to the conclusion that this petition deserves to be dismissed. According to the

department, the claim made by the assessee for the assessment year 1962-63 that a sum of Rs. One lakh was given to Smt. Badamibai Kalani in a

partial partition or family arrangement was negatived by the ITO in the year 1967, and after remand in the year 1972. Smt. Badamibai had made a

gift of the said sum of Rs. One lakh in favour of the members of the HUF of the assessee. The assessee when he filed the return for the assessment

year in question failed to disclose this primary fact on account of which the income of the assessee had escaped assessment and the ITO was

justified in initiating proceedings under s. 147 of the Act. The assessee has tried to meet the contention of the department by stating that he had

annexed a note as annexure to Part III of the return in the following words :

The assessee has no right, title or claim on income of Badamibai derived by her from firm, M/s. S. R. Kalani and Co., 286, M. G. Road, Indore.

The reasons which were recorded by the ITO before issuing notice under s. 148 of the Act are stated in annex. R-4 filed by the respondents.

They are reproduced below :

It is observed from the record that in the assessment year 1962-63, M/s. S. R. Kalani (HUF) claimed partial partition by virtue of the deed of

family arrangement dated 17-8-1961. Smt. Badamibai Kalani, mother of S. R. Kalani, karta, separated from the HUF on receipt of Rs. 1,00,000.

The claim for partial partition was rejected by the ITO on investigations made. He held that the alleged family arrangement w.e.f. 17-8-1961 was

an afterthought. The claim for partial partition of the HUF was, accordingly, rejected and also confirmed by the AAC in appeal. A sum of Rs.

1,00,000 allegedly transferred by the HUF to Smt. Badamibai Kalani thus continued to belong to the HUF only. Smt. Badamibai Kalani, out of

Rs. 1,00,000 received on the basis of the alleged family arrangement, further gifted Rs. 51,000 by Vijay Kumar Kalani and Rs. 91,000 to

Narendra Kumar Kalani, her grandsons in the accounting periods between 61-62 to 69-70. These two grandsons on the basis of the gifted

amount became partners in other firms and had also earned interest thereon. Incomes arising out of the gifted amount and received by the donee

would thus belong to the HUF.

The HUF, S. R. Kalani, did not disclose these incomes in its returns of income and thus they have escaped assessment.

The particulars of the escaped income have also been give in annex. R-4. It cannot be said that by annexing the note referred to above the

assessee has disclosed all primary facts because the information contained in the said note is too vague. We are not concerned with the sufficiency

of the reasons given by the ITO for reopening the assessment. The sufficiency of the reasons can be gone into in appeal, if any, against the order of

reassessment. It cannot, therefore, be said that the ITO had no jurisdiction to initiate proceedings under s. 147(a) of the Act and to issue notice to

the petitioner under s. 148 of the Act.

There is another insurmountable hurdle in the way of the petitioner. The notice under s. 148 of the Act was issued to the petitioner on March 13,

1975, and this petition has been filed on August 29, 1979. Therefore, there is inordinate delay in the filing of this petition and it deserves to be

dismissed on this ground also. The learned counsel for the petitioner contended that after the notice was issued the petitioner raised objections

before the ITO and the case was transferred from one officer to another without deciding the objections which were repeated from time to time

and that the ITO also did not disclose the reasons for initiating proceedings under s. 147 of the Act although he was requested to do so by the

petitioner and that the draft order under s. 144B of the Act was passed on February 22, 1979, and was received by the petitioner on March 12,

1979, and that the petitioner also raised objections to the draft order which were forwarded by the ITO to the IAC and that the IAC passed an

order on August 18, 1979, directing the ITO under s. 144B(4) of the Act to finalise the assessment. He, therefore, contended that there was n

delay on the part of the petitioner of file this petition. The learned counsel for the petitioner further contended that as the ITO had no jurisdiction to

initiate proceedings under s. 147(a) of the Act and the notice issued by him under s. 148 of the Act was null and void, and the petition cannot be

dismissed merely on the ground of delay. We are not impressed by the submissions of the learned counsel for the petitioner. As stated above we

are not satisfied that the ITO had no jurisdiction to initiate proceedings under s. 147(a) of the Act and to issue notice to the petitioner under s. 148

thereof. The delay in challenging the notice issued to the petitioner under s. 148 of the Act cannot be satisfied by reason of the subsequent steps

taken by the petitioner before the ITO. If the petitioner was really aggrieved by the notice issued to him under s. 148 of the Act on the ground that

the ITO had no jurisdiction to initiate proceedings under s. 147 of the Act he should have filed this petitioner within a reasonable time from the

receipt of the said notice. We are, therefore, not satisfied with the explanation given by the petitioner in filing this petition after the expiry of more

than 4 1/2 years from the receipt of the notice under s. 148 of the Act and are of the opinion that this petition should also be dismissed on the

ground of delay. In this view of the matter, we do not think it necessary to decide in this petition the further contentions of the learned counsel for

the petitioner that the ITO committed an error of law in passing a draft order under s. 144B of the Act because according to him the provisions of

s. 144B of the Act are applicable only to an original assessment and not to an assessment under s. 147 of the Act. The petitioner, if occasion

arises, shall have an opportunity to raise the said objection in appeal from the order of assessment that may be passed in the case.

As a result of the discussion aforesaid this petition fails and is dismissed with costs. Counsels fee Rs. 200, if certified. The outstanding amount of

security deposit after deduction of the costs awarded shall be refunded to the petitioner after verification.