

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

SATURDAY, THE THIRTY FIRST DAY OF JANUARY
TWO THOUSAND AND NINE

PRESENT
THE HON'BLE MR JUSTICE V.ESWARAIAH
and
THE HON'BLE MR JUSTICE SANJAY KUMAR

WRIT PETITION NO : 5643 of 2009

Between:

M.Krishna Reddy S/o.M.Punna Reddy
R/o.Flat No.301,Vijaya Sai Srinivasam No.44, MLA & MP colony,
Road No.10C Jubilee Hills
Hyderabad-500033

..... PETITIONER

AND

1The Cabinet Secretary, Govt of India., New Delhi
2The Secretary (Revenue) North Block New Delhi-110001
3The Chairman, CBDT,North Block ,New Delhi-110001
4The Chief Commissioner of Income Tax, 10th floor Income tax Towers,
AC Guards,Hyderabad
5The Director General of Income Tax,8th floor Aayakar Bhavan,
Basheerbagh,Hyderabad
6The Commissioner of Income Tax-I, Ayakar Bhavan
Basheerbagh,Hyderabad
7Mr.Vemuri Radha Krishna, B-68,Journalist colony Jubilee Hills,
Hyderabad-500033
8M/s.Aamoda Publications (Pvt) Ltd., B-68,Journalist colony BJubilee
Hills, Hyderabad-500033
9M/s.Active Power Corporation, B-68, Journalist colony Jubilee
hills,Hyderabad-500033

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a writ order or direction in the nature of writ of mandamus or otherwise the declaring section 1491(a)&(b) of the income tax Act as unconstitutional ultravires violative of Article 14,21 & 266 of the Constitution and also the inaction of the 4th and 5th respondents in not initiating any action as per law based on the representation of the petitioner dated 28.2.2009 as arbitrary,illegal, unjust contrary to law, violative of the basic structure of the Constitution and more particularly the equality clause contained in Article 14 of the Constitution of India and consequently declare the inaction as illegal, and ultra vires the powers of

the Respondents and pass

Counsel for the Petitioner:MR.I.V.RADHAKRISHNA MURTHY

Counsel for the Respondent No.: MR.J.V.PRASAD (SC FOR INCOME TAX)

The Court made the following :

-

THE HON'BLE SRI JUSTICE V.ESWARAIAH
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.5643 OF 2009

ORDER: (Per SK,J)

The petitioner, a Post Graduate in Management and a professed Social Worker, seeks to challenge the constitutional validity of Section 149(1)(a) & (b) of the Income Tax Act, 1961 (for brevity, 'the Act of 1961') on the ground that the same are violative of Articles 14, 21 and 266 of the Constitution of India. The petitioner seeks a further declaration that the inaction of the Chief Commissioner of Income Tax, Hyderabad, and the Director General of Income Tax, Hyderabad, respondents 4 and 5, in not initiating any action on the petitioner's representation dated 28.02.2009 is illegal, arbitrary, unjust and unconstitutional.

Before advertng to the contents of the petitioner's affidavit, it would be appropriate to examine the scheme of the Act of 1961 in which the impugned provisions find place. Section 143 of the Act of 1961 deals with 'Assessment' and provides *inter alia* that where a return is filed under Section 139 or in response to a notice under Section 142(1), if any tax or interest is found payable on the basis of such return, intimation shall be caused to the assessee specifying the sum so payable and alternatively, in the event of any refund being found due on the basis of such return, it shall be granted to the assessee and intimation to this effect shall be sent to the assessee. Under Section 147, if the Assessing Authority has reason to believe that any income chargeable to tax has escaped assessment for any assessment year he may assess or reassess such

income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this Section or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the relevant assessment year. The proviso to Section 147 deals with the modalities of assessing cases where income chargeable to tax has escaped assessment. Section 148 provides for issuance of notice where income has escaped assessment and states to the effect that before making the assessment, reassessment or recomputation under Section 147, the Assessing Authority shall serve on the assessee a notice requiring him to furnish a return of his income during the previous year corresponding to the relevant assessment year. The provisos attached to Section 148 deal with particular situations in relation to the time component stipulated therein. Coming to Section 149 which provides for the time limit for issuing the notice under Section 148, it is apposite to extract hereunder the provisions of Section 149 as obtaining presently, after substitution of clauses (a) and (b) thereof by the Finance Act, 2001, with effect from 01.06.2001:

“Section 149 – Time limit for notice:

- (1) No notice under section 148 shall be issued for the relevant assessment year,-
 - (a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);
 - (b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year.
Explanation.- In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of Explanation 2 of section 147 shall apply as they apply for the purposes of that section.
- (2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.
- (3) If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be

made on him as the agent of such non-resident, the notice shall not be issued after expiry of a period of two years from the end of the relevant assessment year.”

It is, thus, seen that Section 149 seeks to introduce certain restrictions with regard to assessment/reassessment/ recomputation being effected in respect of income which had escaped assessment in the past. This provision seeks to balance the interest of the Revenue with that of an assessee who is entitled by passage of time to assume that a particular past assessment had attained finality and quietus for all times to come. Otherwise, unfettered liberty on the part of the authorities to reopen past assessments, notwithstanding the delay and the quantum involved, would not only foster a sense of irresponsibility and carelessness amongst them but would also lead to chaos, as no assessee could ever rest in peace with regard to a past assessment. This, then, is the import of Section 149(1)(a) & (b).

Coming to the contents of the petitioner's affidavit, it is noticed that the petitioner has not even chosen to exercise due diligence and care with regard to the provision that he is challenging. In the body of the affidavit, the petitioner sets forth the provisions of Section 149(1)(a) & (b) as they stood prior to the substitution effected by the Finance Act, 2001 with effect from 01.06.2001. The reason for the lack of proper care on the part of the petitioner is not far to gather. The affidavit filed in support of the writ petition reads like an all-out personal attack against one Vemuri Radha Krishna, respondent 7 and the extensiveness of the details set out by the petitioner in this regard clearly indicates that the writ petition is the result of some personal grouse that the petitioner has against respondent 7. The process of this Court cannot be permitted to be utilized by the petitioner to settle his personal scores with respondent 7 or espouse his vendetta against him. We do not think that the Income Tax Authorities need a cue from this Court as to how they should run their affairs. If there is any substance in the representation made by the petitioner with regard to evasion of tax by respondent 7, we are confident that the Income Tax Authorities would initiate necessary action thereupon so as to protect the interest of the Revenue. We are therefore convinced that this writ petition

is utterly lacking in *bona fides* and it is only for the purpose of waging an attack on respondent 7 that the petitioner has chosen to assail the constitutional validity of the provisions of Section 149 of the Act of 1961.

Further, it is not the case of the petitioner that the impugned statutory provisions are invalid for want of legislative competence on the part of the Parliament. With regard to violation of constitutional provisions, the petitioner has not made out any case as to how the impugned provisions violate Article 266 of the Constitution of India, which deals with appropriation of monies received by the Government of India and the State Governments under the heads of Consolidated Funds/Public Accounts of the Union and the States. Except for baldly stating that the impugned provisions 'fall clearly in the teeth of Articles 14 and 21 read with Article 266 of the Constitution of India', the petitioner has not taken any pains to explain as to how such violation is, in fact, made out. The statement of the petitioner that the impugned provisions provide blanket leverage for not making evaded payment of tax to the exchequer of the State is untenable, keeping in mind the legal environment in which the impugned provisions find place in the schemata of Act of 1961. We are therefore not inclined to accept the grounds urged by the petitioner to invalidate the provisions of Section 149(1)(a) & (b) of the Act of 1961, even on merits.

The Writ Petition is therefore utterly lacking in substance and *bona fides*, be it viewed on facts, merit or technicalities, and we have no hesitation in dismissing the same. In the circumstances of the case, we are not inclined to make any order as to costs.

V.ESWARAIAH, J.

SANJAY KUMAR, J.

March, 2009.

VGSR

