

(1965) 10 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2628 of 1964

RATTAN CHAND

APPELLANT

Vs

CENTRAL BOARD OF DIRECT TAXES AND ANOTHER. (ON
REFERENCE BY P. D. SHARMA).

RESPONDENT

Date of Decision : 01-10-1965

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 147, 148, 149

Citation : (1966) 62 ITR 309

Hon'ble Judges : P. C. Pandit, J; I. D. Dua, J

Bench : Full Bench

Judgement

I. D. DUA, J. - These two writ petitions have been argued together because they relate to the same controversy and, indeed, have been referred to a larger Bench by P. D. Sharma J. by the same order dated 22nd March, 1965, on the ground that they involve determination of the vires of certain provisions of the Income Tax Act. I may, at the outset, point out that at the hearing before us, the learned counsel for the petitioner to our surprise did not raise any question relating to the vires of any provision of the Income Tax Act, which he wanted to be left open to be raised by him at a later stage, when the question of imposition of penalty may arise. I am not quite sure if this reference would have been made had this position been taken before the Single Bench.

The facts giving rise to these writ petitions may here be briefly stated : Shri Rattan Chand Kapur, son of late Shri Gokal Chand, is stated to have separated from his father some time in 1927. In March, 1942, Rattan Chand created a trust called "Rattan trust". In 1946, a sum of Rs. 5 lakhs was ostensibly donated to the Trust by Shri Gokal Chand, the father of Shri Rattan Chand. In May, 1951, Shri Gokal Chand died. In June, 1947, this trust was assessed for the year 1947-48. Rattan Chand was also assessed as a Hindu undivided family for the year 1946-47. This assessment was made in September, 1946. On 25th March, 1963, a notice was issued to Shri Rattan Chand Kapur u/s 148 of the Income Tax

Act (43 of 1961) by the Income Tax Officer, Special Investigation Circle "A", Amritsar, stating that the said officer had reason to believe that Shri Rattan Chands income in respect of the assessment year 1946-47 had escaped assessment within the meaning of section 147 of the Income Tax Act and that the said Income Tax Officer proposed to assess the income for the said assessment year. Shri Rattan Chand Kapur was required to deliver to the Income Tax Officer, within thirty days from the date of the service of the notice, return in the prescribed form of the income chargeable in respect of which he was assessable for the financial year in question. This notice, it is asserted therein, was being issued after obtaining the necessary sanction of the Central Board of Revenue. It is this notice which is the subject-matter of challenge in the present proceedings and the principle, may the main ground of challenge is that the time prescribed by law for reopening the assessment for the year 1946-47 had expired long ago; according to the petitioners learned counsel, it expired on 31st March, 1955, and under the current Income Tax Act, there was no jurisdiction in the department to issue the impugned notice.

On behalf of the respondents, it has, at the outset, been urged that the impugned notice was issued on 25th March, 1963, and even the assessment order in pursuance thereof was made on 31st October, 1964. The present writ petition was presented to this court on 30th November, 1964, and was admitted by the Motion Bench on 4th December, 1964, it being directed that the case should be heard some time in the month of February, 1965. In the writ petition, an ancillary prayer was made that an order or direction in the nature of mandamus should go directing the respondents, the Central Board of Direct Taxes and the Income Tax Officer, Special Investigation Circle "A", not to take any action or proceeding against the petitioner, in any manner, or to make any assessment and/or recovery of the taxes, etc., or to take any proceeding under/ or in pursuance of the impugned notice. It urged on behalf of the respondents that the conduct of the petitioner disentitles him to discretionary relief from this Hon'ble court. The assessment proceedings had already terminated and the assessment order passed on 31st October, 1964. The assessee deliberately avoided service of the assessment order and the demand notice from the first week of November, 1964, up to the second week of December, 1964. The envelopes containing these orders and demand notices showed on the face of them that they contained the assessment order for 1946-47 and they were addressed to the assessee on the address given by him to the Income Tax Officer, which is the same as is mentioned in the heading of these writ petitions. The assessee has also suppressed in these petitions the fact of the assessment order having been made. The present writ petitions have also been described to be highly belated without offering any cogent explanation for the undue delay. Lastly, it has been urged that the petitioner had actually acquiesced in response to the notice and was estopped from challenging the same in the present proceedings.

The petitioners learned counsel has attempted to meet this objection with the

submission that the petitioner was unaware of the assessment proceedings. It is, however, common case of the parties that the petitioner has since preferred appeals against the orders of assessment in accordance with the provisions of the Income Tax Act. It may here be pointed out that the petitioner has also presented to this court supplementary writ petitions with the object of challenging the assessment orders as well; of course, the challenge is mainly confined to the validity of the original notice. The petitioners counsel has very fairly conceded that he is not entitled to take us into the merits of the assessment order, which may require appreciation or evaluation of the evidence on which it proceeds; on the writ side it is conceded by the learned counsel that this court is confined only to discover a jurisdictional defect or some other serious legal infirmity going to the root of the matter and he can canvass the merits only before the Appellate Tribunal. It has, however, been stressed on behalf of the petitioner that in the case in hand the impugned notice is tainted with a fundamental infirmity inasmuch as it was issued after the right of the revenue to reopen the assessment in question had been extinguished on account of time-bar under the earlier statute. Delay, Shri Sastri has argued, is not fatal in all cases and this court has a discretion to determine whether or not on the facts and circumstances of a given case it should allow its writ jurisdiction to be invoked and grant relief to the aggrieved party. Shri Sastri has in this connection sought to distinguish the decision by Shamsheer Bahadur J. in *Banarsi Dass v. Income Tax Officer, New Delhi*, in which the learned judge declined to interfere under article 226 of the Constitution in a case where, after the receipt of notice, the assessee waited till the assessing authority had made the assessment and approached this court thereafter. Shri Sastri submits that in the reported case disputed questions of fact were required to be gone into and it was this factor which apparently weighed with the learned judge in declining relief on the writ side. I am unable to uphold this distinction. The learned single judge upheld the contention of Mr. Hardy that assessment proceedings cannot be challenged in writ proceedings where the Income Tax authorities have actually assumed jurisdiction and assessment orders have been made as was the case before him. Reference by the learned judge was made in his judgment to a Division Bench decision of the Rajasthan High Court in *Ramniranjan Kedia v. Income Tax Officer, Udaipur*.

I may here also notice some other decisions to which Shri Awasthy for the revenue has made reference at the Bar. In *Hyderabad Allwyn Metal Works Ltd. v. Income Tax Officer, Hyderabad* Basi Reddy J. of the Andhra Pradesh High Court observed that inordinate delay in filing the writ petitions coupled with the conduct of the assessee would disentitle the assessee from invoking the extraordinary jurisdiction of the High Court under article 226. In *Ram Kumar Sitaram v. Certificate Officer*, a Division Bench of the Calcutta High Court observed that where the assessee themselves invite a particular Income Tax Officer to make an assessment on them, they cannot thereafter turn round and say that he had no jurisdiction to make the assessment. Shri Awasthy has also

referred us to *Shivram Poddar v. Income Tax Officer* in which the Supreme Court once again emphasised what it had often observed earlier, that the Income Tax Act provides a complete machinery for assessment of tax and for relief in respect of improper or erroneous orders made by the revenue authorities and it is for those authorities to ascertain the facts applicable to a particular situation and to grant a proper relief in the matter of assessment of tax. Resort to the High Court in exercise of its extraordinary jurisdiction conferred or recognised by the Constitution in matters relating to assessment, levy and collection of Income Tax may be permitted only when questions of infringement of fundamental rights arise, or where on undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess. In attempting to bypass the provisions of the Income Tax Act by inviting the High Court to decide questions which are primarily within the jurisdiction of the taxing authorities, the party approaching the court has often to ask the court to make assumptions of facts which remain to be investigated by such authorities. Similar observations had already been made by the Supreme Court in *C. A. Abraham v. Income Tax Officer, Kottayam*. It has in this connection been emphasised that the assessee-petitioner has since actually preferred an appeal from the impugned order under the provisions of the Income Tax Act. Having done so, Shri Awasthy has very strenuously contended that it would not only be improper but it would be an erroneous exercise of discretion of this court in these circumstances to go into the merits of the challenge to the impugned notice, which can appropriately be canvassed before the departmental hierarchy, which means the authority dealing with the appeal.

In my opinion although in terms article 226 does not contain any restriction on the exercise of power by this court to grant suitable relief, except that of territorial jurisdiction, the exercise of power under this article, as a large number of decisions of the Supreme Court and various High Courts amply establish, is subject to a self-imposed restriction that this court would normally be disinclined to interfere at the instance of a party who is guilty of undue delay, laches or acquiescence or where the party invoking this court's jurisdiction can have equally adequate and efficacious redress from subordinate tribunals. These restrictions have been inspired by considerations of public policy and are also guided by sense of respect to the legislature which has enacted laws providing for relief to the aggrieved parties by machinery provided by relevant enactments. In such circumstances this court is normally disinclined to allow its constitutional jurisdiction to be invoked, unless there are some special cogent ground justifying interference. It was never the object of this article to convert High Courts into appellate assessing authorities whenever an assessee may choose to attack an assessment order on the merits. This reasoning would apply to cases where the assessment order is challenged on the ground that the notice initiating the proceedings which culminated in the assessment is bad in law, if such objection can appropriately be taken before the appellate authorities. In order to warrant the entertainment of a petition under this article, in my opinion, there must

ordinarily be something to show that it would cause palpable injustice to the assessee to force him to adopt the remedies provided by the statute. It is true that this court may persuade itself to interfere if there is something going to the root of the jurisdiction of the Income Tax Officer, but, then again, this is a matter of discretion to be exercised on the facts and circumstances of each case, whether it would be more appropriate that this court decides to intervene itself ignoring the machinery which the legislature has in its wisdom provided for redress of grievances.

In view of the legal position which I have just stated, I may deal with the petitioners submission, because, according to Shri Sastri, there are special circumstances in this case which justify interference by this court.

According to Shri Sastri the last date for reopening the assessment was March 31, 1955, and thereafter, there was no jurisdiction on the Income Tax Officer to issue a notice u/s 34(1) (a) of the Indian Income Tax Act, 1922. This right having become barred by time, sections 147, 148 and 149 of the Income Tax Act, 1961 (43 of 1961), hereinafter described as the current Act, would not revive that right and revest it in the revenue. It is desirable at this stage to notice the various amendments made in section 34(1) (a) of the Indian Income Tax Act, 1922. At the time of the assessment order relating to the assessment year 1946-47, notice u/s 34(1) (a) could be issued at any time within eight years of the end of that assessment year. By virtue of the Finance Act, 1956 (18 of 1956), the limit of eight years was removed from this section, but a proviso was inserted to the effect that the Income Tax Officer shall not issue a notice under clause (a) of sub-section (1) of section 34 for any year prior to the year ending on the 31st day of March, 1941, or for any year, if eight years had lapsed after the expiry of that year, unless the income, profits or gains chargeable to Income Tax which had escaped assessment, etc., amount to, or are likely to amount to, one lakh of rupees or more in the aggregate either for that year or for that year and any other year or years after which or after each of which eight years have elapsed, not being a year or years ending before the 31st day of March, 1941. Satisfaction of the Central Board of Revenue was required in case of the amount being one lakh of rupees or more. The other clauses added in 1956 need not detain us. In 1959 the Indian Income Tax Act was again amended by Act No. 1 of 1959. Sub-section (4) added to section 34 provided that a notice under clause (a) of sub-section (1) of section 34 may be issued at any time notwithstanding that at the time of the issue of the notice the period of eight years specified in the said sub-section before its amendment by clause (a) of section 18 of the Finance Act, 1956 (18 of 1956), had expired in respect of the year to which the notice relates. The impugned notice in the case before us was issued u/s 148 of the current Act for the purpose of making reassessment u/s 147 which deals with cases of escaped assessment. u/s 149 no notice is to issue u/s 148, inter alia, for the relevant assessment year where eight years, but not more than sixteen 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, fifty thousand rupees or more for that year. It is not disputed that the present case is covered by the sixteen-year limitation. Section 297 of the current Act repeals the Indian Income Tax Act, 1922. u/s 297(2) (d) (ii), where in respect of any assessment year after the year ending on the 31st day of March, 1940, any income chargeable to tax has escaped assessment within the meaning of that expression in section 147 and no proceedings u/s 34 of the repealed Act in respect of any such income are pending at the commencement of this Act, a notice u/s 148 may, subject to the provisions of section 149 or section 150, be issued with respect to that assessment year and all the provisions of the current Act are to apply accordingly. The counsel has laid emphasis on some relevant dates in the present case. Rattan Chand, son of Gokal Chand, is stated to have separated from the family somewhere in 1927. In March, 1942, Rattan Chand is stated to have created a trust called the "Rattan Trust". In January, 1946, according to the petitioners case, a sum of Rs. 5 lakhs was donated to this trust by Gokal Chand, the father of the author of the trust. Rattan Chand was assessed as Hindu undivided family for the year 1946-47 on 6th September, 1946. On 14th June, 1947, the trust was assessed for the year 1947-48 and in the course of assessment, reference was made to the donation made by Gokal Chand. In May, 1951, Gokal Chand died. Impugned notice was given in March, 1963, long after the death of Gokal Chand. It has been argued that at the time of the impugned notice, there was no information with the Income Tax Officer on which he could have reason to believe that income chargeable to tax had escaped assessment. The counsel has also, in passing, submitted that any information received after the notice, during the course of the assessment proceedings, would not be relevant for determining the validity of the notice.

The respondents contention, briefly put, is that the language of section 149 confers on the taxing authorities power to issue notice irrespective of the fact whether or not time under the repealed Act had expired for the purpose of reopening the assessment and of taxing income, which has escaped assessment, whereas, on behalf of the petitioner, it is argued that the normal rule applicable is that a right, which has become unenforceable by lapse of time-limit, cannot be revived by a subsequent change in law, merely on the theory of laws of limitation being supposed to be procedural. In the case in hand, the current statute, according to Shri Sastri, does not either, in express terms or by necessary intendment, make section 149 applicable to the assessment in question which was made on 14th June, and does not revive the right to reopen it. The counsel at the bar have referred us to some decisions in support of their respective contentions. They may briefly be adverted to at this stage. Both of 5 judges of the Supreme Court in Commissioner of Income Tax v. Janaba Mohamed Hussain Nachiar Ammal and also from the connected decision by the same Bench in S. C. Prashar v. Vasantsen Dwarkadas. It may be pointed out that in Janaba Mohamed Hussains case. The head-note in Janaba Mohamed Hussains case is in the following terms :

"In the accounting year relevant to the assessment year 1942-43, the assessee

received from her non-resident husband sums of money amounting to Rs. 9,180, which were assessable to Income Tax u/s 4(2) of the Income Tax Act. She, however, did not submit any return of income in respect of those items. Proceedings u/s 34 of the Income Tax Act were initiated against her on July 25, 1949, after the expiry of four years but within eight years. The High Court held on a reference that the assessment proceedings were not valid as the period of limitation prescribed u/s 34 for failure to submit a return was 4 years and the period had expired before the amendment of section 34 in 1948, prescribing an eight-year period of limitation for such a case, came into force. On appeal to the Supreme Court, it was held by Sarkar, Hidayatullah and Raghubar Dayal JJ. (Das and Kapur JJ. dissenting), that the assessment proceedings were valid as section 34, as amended in 1948, was applicable to this case. Per Das and Kapur JJ. (dissenting) : Section 31 of the Indian Income Tax (Amendment) Act, 1953, and section 34 as amended in 1948, did not revive the right of the Income Tax Officer to initiate proceedings which had been barred u/s 34 before it was amended in 1948. Per Sarkar J. : The Legislature had undoubtedly the power to make section 34, as amended in 1948, apply to an assessment for an assessment year by giving it a retrospective operation in spite of the time to issue a notice and to make the assessment fixed by the pre-existing law having expired before the amendment came into effect. Section 31 of the Indian Income Tax (Amendment) Act, 1953, clearly gives section 34 of the Indian Income Tax Act, 1922, as amended in 1948 such retrospective operation. All that is necessary is that all notices and assessment orders in respect of years ending before April 1, 1948, in proceedings commenced after September 8, 1948, shall comply with the provisions of section 34 as amended in 1948. Per Hidayatullah and Raghubar Dayal JJ. : After the passing of the 1948 amendment, which came into force on March 30, 1948, the Income Tax Officer could take action in all cases in which the assessment years ended within 8 years from the date of his action and in which there was an escapement of an assessment for the reason indicated in clause (a) of the section as amended. Even if an omission or failure to make a return was governed by the four-year period under the 1939 amendment, the assessee did not get immunity except if no fresh power to bring to tax such special income was created. Such a power to tax was brought into being by the 1948 amendment. The different periods indicated u/s 34 cannot be treated as periods of limitation, the expiry of which grant prescriptive title to defaulting taxpayers. An assessment once made is final and conclusive except for the provisions of sections 34 and 35 but it is quite a different matter to say that a vested right arises in the assessee. On the expiry of the period, the assessments, if any, may also become final and conclusive, but only so long as the law is not altered retrospectively. Under the scheme of the Income Tax Act, a liability to pay tax is incurred when, according to the Finance Act in force, the amount of income, profits or gains is above the exempted amount. That liability to the State is independent of any consideration of time and, in the absence of any provision restricting action by a time-limit, it can be enforced at any time. What the law does is to prevent harassment of assesseees to the end of time by prescribing a

limit of time for its own officers to take action. This limit of time is binding upon the offices, but the liability under the charging section can only be said to be unenforceable after the expiry of the period under the law as it stand. In other words, though the liability to pay tax remains, it cannot be enforced by the officers administering the tax laws. If the disability is removed, or, according to a new law, a new time-limit is created retrospectively, there is no reason why the liability should not be treated as still enforceable. The law does not deal with concluded claims or their revival but with the enforcement of a liability to the State which though existing remained to be enforced."

Shri Awasthy submits that the majority view in this case supports his contention, whereas Shri Sastri argues that the opinion on the point at issue, which concern us, was equally divided, and Sarkar J. had proceeded on somewhat different lines, though in the ultimate result, he agreed with Hidayatullah and Raghubar Dayal JJ.

Shri Awasthy has relied on the head-notes at pages 2 and 4 of the report in Prashars case. At page 2, it is stated to have been held by Sarkar, Hidayatullah and Raghubar Dayal JJ. (Das and Kapur JJ. dissenting), that :

"(i) Section 4 operated on and validated notices issued u/s 34(1) (a), as amended in 1948, even earlier than April 1, 1956, in other words, in respect of assessment years prior to March 31, 1956, and, therefore, notices issued u/s 34(1) (a) of the Income Tax Act before April 1, 1956, could not be challenged on the ground that they were issued beyond the time-limit of 8 years from the respective assessment years prescribed by the 1948 amendment;

(ii) The words at any time in section 4 meant what they said. There was no special meaning to be attributed to them. Any time thus meant action to be taken without any limit of time."

In the head note at page 4 of the report, Hidayatullah and Raghubar Dayal JJ. are stated to have held that although the notice in question was issued beyond 8 years from the end of the assessment year 1942-43, section 4 of the Indian Income Tax (Amendment) Act, 1959, validated the notice.

Shri Sastri has, on the other hand, submitted that Das, Sarkar and Kapur JJ. held in disagreement with Hidayatullah and Raghubar Dayal JJ. that section 34(4) was prospective in its operation.

Shri Sastri has placed principal reliance on a Full Bench decision of this court in Shahzada Nand & Sons v. Central Board of Revenue, the head-note of which reads thus :

"Sub-section (1A) of section 34 of the Income Tax Act, 1922, is an exception to the cases covered by sub-section (1) (a) of the said section and, consequently, if a notice falling u/s 34(1) (a) falls also within subsection (1A), that is to say, the notice is in respect of income, profits or gains which has escaped assessment for any previous year falling within 1st September, 1939, and 31st March, 1946,

such a notice could not, under the last proviso to sub-section (1A), be issued after the 31st day of March, 1956. The fact that the said notice is in respect of income which is believed to have escaped assessment owing to concealment or non-disclosure of material facts by assessee would not take it out of the purview of sub-section (1A) and empower the department to issue such a notice at any time after 31st March, 1956."

He emphasizes that this decision was followed by the Madhya Pradesh High Court in *Rustomji v. Income Tax Officer, Special Investigation Circle, Indore*, and by the Gujarat High Court in *Mathurdas Govinddas v. G. N. Gadgil, Income Tax Officer, Ahmedabad*. He has quite fairly brought to our notice that the Bombay High Court has in *Laxminarayan R. Rathi v. Income Tax Officer, Poona*, dissented from it. Shri Awasthy has tried to distinguish the Full Bench decision and has, in the alternative, doubted its correctness in the light of the later Supreme Court decision. Shri Sastri has also relied on the following observations of the Supreme Court in *S. S. Gadgil v. Lal & Company* at page 236 :

"It is true that by the amendment made by section 18 of the Finance Act, 1956, a notice could be issued within two years from the end of the year of assessment. But the application of the amended Act is subject to the principle that, unless otherwise provided, if the right to act under the earlier statute has come to an end, it could not be revived by the subsequent amendment which extended the period of limitation. The right to issue a notice under the earlier Act came to an end before the new Act came into force. There was undoubtedly no determinable point of time between the expiry of the earlier Act and the commencement of the new Act; but that would not, in our judgment, affect the application of this rule."

In my opinion, on the facts and circumstances of this case, particularly when the assessee has : (i) allowed more than one and a half years to elapse from the date of the impugned notice before approaching this court; (ii) allowed assessment to be made on 31st October, 1964; (iii) attempted to evade the receipt of the intimation of assessment and the assessment order which were sought to be served by the department in due course; (iv) actually preferred an appeal since the filing of the present writ petition and (v) suppressed the factum of assessment having been made which, it is clear, on the present record, was most probably known to him; it would be better and sounder exercise of discretion to decline interference under article 226 of the Constitution and to leave the party to proceed to get redress of the grievances in accordance with the machinery provided by the Income Tax Act. I have not been able to find any cogent and sufficient reason as to why the petitioner should not follow the normal path which all assesseees are expected to follow for ventilating their grievances and seeking redress in accordance with the statutory machinery provided by Parliament. Nothing convincing has been said as to how the remedy provided by the statute is not sufficiently adequate and efficacious.

The submission that the challenge to the notice goes to the root of the

jurisdiction of the assessing authority, has, on the facts and circumstances of this case, not impressed me to be a sufficiently cogent ground for going into the merits of the controversy on the writ side. The decision of the Supreme Court in *Madhya Pradesh Industries Ltd. v. Income Tax Officer, Nagpur*, in which the Supreme Court reversed the order of the High Court dismissing in limine a petition under article 226 of the Constitution and remitting the case back to the High Court, with the observation that, when the party claiming relief challenges on oath the existence of the conditions which confer jurisdiction, and sets out facts which may, unless disproved, support his case, an order dismissing his petition in limine may not properly be made, is of little assistance to the petitioner at the present stage of the proceedings in this court. It may appropriately be pointed out that in this very judgment, the court, speaking through Shah J., observed that the jurisdiction under article 226 of the Constitution is discretionary and the High Court is not bound to issue a writ merely because it is lawful to do so. It is also not intended thereby to supersede the authority and jurisdiction conferred upon the taxing authorities who are vested with power to deal with the merits of the contentions raised before them. The High Court must in each case consider whether the act or omission complained of has resulted or is likely to result in grave injustice and whether the party approaching it has another adequate remedy which is equally efficacious; whether he has approached the court without acquiescence and without undue delay; whether the problem posed raises complicated questions of disputed facts which it would be inappropriate for the High Court to determine; whether the aggrieved party has been guilty of misrepresentation or suppression of material facts and whether, notwithstanding the apparent breach, it would be inequitable to grant relief. At the close of the judgment, the court took pains to state that it was constrained to set aside the order because there was no indication as to the grounds on which the High Court had rejected the petition which, prima facie, made out a case which might require investigation and trial. Indeed, the anxiety of the Supreme Court to confine this decision to its own circumstances is also clear from the following observations :

"We may hasten to observe that we are not seeking to lay down any rigid rule about the nature or quantum of enquiry which the High Court in a petition which seeks to challenge the issue of a notice u/s 34(1) (a) of the Indian Income Tax Act may make. If the petition on the face of it does not disclose a right to relief, the High Court has undoubtedly power to dismiss it in limine. If there be other grounds which appear to the High Court to be adequate such as delay or acquiescence, existence of an adequate alternative remedy which is equally efficacious, or failure to disclose all material facts which have a bearing on the question of misrepresentation of facts, jurisdiction of the High Court to dismiss a petition in limine cannot be denied. An attempt to short-circuit the procedure provided by the Indian Income Tax Act for investigation of facts which the Income Tax Officer alone is competent to investigate in the first instance may also justify the High Court in rejecting a petition for the issue of a writ under

article 226."

In this decision, I may also point out, reference has been made to an earlier decision by a Bench of five judges of the Supreme Court in *Lalji Haridas v. R. H. Bhatt* in which it is pointed out that the jurisdiction conferred on the High Court under article 226 of the Constitution of India is not intended to supersede the jurisdiction and authority of the Income Tax Officers to deal with the merits of all the contentions that the assessee may raise before them, and so it would be entirely inappropriate to permit an assessee to move the High Court under article 226 of the Constitution and contend that a notice issued to him is barred by time. That is matter which the Income Tax authorities must consider on the merits in the light of the relevant evidence.

This decision is, again, an authority for the view that the challenge to a protective assessment with a prayer that it should be set aside ought to be raised before the taxing authorities and cannot appropriately be allowed to be urged before the High Court in a petition under article 226. I have referred to this aspect because the learned counsel for the petitioner has also urged that what the assessing authority has described to be a protective assessment on Rattan Chand in his individual capacity and in his capacity as Hindu undivided family are illegal.

Finally, Shri Awasthy has submitted that, when all is said and one, it is not possible to hold that the invalidity of the notice is manifest on the face of the present record or that the law is clearly against the revenue. An error -if at all there is one - is, according to the counsel, far from apparent on the face of the record and, in order to establish it, the assessee had to resort to a long-drawn process of reasoning on points on which clearly there may be more than one opinion. In such circumstances, the error can scarcely be described to be self-evident and it would require lengthy and complicated arguments to establish it. A writ is hardly an appropriate remedy for curing the defect under the rules governing the power of this court under article 226 of the Constitution. This submission too cannot be said to be without merit or unjustified.

On behalf of the petitioner, an express request has been made that in case this court is inclined not to go into the merits of the controversy and prefers to direct the petitioner to seek redress of grievances from the appellate authorities under the statute, then we may not express any opinion on the merits of the arguments addressed at the Bar in support of the challenge to the notice or to the assessment order. Considering this request to be fair and reasonable, we refrain from expressing any opinion on the merits of the challenge and nothing said in this order should be construed as a considered expression of our opinion.

This petition accordingly fails and is dismissed with costs which we fix at Rs. 200.

No additional arguments have been advanced in the other writ petition (Civil Writ No. 2627 of 1964) and it is not disputed that this order would cover that petition as well. The other petition accordingly also fails and is dismissed. There would be

no separate order as to costs in that petition.

P. C. Pandit J. - I agree.

Petitions dismissed.