Income Tax Appellate Tribunal - Jaipur
Nizamuddin vs Income-Tax Officer on 8 August, 1986
Equivalent citations: 1986 19 ITD 770 JP
Bench: H Ahluwalia, A Kalyanasundharam
ORDER H.S. Ahluwalia, Judicial Member

1. A very interesting issue is involved in these appeals. Original assessments in these cases were completed under Section 143(3) of the Income-tax Act, 1961 ('the Act') at total incomes of Rs. 61,486 and Rs. 43,140. Later the ITO noticed that the share income pertaining to two minor sons of the assessee, namely, Mohd. Ajmal and Mohinuddin received from the firm Nizam & Sons, Tonk had not been included by the assessee in its return. He, therefore, issued a notice under Section 148 of the Act, in response thereto the assessee asked for the reasons for reopening the assessments. Ultimately, the ITO added back the amounts of Rs. 44,905 and Rs. 36,151 which was the share income of two minor sons of the assessee from the firm Nizam & Sons. Both these additions have been upheld by the Commissioner (Appeals) on appeals filed by the assessee. The assessee has, consequently, come up in second appeal before the Tribunal.

2. We have heard the representatives of the parties at length in these appeals. The main point argued before us on behalf of the assessee was that besides the assessee, his wife Smt. Chunni was also a partner in the same firm and the share income of these children had already been included by the ITO in the assessment of Smt. Chunni. In this behalf reliance was placed by him on Explanation 1 to Section 64(1) of the Act according to which once any income of a minor child is included in the total income of either parent, any such income arising in any succeeding year shall not be included in the total income of the other parent unless the ITO is satisfied, after giving that parent an opportunity of being heard, that it is necessary so to do. According to him it was only in a subsequent year and that too after satisfaction of the ITO to be recorded within the meaning of this Explanation that the clubbing of share income could be changed from one coparcener to another. This according to him implied that there was no question of clubbing the share income of a minor child in the hands of other parent once it had already been clubbed in the hands of one of the parents. We are afraid, we have not been able to persuade ourselves to agree with this contention. For clubbing, there appears to be two distinct features. The earlier part of the Explanation in question makes it very clear that the clubbing would be with the parent whose income is greater. Now, although the assessee has raised a grudge that the reasons recorded for reopening of the assessments were not made available to him. We specifically looked into the file and have got photocopies of the reasons recorded by the ITO on our own record. The sum total of the recorded reasons is that it had come to the notice of the ITO that minor sons of the assessee were admitted to the benefit of partnership and during the relevant accounting years the income arising to the minors from the admission to the benefit of this partnership was to be clubbed with the income of the parent whose income was higher even if the parent was not a partner in that firm in view of the Explanation to Section 64(1)(z'/7). Thereafter, the ITO has in respect of both the years given the respective figures of income of the assessee and his wife which were Rs. 43,140, Rs. 37,975, Rs. 27,114 and Rs. 12,344, respectively. Although the ITO has admitted that the income of the minors was included in the income of Smt. Chunni, he specifically mentioned that by reason of omission or failure on the part of the assessee to disclose fully and truly the income of the minors clubable in his

hands, the provisions of Section 147 of the Act were applicable. It has been mentioned in Chaturvedi and Pithisaria's Income-tax Law, Third edn., Vol. 3, p. 2979 that the decision of the Supreme Court in the case of V.D.M.RM.M.RM. Muthiah Chettiar v. CIT [1969] 74 ITR 183 had been distinguished by the Delhi High Court in Sushila Devi Jain v. CIT [1982] 138 ITR 551 on the ground that the return form prescribed under the Act specifically requires the assessee to mention the relationship between the partners. If this fact was not stated in the return nor made known otherwise to the ITO which lead to the escapement of the income of the minor children of the assessee, the initiation of proceedings under Section 147(a) would be fully justified. Further it has been pointed out just above, this discussion that from the assessment year 1972-73 onwards a separate column has been earmarked in the return form for showing separately, 'income arising to spouse/minor children or any other person as referred to in Chapter V of the Act' and if the assessee omits to do so, the same may amount to non-disclosure of a material fact within the meaning of Section 147(a). The mere fact that the assessee's wife disclosed the income of the minors in her own return would not exonerate the assessee of his duty to do so, because it is very clearly laid down in the Explanation that the clubbing is to be done with the parent whose income is higher and the assessee well knew that his income was higher than his wife.

3. It was argued on behalf of the assessee that it will be a case of double addition. This income has already been clubbed in the hands of the wife and the ITO would not be able to exclude it from the wife's assessment inasmuch more than four years had elapsed after the assessment of the wife. Personally we are of the opinion that for this unfortunate situation the assessee has to thank himself. It is he who created the entire confusion. However, we hope that the Commissioner would exercise his extraordinary jurisdiction under Section 264 of the Act, and since we are adding the income of these minors in the hands of the assessee-father, it would be fair to the mother if the said income is excluded from her hands even if it had been added earlier, and it cannot be technically rectified under Section 154 of the Act. The above observation should be considered to be a sort of recommendation to the Commissioner in the special circumstances of the case. With these remarks, we dismiss both these appeals.