

(12) In view of the above discussion, our answer to the question referred to us for decision is in the affirmative, that is, in favour of the Commissioner of Income-tax and against the assessee. The Income-tax Appellate Tribunal will now pass an order in the light of the observations made above. In the circumstances of the case, we leave the parties to bear their own costs.

K. S. K.

FULL BENCH

REVISIONAL CIVIL.

Before D. K. Mahajan, B. R. Tuli and P. C. Jain, JJ.
AMAR SINGH LAMBA.—Petitioner.

versus.

SEWA SINGH AND ANOTHER,—Respondents.

Civil Revision No. 909 of 1969.

March 6, 1972.

Income Tax Act (XLIII of 1961)—Sections 137 and 138—Income Tax Act (XI of 1922)—Sections 54 and 59-B—Income Tax Rules (1922)—Rule 50—Assessment records of an assessee—Disclosure of, to any person, authority or Court—When to be made.

Held, that the following are the propositions of law with regard to the disclosure of assessment records of an assessee to any person, authority or Court :—

- (1) In the case of assessments completed under the 1922 Act at any time, the matter relating to disclosure of information from the assessment records or the production of those records in a Court of Law will be governed by the provisions of section 54 of the 1922 Act, and no Court shall, except as provided in that section, be entitled to require the production of any return, accounts, documents, affidavits and other records mentioned therein or any part of such record or require or allow any public servant to give any evidence in respect thereof or to disclose any information derived therefrom. This privilege as to secrecy, which the assessee had acquired under section 54 of the 1922 Act, has remained unimpaired by the repeal of that Act with effect from April 1, 1962, or the deletion of section 137 of the 1961 Act with effect from April 1, 1964 ;
- (2) In the case of assessments completed after the 1st day of April, 1960, under the 1922 Act, the information regarding the tax determined as payable by an assessee can only be disclosed as provided in section 59-B of the 1922 Act, read with rule 50 of

Amar Singh Lamba v. Sewa Singh, etc. (B. R. Tuli, J.)

the Income Tax Rules, 1922, framed under that Act or as provided in Section 138 (1) (b) of the 1961 Act ;

- (3) In respect of all assessments made under the 1961 Act prior to the 1st day of April, 1964, the provisions of section 137 of that Act will continue to apply notwithstanding its repeal ;
- (4) Section 138 of the 1961 Act, as amended from time to time, only enables the Commissioner of Income Tax to disclose certain informations to (a) Public officers and (b) any other person as specified therein, and this section does not apply to the power of the Courts to require the production of the assessment records or the disclosure of any information therefrom. Of course, the Commissioner of Income Tax or any other competent authority shall be free to claim privilege under sections 123 and 124 of the Indian Evidence Act, 1872, which will be determined by the Court.
- (5) It is open to the Central Government to grant protection to any class of assessee etc., under section 138 (2) of the 1961 Act by an order notified in the Official Gazette, from disclosure of any information derived from their assessment records or production thereof before a Court, or any other officer or authority. (Para 12).

Case referred to the Full Bench by the Hon'ble Mr. Justice Gurdev Singh, vide order dated 1st February, 1971, and the Full Bench consisting of Hon'ble Mr. Justice D. K. Mahajan, Hon'ble Mr. Justice Bal Raj Tuli, and Hon'ble Mr. Justice Prem Chand Jain, finally decided the case on 6th March, 1972.

Petition under Section 115 C. P. C. for revision of the order dated 8th August, 1969 passed by Shri R. P. Gaiind, Sub Judge, 1st Class, Amritsar, holding that the record cannot be produced and returning the record to the clerk concerned and ordering that he shall not be summoned in future.

N. S. BHATIA, ADVOCATE, for the petitioner.

R. L. AGGARWAL, ADVOCATE; for the respondents.

D. N. AWASTHY AND B. S. GUPTA, ADVOCATES for the Commissioner of Income Tax, Patiala.

ORDER OF THE FULL BENCH

The Order of the Court was delivered by :—

B. R. TULI, J.—In a suit pending between the parties in the court of a Subordinate Judge 1st Class, Amritsar, certain records were

summoned from the Income-Tax Department at the instance of the petitioner which were brought to the Court by a clerk of that department, but he was not examined as the counsel for the respondent raised an objection that the said records could not be produced in view of the provisions of section 138 of the Income-Tax Act, 1961 (hereinafter called the 1961 Act) and notification, dated June 23, 1965 issued thereunder, according to which the production of the record is prohibited. The objection of the respondent's counsel was accepted by the learned lower Court and the record of the Income-Tax Department was returned through the clerk who brought it by order, dated August 8, 1969. The petitioner filed the present revision petition against that order which came up for hearing before Gurdev Singh J., who referred it to a larger Bench and that is how this petition has been placed before this Bench for decision.

(2) This petition came up for hearing before us on February 8, 1972 when we issued notice to the Commissioner of Income-tax, Punjab, Jammu and Kashmir and Chandigarh at Patiala, as we wanted to hear the department in this case. The Commissioner of Income-Tax is represented before us by his counsel, Shri D. N. Awasthy, Advocate.

(3) In order to decide the controversy in this case it is necessary to refer to certain provisions of the Indian Income-Tax Act, 1922, (hereinafter called the 1922 Act) and the 1961 Act. Sub-sections (1) and (2) of section 54 of the 1922 Act, which are relevant, read as under:

"(1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Act other than proceedings under this Chapter, or in any record of any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential and notwithstanding anything contained in the Indian Evidence Act, 1872 (I of 1872), no court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof.

(2) If a public servant discloses any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, deposition or record, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine."

(4) Sub-section (3) provided for cases in which the record mentioned in sub-section (1) could be disclosed or produced, but we are not concerned with those eventualities. Sub-section (4) of section 54 made an exception in the case of any document, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under section 25-A or section 26-A or to the giving of evidence of a public servant in respect thereof. By section 9 of the Taxation Laws (Amendment) Act (XXVIII of 1960), section 59-B was inserted in the Income-Tax Act, 1922, with effect from April 1, 1960, which reads as under :

"59-B. Disclosure of information regarding tax payable :

Where a person makes an application to the Commissioner in the prescribed form and after payment of the prescribed fee for information as to the amount of tax determined as payable by any assessee in respect of any assessment made on or after the 1st day of April, 1960, the Commissioner may, notwithstanding anything contained in section 54, if he is satisfied that there are no circumstances justifying its refusal, furnish or cause to be furnished the information asked for."

(5) The Income-tax Act, 1922, was repealed by the Income-tax Act, 1961; which came into force with effect from April 1, 1962. Section 137 of this Act related to "Disclosure of information prohibited" and was in identical terms as section 54 of the 1922 Act. Section 138 of the 1961 Act provided for disclosure of information regarding tax payable and read as under :

"Where a person makes an application to the Commissioner in the prescribed form and pays the prescribed fee for information as to the amount of tax determined as payable by any assessee in respect of any assessment made either under this Act or the Indian Income-Tax Act, 1922 (XI of 1922), on or after the 1st day of April, 1960, the Commissioner may notwithstanding anything contained in section

137, if he is satisfied that there are no circumstances justifying its refusal furnish or cause to be furnished the information asked for."

(6) It is thus apparent that sections 137 and 138 of the 1961 Act corresponded to sections 54 and 59-B respectively of the 1922 Act. By section 32 of the Finance Act, 1964, section 137 of the 1961 Act was omitted and by section 33 thereof section 138 was substituted as under :

Section 138.

- "(1) Where a person makes an application to the Commissioner in the prescribed form for any information relating to any assessee in respect of any assessment made either under this Act or the Indian Income-Tax Act, 1922 (XI of 1922), on or after the 1st day of April, 1960, the Commissioner may, if he is satisfied that it is in the public interest so to do, furnish or cause to be furnished the information asked for in respect of that assessment only and his decision in this behalf shall be final and shall not be called in question in any court of law.
- (2) Notwithstanding anything contained in sub-section (1) or any other law for the time being in force, the Central Government may, having regard to the practices and usages customary or any other relevant factors, by order notified in the Official Gazette, direct that no information or document shall be furnished or produced by a public servant in respect of such matters relating to such class of assessee or except to such authorities as may be specified in the order."

(7) By Finance (No. II) Act, 1967, sub-section (1) of section 138 was substituted by the following sub-section:—

S. 138.

"Disclosure of information respecting assessee:

- (1) (a) The Board or any other Income-tax authority specified by it by a general or special order in this behalf may furnish or cause to be furnished to—
- (i) any officer, authority or body performing any functions under any law relating to the imposition of any tax,

duty or cess, or to dealings in foreign exchange as defined in section 2(d) of the Foreign Exchange Regulation Act, 1947 (VII of 1947); or

- (ii) such officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public interest, specify by notification in the official Gazette in this behalf;

any such information relating to any assessee in respect of any assessment made under this Act or the Indian Income-tax Act, 1922 (XI of 1922), as may, in the opinion of the Board or other Income-tax authority, be necessary for the purpose of enabling the officer, authority or body to perform his or its functions under that law.

- (b) Where a person makes an application to the Commissioner in the prescribed form for any information relating to any assessee in respect of any assessment made under this Act or the Indian Income-Tax Act, 1922 (XI of 1922), on or after the 1st day of April, 1960, the Commissioner may, if he is satisfied that it is in the public interest so to do, furnish or cause to be furnished the information asked for in respect of that assessment only and his decision in this behalf shall be final and shall not be called in question in any court of law."

(8) From the provisions of law set out above, it is evident that under section 54 of the 1922 Act and section 137 of the 1961 Act, all particulars contained in the records of assessments before the Income-tax authorities as mentioned therein were to be treated as confidential and no public servant was permitted to disclose them to any person authority or court, except to the extent provided in sub-sections (3) and (4) of the said sections. In view of those provisions no Court could call upon the Income-tax authorities to produce any record relating to an assessment but that policy was changed when section 137 was omitted from the 1961 Act with effect from April 1, 1964. Prior thereto with effect from April 1, 1960, when section 59-B inserted in the 1922 Act, came into force, an exception was made to the

extent that the Commissioner of Income-tax was authorised to disclose information, to any person applying for it, as to the amount of tax determined as payable by any assessee in respect of any assessment made on or after April 1, 1960, if he was satisfied that there were no circumstances justifying its refusal. With effect from April 1, 1964, however, the provision with regard to keeping the record of assessment as confidential was deleted and the Commissioner of Income-tax was authorised to furnish or cause to be furnished any information asked for by any person, by making an application to him in the prescribed form, relating to any assessee in respect of any assessment made under the 1922 Act or 1961 Act on or after April 1, 1960, if he is satisfied that it is in the public interest so to do and his decision in that behalf is final and cannot be called in question in any court of law. With effect from that very date the Central Government has been given the power to direct, by order, notified in the Official Gazette, that no information or document shall be furnished or produced by a public servant in respect of such matters relating to such class of assessee and in respect of such authorities as may be specified in the order. It is common ground that an order was notified in 1965 with regard to the assessments of Banking Companies to the effect that no record of assessment *qua* them could be produced in any Court nor could any information be disclosed on the basis thereof. With effect from April 1, 1967, the Board or any other Income-tax authority specified by it has been authorised to furnish information from the assessment records of the Income-tax Department to certain classes of officers mentioned in sub-clauses (i) & (ii) of Clause (a) of section 138(I). The officers mentioned in these sub-clauses do not include a Court of law and, therefore, the provisions of these clauses do not apply in this case. However, strong reliance is placed on Clause (b) of sub-section (1) section 138 in support of the plea that even when the Court requisitions any record from the Income-tax authorities, the matter has to be decided by the Commissioner of Income-tax as to whether that record should be allowed to be produced or not. We are of the opinion that clause (b) of sub-section (1) of section 138 is not amendable to that interpretation. Under this clause any person can make an application to the Commissioner for any information relating to any assessee in respect of any assessment made either under the 1922 Act or under the 1961 Act on or after the 1st day of April, 1960 and the Commissioner of Income-tax has been authorised to furnish or cause to be furnished the information asked for if he is satisfied that it is in the public interest so to do and that

order of the Commissioner is final and cannot be called in question in any Court of law. The function to be performed by the Commissioner under this clause is purely administrative and his decision is subjective on the point whether it is in the public interest to furnish the information or not. That is why his decision has been made final. But it cannot be said that by enacting this provision of law the legislature intended that the Commissioner of Income-tax was to sit in judgment over the requisition made by a Court of law requiring the production of certain records of assessment relating to an assessee. When a dispute is pending before a Court of law and one of the parties desires the production of assessment records of any of the parties, he will make an application to the Court for summoning that record. At that stage the Court will apply its judicial mind after hearing all the parties involved in the dispute and decide whether the record sought to be produced is relevant to the decision of the controversy before it or not. Only such record shall be summoned as is considered relevant and the assessee, with regard to whose assessment the record is summoned, will have the right to object to the summoning of that record and if his objections are over-ruled, he will have the right to approach the higher Courts in appeal or revision. But if the decision of even the higher Courts goes against him, then the Commissioner of Income-Tax cannot be deemed to have been authorised to set at naught the judicial order of a Court of law and he must obey that order by sending that record to the Court concerned. Of course it will be open to the Commissioner of Income-tax to claim privilege for any documents and notes forming part of that record under the provisions of sections 123 and 124 of the Indian Evidence Act, 1872.

(9) It has to be remembered that the scope of the power of the Court under the general law for summoning the relevant record is entirely different from the scope of the power of the Commissioner of Income-tax under section 138(1)(b) of the 1961 Act whereunder the Commissioner of Income-tax is authorised to furnish the information asked for only if he is satisfied that it is in the public interest so to do. The Court, while asking for the production of any record has to be satisfied that the summoned record is relevant for the decision of the controversy before it and conducive to the satisfactory administration of justice between the parties in accordance with law. If the legislature had intended that no document from the assessment record of an assessee should be produced in a Court without the permission, approval or order of the Commissioner of Income-tax, it could

have made such a provision in section 138 of the Act. The repeal of section 137 of the 1961 Act clearly indicates that the legislature thought that it was no more necessary to keep the records of assessment by the Income-tax Department relating to an assessee as confidential and the bar with regard to the production of any part of the assessment records was removed as far as the Courts are concerned.

(10) It is abundantly clear that after the repeal of section 137 of the 1961 Act, the provision contained therein has not been re-enacted and, therefore, it has to be seen what is the effect of the repeal of section 137 on the assessments made before the date of that repeal. While considering this matter it has to be borne in mind that section 54 of the 1922 Act created an absolute bar to the disclosure of any information from the assessment records of an assessee or the production of those records in any Court except as provided in sub-section (3) and (4) thereof. The obligation placed on the Income-tax authorities and public officers under that section cannot be said to have been obliterated by the repeal of the 1922 Act or by the repeal of section 137 of the 1961 Act. That obligation accrued when the assessment record was prepared while the 1922 Act was in force and that obligation will continue to stick notwithstanding the repeal of section 54 thereof by the 1961 Act which contained that provision verbatim in section 137. It is thus evident that the repealing Act does not disclose any intention of the legislature to destroy the effect of section 54. If at all, it expressed a clear intention to preserve intact the confidential nature of the documents and particulars mentioned in section 54 of the 1922 Act, by enacting an absolutely identical provision in section 137 of the 1961 Act. Not only that, it was further provided in section 297(2)(a) and (c) that all assessments with regard to assessment years prior to the 1st day of April, 1962, in respect of which returns had been filed or notices under section 34 of the 1922 Act had been issued prior to that date, had to be completed in accordance with the provisions of the 1922 Act, as if the 1961 Act had not been passed, which clearly means that the provisions of section 54 would continue to apply in the case of such assessments, though made after the 1st day of April, 1962. In those cases it cannot be said that section 54 of the 1922 Act stood repealed by the 1961 Act and the further omission of section 137 of the 1961 Act has no effect on the applicability of section 54 to the assessments made under the 1922 Act. The obligation under that section to keep the particulars mentioned therein as confidential was or is incurred by the Income-tax authorities and public servants the

moment those particulars formed part of the assessment record and the repeal of the 1922 Act cannot destroy or obliterate that obligation. The provisions of section 54 of the 1922 Act will, therefore, continue to have effect in respect of the assessments made thereunder, whether before or after the coming into force of the 1961 Act, irrespective of its repeal by section 297(1) the 1961 Act. *A fortiori* all assessments under the 1961 Act upto the 31st day of March, 1964, will continue to be governed by the provisions of section 137 of that Act irrespective of its repeal with effect from the 1st day of April, 1964, as the obligation to keep the records mentioned in that section as confidential and not to disclose any information relating thereto or derived therefrom was incurred on the date or dates when the assessment records were prepared prior to April 1, 1964, and that obligation cannot be said to have been done away with by the repeal of section 137. Therefore, no information from the assessment records of an assessee prepared before April 1, 1964, under the provisions of the 1961 Act can be disclosed by the Income-tax Authorities or any public servant nor can the records of those assessments be produced in a Court of law or before any officer of the government except to the extent permitted by section 137 or section 138 as existed prior to April 1, 1964. But the assessment records of an assessee prepared after April 1, 1964, under the 1961 Act will not be immune from production in a Court of law and the disclosure of any information from that record can also be made by the Commissioner of Income-tax to any person making an application therefor under section 138(1)(b) of the 1961 Act.

(11) In this view of the matter, we are of the opinion that the case of *O. P. Aggarwal, v. The State and others* (1), was correctly decided. A learned Single Judge of the Allahabad High Court also expressed a similar view in *Raghubir Saran v. O. P. Jain and others* (2). There is, however, a divergence of opinion in the Madras High Court on this point as is clear from *Rama Krishna Mudaliar and another v. Mrs. Rajabu Fathima Bukari and another* (3), *Income-tax Officer Central Circle-I Madras v. P. Ramaratnam and others* (4), *P. Kandiah Thevar v. Third Income-tax Officer, Tirunelveli* (5), and

(1) (1966) 59 I.T.R. 158

(2) (1969) 73 I.T.R. 482.

(3) (1965) 58 I.T.R. 288.

(4) (1965) 58 I.T.R. 297.

(5) (1963) 49 I.T.R. 665.

VE. V. Sivagami Achi v. VR. VE. VR. Ramanathan Chethar and others
(6).

(12) From the above discussion, the following propositions emerge :—

- (1) In the case of assessments completed under the 1922 Act at any time, the matter relating to disclosure of information from the assessment records or the production of those records in a Court of law will be governed by the provisions of section 54 of the 1922 Act, and no Court shall, except as provided in that section, be entitled to require the production of any return, accounts, documents, affidavits and other records mentioned therein or any part of such record or require or allow any public servant to give any evidence in respect thereof or to disclose any information derived therefrom. This privilege as to secrecy, which the assessee had acquired under section 54 of the 1922 Act, has remained unimpaired by the repeal of that Act with effect from April 1, 1962, or the deletion of section 137 of the 1961 Act with effect from April 1, 1964 ;
- (2) In the case of assessments completed after the 1st day of April, 1960, under the 1922 Act, the information regarding the tax determined as payable by an assessee can only be disclosed as provided in section 59-B of the 1922 Act read with rule 50 of the Income-tax Rules, 1922, framed under that Act or as provided in section 138(1)(b) of the 1961 Act;
- (3) In respect of all assessments made under the 1961 Act prior to the 1st day of April, 1964, the provisions of section 137 of that Act will continue to apply notwithstanding its repeal by the Finance Act, 1964 ;
- (4) Section 138 of the 1961 Act, as amended from time to time, only enables the Commissioner of Income-tax to disclose certain informations to (a) public officers and (b) any other person as specified therein and this section does not apply to the power of the Courts to require the production of the assessment records or the disclosure of any information

Amar Singh Lamba v. Sewa Singh, etc. (B. R. Tuli, J.)

therefrom. Of course, the Commissioner of Income-tax or any other competent authority shall be free to claim privilege under sections 123 and 124 of the Indian Evidence Act, 1872, which will be determined by the Court.

- (5) It is open to the Central Government to grant protection to any class of assessee etc., under section 138(2) of the 1961 Act by an order notified in the Official Gazette, from disclosure of any information derived from their assessment records or production thereof before a Court, or any other officer or authority.

(13) It is not clear from the order of the learned lower Court as to what was the year of assessment in respect of which the record was summoned. At the hearing of this petition, the learned counsel for the petitioner has stated that the production of the record relating to the year 1965-66 is required. That record is not immune from production in Court nor does the notified order of 1965, on which the learned counsel for the respondents relied before the lower Court, prohibit its production as it relates only to the assessment of banking companies. This petition is, therefore, accepted and the learned lower Court is directed to pass appropriate orders on the application of the petitioner in the light of the observations made above. As the point of law requiring decision in this petition was not free from difficulty, we leave the parties to bear their own costs.

K. S. K.

