
(1958) 01 AP CK 0010

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1306 of 1956

Additional Income Tax Officer, Anantapur

APPELLANT

Vs

Golla Narayanamma and Others

RESPONDENT

Date of Decision : 23-01-1958

Acts Referred:

Constitution of India, 1950 — Article 227
Income Tax Act, 1922 — Section 54, 54(1)

Citation : AIR 1959 AP 468

Hon'ble Judges : K. Subba Rao, C.J

Bench : Single Bench

Advocate : V. Vedantachari and N.V. Ranganadham, for the Appellant; A. Venkataramana, for the Respondent

Final Decision : Dismissed

Judgement

K. Subba Rao, J.—This is a revision against the order of the learned Subordinate Judge, Anantpur, holding that the Income Tax returns are not entitled to the protection afforded by Section 54 of the Indian Income Tax Act.

2. The facts that gave rise to the revision may be stated. One Narayanappa filed two Income Tax returns before the Income Tax Officer, Anantpur, for the assessment years 1949 and 1950 in respect of the family income. After his death, the widow of Narayanappa's brother filed O. S. No. 59 of 1954 on the file of the Subordinate Judge's Court, Anantpur, for partition of the joint family properties, and to that suit she impleaded the widow and the sons of Narayanappa as defendants. Pending the suit, the plaintiff took out a subpoena requiring the Income Tax Officer, Anantpur, to produce the Income Tax returns filed by Narayanappa for the purpose of using them as evidence to establish her case that the suit properties were the joint family properties. On receipt of the subpoena, the Income Tax Officer objected to the production of the said documents on the ground that Section 54 of the Indian Income Tax Act precluded the production of such documents in Court.

The learned Judge directed him to send the documents in a sealed cover and thereafter proceeded to decide the question of privilege raised by the Income Tax Officer u/s 54 of the Act. He held, on a consideration of the relevant provisions of the Indian Income Tax Act and the decisions of Courts thereon, that the returns are public documents and, therefore, are not entitled to the protection afforded by Section 54 of the Income Tax Act. It is represented to me that the said documents were exhibited in the case and the suit also was disposed of. The Income Tax Officer, however, filed the aforesaid revision against the order of the learned Subordinate Judge, as it was thought that the question raised is one of principle governing similar requisitions from Courts.

3. The question turns upon the interpretation of the provisions of Section 54 of the Indian Income Tax Act, which reads :

"All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence Riven, 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 (1 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.

Under the relevant part of this Section , the Income Tax Officer, who is admittedly a public servant, cannot be required by a Court to produce the returns filed by an assessee before him. The words of the section are clear and unambiguous, It is obvious that the prohibition is mandatory. But it is said that it is a public document within the meaning of the Indian Evidence Act in regard to which a certified copy can be obtained by the assessee and, therefore, the original return also can be directed to be produced in Court. There is an essential distinction between the production of the original return in Court and the obtaining of a certified copy of that return by a person entitled to obtain the same in law. This distinction has been brought out by a Full Bench decision of the Madras High Court in RAMA RAO Vs. VENKATARAMAYYA., .

There, the question was whether a profit and loss statement and a statement showing the details of net income, filed by an assessee in support of his return of income furnished u/s 22 of the Indian Income Tax Act, are public documents within the meaning of Section 74 of the Indian Evidence Act of which certified copies would be admissible u/s 65(e) of the Indian Evidence Act. The Full Bench held that the said documents are public documents and the certified copies obtained by persons entitled to obtain the same could be admitted in evidence u/ s 65(e) of the Evidence Act. But the learned Chief Justice, in the course of the judgment, brought out in bold relief the distinction between the provisions of Section 54 of the Income Tax Act and those of Section 74 of the Evidence Act. At

p. 455 (of ITR): (at p. 773. of AIR), the following observations on the interpretation of Section 54 are found :

"While Section 54 prohibits the disclosure, except on specified occasions, of matters connected with an assessment to Income Tax and prohibits a Court from requiring a public servant to produce the documents mentioned in the section or to give evidence in respect of them, it does not follow that the Court may not admit in evidence a document which falls within Section 54 (1). This will depend on whether the document is admissible under the provisions of the Indian Evidence Act."

The learned Chief Justice then proceeded to consider the provisions of the Indian Evidence Act and the instructions compiled by the Income Tax Department for the guidance of its officers and held that certified copies could be obtained by certain specified persons and that the certified copies obtained by such persons could be admitted in evidence. It is, therefore, clear that, while under certain circumstances, certified copies obtained by specified persons of returns made to an Income-tax Officer can be admitted in evidence, the Court has no power to compel the Income Tax Officer to produce the original returns. In *M. RANGASWAMI NAICKER AND OTHERS Vs. M. RAJU NAICKER AND OTHERS.*,), Gentle, J. relying upon the express prohibition contained in Section 54, held that the Income Tax Officer came under the protection given to him by Section 54 in respect of the account books filed before him by an assessee. In coming to that conclusion, the learned Judge observed at p. 694 (of ITR): (at p. 276 of AIR) as follows : "The wording of Section 54(1) is perfectly clear. It is emphatic in its language and mandatory in its provisions. It may be that, as a matter of practice, the Income Tax authorities may allow a partner to inspect the books of his firm which have been deposited with them as would appear to be the case from the observations in the course of the opinion expressed in *RAMA RAO Vs. VENKATARAMAYYA.*, , in which the learned Chief Justice referred to paragraph 5 of the Notes of Instructions compiled for the guidance of Income Tax Officers. In no way is this any departure or exception to the provisions of Section 54 of the Income Tax Act."

The learned Subordinate Judge, though he was bound by this decision, refused to follow it on the ground that the Full Bench decision was not brought to the notice of the learned Judge who decided *M. RANGASWAMI NAICKER AND OTHERS Vs. M. RAJU NAICKER AND OTHERS.*,). A perusal of the judgment discloses not only that the Full Bench decision was brought to his notice but the learned Judge pointed out the distinction between the facts of the Full Bench case and those before him. The reason for the protection given to the Income-tax authorities u/s 54 of the Act has been succinctly and pointedly stated by Sinha J. in *Smt. Pandei Vs. Babulal Sah and Others.*, , the learned Judge observes as follows :

"..... the principle behind Section 54 is that all such documents, as are mentioned therein filed or statements made before the Income Tax Department are all very confidential in nature, the object being that people, that is the

assessee, should feel that they can freely state the facts with regard to their income which might involve confidential matters relating to their business without fear of the matter being disclosed. It is with that end in view to give absolute freedom to the Income Tax assessee to make statements of their income to the Department untrammelled by any fear or disclosure of those statements that such restrictions have been imposed on the grant of copies and production of such documents."

I respectfully agree with the aforesaid observations. It is not necessary in this case to consider the question whether the plaintiff should have applied for certified copies and obtained them, for she did not do so. But the question is whether this is a fit case calling for interference in revision. As I have already indicated, the suit was disposed of. The petitioner is not interested in the result of the suit and the object of the filing of the revision is only to get a decision of this Court on the construction of Section 54 of the Indian Income Tax Act. I see no ground for interference.

4. The revision petition fails and is dismissed, but, in the circumstances, without costs.