(1961) 09 AP CK 0006

In the Andhra Pradesh High Court

Case No : C. R. P. No. 529 of 1961

K. JAGADESWARIAH APPELLANT

Vs

PINGLE VIJAYAPAL REDDY AND OTHERS. RESPONDENT

Date of Decision : 27-09-1961

Acts Referred:

Income Tax Act, 1961 — Section 25A, 54

Citation : (1963) 47 ITR 300

Judgement

The second defendant in O. S. No. 18 of 1958 on the file of the court of the Subordinate Judge, Warangal, is the petitioner in this case. Respondents Nos. 1 and 2 filed a suit against the defendants for recovery of about Rs. 30,000. One of the defences raised was that the respondents Nos. 1 and 2 and another, Ravva Pullaiah, constituted a partnership and that, as the partnership was not registered, the suit is not maintainable. Defendants Nos. 1 and 2 filed I. A. No. 76 of 1961 in the lower court to summon the Income Tax Officer to produce a letter dated April 24, 1956, written by P. Ramachandra Rao & Co., Chartered Accountants, and who represented the respondents Nos. 1 and 2 before the Income Tax Officer, Warangal Circle, Warangal, requesting the return of the original partnership deed filed in the department. It is stated that the said letter also bears an endorsement of the Income Tax Officer that the said document might be returned and also contains an endorsement by the chartered accountants acknowledging the return of the document. The lower court heard the counsel for the plaintiffs and defendants Nos. 1 and 2 and by its order dated March 2, 1961, ordered the documents to be produced by March 4, 1961. By that order, it expressed the view that the case was covered by section 54, clause (4), of the Income Tax Act, and that, as such, the prohibition contained in clause (1) of section 54 of the Act did not apply. It appears from another order dated March 4, 1961, passed by the lower court that the Income Tax Officer expressed his readiness to produce the document if the court directs, but wanted a months time to get instructions from his higher authorities. But the lower court refused further time and directed him to produce the document by March 6, 1961.

Accordingly, the document was produced by the Income Tax Officer on March 6, 1961. On that date, Sri Madhava Rao, a partner in the firm of Ramachandra Rao & Co., Chartered Accountants, was examined to prove the said letter. It appears that, while sending the document to the court, the Income Tax Officer also informed the court that the registers in his office do not indicate the existence of any file relating to the plaintiffs Nos. 1 and 2 u/s 26A of the Income Tax Act. Therefore, the learned counsel for the plaintiffs argued that since there was no file relating to section 26A of the Income Tax Act, clause (4) of section 54 has no application and that the document in question cannot be taken in evidence in view of section 54, clause (1). The lower court held that, since there is no file u/s 26A of the Income Tax Act relating to the plaintiffs Nos. 1 and 2, the document in question could not have been filed in a proceeding u/s 26A of the Act and that, therefore, the Income Tax Officer could not be summoned to produce that document and that it could not be admitted in evidence. Against this order, the second defendant filed the above civil revision petition.

Sub-section (1) of section 54 of the Income Tax Act is as follows :

"54. (1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of the 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 (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."

Sub-section (2) provides for the punishment of a public servant, who unlawfully discloses any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, disposition, or record. Sub-section (3) sets out the occasions on which disclosure can not relevant for the purposes of this case. Sub-section (4) states that :

"Nothing in this section shall apply to the production by a public servant before a court of any document, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding u/s 25A or section 26A, or to the giving of evidence by a public servant in respect thereof."

I have already mentioned that the lower court pointed out that this case does not fall under sub-section (4) as there is no record of any proceeding u/s 26A.

Section 54 of the Act prohibits the disclosure except on specified occasions of matters connected with an assessment of Income Tax and prohibits the court from requiring a public servant to produce the documents mentioned in the section or to give evidence in respect of them. It is argued by the learned

Advocate-General appearing for the petitioner that the document in question does not fall under any one of the categories of papers mentioned in section 54, clause (1), of the Act. The document is a letter addressed by P. Ramachandra Rao & Co., Chartered Accountants, to the Income Tax Officer, Warangal Circle, Warangal, requesting him to kindly return the original partnership deeds filed in the case referred to therein in connection with the assessment proceedings as they were required by the parties in another connection. One of the parties referred to in that letter was Pingle Vijayapal Reddy, who is the first plaintiff in this suit. On this, there is an endorsement dated March 24, 1956, "Return the originals and obtain ask." There is another endorsement "Recd. original deeds.

Sd./- K. S. Rao for P. Ranga Reddy and P. Vijaypal Reddy."

The question is, does this document fall under any one of the categories mentioned in section 54, clause (1), of the Act. It is not a statement made or return furnished or account or document produced in the curse of any proceedings under the Act. It is also not any evidence given or affidavit or deposition made in the curse of any proceedings under the Act and it is not any record of assessment proceeding or any proceeding relating to the recovery of a demand prepared for the purposes of the Act. It is only a letter written by the chartered accountant representing the assessee to return certain documents which were filed in connection with the assessment proceedings relating to the first plaintiff and another. It has been pointed out in S. C. Bahl v. Megh Raj that :

"The object of the enactment of section 54 is to save confidential communications which the assessees may make the Income Tax Officer in the course of the investigation. It is not the intention of the legislature to save all documents produced before the Income Tax Officer under the provisions of the Income Tax Act irrespective of their nature. Only those documents which were relevant for purposes of assessment came under the ban imposed u/s 54."

In that case, a suit was instituted by an advocate for recovering his fees for appearing before the Income Tax Officer on behalf of certain assessees. In order to prove that he was engaged by the assessee and that he actually appeared for him before the Income Tax Officer, the plaintiff applied to the court for summoning the Income Tax Officer to produce among other papers a vakalatnama. It was contended before the learned judge that the vakalatnama is a document produced under the provisions of section 61 of the Income Tax Act and that, as such, it was covered by the ban imposed u/s 54 did not cover the production of the vakalatnama. I respectfully agree with the view taken in this decision on the scope of the ban imposed u/s 54 of the Income Tax Act and hold that the letter in question, i.e., the letter dated April 24, 1956, written by P. Ramachandra Rao & Co., Chartered Accountants, to the Income Tax Officer, Warangal Circle, Warangal, requesting the return of certain documents filed before the officer, can be summoned for and marked as evidence in this suit. Sri Vaidya, the learned counsel appearing for the plaintiffs-respondents, placed strong reliance on the decision in Sayad Ashgar Ali Shah v. Achur Mal, wherein it was held by a Division Bench of the Lahore High Court that :

"Section 54 of the Income Tax Act excludes not only evidence as to the contents of documents produced before the Income Tax authorities, but also evidence of the fact that account books had been produced before them. Income Tax authorities cannot, therefore, be summoned to give evidence that certain books had been produced before them."

In my view, this decision has no direct bearing on the question that arises for decision in this case. In that case, the defendant in a suit attempted to summon a member of the Income Tax collection staff with view to show that the plaintiff had at one time produced books of accounts before the Income Tax authorities. But it was held that the Act does not merely exclude evidence with regard to the contents of any documents which may be produced before the Income Tax authorities for purposes of assessment, but it forbids any evidence with regard to such documents. It was further held that section 54 of the Income Tax Act is wide enough to exclude evidence to prove that account books have been produced before the Income Tax Officer. The situation that arose in that case in quite different from that which has arisen in this case before me. Reliance is also place upon the decision of the Punjab High Court in G. S. Basanti v. Khalsa Nirbhai Transport Co. But this decision does not at all support the contention of the learned counsel for the plaintiffs. In that case, the defendant applied to the court for an order directing the Income Tax Officer to produce original complaints filed against the plaintiffs by certain persons with regard to the concealment of income and also to reply to certain questions, namely, whether as a result of that action, any concealment was proved, etc. It was held by the learned judges who decided that case that the complaints about the concealment of income formed part of the assessment proceedings under the Income Tax Act and that the question put to the Income Tax Officer related to matters which formed part of the record of the Income Tax Act is applicable. Another decision relied upon by the learned counsel for the respondents is Nagammai Achi v. Alamelu Achi. That case related to an application to direct the plaintiff to produce assessment orders and Income Tax returns and statements submitted by the plaintiff to the Income Tax Officer. These documents, the learned judge held, could not be directed to be produced in view of the ban imposed by section 54, clause (1), of the Income Tax Act, though the documents which were alleged to be with the plaintiffs were certified copies of the originals. That question does not arise in the present case.

In the result, the objection raised on behalf of the plaintiffs that the document dated April 24, 1956, cannot be let into evidence is overruled and the civil revision petition is allowed with costs.

Revision allowed.

