(1963) 04 MAD CK 0016

In the Madras High Court

Case No : Writ Petition No. 1187 of 1962

P. Kandiah Thevar APPELLANT

Vs

Third Income Tax Officer and Another RESPONDENT

Date of Decision : 03-04-1963

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1922 — Section 54
Income Tax Act, 1961 — Section 137(1), 137(2), 137(3)

Citation : AIR 1964 Mad 305 : (1964) ILR (Mad) 102 : (1963) 49 ITR 665

Hon'ble Judges : Venkatadri, J;Srinivasan, J

Bench : Division Bench

Advocate : T.V. Balakrishnan, for the Appellant; S. Ranganathan and T.R. Mani, for the Respondent

Final Decision : Dismissed

Judgement

Srinivasan, J.—This is an application under Article 226 praying for the issue of a writ of mandamus to direct the, Income Tax Officer,

Tirunelveli, to grant a certified copy of a statement made by the second respondent, an assessee of the Income Tax department, in the course of his

assessment proceedings.

2. The second respondent filed a suit O.S. No. 130 of 1961, District Munsifs court, Shencottah, against the petitioner claiming ownership of a

certain property. In the course of the assessment proceedings of the second respondent, certain statements were made both by the petitioner and

the second respondent. It is stated by the petitioner that the second respondent in those Income Tax proceedings admitted that the property does

not belong. to him. In these proceedings the petitioner was also examined wherein he set up his title to the property. The petitioner claimed that the statement made by the second respondent was necessary for being marked in evidence in the trial of the suit and accordingly applied u/s 137 of the

Income Tax Act, 1961, for grant of copies of his own deposition as .well as that of the second respondent. The Income Tax Officer granted copy

of the petitioner''s own deposition, but he refused to grant a copy of statement made by the second respondent on the ground that Section 54 of

the Indian Income Tax Act of 1922 prevented the grant of such a copy. The petitioner claims that under the Act of 1961, the grant of a copy of a

statement made by an assessee wherein he_ disowned ownership of certain property and admitted the ownership of another person is not

prohibited and that the Income Tax Officer was not justified in refusing him the grant of the copy. It is in these circumstances that the petitioner

invokes the special jurisdiction of this court to direct the Income Tax Officer to grant the copy in question.

3. On behalf of the Income Tax Officer, it is stated that the Income Tax Officer has no objection. to the grant provided it is held to be permissible

under the law. It is however claimed that u/s 54 of the Act of 1922, which was in force till the 31st March 1962, all statements made before the

Income Tax Officer in assessment proceedings arc confidential and the Income Tax authorities are prohibited from granting any certified copy of

the statement in question to the petitioner. It is claimed that the Income Tax Act of 1961 came into force on 1-4-1962, and the provision upon

which the petitioner relies is, according to the Department, hot retrospective in its nature and that the prohibition contained in Section 54 will

continue to operate even after the passing of the Act of 1961.

4. On behalf of the second respondent, it is admitted that there is a suit regarding the ownership of the property, but it is stated that that suit has

since been disposed of in favour of the petitioner. On this ground it is claimed that the need for the grant of a copy of the statement no longer exists

and that the writ petition has really become infructuous. The further point taken is that since the assessment proceedings in which this statement was

made related to a period long prior to the coming into force of the Act of 1961, the grant of a copy or the refusal thereof must be governed by

Section 54 of the repealed Act and further that the Income Tax Officer is under no legal duty to grant a copy of the statement.

5. The question that calls for decision in this writ petition is not free from difficulty. Both under the Act of 1922 and the Act of 1961, 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 the Act shall be treated as confidential. Except as provided, no court shall be

entitled ''to require any public servant to produce before it any such return, accounts, documents or record or any part of such record. u/s 54 (3)

of the Act of 1922, certain exceptions were provided. Disclosure of information contained in the records of Income Tax proceedings was

permitted for the purpose of prosecution, for proceedings under the Taxation of Income Investigation Commission Act, in proceedings to which

the Government or the Income Tax authority is a party and where any matter arising out of the proceedings under the Act was involved. The

prohibition was also relaxed in cases of particulars to be supplied to the Comptroller and Auditor General or the Central Board of Revenue or in

the course of enquiry into the conduct of an official, of the Income Tax department and into charges of misconduct against a lawyer or chartered

accountant, for the purpose of proceedings under the Indian Stamp Act etc. All the classes of exemptions, if they may be so called, of the

prohibition contained in Section 54(1) of the Act, practically relate to what may be called official proceedings conducted by an appropriate

statutory authority.

6. The Income Tax Act of 1961 added certain other cases where the prohibition against disclosure was relaxed and one of these, is in Section

137(3)(XXI), which reads thus:

Nothing in this section shall apply to the disclosure .... (xxi) of so much of such particulars to any person as is evidence of the fact that any

property does not belong to the assessee but belongs to such person; provided that the assessee had, print to such disclosure, been examined by

the Income Tax Officer, in respect of his right to such property.

It is upon this provision that reliance has been placed by the petitioner who claims, that in the assessment proceedings of the second respondent,

the second respondent did make a statement admitting that he was not the owner of the property but that the petitioner was the owner. This provision would certainly enable the petitioner to obtain a copy of the statement made by the second respondent. But the contention that has been

advanced both by the second respondent and the Income Tax Officer, the first respondent, is that, this relaxation contained in clause (XXI) can

apply only to statements made after the coming into force of the 1961 Act and not to statements made in proceeding under the repealed Act of

1922. In this regard reference has been made to Section 297 of the new Act which is the section enacting repeals and savings. By sub-section (1)

of Section 297 the Indian Income Tax Act of 1922 has been repealed. Notwithstanding the repeal, Sub-section (2) provides for continuance of

certain proceedings under the old Act as if the new Act had not been passed. It is urged that in so far as closed proceedings are concerned, that is

to say, in proceedings which had terminated before the coming into force of this Act, the relaxation contained in Section 137(3)(xxi) cannot apply.

7. A further argument advanced by Mr. Ranganathan for the department, is that u/s 6 of the General Clauses Act also, the repeal of the old Act

cannot affect any right or privilege which has accrued under the repealed Act. The argument is that the prohibition against disclosure is a right or

privilege which has been secured by the assessee under the provisions of the repealed Act and that this right cannot be affected by the repeal of the

1922 Act.

8. The object in prohibiting the disclosure of matters contained in the records of assessment is to encourage an assessee to place all the facts

before the department, even confidential matters, for the purpose of assessment. Any documents or material so furnished by the assessee in his

assessment proceedings are prohibited from being availed of by third parties to the assessment; but that is solely with a view to enable a proper

assessment to be made by the department. If such a protection against the disclosure of statements or other confidential matter furnished by the

assessee were no 6 ganted, the object of the section would be frustrated. In AIR 1934 181 (Nagpur) it was held that the intention underlying

Section 54 is to encourage an assessee to make a full and true disclosure of all relevant facts within his knowledge knowing that any statement

made by him will not subsequently be used against him. It was also held that it was open to the assessee to object to answering interrogatories on statements made by him in such proceedings on the ground that they are privileged. The Supreme Court has also held in Charu Chandra Kundu

Vs. Gurupada Ghosh, that the prohibition imposed against the disclosure by Section 54 is an absolute one and its operation is not obliterated by

any waiver by the assessee. In RAMA RAO Vs. VENKATARAMAYYA., a Full Bench of this court had to examine whether a record of

assessment is a public document within the meaning of Section 74 of the Evidence Act, certified copies of which would be admissible u/s 65(c).

This decision only went to the extent of examining the right of a person who is concerned with the assessment to obtain copies of the document

relevant to his assessment and to the admissibility of such document in evidence under the Evidence Act. In another Bench decision of this Court

Muniyammal, Proprietrix, Salem Vs. Third Additional Income Tax Officer, Salem and Another, Ramachandra Iyer J. as he then was, observed

thus:

Where there is a plurality of legal representatives, all of them should concur in applying for the inspection of statements made to the Income Tax

Officer or for obtaining certified copies of the same from him. But where they do not agree, one of them alone could not be held to represent the

deceased and, therefore, one of them alone could not have an inspection. To recognise such a right might perhaps defeat the very purpose for

which the section was enacted.

This decision also indicates the extent to which the prohibition contained in Section 54(3) of the Income Tax Act should be stringently enforced.

9. The question that we have to consider is nevertheless whether after the re-enactment of the Income Tax Act in 1961, the relaxation contained in

Section 137(3)(xxi) will not operate, in respect of statements that were made in assessment proceedings under the repealed Act. The broad

statement made by the learned counsel for the respondents that the new Act cannot apply in this regard to proceedings under the old Act is too

general to be accepted as it stands. The new enactment is not merely a repealing enactment; it both repeals and re-enacts and has introduced a

new class of cases where the prohibition against disclosure has been relaxed. In such-circumstances, can the assesee say that he has secured a

right under the old Act which cannot be affected by the new Act? It seems to us that the question must depend upon the intention of the legislature.

Section 6 of the General Clauses Act does not without any qualification protect the right or the privileges acquired or accrued under the repealed

Act. It states that the repeal of the Act shall not affect any right or privilege acquired or accrued under the. enactment so repealed, unless a

different intention appears. Would it therefore be correct to say that in enacting this particular provision, clause (xxi) of Section 137(3), the

legislature did have a different intention? It may be noticed that the provision only relates to statements made by an assessee disowning any right in

an item of property and admitting such .right to exist in another person. In so far as the assessee is concerned, the statement so made by him was

obviously designed to get out of any taxable incidence in relation to ownership of that property. It would also affect the taxability of the person in

whose favour the right of ownership was conceded by the assessee. If such latter person who is affected by a statement that was made by another

either seek to establish his title to the property or even to deny the truth of the statement, we can see no reason why as between those two persons

a statement made by one should be regarded as confidential. Assuming for a moment that the assessing authorities accepted the statement of the

assessee that an item of property did not belong to him but belonged to another, the department could not very well proceed to assess the latter

person on the basis of the statement without disclosing that statement to the person who is sought to be assessed. If, therefore, in certain

circumstances the disclosure of this statement is necessary and is permitted, it is difficult to see why that other person should not have the benefit of

the statement made by the assessee in proceedings other than Income Tax proceedings. The intention of the legislature in enacting this provision

seems to be that where any right to property was in question in assessment proceedings and statements relevant to that right were made by the

assessee in the course of those proceedings, the disclosure of such statements would not offend the general principle of the confidential nature of

the proceedings contained in Section 137(1) and (2). Whatever right might have existed in the assessee in securing a non-disclosure of the

statement made by him under the repealed Act, in so far as the statements of the nature mentioned in Section 137(3)(xii) are concerned, the legislature did to pur mind liberate such statements from the prohibition against non-disclosure. We are therefore inclined to hold that to this extent

there is a contrary intention apparent, and notwithstanding that the statement was made in proceedings under the old Act, its disclosure is permitted

under the new Act. To hold otherwise would amount to enabling a person in taking advantage of a statute for a dishonest purpose.

10. We are satisfied therefore that the stand taken by the respondents that the new Act has no application and that the prohibition against

disclosure under the old Act must continue cannot be accepted.

11. Nonetheless, we are not inclined to issue a writ in the peculiar circumstances of the case. It has been stated, and it is not denied that the second

respondent who filed a suit against the petitioner asserting his own title to the property in question has failed in his suit and the suit has been

dismissed. No circumstances necessitating the production of a certified copy of the statement before the civil court now exist. But Mr.

Balakrishnan, for the petitioner, argues that if the second respondent should file an appeal against the dismissal of the suit, it may become necessary

for the earlier statement made by the second respondent in respect of the ownership of the property to be placed before the appellate court. It may

be so; but we are not satisfied that the extraordinary jurisdiction of this Court should be invoked or should be exercised in favour of the petitioner

solely on the ground that conditions might arise in the future, when this statement might be necessary. It would be open to the petitioner when such

a situation arises, to obtain the copy from the Income Tax Officer, which in the light of our interpretation of Section 137(3)(xxi) the Income Tax

Officer can hardly refuse.

12. For the reasons, stated above, the petition fails and is dismissed. But there will be no order as to costs.

