
(1973) 12 DEL CK 0020
In the Delhi High Court
Case No : Suit Appeal No. 641 of 1969

Trilok Chand Jain	Vs	APPELLANT
Dagi Ram Pindi Lall and Others		RESPONDENT

Date of Decision : 14-12-1973

Acts Referred:

Citation : (1985) ILR Delhi 331 : (1974) 95 ITR 34

Hon'ble Judges : T.V.R. Tatachari, J;S.N. Shankar, J;Narain Andley, J

Bench : Full Bench

Advocate : S.L. Bhatia, H.C. Malhotra, S.L. Seth, S.L. Watel, R.K. Malik and S.R. Bhagat, for the Appellant;

Judgement

This Judgment has been overruled by : M/s. Dagi Ram Pindi Lall and another Vs. Trilok Chand Jain and others, AIR 1992 SC 990 : (1992) 102 CTR 170 : (1992) 194 ITR 228 : (1992) 1 JT 526 : (1992) 1 SCALE 249 : (1992) 2 SCC 13 : (1992) 1 SCR 545 : (1992) 60 TAXMAN 551

T.V. Tatachhari, J.

(1) This reference to the Full Bench has been made by Avadh Behari Rohatagi, J. under Rule 2 (as amended) of the Original Side Rules. 1967, in Suit No. 64 of 1969 instituted on the Original Side of this Court. The questions referred to by the learned Judge for the opinion of the Full Bench relate to the scope and effect of the provisions in sections 54 and 59B of the Indian Income Tax Act, 1922, and sections 137 and 138 of the Income Tax Act, 1961.

(2) The facts which have occasioned the reference are briefly the following. The plaintiff, Trilok Chand Jain, instituted the suit referred to above for recovery of Rs. 1,39,722.86 from the defendants M/s. Dagi Ram Pindi Lall, its three partners Pindi I all, Bishamber Nath and Dagi Ram and Smt. Budh Wanti, wife of Pindi Lall. While evidence was being recorded in the Suit, the plaintiff obtained summons from the Court requiring the Income Tax Department to produce in Court the records relating to the Income Tax of M[s. Dagi Rani Pindi Lall for the

years 1964-65 to 1971-72. The Income Tax Officer, District II(XI), New Delhi, sent a letter, dated November 1, 1972, to the Court claiming that the said records relating to Mis. Dagi Ram Pindi Lall were privileged u/s 137 of the Income Tax Act, 1961, in view of the decision of H. R. Khanna, J. (as his lordship then was) in DAULAT RAM AND OTHERS Vs. SOM NATH AND OTHERS., . The Income Tax Officer, however, sent the records in a sealed cover through an Inspector in compliance with the summons of the Court. The plaintiff again applied for and obtained summons requiring the Income Tax Officer to produce the Income Tax records relations :to m/s. Horizon Industrial Products (P) Ltd. and Bishamber Nath Kaul. By a letter, dated January 4, 1973, the Income Tax Officer, Companies" Circle-VIII, New Delhi, claimed privilege u/s 138 of the Income Tax Act, 1961. It was submitted in the letter that no disclosures of information regarding Income Tax pertaining to Income Tax assesseds could be made, and that if any information was required, the party should apply to the Commissioner of Inane-tax u/s 138(1) of the Income Tax Act, 1961, read with Rule 113 of the Income Tax Rules, 1962, in Form No. 46. The officer, however, sent the records in a sealed cover to the Court. The plaintiff also filed in the Court a number of certified copies of the accounts of the defendants which he had been able to obtain from the Income Tax authorities, and wanted to tender the certified copies in evidence. The defendants in their turn wanted to summon certain records relating to the plaintiff from the Income Tax Department, but the plaintiff opposed the same relying, inter alia, on the decision in Daulat Ram's case (supra).

(3) At that stage, arguments were addressed before the learned Judge on the question of privilege. The counsel for the plaintiff relied, inter alia, upon the decision in Daulat Ram's case (supra), while the counsel for the defendants argued that the said decision needed re-consideration in view of a decision of a Division Bench of the High Court of Madras in Ve. Vs. Sivagami Achi v. Vr. Ve. Vr. Ramanathan Chettiar And Others., . A number of decisions of other High Courts including a decision of a Full Bench of the Punjab High Court in Amar Singh Lamba v. Sewa Singh and another, ILR 1972 P&H 202, were cited before the learned Judge. On a consideration of the various decisions, the learned Judge was inclined to take a view different from the view taken in Daulat Ram's case (supra) and in some of the Other decisions cited before him. The learned Judge observed that the derived some support for his view from the decision of the Supreme Court in Lalji Raja and Sons Vs. Firm Hansraj Nathuram, . However, since the question of privilege claimed by the Income Tax officers was likely to arise frequently on the Original Side in the course of trial of suits, the learned Judge considered that the said question should be settled by a Full Bench of this Court, and accordingly made the present reference suggesting that the question of privilege may be examined under the following three heads:

1. What is the position of law relating to privilege prior to 1964?
2. What is the position of law relating to privilege after 1964? and

3. What is the effect of the production of certified copies relating to Income Tax assessment records, and how far certified copies can be admitted in evidence? It is thus that the matter has come up before us for our opinion.

(4) For a proper appreciation of the various points that are involved in the questions referred to. us, it is necessary to refer to the relevant provisions in the Indian Income Tax Act, 1922, and the Income Tax Act, 1961. Sub-sections (1) and (2) of section 54 of the Indian Income Tax Act, 1922, provided as under:

"54. Disclosure of information by a public servant (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 (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.

(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.

(3)

(4)

(5)...It has to be noted that sub-section (1) "declared (i) that the various documents referred to therein shall be treated as confidential, and (ii) prohibited a Court from requiring any public servant to produce before it any such documents or to give evidence before it in respect thereof, and that sub-section (2) made punishable the disclosure by a public servant of any particulars contained in such documents. Sub-section (3) of section 54 recognised certain exceptions to the aforesaid provisions in sub-sections (1) and (2), and they are not material for the purposes of the points involved in the reference before us.

(5) By section 9 of the Taxation Laws (Amendment) Act No. Xxviii of 1960, section 59B was inserted in the Indian Income Tax Act, 1922, with effect from April 1, 1960. It provided 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 assessed 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." This new section thus permitted a person to make an application to the Commissioner for information only as to the amount of tax determined as payable by any assesses in respect of any assessment made on or after April 1, 1960. and empowered the Commissioner to furnish or cause to be furnished the information asked for if he was satisfied that there were no circumstances justifying its refusal.

(6) The above legal position continued till April 1, 1962, when the Indian Income Tax Act, 1922, was repealed by the Income Tax Act, 1961, which came into force from the said date. In this new Act, provisions were made in sections 137 and 138 corresponding to the provisions in sections 54 and 59B respectively of the Indian Income Tax Act. 1922. The relevant portions of the said sections 137 and 138 read as under:

"137: Disclosure, of information prohibited (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 Charter XXII. or in any record of any assessment proceeding, or any proceeding relating to recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential, and notwithstanding anything contained in in the Indian Evidence Act, 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) No public servant shall disclose any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, deposition or record.

(3)

(4)

(5)138. Disclosure of information respecting tax payable 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 assessed in respect of any assessment made either under this Act or the Indian Income Tax Act, 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."

(7) It has to be noted that the provisions in sub-section (1) of section 137 of the new Act were almost identical with the provisions in sub-section (1) of section 54 of the Indian Income- tax Act, 1922. Sub-section (2) of section 137 merely prohibited a public servant from disclosing any particulars contained in any of the documents mentioned in sub-section (1), while sub-section (2) of section 54 of the. Indian Income Tax Act, 1922, ade the disclosure by a public servant

punishable. Subsections (3) to (5) of section 137 were almost similar to subsections (3) to (5) of section 54. The provisions in section 138 were also similar to the provisions in section 59B of the Indian Income Tax Act, 1922.

(8) The aforesaid provisions continued to be in force till April 1, 1964, on which date, by section 32 of the Finance Act No. 5 of 1964, section 137 was omitted, and by section 33 thereof, section 138 was substituted by a new section 138. The said substituted section 138 read as under:

"138. Disclosure of information respecting assesseds (1) Where a person makes an application to the Commissioner in the prescribed form for any information relating to any assessed in respect of any assessment made either under this Act or the Indian Income Tax Act, 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 assesseds or except to such authorities as may be specified in the order."

(9) It has to be noted that by the changes so made, the declaration of the confidential nature of the documents, the prohibition against a Court requiring any public servant to produce such documents or to give evidence before it in respect thereof, and the prohibition against a public servant making a disclosure of any particulars in the said documents, which were provided in section 137 have all been omitted. The scope of the provision in section 138 which came into force with effect from April 1, 1962, was enlarged by sub-section (1) of the substituted section 138. While under the previous section 138 a person could make an application for information as to the amount of tax determined as payable by an assessed, under subsection 1 of the substituted section 133 a person could make an application for "any information" relating to any assessed. Also, while under the previous section 138, the Commissioner was to be satisfied that there were no circumstances justifying a refusal to furnish the information asked for, under sub-section

(1) of the substituted section 138 he was to be satisfied that it was in the public interest to furnish the information asked for and his decision in that behalf was made final and could not be called in question in any court of law. Further, sub-section

(2) of the substituted section 138 empowered the Central Government 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 assesseds or except to such authorities as may be specified in the order.

(10) Again, sub-section (1) to section 138 was substituted by a new sub-section (1) by section 28 of the Finance Act No. 20 of 1967 with effect from April 1, 1967, which reads as under:

"(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

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; or

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 assessed in respect of any assessment made under this Act or the Indian Income Tax Act, 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.

Where a person makes an application to the Commissioner in the prescribed form for any information relating to any assesses in respect of any assessment made under this Act or the Indian Indian-tax Act, 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."

(11) It has to be noted that the provision in the previous subsection (1) of section 138 was incorporated in clause (b) of the new substituted sub-section (1). and a further provision was made in clause (a) of the new sub-section (1) empowering the Board or any other Income Tax authority specified by it by a general or special order in that behalf to furnish or cause to be furnished information relating to any assessed to such officer, authority or body as was mentioned in the clause.

(12) Coming now to the questions referred to the Full Bench, the first of them is as regards the position of law relating to privilege prior to April 1, 1964. As pointed out by Mr. B. N. Kirpal, learned counsel for the Income Tax Department, in dealing with the said question, the following situations or aspects require to be considered, viz.-

(A) where the documents, records etc. in respect of which privilege is claimed were filed by an assessed or a third party before April 1, 1962, with effect from which date the Indian Income Tax Act, 1922, was repealed, in respect of assessment years up to and including assessment year 1961-62 in proceedings for the said assessment years taking place under the Indian Income Tax Act,

1922;

Here the documents, records, etc. were filed by an assessed or a third party after April 1, 1962, but before April 1, 1964, in respect of assessment years up to and including assessment year 1961-62 in proceedings for the said assessment years taking place under the Indian Income Tax Act, 1922".

(C) where the document, records, etc. were filed by an assessed or a third party after April 1, 1962, but before April 1, 1964, in respect of assessment years up to and including assessment year 1961-62 in proceedings for the said assessment years taking place under the Income Tax Act, 1961; and

Where the documents, records, etc. were filed by an assessed or a third party after April 1, 1962, but before April 1, 1964, in respect of assessment years 1962-63 and 1963-64 in proceedings for the said assessment years taking place under the Income- tax Act, 1961.

(13) The first question referred to the Full Bench has thus to be treated as consisting of questions 1 (a) to 1 (d) and answered Serialtim.

(14) So far as question 1 (a) is concerned, the legal position up to April. 1, 1962. was that section 54 of the Indian Income- tax Act applied to such documents, records, etc. and they, with the exception of those which fell within the exceptions mentioned in sub-section (3) of section 54. were confidential and a Court was prohibited absolutely from requiring any public servant to produce before it any such documents, etc. or to give evidence before it in respect thereof. The absolute nature of the said prohibition was emphasised by the Supreme Court in Charu Chandra Kundu Vs. Gurupada Ghosh, , where-in Shah J., who spoke for the Court, observed at page 86 that "the prohibition imposed against the Court by section 54 is absolute", and that "its operation is not obliterated by any waiver by the assessed in whose assessment the evidence is tendered, document produced or record prepared." Similarly, in COMMISSIONER OF Income Tax, BOMBAY Vs. LAXMICHAND NARAYANDAS AND ANOTHER., , the Supreme Court reiterated at page 550 that section 54 of the Indian Income Tax Act, 1922, contained in effect an unconditional prohibition against a public servant producing the documents, etc. mentioned therein, and that the section was not confined to documents produced by the assessed but applied also to documents produced before an Income Tax authority by third parties. Also, disclosure by a public servant of any particulars contained in such documents, etc. was punishable. After April 1, 1960, section 59-B also applied, and the Commissioner could furnish or cause to be furnished information, on an application by a person, only as to the amount of tax determined as payable by any assessed in respect of any assessment made on or after Apra 1, 1960, if he was satisfied that there were no circumstances justifying its refusal.

(15) The question then is whether the confidential nature of the aforesaid documents, records, etc. and the prohibition against their being required by a Court to be produced or evidence thereof to be given as well as the liability of a

public servant to be punished for disclosure of the particulars contained in the documents, records, etc. continued to subsist even after April 1, 1962, with effect from which date the Indian Income Tax Act, 1922, had been repealed and the Income Tax Act, 1961, came into force. As regards the effect of repeal of an enactment, section 6(c) of the General Clauses Act, 1897, provides as under:

"6. Where this Act, Or any Central Act or regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not

(C) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed." As pointed out by a single Judge of the High Court of Madras, Venkataraman J in S.V. Ramakrishna Mudaliar and Another Vs. Rajabu Fathima Bukari and Another, , .the principle of the above provision would apply even to a case of repeal of one of the sections of an. enactment. The Provision lays down two propositions. The first is that the repeal of an enactment shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under the enactment repealed. The second is that the said consequence will follow lineless a different intention appears in the repealing enactment.

(16) It has, Therefore, to be seen in the first instance whether it can be said that by virtue of the declaration of the documents, etc. as confidential, the prohibition imposed against the Court and the liability of a public servant to be punished for disclosure u/s 54, a right, privilege, obligation or liability had been acquired, accrued or incurred within the meaning of section 6(c) of the General Clauses Act. In S. V. Ramakrishna Mudaliar's case (supra), Venkataramon J. held at page 295 that the public servant (the Income Tax Officer in that case) was under an obligation not to give evidence in Court, and that the said obligation accrued or was incurred u/s 54 of the Indian Income Tax Act, 1922. The learned Judge also held that the said obligation was correlated to the corresponding right of the assessed concerned to forbid the public servant (the Income Tax Officer in that case) from producing the document or giving evidence thereof, that the obligation of the Income Tax Officer was there even apart from the corresponding right of the assessed to forbid him from giving evidence, and that the prohibition was enacted in public interest to enable full and true disclosure to be made by the assesses and that was why it , not waivable by the assessed. At page 296, the learned Judge observed that the Commissioner of Income Tax had both a light to refuse to produce the documents before the Court, as also an obligation not to produce them before the Court.

(17) In DAULAT RAM AND OTHERS Vs. SOM NATH AND OTHERS., , H. R. Khanna J. (as his Lordship then was) treated the matter as one of privilege. The .learned Judge observed at page 784 as under : "As a privilege existed in respect of the production of the documents in question at the time they were filed before the Income Tax authorities in the present case, the aforesaid privilege could not be affected because of the repeal of section 54 of the Act of 1922, in view of the plain language of clause (c) of section 6 of the General Clauses Act." The learned

Judge also referred to and agreed with the view taken in S. V. Ramakrishna Mudaliar's case (supra).

(18) In *Tulsiram Sanganaria and Another Vs. Srimati Anni Rai and Others*, . Grover J. observed at page 672 that section 54 made it "obligatory" on the officials and other servants of the Income Tax Department to treat as confidential the records and documents mentioned in sub-sections (1) and (2) thereof.

(19) But, a different view was taken by a Division Bench of the High. Court of Madras (Veeraswami and Krishnaswamy Reddy JJ.), in the case of *Ve. v. Sivagami Achi* (supra). The learned Judges took the view that section 54 of the Income tax Act, 1922, did not create any right, privilege, obligation or liability which could be properly regarded as having been acquired, accmed or incurred. The learned Judges observed that the declaration in section 54 was not from the point of view of any particular individual, and such a declaration did not confer a right or impose an obligation on any specified person. They added that no particular person could by virtue of the declaration be said to have incurred an obligation or acquired a right or privilege. As regards the prohibition, the learned Judges expressed the view that the second part of sub-section (1) of section 54 merely contained a bar on Courts from summoning for the specified particulars, and sub-section (2) merely enjoined a prohibition against any public servant disclosing such particulars, and the same did not amount to an obligation incurred. They also observed that every obligation, however, abstract, does not necessarily invoke a corresponding right also in the abstract. It was pointed out that if the Court or the public servant contravened the power, no particular person including the assessed had a cause of action against it, and all that any one like the assessed could do in such a case was to bring it to the notice of the Court or the authority concerned that the provision had been contravened. The learned Judges were of the view that section 6(c) of the General Clauses Act does not comprehend a right in gross or in the abstract, but confers only a specific right or obligation with reference to ascertainable persons as distinguished from the general public. In support of the said view, reliance was placed upon the following observations in *Hamilton Gell v. White* (1922) 2 K.B. 422 and *Abbott v. Minister for Lands* (1895)A.C. 425. In the former case *Atkin L.J.*, referring to section 38 of the Interpretation Act, 1889, which corresponds to section 6(c) of the Indian General Clauses Act, expressed the view : "It is obvious that that provision was not intended to preserve the abstract rights conferred by the repealed Act, such for instance as the right of compensation for disturbance conferred upon tenants generally under the Act of 1908, for. if it were, the repealing Act would be altogether inoperative. It only applies to the specific rights given " to an individual upon the happening of one or other of the &events specified in the statute." In the latter case, it was observed as under : "The mere right (assuming it to be properly so-called) existing in the members of the community or any class of them to take advantage of an enactment, Without any act done by an individual towards availing himself of that right, cannot properly be deemed to be a "right accrued" within the meaning of the

enactment."

(20) With utmost respect to the learned Judges of the Division Bench in the case of *Ve. V. Sivagami Achi* (supra), we are unable to agree with their view. No doubt, the declaration in section 54 that the documents mentioned therein shall be treated as confidential was not from the point of view of any particular individual. But, in the context and on a plain reading of the section, it seems to us to be clear that the documents were required to be treated as confidential by every one concerned including the authorities before whom they were filed. The persons concerned and, particularly, the said authorities were thus placed under an obligation to treat the documents as confidential. Also, as pointed out by Venkataraman J. in *S. V. Ramakrishna Mudaliar's* case (supra), the declaration of the confidential nature and the prohibition against disclosure were enacted in public interest to enable a full and true disclosure to be made by the assessed or a third party required to file documents or furnish information to the Income Tax authority. The assessed or the third party could, Therefore, insist that the documents filed or the information furnished by him should be regarded as confidential and the documents or information should not be disclosed. In that view, a right to resist the production and disclosure of the documents can be said to have been acquired or accrued which could be exercised by the assessed or the third party, and an obligation not to produce or disclose can be said to have been incurred by the concerned officer or authority. Similarly, the provision in the second part of sub-section (1) of section 54 which contained a bar on Courts from summoning for the production of the documents or for requiring evidence thereof to be given, did create a right in the assessed or the third party to enforce the said bar. Again, the prohibition contained in sub-section (2) of section 54 against any public servant disclosing the particulars of the documents, etc. can be said to have created an obligation on the part of the said public servant. It may be that the declaration and the prohibition were general abstract in the first instance. But, as soon as the documents, records, etc. were filed by the assessed or the third party before the concerned officer, the provisions in section 54 were attracted and the declaration and the prohibition ceased to be general or abstract and became concrete and specific, with the result that a specific right accrued to or was acquired by the assessed or the third party and a specific obligation was incurred by the officer concerned in respect of the said specific documents, records, etc.

(21) The above view gains support even from the English decisions relied upon by the learned Judges of the Division Bench.

(22) In *Abbott's* case (supra.), Abbott purchased certain Crown land in March 1871, under the provisions of the Crown Lands Alienation Act, 1861, and it was granted to him in fee simple. Later, in November, 1873, he took up a conditional purchase of a certain extent of adjoining land. Then in March, 1892, he applied for an additional conditional purchase of certain other land adjoining the land already purchased by him. Section 22 of the aforesaid Act of 1861 provided that

holders in fee simple of lands granted by the Crown in areas not exceeding 280 acres might make additional purchases of adjoining lands. The said Act was repealed subject to a saving provision by the Crown Lands Act, 1884, which, like the Act " of 1861, provided for additional conditional purchases, but section 22 of the Act of 1861 had no counter part in the latter Act, there being no provision relating to the conditional purchase of adjoining lands by a holder in fee simple of lands granted by the Crown. Section 2 of the Act of 1884 under which the former Act was repealed contained a proviso which read as under : " "Provided always that notwithstanding such repeal

(B) all rights accrued and obligations incurred or imposed under or by virtue of any of the said repealed enactments shall subject to any express provisions of this Act in relation thereto remain unaffected by such repeal.

(23) It was contended on behalf of Abbott that although section 22 of the Act of 1861 was repealed and there was no corresponding provision in the Act of 1884, yet the saving proviso to section 2 of the Act of 1884 enabled him still to make an additional conditional purchase as if section 22 remained in force. The argument was that under the repealed enactment he had a right to make the additional conditional purchase, that it was a "right accrued" at the time Act 1884 was passed, and that notwithstanding the repeal it remained unaffected by such repeal. Rejecting the said contention, the Privy Council observed at page 431 that the power to take advantage of an enactment may without impropriety be termed a "right", but "the mere right (assuming it to be properly so-called) existing in the members of the community or any class of them to take advantage of an enactment, without any act done by an individual towards availing himself of that right, cannot properly be deemed a "right accrued" within the meaning of the enactment". Thus, the right claimed u/s 22 of the Act of 1861 was, if at all, a general or an abstract right existing in the members of the community to take advantage of the enactment, and unless an individual did any act towards availing himself of that right, it could not properly be deemed a "right accrued". As Abbott did not file any application before the repeal of the Act of 1861, it was held that no right had accrued to him within the meaning of the proviso to section 2 of the Act of 1884.

(24) In the case of Hamilton Cell (supra), a similar question arose for consideration Section 11 of the Agricultural Holdings. Act, 1908, provided that "where the landlord of a holding,. .. terminates the tenancy by notice to quit...the tenant upon evicting the holding shall, in addition to the compensation, (if any) to which he may be entitled in respect of improvements.. .be entitled to compensation for the loss or expense directly attributable to his quitting the holding." There was a proviso to that section to the effect, inter alia. that no compensation under the section shall be payable (i) unless the tenant had within two months after he had received notice to quit given" to the landlord notice in writing of his intention, to claim compensation under the section; and (ii) if the claim for compensation was not made within

three months after the time at which the tenant quits the holding. The landlord, Hamilton Cell, gave his tenant John White notice to. quit .The tenant duly gave notice of his intention to claim compensation within the time limited. But. before the tenancy had expired, and Therefore before he could satisfy the second condition, section 11 of the Act of 1908 was repealed. He subsequently made his claim within three months limited by the section. It was held by the Court of Appeal that notwithstanding the repeal he was entitled to claim compensation u/ s 11 by virtue of section 38 of the Interpretation Act. 1889, which corresponds to section 6(c) of the Indian General Clauses Act. It was pointed out that when the landlord gave the tenant notice to quite, the tenant "acquired a right" to compensation for disturbance u/s II. The decision in Abbott's case was distinguished at page 428 as follows: "This is not like the case which was cited to us (i) (Abbott's case) in argument where the tenant's right depended upon some act of his own. Here. it depends upon the act of the landlord -namely, the giving of a notice to quit in view of a sale in which event the section itself confers a right to compensation subject to the tenant complying with the conditions therein specified, and so far as it was possible to comply with them down to the time when the section was repealed he did in fact comply with them."

(25) Thus, as stated earlier, even if the declaration and the prohibition in section .54 are regarded as being general or abstract, as soon as the documents were filed by an assessed or a third party before the concerned officer the provisions in section 54 applied to them and the declaration and the prohibition ceased to be general or abstract and became concrete and specific, with the result that a right accrued to or was acquired by the assessed or the third party, and an obligation was incurred by the officer concerned in respect of the documents, records, etc.

(26) A similar view was taken by a single Judge (R. L. Gulati, J.) of the High Court of Allahabad in Raghubir Saran Vs. O.P. Jain, Additional Munsif (I) and Others, . The learned Judge observed at page 488 as follows : "The object behind the enactment of section 54 clearly was to induce the assessed to make a true and full disclosure before the Income Tax authorities of facts relating to their income by affording them a protection against the disclosure of such facts to anybody else including a court. Under the cover of protection granted by section 54 people felt free to state facts involving confidential matters relating to their business and property without fear of such information being used against them in any other proceedings or inquiry. This undoubtedly created a right or a privilege in favor of assesseds and other people concerned and in order to make that right or privilege effective, the legislature, in its wisdom, imposed an absolute ban on the income- tax authorities not to disclose any document filed or statement made before them during the course. of such assessment and went further to impose a restriction on the powers of the courts to compel the disclosure of any information contained in the Income Tax records.... In this background, it is not possible to say that section 54 merely imposes an obligation upon the Income Tax authorities without creating any corresponding right in

favor of any particular person." The learned Judge declined to agree with the view of the Division Bench of the High Court of Madras in *Ve. V. Sivagami Achi*'s case (supra). The learned Judge concluded that section 54 was intended to create a right and a privilege in favor of the assessed and other persons concerned, and that it was for the preservation of that right or privilege that an absolute obligation was imposed upon the Income Tax authorities never to divulge to anybody including, a court any information from the assessment records. The learned Judge also observed that the obligation extended to each document referred to in section 54(1).

(27) Mr. Watel, learned counsel for the defendants, referred to the decision of the Supreme Court in *Lalji Raja and Sons Vs. Firm Hansraj Nathuram*, . It is necessary to state the facts in the said case. Lalji Raja and Sons obtained a decree against Firm Hansraj Nathuram in the Court of Sub-Judge, Bankura, West Bengal, on December 3, 1949. On an application by the decree-holder, the Court which passed the decree transferred the decree to the Court of the Additional District Judge at Morena in the then State of Madhya Bharat for execution. The judgment-debtor resisted the execution on the ground that the transferee court had no jurisdiction to execute the decree as it was that of a foreign Court and had" been passed ex parte. The transferee court accepted that contention and dismissed the execution petition on December 29, 1950. On April 1, 1951, the CPC (Amendment) Act. (Act II of 1951) came into force, and as a result of that amendment the Indian CPC was extended to the former State of Madhya Bharat as well as to various other places. Meanwhile, the decree-holders appealed against the order of the transferee court to the High Court "of Madhya Pradesh which allowed the appeal. On further appeal by the judgment-debtor to the Supreme Court, the order of the transferee Court was restored. The Supreme Court held that the transfer ordered by the Bankura Court was without jurisdiction as on that date the Indian CPC did not apply to the Morena Court, but it was governed by the said Indian CPC as adapted by the Madhya Bharat Adaptation Order, 1947, i.e., it was governed by a law passed by the then Madhya Bharat State. The decree-holders again filed an execution application in the Bankura Court on February 15, 1963, praying for the transfer of the decree-again to the Morena Court for execution as by that time. the Indian CPC had been extended to the Madhya Bharat State. "The transfer was ordered and execution proceedings commenced in the Morena Court. The judgment-debtors again resisted the application on various grounds. The transferee Court rejected the. objections, and an appeal against that. order to the High Court of Madhya Pradesh was allowed on the ground that the decree was not executable as the Court which passed the decree was a foreign Court. The decree-holders preferred an appeal to the Supreme Court, and it was contended before the Supreme Court that in view of section 20 clause (1) of the Civil Procedure (Amendment) Act, 1951. by which the Code was extended to Madhya Bharat and other areas, the judgment-debtors" right to resist the execution of the decree was protected. Section 20(1) of the Act deals with repeals and savings. The relevant portion

thereof reads as under "If, immediately before the date on which the said Code comes into force in any Part B State there is in force in that State any law corresponding to the said Code, that law shall on that date stand repealed. Provided that the repeal shall not affect

(B) any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed...as if this Act had not been passed." The said provision thus protected the rights acquired and privileges accrued under the law repealed by the amending Act.

(28) The argument before the Supreme Court was that the non-executability of the decree in the Morena Court under the law in force in Madhya Bharat before the extension of the Code could not be said to be a right accrued under the repealed law. Hegde J. speaking for the Court, held that even by straining the language of the provision it could not be said that the non-executability of a decree within a particular territory could be considered as a privilege, that in order to get the benefit of the provision in section 20(l)(b.) of the Amendment Act. the non-executability of the decree must, firstly, be a right and, secondly, it must be a right that had accrued from the provisions of the repealed law, and that it was difficult to consider the non-executability of the decree in Madhya Bharat as a vested right of the judgment-debtors. The learned Judge pointed out" that the non-executability in question pertained to the jurisdiction of certain courts and not to the right of the judgment debtors, that the relevant provisions of the CPC in force in Madhya Bharat did not confer the right claimed by the judgment-debtors, that all that had happened in view of the extension of the Indian Code to the whole of India in 1951 was that the decrees which could have been executed only by courts in British India have been made executable in the whole of India, and that the change made was one relating to procedure and jurisdiction. It was further pointed out by the learned Judge that before the Indian CPC was extended to Madhya Bharat, the decree, in question could have been executed either against the person of the judgment-debtors if they had happened to come to British India or against any of their properties situated in British India, that the execution of the decree within the State of Madhya Bharat was not permissible because the arm of the Indian CPC did not reach Madhya Bharat, and that it was the invalidity of the order transferring the decree to the Morena court that stood in the way of the decree-holders in executing their decree in that court on the earlier occasion and not because of any vested right of the judgment-debtors, and that by the extension of the Indian Code to Madhya Bharat, want of jurisdiction on the part of the Morena court was remedied and that Court has now been made competent to execute the decree. The learned Judge referred to the decisions in Hamilton Gell's case (supra). Abbott's case (supra), and G. Ogden Industries Pvt. Ltd. v. Lucas. (1969) 1 All Fr 121, and observed that a provision to preserve the right accrued under a repealed Act was not intended to preserve the abstract rights conferred by the repealed Act, that it only applied to specific rights given to an individual upon the happening of one or the other of the events specified in the statute, and that the

mere right existing at the date of the repealing statute to take advantage of the provisions of the statute revealed was not a "right accrued" within the meaning of the usual saving clause. The learned Judge concluded that the view taken by the High Court that the decree in question was a nullity qua the Morena Court could not be accepted as correct.

(29) Relying upon the above decision, Mr. Watel contended that in the present case also the prohibition against a Court contained in section 54 related to the procedure and jurisdiction of the Court, and that under the provision in section 54 it cannot be said that a right, privilege or obligation had been acquired, accrued or incurred within the meaning of section 6(c) of the General Clauses Act. We are unable to accept the contention. In the case before the Supreme Court, the Morena Court had no jurisdiction to start with, and the want of jurisdiction was remedied by the extension of the Indian CPC to Madhya Bharat and the Court was made competent to execute the decree. In the case of section 54, it laid down a prohibition against the Court doing a certain act and the same cannot be regarded, in our opinion, as one relating to procedure or absence of jurisdiction. The prohibition in section 54 was a substantive provision and not merely procedural, and the section only required the Court not to exercise the jurisdiction normally vested in it. It was just a restraint on existing jurisdiction of the Court. The learned counsel cannot, Therefore, derive any assistance from the decision. We have already referred to the decisions in Hamilton Cell's case and Abbott's case and pointed out that the said decisions in fact support the view taken by us. The case of G. Ogden Industries Pty. Ltd., referred to in the decision of the Supreme Court, is also in no way against the view taken by us. Section 5 of the English Workers' Compensation Act, 1958, provided for compensation fit certain rates for personal injury suffered by an employee in the course. of his employment. By an Amendment Act of 1965, the benefits payable to. the dependents of a "deceased worker were. increased. After the said amendment Act came into force, a worker suffered pulmonary oedema from which he died. His dependants claimed compensation under the Act of 1958. The question arose, whether compensation should be paid under the increased rates introduced by the Amendment Act. or whether. the rights of the dependents and the liabilities of the employer under the 1958 Act were preserved by section 7(2) (c) of the Acts Interpretation Act, 1958, and thus not affected by the Amendment Act of 1965. The Privy Council held that the liability in section 7 (2) (c) of the Acts Interpretation Act was used to connote something quite different from the liability referred to in section 5 of the Act of 1958, and that section 5 being merely introductory, even when read in conjunction with section 9, did not confer on the dependents any rights until the death of the worker, and accordingly there was no liability preserved by section 7 after the Amendment of the Act of 1958. The principle underlying that decision is the same as in the other two English decisions and is consistent with the view taken by us.

(30) Mr. Watel referred to a passage at Page 217 in Salmond on Jurisprudence (12th Edition) which reads as under :- "Rights are concerned with interests, and

indeed have been defined as interests protected by rules of right. i.e. by moral or legal rules. Yet rights and interests are not identical. Interests are things which are to a man's advantage; he has an interest in his freedom or his reputation. His rights to these, if he has such rights, protect the interest, which accordingly form the subject of his rights but are different from them. To say he has an interest in his reputation means that it is to his advantage to enjoy a good name; but to say he has a right to this is to imply that others ought not to take this from him."

(31) The learned counsel also referred to the characteristics of a legal right set out at page 221 in the aforesaid book. He argued that, as pointed out by Salmond, rights and interests are not identical, and that even if an assessed or "third party may be regarded, as having an interest in the confidential nature of the documents, records, etc. filed by him as declared in section 54. and in the protection against the disclosure of the particulars in the said documents, etc. contained in the section, he cannot be regarded as having acquired a right in respect of the same. We do not think so. It is true that rights and interests are not identical. But, the question is whether the assessed or the third party acquired a right or merely an interest u/s 54. As pointed out earlier, the assessed or the third party acquired a right or a right accrued to the assessed or the third party under the section. In our opinion, it is not a mere interest that he acquired or that has accrued to him. Even as explained by Salmond, an interest is merely an advantage to be enjoyed by the assessed, while a right is one which ought not to be taken away from him by others. Further, Section 54, as explained earlier imposed an obligation on the officer concerned before whom the documents are filed by an assessed or a third party. and the obligation thus imposed creates a corresponding right in the assessed to resist the production and disclosure of the documents in contravention of the obligation. In this connection. the learned counsel referred to pages 7 and 8 of the New Jurisprudence by P.B. Mukherji where the learned author dealt with the concept of rights. It is, however, not necessary to consider the same at length in the view taken by us regarding the scope and effect of the provisions in section 54 of the Indian Income- tax Act, 1922. The learned counsel also referred to the decision in *Arbon v. Anderson*, 1943 1 All Er 154. where it was observed by Goddard L.J. that the question as to when the breach of a duty imposed by statute confers a right of action on an individual depends upon the scope and language of the Act which creates the obligation and on considerations of policy and convenience. We are unable to see how this observation is of any assistance to the learned counsel regarding the question under consideration.

(32) For the reasons set out above, we are of the opinion that by virtue of the declaration of the documents, etc. as confidential, the prohibition imposed against the Court and the liability of a public servant to be punished for disclosure u/s 54 of the Indian Income Tax Act, 1922, a right to resist the production and disclosure of the documents, etc. had been acquired or had accrued to an assessed or a third party on his filing the documents before the

Income Tax authority ,and an obligation not to produce or disclose had been incurred by the concerned officer or authority.

(33) The second proposition laid down in section 6(c) of the General Clauses Act has to be considered next. In the State of Punjab Vs. Mohar Singh, , the Supreme Court pointed out. the correct scope .and effect of the said section 6. Mukharji J. (as his" Lordship then was) observed at page .899 as follows : "Whenever there is a repeal of an enactment, the consequences laid down in section 6 of the General Classes Act will follow unless as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any rown for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject, we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The line of inquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot, Therefore, subscribe to the broad proposition that section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation : Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material." It has, Therefore,, to be seen whether a different intention appeared in the repealing enactment, Income tax Act, 1961, This aspect has been considered in some decisions.

(34) In O. P. AGGARWAL, Income Tax OFFICER, C-WARD, JULLUNDUR Vs. THE STATE AND OTHERS., , a Division Bench (S. B. Capoor and J.S. Bedi JJ.) of the High Court of Punjab held at page 170 that "there is nothing in the Income-lax Act, 1961, which manifests an intention that the protection from and prohibition of disclosure of assessment records as afforded by section 54 would not be applicable to assessments which had been completed before the 1st day of April, 1962, which was the date on which the Income- tax Act, 1961, came into force". We are in respectful agreement with the view taken by the learned Judges for the reason that there was in fact a clear indication in the Income Tax Act, 1961, that the legislature was careful to keep the protection from and prohibition of disclosure alive and subsisting with regard to assessments completed before April 1, 1962, as is apparent from the re-enactment of the provisions in sub-sections (1) and (2) of section 54 of the Indian Income Tax Act, 1922, in almost identical terms in sub-sections (1) and (2) of section 137 of the Income Tax Act, 1961. We may add that the same position obtains even if the assessments had not been completed before April 1, 1962, but the proceedings happened to continue thereafter, in-as-much as such assessment proceedings pending on April 1. 1962, would continue to be governed by the Indian Income Tax Act, 1922, by virtue of the provisions in section 297(2) of the Income Tax Act. 1961, as if the latter Act had not been passed.

(35) In Daulat Ram's case (supra), an application was filed for summoning the clerk of the Income Tax Office to produce the balance-sheets and profit- and loss accounts for the years 1950 to 1954 filed by a firm of which the applicant was a partner to prove that that firm was carrying on business in the premises in dispute in certain proceedings instituted under the Delhi Rent Control Act, 1958. The Income Tax Officer claimed privilege in respect of the production of the documents under section. 54 of the Indian Income Tax Act, 1922. H. R. Khanna, J. held as stated earlier, that the privilege u/s 54 of the Act of 1922 had accrued in respect of the said documents filed at a time when section 54 was in. force, and that -the same could not be affected by the repeal of the Act of 1922 in view of section 6(c) of the) General Clauses: Act, 1897. The learned Judge further held that although the application for the protection of the documents was made in 1966 when the Income Tax Act of 1922 had been repealed and there was no provision like section 54 of the Act of 1922, the subsequent legislation did not reveal an intention to destroy the privilege which had accrued when section 54 was in force. This view of the Learned Judge supports the view expressed by us.

(36) In Raghubir Saran's (supra), an application was filed in a suit for the recovery of arrears of rent to summon the Income Tax assessment records of the defendant to prove a statement alleged to have been made by him during the course of his assessment proceedings which took place when section 54 of the Indian Income Tax Act, 1922, was in force. R. L. Gulati J. held that the obligation on the part of the Income Tax authorities to treat the same as confidential u/s 54 had accrued the moment the statement was recorded, and neither the repeal of the Income Tax Act, 1922, nor the enactment of the Income- tax Act, 1961, had obliterated the obligation imposed by section 54. The learned Judge expressed the view that the repealing Act of 1961 did not disclose any intention of the. legislature to destroy the effect of section 54. and that by enacting section 137 in the new Act the legislature's clear intention was to preserve in tact the object of section 54 of the old Act. This decision also supports the view taken by us.

(37) In Chandrasekhara Mandian Vs. Income Tax Officer, . K. Sadasivan J. held that the effect of section 54 of the Indian Income Tax Act, 1922, has been preserved, after its repeal, by section 6(c) of the General Clauses Act, 1897. and that the repealing Act did not disclose any intention of the legislature to destroy the effect of section 54 of the old Act. The learned Judge added that, on the other hand the intention, as was evident from the enactment of section 137 in the new Act, was to preserve in tact the object of section 54 of the old Act. In that view, he held that certain returns relating to the years 1957 to March 31., 1954, filed before the Income Tax Officer by the plaintiff in a suit could not be summoned by the Court in view of the protection u/s 54 of the Income- tax Act of 1922 and section 137 of the Income Tax Act, 1961. This decision also supports the view expressed by us.

(38) In P. Kandiah Thevar Vs. Third Income Tax Officer and Another, , a Division Bench of the High Court of Madras (Srinivasan & Venkatadri JJ.) held that the

Income Tax Act, 1961, was not merely a repealing enactment, but it both repealed and re-enacted and also introduced in sub-section(3) of section 137 certain new classes of cases where the confidential nature and the prohibition against disclosure in section 54 was relaxed, that the provision in clause (xxi) of section 137(3) was one such case and in enacting the said clause (xxi) the legislature did have a different intention to that extent, and that notwithstanding that a certain statement was made in assessment proceedings which had terminated before the coming into force of the Income Tax Act, 1961, the relaxation contained in section 137(3)(xxi) applied to the statement and its disclosure was permitted there by. With respect, we are unable to agree. Certain exceptions to the provisions in sub-sections (1) and (2) were laid down in sub-section (3) of section 54 itself. The mere fact that some more exceptions were added in sub-section (3) of section 137 does not necessarily mean an intention to destroy the right acquired or accrued or the obligation incurred under sub-section's (1) and (2) of section 54. particularly when the provisions in sub-sections (1) and (2) of section 54 were substantially re-enacted in sub-sections (1) and (2) of section 137.

(39) In Chinnammal and Others Vs. Kumidhini, a view similar to that taken in P. Kandiah Thevar's case (supra) was taken by a single Judge (K. Veeraswami J.) of the High Court of Madras. For the reason given above, we are unable to agree with this decision, also.

(40) In Kalawati Devi Harlalka Vs. Commissioner of Income Tax, West Bengal and Others, , prior to its repeal made under the Indian Income Tax Act, 1922, prior to its repeal for assessment years 1952-53 to 1960-61, and after the repeal of that Act by the Income Tax Act, 1961, the Commissioner issued a notice on January 24, 1963, u/s 33-B of the Act of 1922 for revision of those assessments. The Supreme Court held that section 297(2)(a) of the Income Tax Act, 1961, included within its scope a proceeding u/s 33B of the Indian Income Tax Act, 1922, and that the Commissioner, Therefore, had jurisdiction to issue the notice u/s 33B of the Indian Income Tax Act, 1922, in view of the section 297(2) of the Income Tax Act, 1961. In that context, the Supreme Court observed that section 297 was meant to provide as far as possible for all contingencies which may arise out of the repeal of the 1922 Act, and section 6 of the General Clauses Act, 1897, would not apply because section 297(2)(a) specifically evidenced an intention to the contrary. As observed by Ramaswami J. In Third Income Tax Officer, Mangalore Vs. M. Damodar Bhat, , the Supreme Court held in Kalawati Devi Harlalka's case (supra) that "section 6 of the General Clauses Act will not apply in respect of those matters where Parliament had clearly expressed its intention to the contrary by making detailed provisions for similar matters mentioned in that section." Again in T.S. Baliah Vs. T.S. Rengachari, , the same learned Judge observed at page 794 that his observation quoted above was the ratio of the decision in Kalawati Devi Harlalka's case (supra). It will thus be seen that the decision was based on the fact that the issuance of notices u/s 33-B fell within the specific provision "in section 297(2)(a), and it was not concerned

with the proposition under consideration by us, namely, whether the confidential nature of the documents, etc. filed in proceedings for assessments completed" prior to April 1, 1962, or continued after that date, and the prohibition in section 54 against the disclosure of the particulars therein remained unaffected even after April 1, 1962, by virtue of section 6(c) of the General Clauses Act.

(41) Thus, the two propositions in section 6 of the General Clauses Act had been satisfied, and. Therefore, by virtue of clause (c) of the said section 6, the right, privilege, obligation or liability acquired, accrued or incurred u/s 54 of the Indian Income Tax Act, 1922. continued to subsist even after April 1, 1962, with effect from which date the said Act had been repealed "and the Income Tax Act, 1961 came into force.

(42) It has next to be considered whether the confidential nature of the aforesaid documents, records, etc. and the prohibition against their being required by a Court to be produced or evidence thereof to be given as well as the liability of a public servant to be punished for disclosure of the particulars contained in the said documents, records, etc. continued to subsist even after April 1, 1964, with effect from which date. by Finance Act No. 5 of 1964, section 137 of the Income Tax Act, 1961, was omitted and section 138 therein was substituted by a new section 138 which consisted of sub-sections (1) and (2). This aspect also has been considered in some of the decisions already adverted to. In S. V. Ramakrishna Mudaliar's case (supra), Venkataraman J. held that in a case governed by section 137 (which contained provisions similar to those! in sub-sections (1) and (2) of section 54 of the 1922 Act the prohibition therein would continue to. operate in spite, of the deletion of the section in 1964 as a contrary intention was not apparent in the Finance Act No. 5 of 1964 or in sub-sections (1) and (2) of section 138 as inserted by the said Finance Act and the prohibition contained in section 137 had not been destroyed.

(43) In Ve. V. Sivagami Achi's case (supra), the Division Bench of the Madras High Court (Veeraswami and Krishna- swamy Reddy JJ.) agreed that Venkataraman J. rightly held-in S. V. Ramakrishna Mudaliar's case (supra) that, section 138(2) did not contain any intention so as to eliminate the application of section 6 of the General Clauses Act. The learned Judges, however, took the view that section 137, like its predecessor section 54 of the Indian Income Tax Act, 1922, neither created an obligation nor privilege or right which could be properly regarded as having been incurred, acquired, or having accrued and, Therefore, section 6(c) of the General Clauses Act was not attracted to the omission, of section 137. We have already indicated our disagreement with the said view of the learned Judges. It is sufficient to note in the present context that so far as the existence of any contrary intention in section 138 is concerned, the view of the learned Judges was that there was no such contrary intention.

(44) In Daulat Ram's case (supra), H. R. Khanna J. referred with approval to the view taken by Veakataraman J. in S. V. Ramakrishna Mudaliar's case (supra) regarding sub-sections (1) and (2) of section 138 of the Act of 1961. and held at

page 785 that even after the repeal of section 137, the legislation did not reveal an intention to destroy the privilege which had accrued in respect of documents filed at the time section 54 of the Act of 1922 was enforced.

(45) Similarly, in Raghbir Saran's case (supra), R. L. Gulati J. observed at page 487 that "the mere omission of a section does not necessarily lead to the conclusion that it was the intention of the legislature to do away with the rights and obligations created under or by the omitted section", that "section 138 also, in my opinion, is not incompatible or inconsistent with the effect of section 137 being continued notwithstanding its omission", and at page 488 that "it is, Therefore, clear that the legislature did not indicate its intention to destroy the effect of section 54 of the old Act by deleting section 137 from or by amending section 138 of the new Act."

(46) In Chandrasekhara Mandiar's case (supra.), K. Sadasivan J. took a similar view.

(47) La Nazir Mahammad v. Jamila Bibi, (1972) 85 I .L R. , R. N.Misra J. held that after the omission of section 137 of the Income Tax Act, 1961, with effect from April 1, 1964, there was no bar on a Court calling for production of Income Tax assessment records of an assessed for any period subsequent to April 1, 1964. The learned Judge did not go into the question as to whether records relating to a period before April 1, 1964, could be called for. In Smt. Rama Gouri Devi Vs. Harish Chandra Chaturdas, ,j S. Sarwar Ali J. held in a similar manner that after the repeal of section 137 of the Income Tax Act, 1961, there could not be any impediment in the way of a Civil Court in directing production of documents which were filed before an Income Tax Officer after the repeal. The case related to documents filed after April 1, 1964, and not before the said date. We shall refer to these two decisions later when we deal with the question No. 2 relating to documents, records, etc. filed after April I, 1964.

(48) We have pointed out above the view taken in S. V. Ramakrishna Mudaliar's case (supra), Ve. V Siyagami Achi's case (supra), Daulat Ram's case (supra), Raghbir Saran's case (supra) and Chandra-Sekhara Mandian's case (supra). In our view also, it cannot be said that the legislature had indicated an intention to destroy the effect of section 54 of the Indian Income Tax Act. 1922, by deleting section 137 from of by amending section 138 of the Income Tax Act, 1961. We do not find any such intention either in the Finance Act No. 5 of 1964 or in sub-sections (1) and (2) of section 138 as inserted by the said Finance Act. No doubt, sub-sections (1) and (2) of section 138 did not contain a declaration or prohibition as was laid down in sub-sections (1) and (2) of sections 54 and 137. But, that by itself, in our opinion, does not show an intention. to destroy any right that was acquired to accrued or the oblige -corporation that was incurred either under sub-sections (.1) and (2) of section 54 or under sub-sections (1) and (2) of section 137. Also, as pointed out by Venkataraman J. in S. V. Ramakrishna Mudaliar's case (supra) with which H. R. Khanna J. agreed at pages 785 and 786 in Daulat Ram's case (supra), the mere fact that the discretion was

exclusively given to the Commissioner of Income Tax under sub-section (1) of section 138 does not necessarily mean; an intention to destroy the rights and obligations already acquired, accrued or incurred. The provision in section 138(2) also shows only that when the Central Government issues a notification, there would be a prohibition in respect of the documents specified therein. Therefore, in the absence of a contrary intention in section 138, it has to be held that the aforesaid rights and obligations in respect of documents, records, etc. filed prior to April 1, 1962, continued to subsist even after April 1, 1964 by virtue of the provision in section 6(c) of the General Clauses Act.

(49) Mr. Watel contended that the provisions in section 54 and 137, particularly in so far as they related to the power of the Court to summon the records of Income Tax authorities pertaining to assessed parties before the Court were procedural provisions like sections 125 to 133 of the Evidence Act, and that changes in such procedural law have always a retrospective operation on proceedings pending on the dates of the said changes unless provided for otherwise. In support thereof, the learned counsel relied upon *Paras Ram and Another Vs. Mt. Mewa Kunwar and Others* and *Tika Sao v. Hari Lal*, AIR 1940 Pat 385. He argued that the declaration and prohibition laid down in sections 54 and 137 having been repealed, and the aforesaid procedural bar to the production of documents or summoning of witnesses to give evidence thereof having been removed, the said alteration should be deemed to be retrospective. The contention and the argument were based on the assumption that the provisions in sub-sections (1) and (2) of section 54 and 137 were procedural. We have already indicated that the said provisions are substantive and not procedural, and in that view the contention and the argument cannot be said to have any force.

(50) Mr. Watel next contended that since by virtue of subsection (5) of section 137 of the Act of 1961 the prohibition was lifted in so far as the assessed himself was concerned, the prohibition or privilege was no longer absolute and the courts were no longer completely fettered by the provisions of sections 54 and 137 even in respect of the records filed while the said provisions were in force. The learned counsel argued that if the effect of the provisions in sub-sections (1) and (2) of sections 54 and 137 were intended to continue, then section 137(5) also would have been continued, and that the fact that the legislature omitted section 137 in toto including sub-section (5) thereof showed that the intention was not to continue the effect of the provisions in sub-sections (1) and (2) of sections 54 and 137. It is true that sub-section (5) of section 137 permitted the assessed or the party by whom the documents were filed to produce or disclose the same if he so desired, and subsequently the legislature, in its wisdom, instead of giving that option to "the assessed left the production and disclosure to the discretion of the Commissioner. That does not, however, mean, in our opinion, that the right or obligation acquired, accrued, or incurred by virtue of sections 54 and 137 was thereby completely destroyed. It would at the most mean that the said right or obligation which was earlier subject to the option given to the assessed or the

party that filed the documents, has since been made subject to the power given to the Commissioner.

(51) Mr. Watel argued also that while u/s 54 of the Indian Income Tax Act, 1922. there was an absolute ban against the Court requiring the production of the documents, records, etc. or evidence thereof to be given, section 137(5) lifted the ban imposed by section 54 so far as voluntary disclosure by the assessed who filed the documents, and to that "extent the jurisdiction of the Court was restored. We do not think so. The provision in section 137(5) would no doubt apply to documents, records, etc. filed after April 1, 1962. But. so far as documents. records, etc. filed prior to April 1, 1962, which we are now considering in dealing with question I (a), are concerned, the absolute prohibition in section 54 applie"s to them subject of course to the exceptions in section 54(3), and the right or obligation acquired, accrued or incurred cannot be said to have been destroyed by reason of the provision in section 137(5). In this connection, Mr. Watel referred to the decision in *The Income Tax Officer, Madras Vs. P. Ramaratnam and Others*, in which it was held by Sadasivarn J. that certain documents could be summoned by the Court by virtue of section 137(5) at the instance of the assessed. In that case, the documents were filed prior to April 1, 1964. It is not, however. clear from the judgment whether they were filed prior to April 1, 1962. In the absence of that detail, we consider that the documents must have been filed after April 1, 1962, but before April 1, 1964, in which case tile exception in section 137(5) applied and the Court could summon the documents at the instance of the assessed himself. The decision cannot, Therefore, be of any assistance to the" learned counsel.

(52) Mr. Watel also pointed out that section 59-B which came into effect on April ,1960, as well as section 138 as originally enacted in the Income Tax Act. 1961, restricted the information that could be furnished by the Commissioner to the amount of tax determined and that too in respect of any assessment made on or after April 1, 1960, while section 138(l)(b) substituted with effect from April 1, 1967, enlarged the ambit by using the words "any information", in respect of assessments made on or after April 1, 1960, and argued that it suggests that the intention was not to continue the right or obligation already acquired. accrued, or incurred under sections 54 and 137." There is no force in this argument. The legislature conferred a limited powers on the commissioner by section 59-B and section 138, and subsequently enlarged the power to the extent stated in section, 138(l)(b). From this circumstance alone, it cannot be said, in our opinion, that the intention, was to destroy the right or obligation already acquired, accrued or incurred. On the other hand, the fact that section 138(1)(b) provides only for assessments on or after April 1, 1960, as did the provision in sections 59-B and 138 when sections 54 and 137 were in force, seems to suggest that the intention was not to destroy such right or obligation.

(53) The last contention of Mr. Watel regarding question I (a) was that whatever might have been the position prior to April 1, 1967, section 138(l)(b), which was

enacted on the said date, enabled a person to make an application to the Commissioner for any information relating to any assessed in. respect of any assessment made under the 1922 Act or the 1961 Act on or after April 1, 1960, that the words "on or after the 1st day of April, 1960", referred to the making of the application and not to the making of the assessment, that consequently a person. could apply after April 1, 1960, u/s 138(l)(b) for information even in respect of documents, records, etc. filed when section 54 was in force, that section 138(l)(b) thus implied an intention contrary to the provision in section 6(c) of the General Clauses Act, and so the said section 6(c) was not attracted, with the result that the prohibition in section. 54 did not subsist in respect of documents filed when section 54 was in force, i.e.. filed prior to April 1, 1962, and that a Court could, Therefore, require the production of the said documents, records, etc. or evidence thereof to be - given. The contention cannot be accepted. In the first place, the words "on or after the 1st day of April, 1960", on a plain reading of the clause, seem to refer to the making of the assessment rather than to the making of the application. Secondly, the provision - in section 138(l)(b) was not introduced for the first time. The previous sections 59-B. 138 and 138(1) also contained a similar provision though of a smaller ambit, April 1, 1960, was the date on which section 59-B was added by amendment. Prior to April 1, 1960, there was only section 54 which contained The absolute prohibition against a court requiring the production of the documents, records, etc. or evidence thereof to be given. During the period April 1, 1960, to April 1, 1962, there was the aforesaid prohibition u/s 54 and the enabling provision, was also there in section 59-B. Reading the two provisions together, the position during that period was that while a Court was absolutely prohibited, the Commissioner was empowered to furnish information to the extent mentioned in section 59-B. Similarly during the period April 1, 1962, to April 1, 1964, the right or obligation acquired, accrued or incurred by virtue of section 54 in respect of documents, records, etc. filed prior to April 1, 1962, subsisted as explained by us earlier, and consequently the Court remained prohibited, while the Commissioner had the power to furnish information to the extent mentioned in section 138 as it then stood. Between April 1, 1964, and April 1. 1967, the aforesaid right or obligation continued to subsist, and consequently the Court remained prohibited, while the Commissioner had the power to furnish information to the extent mentioned in section 138(1) as it then stood. After April I, 1967, the right or obligation continued to subsist and the" Court continued to remain prohibited, while the Commissioner has the power to furnish information to the extent mentioned in section 138(1)(b). Thus, even after April 1, 1967, the documents, records. etc. filed prior to April 1, 1962, cannot be required by a Court to be produced and evidence thereof cannot be required by a Court to be given. The contention of the learned counsel has. Therefore, to be rejected.

(54) For the foregoing reasons, our answer to question 1 (a) is that where documents, records, etc., such as were mentioned in section 54(1) of the Indian Income Tax. 1922, were filed by an assessed or a: third party before April 1.

1962, in respect of assessment years up to and including assessment year 1961-62, in proceedings for the said assessment years taking place under Indian Income Tax Act, 1922, the declaration of their confidential nature and the prohibition against a Court requiring any public servant to produce before it any such documents, etc. or to give evidence before it in respect thereof laid down in section 54(1), and the liability of a public servant to punishment for disclosure of any particulars contained in such documents, etc. laid down in section 54(2) remained unaffected and continued to subsist notwithstanding the repeal of the Indian Income Tax Act, 1922, the enactment of the Income Tax Act, 1961, and the amendments of sections 137 and 138 on April 1, 1964, and April 1. 1967.

(55) Coming now to question I(b) which relates to documents, records, etc. filed by an assessed or a third party after April 1, 1962, but before April 1, 1964, in respect of assessment years up to and including 1961-62 in proceedings for the said assessment- years taking place under the Indian Income Tax Act, 19-22, it has to be noted that with effect from April 1, 1962, the Indian Income Tax Act, 1922, had been repealed and the Income Tax Act, 1961, had come into force, and even though the documents, records, etc. were filed after April 1, 1962, they were filed in assessment proceedings taking place under the Indian Income Tax Act, 1922. Therefore, the provisions in sections 54 and 59-B apply, and the position in law is the same as in the case of documents, records, etc. dealt with in question 1(a).

(56) As regards question I(c), it has to be noted that it relates to documents, records, etc. filed by an assessed or a third party after April 1, 1962, but before April 1, 1964, in respect of assessment years up to and including assessment year 1961-62 in proceedings for the said assessment years taking place under the Income Tax Act, 1961. Here, although the documents are in respect of assessment years up to and including assessment year 1961-62, yet they were filed after April 1, 1962, in proceedings taking place under the Income Tax Act, 1961. The Indian Income Tax Act, 1922, having been "repealed with effect from April 1, 1962, the provisions of sections 54 and- 59-B ceased to exist. The proceedings being under the provisions of the Income Tax Act, 1961, which came into force with effect from April 1, 1962, the provisions of that Act were applicable to the proceedings. However, sub-section (1) of section 137 of the Income Tax Act, 1961. contained provisions almost identical with the provisions in sub-section (1) of section 54 of the Indian Income Tax Act, 1922. The declaration of the confidential nature of the documents and the prohibition against any Court requiring any public servant to produce or to give evidence in respect thereof continued u/s 137(1) of the Income Tax Act, 1961. It is true that subsection (2) of section 137 merely prohibited a public servant from disclosing any particulars of the documents mentioned in sub-section (1) of section 137. while sub-section (2) of section 54 of "the Indian Income Tax Act. 1922. made the disclosure by a public servant punishable. This difference in the provisions is immaterial for the purposes of the present discussion". Sub-sections (3) to (5) of section 137 of the Income Tax Act, 1961, were similar to sub-sections (3) to (5)

of section 54 of the Indian Income Tax Act, 1922. The provisions in section 138 of the former Act were also similar to the provisions in section 59-B of the Indian Income Tax Act, 1922. That being so, the reasons given by us regarding documents, records, etc. filed prior to April 1, 1962, in dealing with question, 1(a) would apply equally to the documents mentioned in question 1(c) also. In other words, the answer to question 1(c) is that where documents, records, etc. such as were mentioned in section 137(1) of the Income Tax Act, 1961, were filed by an assessee or a third party after April 1, 1962, but before April 1, 1964, in respect of assessment years up to and including assessment year 1961-62 in proceedings for the said assessment years taking place under the Income Tax Act, 1961, the declaration of their being of confidential nature and the prohibition against a Court requiring any public servant to produce before it any such document etc. or to give evidence before it in respect thereof laid down in section 137(1), and the prohibition against a public servant disclosing any particulars contained in any such documents, records, etc. laid down in section 137(2) remained unaffected and continued to subsist notwithstanding the omission of section 137 and the amendments of section 138 on April 1, 1964, and April 1, 1967.

(57) Coming next to question 1(d), it has to be noted that it relates to documents, records, etc. filed by an assessee or a third party after April 1, 1962, but before April 1, 1964, in respect of assessment years 1962-63 and 1963-64 in proceedings for the said assessment years taking place under the Income Tax Act, 1961. The position of law regarding the said documents, records, etc. is the same as in the case of documents, records, etc. dealt with in section 1(c) because sections 137 and 138 apply to such documents, records, etc.

(58) The second question referred to this Full Bench is as regards the position of law relating to privilege after April 1, 1964. As pointed out by Mr. B. N. Kirpal, learned counsel for the Income Tax Department, in dealing with the said question, the following situations or aspects require to be considered, viz.

Where the documents, records, etc. in respect of which privilege is claimed were filed by an assessee or a third party after April 1, 1964, in respect of assessment years up to and including assessment year 1961-62 in proceedings for the said assessment years taking place under the Indian Income Tax Act, 1922:

Where the documents, records, etc. were filed by an assessee or a third party after April 1, 1964, in respect of assessment years up to and including assessment year 1961-62 in proceedings for the said assessment years taking place under the Indian Income Tax Act, 1961;

Where the documents, records, etc. were filed by an assessee or a third party after April 1, 1964, in respect of assessment years 1962-63 and 1963-64 in proceedings for the said assessment years taking place under the Income Tax Act, 1961; and

Where the documents, records, etc. were filed by an assessee or a third party

after April 1, 1964, in respect of assessment years 1964-65 onwards. The second question referred has thus to be treated as consisting of questions 2(a) to 2(d) and answered Seriatim. Into which of the four categories (a) to (d) of the second question a given proceeding would fall, has to be determined in the light of the provisions in section 297(2) of the Income Tax Act, 1961.

(59) So far as question 2(a) is concerned, since the proceedings were taking place under the Indian Income Tax Act, 1922, in respect of assessment years up to and including 1961-62, the provisions in sections 54 and 59-B apply, and the position in law is the same as that stated by us in our answers to questions 1 (a) and 1(b) above.

(60) As regards question 2(b), it has to be noted that although the assessment years were up to and including assessment year 1961-62, yet the proceedings were taking place under the Income-tax Act, 1961, and the documents, records, etc. were filed after April 1, 1964. i.e. when sections 54 and 59-B had been repealed, section 137 "also had been omitted and either section 138(1) and (2) as substituted by Finance Act No. 5 of 1964 or section 138(l)(a) and (b) and (2) as substituted by Finance Act No. 20 of 1967 was in operation. Therefore, section 138(1) and (2) as substituted by Finance Act No. 5 of 1964 or section 138(l)(a) and (b) and (2) as substituted by Finance Act No. 20 of 1967 applied according as the documents, records, etc. were filed between April 1, 1964. and April 1, 1967, or were filed after April 1, 1967. In either case, there was no longer any declaration of the confidential nature or a prohibition against the Court or a prohibition against a public servant as in section 54 of the 1922 Act or section 137 of the 1961 Act. There were only the provisions in section 138(1) and (2) as substituted in 1964 or in section 138(l)(a) and (b) and (2) as substituted in 1967, which empowered the Commissioner under the former, and the Board also under the later, to furnish or cause to be furnished information as provided in the said sections.

(61) The legal position in a case where documents were filed after April 1, 1964, has been considered in some decisions, in Nazir Mohammad's case (supra), an application was filed on July 7, 1970, in a suit in a civil court for summoning documents for the assessment years 1965-66 to 1968-69. R. N. Mishra J. held that "there was no ban on a Court calling for production of the income tax assessment records of an assessed for any period subsequent to April 1, 1964". The learned Judge also observed that section 138(1)(b) was an enabling provision and did not deal with any restriction on the Court summoning the documents.

(62) In Smt. Rama Gouri Devi's case (supra), S. Sarwar Ali J. held that "after the repeal of section 137 of the Income Tax Act, 1961, by Act V of 1964, there cannot be any impediment in the way of a civil court in directing production of documents which were filed before an Income Tax Officer". It has, however, to be noted that it is not clear from the judgment as to when exactly the documents were filed before the Income Tax Officer.

(63) In *Amar Singh Lamba Vs. Sewa Singh and Another*, , certain assessment records of an assessee prepared after April 1, 1964, were sought to be summoned in a suit in a civil court. It was contended on behalf of the opposite party that in view of clause (b) of sub-section (1) of section 138, 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 should "be allowed to be produced or not. A Full Bench of the High Court, of Punjab and Haryana (D.K. Mahajan, Bal Raj Tuli and Prem Chand Jain JJ.). held that the aforesaid clause was not amenable to that interpretation. The learned Judges observed at page 9 that" the function to be performed by the Commissioner u/s 138(l)(b) was purely administrative and his decision was subjective on the point whether it was in the public interest to furnish the information or not and that was way his decision had been made final that it could not be said that by enacting the aforesaid 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 assessed that the scope of the power of the court under the general law for summoning the relevant record was entirely different from the scope of the power of the Commissioner of Income Tax under the aforesaid clause; and that the repeal of section 137 of the Act of 1961 clearly indicated that the legislature thought that it was no more necessary to keep the records of assessment by the Income Tax Department relating to an assessed as confidential, and the bar with regard to the production of any part of the assessment records was removed as far as no courts were concerned .

(64) With respect, we are unable to agree. It is true that a civil court has p.ower under the general law for summoning documents or records relevant to the case before it. But. that power has to be subject to the provision in a special statue like the Income Tax Act. The Indian Income Tax Act, 1922. by section 54 thereof, declared such documents ,records, etc. as confidential and prohibited a court from requiring, the production of such documents, records, etc. and from requiring evidence thereof to be given before it. it also made the disclosure of any particulars of any such documents, records, etc. by a public servant punishable with imprisonment and or fine. Later, in 1960, the legislature, by adding section 59-B. relaxed the provisions to a limited extent by empowering the Commissioner of Income Tax to furnish or cause to be furnished information only as t't'o the amount of tax determined as payable by an assessed in respect of any assessment made after April 1, 1960, if he was satisfied that there were no circumstances justifying its repeal.. The position remained under sections 137 and 138 of the Income Tax Act, 1961, practically the same even after the repeal of the Indian Income Tax Act, 1922, except that section 137(2) merely prohibited a public servant from disclosing any particulars contained in such documents, records, etc., while section 54 of the Indian Income Tax Act, 1922. made the disclosure by a public servant punishable. Thereafter, in 1964, section 137 was completely omitted and by section 138(1) and (2) the Commissioner was

empowered to furnish information if he was satisfied that it was in the public interest so to do, and the Central Government was empowered 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 assesses or except to such authorities as may be specified in the order. Subsequently, in 1967, the decision of the Commissioner of Income Tax was declared u/s 138(I)(b) to be final and not liable to be called in question in any court of law.

(65) The complete omission of the declaration of the confidential nature "of the documents, records, etc. and the removal of the ban on courts and public servants, no doubt, suggests that the power of a court under the general law to. Summon such documents, records, etc. relevant to the case before it has been restored. But, at the same time, the legislature which empowered the Commissioner of Income Tax to furnish the information if he is satisfied that it is in the public interest so to do, made the decision of the Commissioner final and unquestionable in a Court" of law. When two powers are thus vested in two legal authorities, neither of them can be ignored and both of them have to be reconciled and given effect to. In the case of the two powers under consideration, it has to be noted that the power to summon which vests in a court is under the general law, while the power of the Commissioner has "been conferred upon" him by a special law and has. Therefore, to prevail over the former. In "view of the same, it has to be held that while it is open to a court" to summon the documents, records, etc. from the Income Tax Commissioner, it is equally open to the Commissioner on receiving the summons to consider whether the production" furnishing of the documents, records etc. would be in the public interest, and submit the same to the court in answer to the summons.

(66) The above; view seems to be correct and proper in view of two other considerations. When, by emitting section 137, the legislature has removed the confidential nature of the documents, records, etc. as well as the ban on a Court and on a public servant, can the same be brought in in a circuitous way u/s 138(I)(b) In our opinion, it cannot be so done. Also, u/s 138(I)(b), complete discretion has been given to the Commissioner of Income Tax to furnish or cause to be furnished the documents, records, , or any information therein in case "he is satisfied that it is in the public interest so to do, and not to furnish in case he is not satisfied. Can that" be set at naught by filing a suit and getting summons issued by the Court for the production of the documents, records, etc. or for the, furnishing of any information therein? If it can be so done, it would obviously frustrate the object of the provision in section 138(I)(b). Further, though the prohibition or ban incorporated in sections 54 and 137 has been omitted, the legislature apparently intended to avoid free publicity of the documents, records, etc. or any particulars thereof given in confidence by an assessed to the Income Tax Officer as well as other information secured by the Income Tax Officer from other sources, and that was why a restriction has been imposed upon the Commissioner of Income-tax by section 138 in the matter of furnishing or causing

to be furnished any information in the documents, records, etc. In this connection, an observation made by Lord Denning in *Norwich Pharmacal Co. and others v. Commissioner of Customs and Excise* (1972) 3 All E.R. 813, is apposite. In that case, by virtue of section 28 of the English Customs and Excise Act, 1952. whenever goods are imported the importer has to fill in the form of entry giving the name of the importers, the description of the goods and so forth, and thus the customs authorities have, in their possession, the names of the importers. The customs authorities regard the said information as confidential and do not publish it at all. The said confidence was strongly confirmed in the Finance Act of 1957. Section 3 of that Act authorised the Commissioners of Excise and Customs to disclose some of the information to others if it is in the National interest, or, rather, if the Secretary of State is satisfied that it is in the National interest, but it was provided in the section that the Commissioners were not to disclose "the price of the goods or the name of the importer of the goods". In other words, those said matters were sacrosanct. and not even the Secretary of State could require them to be disclosed even when it was in the National interest. Referring to the said provision. Lord Denning observed at page 818 as under : "Even if the plaintiffs could over-come that hurdle they are faced with another. It is that the names of the importers were given to the customs authorities in confidence for a limited and restricted purpose and the Court, thought not to compel the customs to break that confidence." Similarly, in the present case, a Court has to respect the restraint placed on the Commissioner of Income Tax and desist from breaking the confidence reposed in the income- tax authorities by an; assessed or the third party. The view taken by us above is in accord with the said principle.

(67) For the foregoing - reasons, our answer to question 2(b) is that when a party to a proceeding in a Court applies for summoning any documents, records, etc. from the income- tax authorities, the Court may summon the said documents. records, etc. But, on receipt of the summons, it is open to the Commissioner of Income Tax to consider the matter is provided u/s 138(1)(b), and decide whether it would be in the public interest to produce or furnish the documents, records, etc. summoned for, and submit his view to the Court in answer to the summons. In case, he is satisfied that the production, etc. would not be in the public interest, his decision is final and the Court to which the said decision is communicated cannot question the same.

(68) As regards questions 2(c) and 2(d), the answers are the same as our answer to question 2(b).

(69) The third question referred to the Full Bench is "What is the effect of the production of certified copies relating to Income Tax assessment records, and how far certified copies can "be admitted in evidence? Mr. S.L. Bhatia, learned counsel for the plaintiff, sought to argue under the first part of the question that ""if any party had obtained certified copies of his own documents or of documents of third parties, the ground of privilege does not subsist, and the

party is entitled to produce the certified copies and prove those documents. Mr. Watel, learned counsel for the defendants, sought to argue under the second part of the question "that certified copies of returns of an assessed filed before the Income Tax authorities. and other related records ,cannot be said to be public documents, that the certified copies of the said documents would, Therefore, not be admissible per se in the absence of legal proof in terms of section 67 of the Evidence Act. and that this would be .particularly true of the certified copies of returns and other documents alleged to have been filed by a party other than the party obtaining and producing the certified copies of the said documents".

(70) The points sought to be argued by both the learned counsel have to be considered and answered only with respect to a particular document and not in a general manner. For instance, the argument of Mr. Bhatia regarding the subsistence of the ground of privilege can be considered only with respect to a particular document and the answer would depend, inter alia. upon the facts as to when it was filed before the Income Tax authority, to which assessment year it relates, and under which of the two Acts of 1922 and 1961 the assessment proceeding in which it was filed was taking place. Similarly the argument of Mr. Watel regarding the admissibility and proof of a certified copy and the question whether the original of that copy is a public document can be considered only with respect to a particular document, and the answer would depend upon What that document is, i.e. whether it is a return, a statement recorded by the Income Tax Officer and so forth. Under the third question referred to the Full Bench, we are not called upon to give our opinion with respect to any particular document or documents. We, Therefore, do not express any opinion on the third question. The reference is answered accordingly.