Supreme Court of India
Dagi Ram Pindi Lal And Anr vs Trilok Chand Jain And Ors on 4 February, 1992
Equivalent citations: 1992 AIR 990, 1992 SCR (1) 545
Author: A Anand
Bench: Anand, A.S. (J)

PETITIONER:
DAGI RAM PINDI LAL AND ANR

Vs.

RESPONDENT:
TRILOK CHAND JAIN AND ORS.

DATE OF JUDGMENT04/02/1992

BENCH:
ANAND, A.S. (J)
BENCH:
ANAND, A.S. (J)
KULDIP SINGH (J)

CITATION:
1992 AIR 990 1992 SCR (1) 545
1992 SCC (2) 13 JT 1992 (1) 526
1992 SCALE (1)249

ACT:
Income Tax Act, 1922-Section 54 and Section 137 of the Income Tax Act, 1961-Repeal of 1922 Act and omission of Section 137-Jurisdiction of Courts to call for the record-Scope of.
Income Tax Act, 1961- Section 138(1)(b)-Scope and application of-Jurisdiction and powers of Commissioner of Income Tax under-Scope of-Court's order for Production of Record-Commissioner cannot refuse-Omission of Section 137-Legislative intention.
Income Tax Act, 1961-Sections 138(1)(b), 137 read with section 6, General Clauses Act-Repeal of any Enactment-Effect-Omission of Section 137-Court's order for production of record-Ban on Court's jurisdiction whether continues.
Income Tax Act, 1961-Sections 137, 138(1)(b)-Repeal of Section 137-Documents relating to assessment proceedings for 1964-65 onwards-Filed before the authority after 1.4.1964 by assessee-Whether Court can summon.

HEADNOTE:
The Plaintiff-respondent instituted a suit for recovery of Rs.1,39,722.86 against the defendants-appellants.
When evidence was being recorded in the suit

proceedings, the plaintiff obtained summons from the court requiring the Income Tax Department to produce in the court records relating to the income tax assessment of the defendants for the assessment years 1964-65 to 1971-72.

The Income Tax Officer produced the record in a sealed cover.

The plaintiff also obtained summons requiring the Income Tax Officer to produce the income tax record relating to two other assessees, which was produced in the Court by the Department in a sealed cover with a submission that no disclosure of information regarding income tax

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pertaining to an income tax assessee could be made. The plaintiffs in the meanwhile filed in the court a number of certified copies of the accounts of the defendants, which he had obtained from the Income-Tax authorities and sought permission of the Court to tender the certified copies in evidence.

Before a Single Judge of the High Court on the question of privilege as claimed by the Income Tax Department, arguments were addressed by the parties.

The following three questions were referred to the Full Bench

(i) What is the position of law relating to privilege prior to 1964?

(ii) What is the position of law relating to privilege after 1964? and

(iii) 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?

The Full Bench answered the first and second questions sustaining the claim of the privilege by the Income Tax Department and the Full Bench did not express any opinion on the third question.

Against the judgment of the Full Bench of the High Court, appeal was filed by special leave. The controversy before this Court was confined to the finding of the High Court relating to the claim of privilege for the production of documents which were filed after the repeal of Section 137, with effect from 1.4.1964 in respect of assessment years 1964-65 onwards.

The appellants (defendants) contended that after the repeal of Section 137 of the Income-Tax Act, 1961 by the Finance Act, 1964 there was no longer any impediment left in the way of a civil court to summon the production of documents filed by an assessee during the assessment proceedings before an Income-Tax Officer after 1.4.1964 in respect of assessment years 1964-65 onwards, and that the finality attached to an order of the Commissioner with regard to claim of privilege under Section 138(1)(b) had no relationship to the power of the court to summon that record.

Allowing the appeal of the defendants-appellants, this

Court,

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HELD:1.01. Section 54 of the Income Tax Act, 1922 and after its repeal, Section 137 of the Income Tax Act, 1961 had only placed fetters on the exercise of the jurisdiction, in respect of the specified documents, by the courts, notwithstanding anything contained in any other law for the time being in force. The exercise of the jurisdiction to seek production of documents had, only been put under a cloud in so far as the record of assessment is concerned. [560E]

1.02. With the repeal of the 1922 Act and omission of Section 137 of the 1961 Act, the fetters on the exercise of the jurisdiction were removed with the result that the exercise of jurisdiction to call for the production of documents relevant to the case pending before the court, even from the income-tax authorities, revived. [560E-F]

1.03. Neither Section 54 of the 1922 Act nor Section 137 of the 1961 Act had taken away for all times the jurisdiction of the courts to call for the record from the Income-Tax authorities. Those provisions had only put the exercise of that jurisdiction under a cloud and those fetters were coterminous with the life of Section 54 of the 1922 Act or Section 137 of the 1961 Act. [560F-G]

2.01. Clause (b) of Sub-Section (1) of Section 138 is limited in its scope and application. Under it, any person can make an application to the Commissioner for any information relating to an assessee in respect of any assessment made either under the 1922 Act or under the 1961 Act on or after the 1st April 1960 and the Commissioner of Income Tax has the authority to furnish or cause to be furnished the information asked for on being satisfied that it is in the public interest so to do and such an order of the Commissioner is final and cannot be called in question in any court of law. The Commissioner of Income Tax under this clause performs only an administrative function, on his subjective satisfaction as to whether it is in the public interest to furnish the information or not to any person seeking such information and his decision in that behalf is final and the aggrieved person cannot question it in a court of law. By enacting this provision, the legislature could not be said to have intended that the Commissioner of Income Tax would have the authority to sit in judgment over the requisition (Judicial order) made by a court of law requiring the production of record of assessment relating to an assessee in a case pending before the court. [562H-563D]

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2.02. When a court of law, in any matter pending before it, desires the production of record relating to any assessment after applying its judicial mind and hearing the parties and on being prima facie satisfied that the record required to be summoned is relevant for the decision of the

controversy before it - it passes a judicial order summoning the production of that record from the Party having possession of the record. The Commissioner of Income Tax cannot, therefore, refuse to send the record, as he certainly is not authorised to set at naught a judicial order of a court law. He must obey the order of the court by sending the record to the court concerned. [563D-F]

2.03. It is open to the Commissioner of Income Tax to claim privilege, in respect of any document or record so summoned by a court of law, under Sections 123 and 124 of the Indian Evidence Act, 1872 and even then it is for the court to decide whether or not to grant that privilege. Had the legislature intended that no document from the assessment record of an assessee should be produced in a court on being summoned by it, without the approval of the Commissioner of Income Tax, it would have said so in Section 138 of the Act itself. [563F-G]

2.04. The repeal of Section 137 of the Act clearly discloses the legislative intent that it was felt by the legislature that it was no more necessary to keep the records of assessment by the Income Tax Department relating to an assessee as confidential from the courts and the bar with regard to the production of any part of the record was removed in so far as the courts are concerned. The finality which has been attached to the order of the Commissioner under Section 138(1)(b)of the Act is restricted to the cases where the information etc. as contemplated by the section is called for by any person, other than a court of law by a judicial order. [563G-564A]

2.05 The finality which has been attached to the order of the Commissioner under Section 138(1)(b) of the Act is applicable only in cases where application is made to the Commissioner by a party or any other person for receiving documents or information. It has nothing to do with the powers of the courts to summon the production of assessment record of an assessee, filed after 1.4.1964. The privilege as to secrecy, which the assessee had acquired under Section 54 of the 1922 Act remained unimpaired by the repeal of that Act or even by the omission of Section

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137 of the 1961 Act in respect of record filed prior to 1.4.1964 and relating to the assessments prior to that date. That privilege did not extend, after April 1,1964. to record filed before the income-tax authorities, for the assessment years 1964-65 onwards. [560H-561B]

2.06. Section 138(1)(b) does not effect the powers of the courts to require the production of assessment records or the disclosure of any information therefrom to it, in a case pending before the court when the court, by a judicial order, requires the production of the record, considered relevant by it for decision of a case pending before it. [564B-C]

2.07. The High Court, therefore, fell in error

in holding that the assessment records of an assessee filed before the income-tax authorities, even after April 1,1964, are immune from production in a court of law on summons for their production being issued by the court and that the disclosure of any information from the record even to the courts is subject to the veto powers of the Commissioner of Income Tax. [564B]

3.01. Section 6 of the General Clauses Act as well as Section 138 (1)(b) of the 1961 Act cannot extend the ban on the exercise of the jurisdiction by the courts to summon the production of documents from the income-tax authorities after April 1,1964 relating to assessment year 1964-65 in respect of the record filed after April 1,1964. [561B-C]

3.02. Section 6 of the General Clauses Act provides that the repeal of any enactment, unless a different intention appears, shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed enactment. [561F]

3.03 The general principle is that an enactment which is repealed, is to be treated, except as to transactions past and closed, as if it had never existed. The assessee had acquired no right or privilege under the repealed Act, since the provision is only a procedural restriction and did not create any substantive right in the assessee, in respect of assessments for the period after the omission of Section 137 of the 1961 Act. Thus, reliance placed on the provisions of Section 6 of the General Clauses Act to hold the continuation of the ban on the exercise of jurisdiction by the courts was misplaced. [561H-562B]

3.04. In respect of the documents filed after the omission of Section

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137 of the 1961 Act , with effect from April 1,1964, relating to assessments for the period 1964-65 onwards, no right, privilege, obligation or liability can be said to have been acquired accrued or incurred prior to the omission of Section 137 of the Act. [561F-G]

3.05 The ban contained in Section 137 of the 1961 Act on the exercise of the powers of a civil court to call for production of documents etc. could not be said to have continued to exist, in matters arising subsequent to the omission of that Section with effect from April 1, 1964 and that ban came to an end in respect of the period after April 1, 1964. [561G]

4. After the repeal of Section 137 of the act, there is no longer any impediment left in the way of a court to summon the production of documents filed by an assessee before the income-tax authorities after April 1,1964 relating to assessment proceedings for 1964-65 onwards and that the finality attached to an order of the Commissioner under Section 138 (1)(b) has no relevance to the exercise of powers by a court to summon the production of documents in a case pending before the Court. [564D-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1360 of 1974.

From the judgment and Order dated 14.12.1973 of the Delhi High Court in suit No. 64 of 1969.

Ms. Suruchi Agarwal and T.V.S.N. Chari for the Appellants.

H.K. Puri and Mrs. Urmila Sirur for the Respondents. The Judgment of the Court was delivered by DR. A.S.ANAND,J. This appeal, by special leave, is directed against the judgment of the Full Bench of the Delhi High Court, dated 14.12.1973 in Suit No. 64/69, delivered in a reference made by a learned Single Judge for opinion of the Full Bench. The questions referred by the learned Single Judge to the Full Bench revolved around the scope and effect of the provisions of Sections 54 and 59B of the Indian Income Tax Act 1922 (hereinafter referred to as the '1922 Act') and Sections 137 and 138 of the Income Tax Act 1961 (hereinafter referred to as the '1961 Act') as amended from time to time in 1964 and 1967 in the context of the claim of privilege by the Income Tax Department for the production of the documents relating to assessment of an assessee summoned by the Civil Court. The following three questions were referred to and considered by the Full Bench:

> "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 ?"

The circumstances under which these questions arose, briefly put, are as follows:

2. The plaintiff, Trilok Chand Jain, instituted a suit for recovery of Rs. 1,39,722.86 against the defendants, M/s. Dagi Ram Pindi Lal and Smt. Budh Wanti Gulati, w/o Shri Pindi Lal Gulati, the appellants herein. During the course of proceedings in the suit, when evidence was being recorded, the plaintiff obtained summons from the court requiring the Income Tax Department to produce in the court records relating to the Income Tax Assessment of the defendants, M/s. Dagi Ram Pindi Lal, for the assessment years 1964-65 to 1971-72. The Income tax officer to whom the summons were issued, sent the record in a sealed cover through an Inspector along with a letter, dated November 1,1972, claiming that the said record was privileged under Section 137 of the 1961 Act. The plaintiff also applied for and obtained summons requiring the Income tax Officer to produce the Income tax record relating to M/s Borizeon Industrial Products (P) Ltd. and Bishamber Nath Kaul. That record was also sent by the Income Tax Officer in a sealed cover alongwith a letter in which it was submitted that no disclosure of information regarding income tax pertaining to an income tax assessee could be made. The plaintiffs, it appears, in the meanwhile 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 sought permission of the Court to tender the certified copies in evidence. Arguments were addressed by the parties before the learned Single Judge on the question of privilege as claimed by the Income Tax officer. Being of the opinion that the question of privilege, as claimed by the Income Tax officer, was important and likely to arise in the course of trial of suits in future also, a reference was made by the learned Single Judge to the Full Bench. In dealing with the three questions (supra) referred to it, the Full Bench considered different situations. It considered the first question in the following four situations:

"(a) Where the documents, records, etc. in respect of which privilege is claimed were filed by an assessee 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;

(b) Where the documents, records, etc. 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 Indian Income_tax Act,1922;

(c) Where the document, records, etc. 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;and

(d) Where the documents, records, etc. were 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."

and sustained the claim of privilege by the Income Tax Department in each one of the situations.

The Full Bench while considering the second question, dealt with the following situations:

(a) 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;

(b) 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 year 1961-62 in proceedings for the said assessment years taking place under the Indian Income-tax Act, 1961;

(c) 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 assessments years taking place under the Income-tax Act, 1961; and

(d) 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 claim of privilege was sustained in all above situations also.

3. Dealing with the effect of omission of Section 137 and substitution of section 138 (1) (a) and (b), the High Court opined;

".....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 summons, it is open to the Commissioner of Income-tax to consider the matter as provided under section 138 (1) (b), and decide whether it would be (sic) 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."

[EMPHASIS SUPPLIED] The Full Bench, however, did not express any opinion on the third question.

4. Learned counsel for the appellant has not questioned the findings of the Full Bench in so far as they relate to the claim of privilege in respect of documents filed prior to the repeal of the 1922 Act or before the omission of Section 137 from the 1961 Act. She has questioned the findings of the Full Bench only as regards the power and jurisdiction of the Court to summon the documents, after the repeal of the 1922 Act and after the deletion of Section 137 from the 1961 Act by the Finance Act, 1964 as also the interpretation placed by the Bench on Section 138 (1) (b) of the Act. The controversy before us has been confined to the finding of the High Court relating to the claim of privilege for the production of documents which were filed after the repeal of Section 137, with effect from 1.4.1964 in respect of assessment years 1964-65 onwards. Thus, it is the finding on situation (d) of the second question as rendered by the Full Bench Which alone has been questioned and debated before us.

The precise argument of the learned counsel for the appellant is that after the repeal of Section 137 of the 1961 Act by Act V of 1964, there is no longer any impediment left in the way of a civil court to summon the production of documents filed by an assessee during the assessment proceedings before an Income-tax Officer after 1.4.1964 in respect of assessment years 1964-65 onwards, and that the finality attached to an order of the Commissioner with regard to claim of privilege under Section 138 (1) (b) has no relationship to the power of the court to summon that record.

5. For a proper appreciation of the question debated before us, it would be desirable to refer to the relevant provisions of the 1922 Act and 1961 Act, as amended from time to time, and notice the changes brought about in the matter of claim of privilege by the Income Tax Department. Section 54 (1) and (2) of the 1922 Act provided as follows:

"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 purpose 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."

6. By Section 9 of the Taxation Laws (Amendment) Act of 1960, Section 59-B was inserted in the 1922 Act 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 assessee in respect of any assessment made on or after the 1st day of April, 1960, the Commissioner may, notwithstanding anything contained in section 54, if he is satisfied that there are no circumstances justifying its refusal, furnish or cause to be furnished the information asked for." Both the aforesaid provisions dealt with the confidential nature of the documents filed, before the Income Tax authorities and the claim of privilege to disclose the same to anyone, including a court of law. Section 54 (1) declared that the various documents referred to therein shall be treated as confidential and prohibited a court from requiring any public servant to produce before it any such document or to give evidence before it in respect thereof, notwithstanding anything contained in the Indian Evidence Act, 1872. Sub-Section (2) of Section 54 made punishable, the disclosure by a public servant, of any information contained in those documents. the effect of introduction of Section 59-B by Taxation Laws (Amendment) Act 1960 was that it entitled a person to make an application to the Commissioner to obtain information thereafter as to the amount of tax determined, as payable by an assessee in respect of any assessment made on or before April 1, 1960, and authorised the Commissioner to furnish or cause to be furnished the sought for information, if he was satisfied that there were no circumstances justifying its refusal. This legal position continued to prevail till April 1, 1960, when the 1922 Act was repealed by the 1961 Act. In the 1961 Act , provisions were made corresponding to sections 54 and 59-B of the 1922 Act in Sections 137 and 138. The relevant portions of Sections 137 and 138 of the Act provided as follows:

"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 Chapter XXII, or in any record of any assessment proceedings, or any proceedings relating to 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, 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 an assessee 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. The provisions of Section 137(1) of the 1961 Act were, as is seen, almost identical to the provisions of sub- section (1) of Section 54 of the 1922 Act and Section 137 (2) prohibited a public servant from disclosing the particulars contained in any of the documents mentioned in Section 137 (1). The provisions of Section 138 of the 1961 Act were almost identical to the provisions of Section 59-B of the 1922 Act.

8. With effect from April 1, 1964, Section 137 of the 1961 Act was omitted from the Statute vide Section 32 of the Finance Act No. V of 1964, and Section 138 was substituted by a new Section vide Section 33 of the Finance Act No. V of 1964. The substituted Section 138 reads as under:-

"138. Disclosure of information respecting assessees:-

(1) Where a person makes an application to the Commissioner in the prescribed form for any information relating to any assessee in respect of any assessment made either under this Act or the Indian Income-tax Act, 1922, 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 assessees or except to such authorities as may be specified in the order."

9. The scope of Section 138, of the 1961 Act was, as can be seen, enlarged by the substituted provisions of Section 138. Under the original Section 138 a person could make an application for information only as to the amount of tax determined, as payable by an assessee, under sub-section (1) of the substituted Section 138, a person could make an application for any information relating to an assessment. Again, under the original Section 138, before the necessary information could be furnished or cause to be furnished to an applicant, the Commissioner was to be satisfied that there were no circumstances justifying refusal to furnish the information asked for; under sub-Section (1) of the substituted Section 138, the Commissioner was required to be satisfied that it was in the public interest to furnish the information asked for and "his decision in this behalf shall be final and shall not be called in question in any court of law." Vide sub-Section (2) of the substituted Section 138, the Central Government was also empowered to direct, by an 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 assessees or except to such authorities as may be specified in the order.

10, The substituted Section 138 was once again amended and substituted vide Section 28 of the Finance Act, 1967 with effect from April 1, 1967. The new sub-section (1) of section 138 reads as follows:

"(1)(a) The Board or any other income-tax authority specified by it by a general or special order in this behalf may furnish or cause to be furnished to-

(i) any officer, authority or body performing any functions under any law relating to the imposition of any tax, duty of cess, or to dealings in foreign exchange as defined in section 2(d) of the Foreign Exchange Regulation Act, 1947; or

(ii)such officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public interest, specify by notification in the Official Gazette in this behalf, any such information relating to any assessee in respect of any assessment made under this Act or the Indian income-tax Act, 1922 as may, in the opinion of the Board or other Income-tax authority, be necessary for the purpose of enabling the officer, authority or body to perform his or its functions under that law.

(b) Where a person makes an application to the Commissioner in the prescribed form for any information relating to any assessee in respect of any assessment made under this Act or the Indian Income-tax Act 1922, 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."

The provisions of sub-Section (1) of Section 138 as they originally stood were incorporated in clause (b) of the substituted sub -Section (1) and a new provision was incorporated in clause (a) of sub-Section (1) which empowered 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 assessee to such officer, authority or body as is mentioned in the provision to enable him or it to perform its functions under the Act. Vide clause (b)of the substituted sub-Section (1) of Section 138, finality has also been attached to an order of the Commissioner, made on an application filed by any person seeking information relating to an assessee in respect of any assessment. The Commissioner, has to make an order, after being satisfied that it is in the public interest so to do, to furnish or cause to be furnished such information and that decision of the Commissioner is immune from challenge in any court of law.

11. The controversy as already noticed, before us is limited to the jurisdiction or lack of it of a civil court to seek production of documents relating to assessments filed after April 1, 1964 in assessment proceedings 1964-65 onwards, after the omission of Section 137 of the Act.

12. The Full Bench, in the impugned judgment, came to the conclusion that the omission of Section 137 did not make any difference and that the ban on the courts as contained in the repealed Section 137 continued to remain in force by virtue of the provisions of Section 138 (1) and after 1967 by Section 138 (1)(b) of the Act even in respect of the documents filed in the assessment proceeding after April 1, 1964 for assessments relating to the period 1964-65 onwards. The Full Bench also pressed into aid the provisions of Section 6 of the General Clauses Act to hold that the repeal of Section 137 did not remove the ban on the courts to summon any documents from the income-tax authorities, even in respect of documents which had been filed before the Income-tax authorities after the repeal of Section 137 after April 1, 1964.

13. In our opinion the High Court fell in error in coming to that conclusion. It not only ignored the legislative intent manifest in the omission of Section 137 of the 1961 Act, after the repeal of the 1922 Act, but also ignored the powers of a court under the general law, to summon such documents, record etc. as is found relevant to a case pending before the court, in the absence of any specific prohibition, under any law for the time being in force. The High Court assumed that by Section 54 of the 1922 ACt and Section 137 of the 1961 Act, the jurisdiction of the courts to call for documents from the income-tax authorities had been taken away for all times to come, notwithstanding the repeal of the 1922 Act or the omission of Section 137 specifically from the 1961 Act. The High Court appears to have lost sight of the position that under the Code of Civil Procedure, the courts of law have always possessed the jurisdiction to call for the production of documents relevant to the case before the court from anybody having custody of those documents. Section 54 of the 1922 Act and after its repeal Section 137 of the 1961 Act had only placed fetters on the exercise of that jurisdiction, in respect of the specified documents, by the courts, notwithstanding anything contained in any other law for the time being in force. The exercise of the jurisdiction to seek production of documents had, thus only been put under a cloud in so far as the record of assessment is concerned. With the repeal of the 1922 Act and omission of Section 137 of the 1961 Act, the fetters on the exercise of that jurisdiction were removed with the result that the exercise of the jurisdiction to call for the production of documents relevant to the case pending before the court, even from the income-tax authorities, revived. Neither Section 54 of the 1922 Act nor Section 137 of the 1961 Act had taken away for all times the jurisdiction of the courts to call for the record from the income-tax authorities. Those provisions, as already noticed had, only put the exercise of that jurisdiction under a cloud and those fetters were coterminous with the life of Section 54 of the 1922 Act or Section 137

of the 1961 Act.

14. The finality which has been attached to the order if the Commissioner under Section 138 (1) (b) of the Act is applicable only in cases where application is made to the Commissioner by a party or any other person for receiving documents or information. It has nothing to do with the powers of the courts to summon the production of assessment record of an assessee, filed after 1.4.1964. The Privilege as to secrecy, which the assessee had acquired under Section 54 of the 1922 Act remained unimpaired by the repeal of that Act or even by the omission of Section 137 of the 1951 Act in respect of record filed prior to 1.4.1964 and relating to the assessments prior to that date. That privilege did not extend, after April 1, 1964, to record filed before the income-tax authorities, for the assessment years 1964-65 onwards. Section 6 of the General Clauses Act as well as Section 138 (1) (b) of the 1961 Act cannot extend the ban on the exercise of the jurisdiction by the courts to summon the production of documents from the income-tax authorities after April 1, 1964 relating to assessment year 1964-65 in respect of the record filed after April 1, 1964.

15. Section 6 (C) of the General Clauses Act, 1897 on which reliance was placed by the HIgh Court reads 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 or incurred under any enactment so repealed."

A plain reading of the Section shows that the repeal of any enactment unless a different intention appears, shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed enactment. In respect of the documents filed after the repeal of Section 137 of the 1961 Act, with effect from April 1, 1964, relating to assessments for the period 1964-65 onwards, no right, privilege, obligation or liability can be said to have been acquired, accrued or incurred prior to the omission of section 137 of the Act. Therefore, the ban contained in Section 137 of the 1961 Act on the exercise of the powers of a civil court to call for production of documents etc. could not be said to have continued to exist, in matters arising subsequent to the omission of that Section with effect from April 1, 1964 and that ban came to an end in respect of the period after April 1, 1964. The general principle is that an enactment which is repealed, is to be treated, except as to transactions past and closed, as if it had never existed. The assessee had acquired no right or privilege under the repealed Act, since the provision is only a procedural restriction and did not create any substantive right on the assessee, in respect of assessments for the period after the omission of Section 137 of the 1961 Act. Thus, reliance placed on the provisions of Section 6 of the General Clauses Act to hold the continuation of the ban on the exercise of jurisdiction by the courts was misplaced.

16. Dealing with the scope of Section 138 (1) (b) of the Act, the High Court held that the said provisions attached a finality to an order of the Income Tax Commissioner and applied to the cases where the record was summoned even by a court of law. The High Court opined:

"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 un-questionable 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."

We are unable to subscribe to the above view.

17. Clause (b) of sub-Section (1) of Section 138 is limited in its scope and application. Under it, any person can make an application to the Commissioner for any information relating to an assessee in respect of any assessment made either under the 1922 Act or under the 1961 Act on or after the 1st April 1960 and the Commissioner of Income Tax has the authority to furnish or cause to be furnished the information asked for on being satisfied that it is in the public interest so to do and such an order of the Commissioner is final and cannot be called in question in any court of law. The Commissioner of Income Tax under this clause performs only an administrative function, on his subjective satisfaction as to whether it is in the public interest to furnish the information or not to any person seeking such information and his decision in that behalf is final and the aggrieved person cannot question it in a court of law. By enacting this provision, the legislature could not be said to have intended that the Commissioner of Income Tax would have the authority to sit in judgment over the requisition made by a court of law requiring the production of record of assessment relating to an assessee in a case pending before the court. When a court of law, in any matter pending before it desires the production of record relating to any assessment after applying its judicial mind and hearing the parties and on being prima facie satisfied that the record required to be summoned is relevant for the decision of the controversy before it - it passes a judicial order summoning the production of that record from the party having possession of the record. The Commissioner of Income Tax cannot, therefore, refuse to send the record, as he certainly is not authorised to set at naught a judicial order of a court of law. He must obey the order of the court by sending the record to the court concerned indeed it is open to the Commissioner of Income Tax to claim privilege, in respect of any document or record so summoned by a court of law, under Sections 123 and 124 of the Indian Evidence Act 1872 and even then it is for the court to decide whether or not to grant that privilege. Had the legislature intended that no document from the assessment record of an assessee should be produced in a court on being summoned by it, without the approval of the Commissioner of Income Tax, it would have said so in Section 138 of the Act itself. The repeal of Section 137 of the Act clearly discloses the legislative intent that it was felt by the legislature that it was no more necessary to keep the records of assessment by the Income Tax Department relating to

an assessee as confidential from the courts and the bar with regard to the production of any part of the record was removed in so far as the courts are concerned. The finality which has been attached to the order of the Commissioner under Section 138(1)(b) of the Act is, thus, restricted to the cases where the information etc. as contemplated by the Section is called for by any person, other than a court of law by a judicial order. The High Court, therefore, fell in error in holding that the assessment records of an assessee filed before the income-tax authorities, even after April 1, 1964, are immune from production in a court of law on summons for their production being issued by the court and that the disclosure of any information from the record even to the courts is subject to the veto powers of the Commissioner of Income Tax. Section 138(1)(b) does not affect the powers of the courts to require the production of assessment records or the disclosure of any information therefrom to it, in a case pending before the court when the court, by a judicial order, requires the production of the record, considered relevant by it for decision of a case pending before it.

18. As a result of the above discussion, we, therefore, find that the answer given by the Full Bench of the High Court in the impugned judgment, to situation (d) of the second question (supra) as formulated by it, is erroneous and we set it aside. Consequently, we hold that after the repeal of Section 137 of the Act, there is no longer any impediment left in the way of a court to summon the production of documents filed by an assessee before the income-tax authorities after April 1, 1964 relating to assessment proceedings for 1964-65 onwards and that the finality attached to an order of the Commissioner under Section 138(1)(b) has no relevance to the exercise of powers by a court to summon the production of documents in a case pending before the Court. Since, the challenge before us had been confined to the answer given by the High Court to situation (d) of the second question as formulated by it and no other finding of the High Court was called in question, we have refrained from expressing any opinion on the other findings recorded by the Full Bench of the High Court. The appeal consequently succeeds to the extent indicated above and is allowed. We, however, make no order as to costs.

V.P.R. Appeal allowed.