Madras High Court
V. Datchinamurthy And Anr. vs Asst. Director Of Inspection, ... on 21 November, 1980
Equivalent citations: 1984 149 ITR 341 Mad
Author: Sethuraman
Bench: N Balasubramanian, V Sethuraman
JUDGMENT Sethuraman, J.

1. These are two writ petitions, which were originally posted along with W. Ps Nos. 828 and 2120 of 1977 and 3307 of 1978. As the points raised in these writ petitions required certain other contentions to be considered, these petitions on January 23, 1979. In both these write petitions the respective write petitioners have prayed for issue of a write of prohibition prohibiting the first respondent, that is the Assistant Director of Inspection from taking and proceedings under s. 131 of the I.T. Act or any other provision for the purpose of summoning the petitioners and taking evidence or recording statements in respect of any proceedings relating to the second respondent, viz., the Tamil Nadu Farmers Service Co-operative Federation. The learned counsel, Mr. S. Gopalaratnam, who appeared for these two write petitioners, wanted the write of prohibition to be issued in a modified form and not in the form in which it is set out in the petitions, as it was realised that a bald prohibition from enquiry would not be appropriate in the circumstances of the case. We shall indicate the modified prayer in due course.

2. The Tamil Nadu Farmers Service Co-operative Federation, which is the second respondent in these writ petitions, was registered on December 4, 1974. It executed a promissory note in favour of the writ petitioner in W.P.No. 3306 of 1978, for a sum of Rs. 14,700 on April 8, 1975, by name Datchinamurthy, agreeing to repay the amount set out in the promissory note with interest. The second respondent Federation was started with the object of helping the farmers by providing them integrated credit and other services. The membership of the Federation was open to the Farmers Service Co-operative Societies and persons over 18 years of age from the Government of Tamil Nadu. The total individual members was not to exceed 20. The Federation was taking deposits on payment of 10% interest. A large number of farmers are said to have lent monies on interest to the Federation, of whom the write petitioners, Datchinamurthy and Natarajan were two. Datchinamurthy claims to own lands in Karungulam Village. He was a member of the Tirunelveli District Farmers' Co-operative Society. He come to know that in 1976 the Federation had some problems with I.T. Department and therefore, demanded repayment of the amount advanced to the Federation. As the amount was not paid, he filed O.S. No. 474 of 1977, in the City Civil Court, Madras, as a summary suit under order 37, rule 1, C.P.C. The Federation filed an application for leave to defend, which was dismissed by the trial court and the suit was decreed on March 7, 1977, for a sum of Rs. 16,145 together with interest and costs. The claims to have come to know that similar decrees had been obtained by several of the farmers, who had made deposits and who had obtained decress. When the Federation was approached for payment of the decree amount, the petitioner was said to have been informed that the Assistant Director of Inspection, the first respondent, had issued prohibitory order under s. 132(3) of the I.T. Act, 1961, prohibiting the managing director of the Federation from removing, parting with or otherwise dealing with the amount deposited in the bank accounts in specified banks, on June 1 and 2, 1976. Notices were issued under s. 148 read with s. 139 of the I.T. Act, for the purpose of making an assessment for the

assessment year 1975-76 on July 1, 1976. On April 21, 1977, the ITO, City Circle I(2), was vested with the jurisdiction to make the assessment on the Federation and he issued the statutory notice. The Federation filed a return showing loss of Rs. 36,070 on April 28, 1977, and a revised return on May 7, 1977, showing a loss of Rs. 21,890. The Federation was represented by an auditor who filed his power on May 28, 1977.

3. Ever prior to the issue of notices against the Federation on July 1, 1976 enquiries were made as regards the large amounts in deposit in various banks, with the managing director of the Federation by name Chandrasekaran. On May 23, 1977, sworn statement were taken from him and a large number of affidavits were field on that day. The exact number is not clear, but it exceeds 400. At that stage, the representative of the Federation wrote to the ITO giving the names and particulars of the suits filed and decrees obtained. The total amount decreed was stated to be Rs. 37,80,806.30. The ITO was seeking to make enquiries about the depositors and the court proceedings. As required by this court in the course of the proceedings in the earlier write petitions, on May 27, 1977, an order of provisional assessment was made in order to find out the total amount that was required as and by way of tax so as to release the balance, if any, for being realised by the decree-holders.

4. On June 10, 1977, the Inspectors attached to the I.T. Department visited the Villages in Tirunelveli District for the purpose of verification of the averments in thee large number of affidavits. On October 29, 1977, the ITO City I(2), the Assistant Director of Inspection and there Inspectors visited Serakulam, a village in Tirunelveli District, for making the enquiries. There were similar enquiries subsequently between March 10, 1978, and August 28, 1978. During these hearings a large number of persons were summoned by the assessing officer and their statements were recorded.

5. The present writ petitions came to be filed in August, 1978. The allegations in the affidavits in support of the writ petitions are that the exercise of powers for summoning witness was without jurisdiction, that the powers under s. 131 could not be used in such a manner as to take away the accrued rights emerging from the decrees obtained by the writ petitioners, that the summoning of witnesses and taking statements from them was in defiance of order of this court and that the procedure adopted in making these enquiries was wholly unauthorised and illegal. The exercise of the powers of the I.T. Department in such a manner as to go behind the decrees was questioned. There were two miscellaneous petitions filed along with these write petitions, which were numbered as W.M.P. Nos. 4780 and 4782 of 1978, praying for permission of the court to file the writ petitions in a representative capacity under Order 1, rule 8 of the C.P.C. These petitions were ordered. However, it is stated on behalf of the first respondent that the said permission is being questioned in some proceedings, which are pending before the Supreme Court.

6. It is in these circumstances that the petitioners prayed for the issue of a writ of prohibition. The way in which the learned counsel for the writ petitioners sought to mould the prayers at this stage was as follows : He wanted the income-tax authorities to be prohibited from conducting any enquiry seeking to go behind the decrees obtained by the writ petitioners and others. He wanted also a declaration to the effect that only the ITO, who had jurisdiction over the Federation, should make the enquiries and not any one else. He wanted also a declaration to the effect that the witnesses

should be allowed to be represented by counsel, if they so desired.

7. The Assistant Director of Inspection has filed counter-affidavits in which he has questioned the correctness of the several allegations made in the affidavit in support of the writ petitioners. In substance, he has stated that the enquiries were being proceeded with only in the manner contemplated by the Act and that all statements were being taken from the deponents in accordance with law and without any exercise of any coercion as alleged. He has stated that a number of officials had to be taken for the purpose making these enquiries on the spot, as a large number of deponents to the affidavits had to be examined, their whereabout ascertained and the correctness of their averments in the affidavits investigated. It has been alleged in the counter-affidavits that the writ petitioners were making mala fide attempts on their part to subserve the interest of the Federation and to thwart the enquiry and the assessment to be made on the Federation.

8. A reply affidavit has also been filed by the writ petitioner, V. Datchinamurthy, in which the statements in the counter-affidavits had been traversed.

9. Another affidavit purporting to be a "reply affidavit" has been filed by the managing director of the Federation.

10. On the allegations mentioned above, the first question that arises for consideration is whether the ITO can make any enquiries in relation to the decrees obtained from the courts in the suits mentioned already. The learned counsel for the writ petitioners drew our attention to two decisions in support of his contention that the findings of courts should be treated as conclusive in proceedings before quasi-judicial tribunals, which an ITO is. The first decision is of this court this court in Jerome D' Silva v. Regional Transport Authority, South Kanara . In that case, a public carrier permit was issued by the Regional Transport Authority to a transport operator. The lorry carrying certain materials was detained on suspicion that it contained smuggled rice. The driver of the lorry was charged under the appropriate provisions of law and after full enquiry, the Magistrate discharged the accused holding that the accusation was groundless. Meanwhile, the Regional Transport Officer called upon the transport operator to show cause why his permit should not be cancelled or suspended as the lorry was engaged on smuggling foodgrains. The explanation was submitted. The order of the Magistrate acquitting him was brought to his notice. The Regional Transport Authority, however, passed orders suspending the permit for three months, as if the transport operator had transported smuggled goods in the lorry, contrary to the findings of the criminal court. The transport operator came to this court in proceedings under article 226 of the Constitution of India for quashing the order of the Regional Transport Authority. In the course of the judgment at page 635 (p. 854 of 1952 AIR), Rajamanar C.J., delivering the judgment of the Bench, observed as follows :

"We have no hesitation in making it clear that a quasi-judicial tribunal, like the Regional Transport Authority or the Appellate Tribunal therefrom, cannot ignore the findings and orders of competent criminal courts in respect of an offence when the Tribunal proceeds to take any action on the basis of the commission of that offence. Let us take the instance before us. The offence consists in smuggling foodgrains. For that same offence, the petitioner was criminally prosecuted. He has also

been punished by his permit being suspended for a period of three months. If the criminal case against him ends in discharge or acquittal, it means that the petitioner is not guilty of the offence and therefore did not merit any punishment. It would indeed be a strange predicament when in respect of the same offence he should be punished by one tribunal on the footing that he was guilty of the offence and that he should be honorably acquitted by another tribunal of the very same offence. As primarily the criminal courts of the land are entrusted with the enquiry into offences, it is desirable that the findings and orders of the criminal courts should be treated as conclusive in proceedings before quasi-judicial tribunals like the Transport Authorities under the Motor Vehicles Act."

11. It was pointed out that if at the time when the Road Transport Tribunal disposed of the particular matter, no prosecution had been launched, then it was not incumbent on it to await a criminal prosecution, and that a prosecution had actually commenced and if the prosecution was in respect of the same offence, then it would be desirable that the Transport Authority should await the decision of the criminal court. This procedure, it was indicated, would avoid the spectacle of two departments of the Government proceeding on contradictory lines, to the annoyance and hardships of the citizen.

12. It may be seen from this judgment that the learned judges were considering the question whether there could be contradictory conclusion in respect of the same matter by the statutory tribunal and by the criminal court. Both of them were concerned in that case with the question when there any offence has been committed on the same facts. In such a case, it would indeed be undesirable that the same matter should be proceeded with by the statutory tribunal in a manner inconsistent with the decision of the criminal court. The case before us is not of a similar type.

13. Another decision, also of a Bench of this court, in K. Sankaralinga Thevar v.Thirumalammal [1977] 1 MLJ 189, was also brought to our notice. In that case a person applied to the Special Tahsildar for his name to be included as a tenant in respect of certain lands. The tenant had field O.S.No. 432 of 1971, which was decreed in his favour, and the result was that he was declared to be a cultivating tenant. Then the matter was taken on appeal and it was pending before the appellate court. When the Special Tahsildar took the petition of the tenant for disposal, the judgment and decree of the trial court was in force and following the said judgment he allowed the petition of the tenant. However, on appeal by the landlord, the order of the Special Tahsildar was set aside and the revision filed before the District Revenue Officer also failed. It was at that stage that the matter was brought before this court in a writ petition. During the pendency of the proceedings before the civil court, s 16A of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act (No. X of 1969) was brought into force. That provision barred the jurisdiction of the civil courts in respect of any matter which the Records Officer, the District Collector or other officer or authority empowered by or under the Act had to determine and it provided also that no injunction could be granted by any court in respect of any action taken or to be taken by such officer or authority in pursuance of any power conferred by or under that Act. The question raised in that writ petition related to the extent of the jurisdiction of the civil court in the light of the provisions of s. 16A. It was held that the civil court had decided the matter prior to the introduction of s. 16A, i.e., at a time when its jurisdiction was not barred and that the civil court's decree was not affected by the said provision. In the course of the

judgment, to which one of us was a party, it was observed as follows :

"When once a civil court passed its judgment and decree under the same Act validly with jurisdiction, it can be set aside only by a procedure known to law. Any other tribunal constituted by law cannot act in such a manner as to set aside the civil court's judgment and decree".

14. It was in this view that the order of the Revenue Divisional Officer and the District Revenue Officer ignoring the civil court's judgment and decree was held to be bad.

15. This judgment was considered by a Full Bench of this court in W.P. No. 7430 of 1975 - Periathambi Gounder v. District Revenue Officer, Coimbatore.

16. In the judgment was considered by a Full Bench delivered by Ismail J., as he then was, this judgment was approved, and a contrary view taken in Muniyandi v. Rajangam Iyer [1976] AIR 1976 Mad 287; [1976] 1 MLJ 344, was disapproved. The decision in Muniyandi v. Rajangam Iyer, AIR 1976 Mad 287; [1976] 1 MLJ 344, was disapproved only because in that case also there was a decision of the civil court before the introduction of s. 16A of Tamil Nadu Act 10 of 1969. It was held that since s. 16A was not retrospective in operation, the civil court's decree was not affected by it.

17. This decision also is not relevant in the context of the present case. The scope of the enquiry before a civil court and before the Revenue authorities functioning under the Tamil Nadu Act 10 of 1969 was the same, viz., whether a particular person could be recognised as a tenant under the said Act. When once there was a judgment of the civil court, it was held that it was not open to the statutory tribunal to ignore the decision of the civil court. If the scope of the enquiry before the ITO was the same as it was before the civil court, then it would follow that the ITO cannot ignore the civil court's judgment.

18. The question thus to be considered is whether the scope of the enquiry under the I.T. Act is the same as it was before the civil court in passing the claim of the depositors in the present case, based on the promissory notes executed in their favour. The ITO in making investigation in the case of the Federation was seeking to find out the person to whom the money belongs. In other words, he wanted to find out whether there was any income earned by the Federation, which took its shape as deposits in the names of these persons, who had obtained decrees. As the scope of the enquiry under the I.T. Act is wholly different from that before a civil court, it is not possible to accept the submission that the ITO in making the enquiries was acting in any manner contrary to the findings of the civil court. Any action taken by the ITO is not likely to set at naught these decrees if they otherwise remained unchallenged in accordance with the provisions of the Code of Civil Procedure in the appropriate forum. As the scope of the enquiries by the civil court and by the ITO are different, the principle of this decision cannot be applied to the facts herein.

19. The Supreme Court, in Chhatrasinhji Kesarisinhji Thakore v. CIT [1966] 59 ITR 562, has examined the scope of the powers and jurisdiction of the ITO in relation to the assessment as contrasted with other statutory adjudications. That was a case where a mining lease contained an undertaking on the part of the lessee to pay all taxes, rates etc., which might be charged upon, or in

respect of, the mines worked by the lessee. The landlord received from the lessee Rs. 16,309 and Rs. 39,515 described as "local fund cess", and the lessee paid these amounts believing that it was liable to reimburse the landlord under the terms of the lease deed. The income-tax authorities and the Appellate Tribunal found that the local fund cess due in respect of the leasehold land was only Rs. 270.45, and only that the lessee had to pay. It was, therefore, held that the balance of the amount received represented the income of the landlord. The question referred to the court was whether the said receipts were income. The Bombay High Court held the amount to be income and, on appeal, the Supreme Court confirmed the decision. In the course of the judgment of the Supreme Court, it was observed at page 567 as follows :

"There is nothing in the Income-tax Act which prevent the revenue authorities from determining the quantum of the amount which is payable by the appellant as local fund cess, when that question properly arise before them in the course of proceedings for assessment. The Income-tax Officer is, within the limits assigned to him under the Act, a tribunal of exclusive jurisdiction for the purpose of assessment of income tax. He has under the Act to decide whether a particular receipt is income, and it is not predicated that he must make some person or body other than the assessee who may be concerned with that receipt as a party to the proceeding before he decides that question. As between the State and the assessee it is his function alone to determine whether the receipt is income and is taxable. The determination by the Income-tax Officer may be questioned in proceedings before superior tribunals which are permitted by the Act, but the Income-tax Officer cannot be prevented from determining a question which properly arises before him for the purpose of assessment of tax, merely because his determination may not bind some other body or person qua the assessee".

20. In that case it was brought to the notice of the Supreme Court that the tenant was taking proceedings in a civil court against the landlord to recover the amount paid in excess as found by the income-tax authorities. The Supreme Court dealt with this aspect at page 569 as follows :

"We are not in this case concerned with the merits of that claim. The appellant has received certain amount under a contract with the syndicate (lessee), and if that amount was income, the fact that the person who paid it may claim refund will not deprive it of its character of income in the year in which it was received".

21. This decision appears to us to afford a complete answer to the submission made on behalf of the writ petitioners. As the ITO has exclusive jurisdiction to go into the question whether a particular amount was income or not, he cannot be prohibited from making an enquiry in relation to the decreed amount.

22. In this connection, we may also refer to two other decisions. In Hazrat Pirmohamed Shah Saheb Roza Committee v. CIT [1965] 58 ITR 360 (Guj), the question for consideration was whether the properties held by the assessee were held under trust or other legal obligation so as to be exempt under the Indian I.T. Act, 1922. The Charity Commissioner functioning under the Bombay Public Trusts Act, 1950, had held the assessee to be a public trust. One of the contentions taken before the Gujarat High Court was that it was not open to the revenue authorities to examine the question afresh for themselves and that they were bound by the decision of the Charity Commissioner. Shelat

C.J. and Bhagwati J., as their Lordships then were, of the Gujarat High Court, held as follows (p. 391) :

"The inquiry by the Charity Commissioner under the Bombay Public Trusts Act, 1950, is of an entirely different character from the enquiry under the Indian Income-tax Act and if we look at the provisions of sections 79 and 80 of the Bombay Public Trust Act, 1950, it is clear that the decision of the Charity Commissioner which is made final and conclusive is only for the purpose of proceedings before the civil court and there is nothing in those section that precludes the revenue authorities from examining whether the terms of the section under which the claim for exemption is made by the assessee are satisfied or not".

23. This decision was taken on appeal to the Supreme Court and was reserved in Hazrat Pirmohamed Shah Saheb Roza Committee v. CIT . The Supreme Court, however, did not pronounce on this point, as it was unnecessary to do so, since the result of the Supreme Court's decision was not inconsistent with that of the Charity Commissioner.

24. There is also another decision of the Supreme Court in Narendrakumar J. Modi v. CIT [1976] 105 ITR 109. In that case for the assessment year 1955-56 it was claimed that there was a partition with effect from October 24, 1954, in the HUF. This claim was rejected by the ITO, and on appeal the AAC confirmed the ITO's order. Before the AAC reliance was placed on a preliminary decree of the civil court passed in 1965 in a suit instituted in 1961. The Supreme Court held that the income-tax authorities had their own view to take and that they were not bound by the decree. The plenitude of the ITO's power to examine the matter for himself and arrive at his own decision was recognised in this case also.

25. The learned counsel for the writ petitioners sought to distinguish this decision by contending that the claim of the assessee for a partition in 1954 in that case was wholly inconsistent with the later proceedings before the civil court, and that it was in that context that the Supreme Court pronounced that the income-tax authorities were not bound by the decree. It was also contended that the observation in the said decision at page 114 of Narendrakumar J. Modi v. CIT cannot be taken to be a pronouncement on the legal position. We are unable to agree with this submission. Even an obiter dictum of the Supreme Court in so far as it expounded the law would be binding on all the courts under the Constitution. The dictum of the Supreme Court is also, if we may say so with respect, in line with the earlier decision of the Supreme Court already adverted to. It cannot be taken to be a causal observation as contended by counsel. The result is that the ITO cannot be prohibited from making any enquiry on the question as to whether the Federation had earned any income, which was assessable to tax, and whether the amounts, which were the subject-matter of decrees, belonged to the depositors or to the Federation.

26. As indicated earlier, one of the contentions urged by the petitioner was that the only person who could record the statement in relation to the assessment on the Federation was the ITO, who had jurisdiction over the assessee, and that, in this case, a number of other persons have been making enquiries. It was submitted that the enquiry by other ITOs or other authorities was without jurisdiction. In this context the file relating to the authorisation of the several ITOs was placed

before us. As mentioned earlier, a notification was issued conferring jurisdiction on the ITO, City Circle-I(2), with reference to the particular assessee. The ITO issued commissions to several officers in order to expeditiously record the statements of the large number of persons, who had filed the affidavits. The income-tax assessments are governed by time-limits, and it was thus necessary to avoid any delay. We have looked into the files and we find that commissions had been issued to several officers for getting the statements recorded. The ITO could under the law take recourse to issuing commission for recording statements, and this position under the law is not in dispute. As a large number of persons were concerned, he had necessarily to adopt this course. We do not find anything lacking in authority in several persons recording the statements.

27. The next point that was urged was that the witnesses should be permitted to have their counsel present before the addressing officer. It was stated that any statement recorded from the decree-holders was likely to prejudice them. It was pointed out that even though the decrees had been passed under order 37, rule 1, CPC, any statement made by the decree-holders to the effect that they had not lent the amounts or that the amounts did not belong to them was likely to prejudice them, and that there could be protection to the decree-holders only if they were allowed to have their counsel with them, so that any statement, which was injurious to their interest did not go on record. It was also stated that though a witness is bound to answer all the questions under s. 132 of the Indian Evidence Act, 1872, the witness may claim that any answer may incriminate him. If he was compelled to give an answer, then such an answer could not be proved against him in any criminal proceedings. It was, therefore, submitted that a witness, who is a lay person, would not be aware of his rights, and that it was necessary to allow him to be present with counsel at the stage of the recording of the evidence.

28. We do not find any provision under the law which authorises a witness to be represented by or appear with counsel when his statement is recorded. There is a decision of a learned single judge of the Calcutta High Court in Sarju Prasad Sharma v. ITO [1974] 93 ITR 36, which runs counter to this contention. In that case a partner by name Sharma was required to give evidence by the ITO in relation to the assessment of the firm in which he was a partner. The firm was represented by counsel. However, the ITO found that the counsel did not properly interpret the evidence, which was given by the deponent in Hindi and which was translated into English. He, therefore, did not want to allow the authorised representative of the firm to be present at the time of recording the statements of the witness. The partner, who was seeking to give evidence, wanted to be represented by an authorised representative. In dealing with this claim, the learned judge pointed out as follows (p. 37) :

"Powers of the Income-tax Officer to direct appearance of witnesses or production of books by them or through their authorised representatives have been laid down in section 131 of the Act. The said powers, it seems, are co-terminous with the powers of a civil court under the Code of Civil Procedure.

29. A witness has no right to be represented in a proceeding by a lawyer or an authorised representative. So, it seems to me that Sarju Prosad Sharma when he appears before the said Income-tax Officer in terms of the summons dated February 11, 1972, has no right to be represented

by an authorised representative but the proceeding before the said Income-tax Officer is none the less a proceeding for assessment of the assessee-firm, Messrs. S. P. Sharma. The assessee-firm certainly has the right which it cannot be deprived of, in my opinion, to be present when any proceeding in regard to its assessment goes on or takes place.

30. We agree with this statement of principle by the learned judge. We hold that a witness has no right to take his counsel along at the time when his statement is recorded.

31. We may examine the question of any possible prejudice to the deponent on the facts herein. If a particular witness stated that he lent any money to the Federation and that the amount was covered by the decree, then there is no likelihood of any prejudice to the witness as a decree-holder. If he stated on oath that he did not lend any money and that someone else was at the back of the decree, then even assuming that in proceedings under order 37, rule 4 of the Code of Civil Procedure, such a statement could be used, still there would be no prejudice caused to the witness, because he had not lent any amount and he was not likely to suffer by the decree being assailed under order 37, rule 4, C.P.C. The grievance of the petitioners appears to be thus more imaginary than real. Further, s. 132 gives protection in respect of answers which the witnesses are compelled to give in any criminal proceedings. The apprehension was in respect of civil proceedings, and any statement recorded, despite objections, is not covered by any protection given in respect of such proceedings contemplated by s. 132 of the Indian Evidence Act. A witness has to speak the truth and the whole attempt at having a counsel to be present at the stage of the enquiry appears to be open to the objection that he does not want to come forward with the truth or to allow the truth to go into the record. It is not possible, therefore, to accept the submission of the learned counsel for the petitioner.

32. In this connection a passage from Phipson on Evidence, tenth edition, was brought to our notice. The relevant passage occurs in Chapter 15 under the head "Facts excluded by privilege". After observing that the matters protected from disclosure on the grounds of privilege were, (1) professional confidence; (2) title-deeds, evidence, lien; (3) matrimonial communications; (4) incriminating questions; and (5) questions of adultery in divorce cases, the learned author has stated as follows :

"The privilege may be that either of the witness himself, or of another whom he represents; in the former case he will 'not be compelled' and in the latter he will not be allowed (without the principle's consent), to disclose the protected matter. Such claims arise more frequently on applications for discovery or inspection before trial than with reference to testimony in the witness-box, but the principles are substantially the same.

They should, in strictness, be made by the witness himself, and not be made or argued by counsel, whether in the cause, or specially instructed; but in practice they are now usually both taken and argued by the latter on his client's behalf as otherwise the privilege might be lost through ignorance, since, though the judge ought, yet he is not obliged, to advise the witness of his rights. The claim may be made at any stage of the examination and is determinable by the judge, who may, if he thinks fit, hear other witnesses on the point."

33. The learned author has put the matter more on practice than on any principle of law. In fact, the principle stated is that the privilege could be claimed only by the witness himself and not by any other person or counsel in the cause or specially instructed. The views of the author do not support any proposition that there is any right to be represented by the counsel. The attempt to get witness to be accompanied by counsel is likely to result in truth being kept off the record. It would not be proper to accept a plea leading to the consequence of truth being filtered out of the record.

34. The learned counsel for the Federation, Mr. K. N. Balasubramaniam, stated that the ITO in the assessment proceedings was functioning virtually as a court and that he should conduct himself as such. According to him, at the stage at which these enquiries are made, the assessee should be allowed to be present, if necessary, with his counsel. In his submission any enquiry conducted behind the back of the assessee would be wholly illegal.

35. It is necessary to remember that the Federation is only a repondent. The present petitioner are by the persons, who have obtained decrees as against the Federation. The Federation itself had filed a writ petition, W.P. No. 2120 of 1977, which was disposed of by the judgment dated January 23, 1979. It is not clear how a respondent in the writ petition is entitled to seek any relief of declaration in the present proceedings. Therefore, the points sought to be canvassed by the learned counsel would thus be alien to the present proceedings. These points have been set out in what is called "a reply affidavit" sworn to by the managing director of the Federation. The learned counsel was not in a position to satisfy us on the legal position that a reply could be filed by one respondent to answer conter affidavit filed by another respondent. Though some argument was sought to be advanced as if the interests of the Federation were hostile to the interest of the two writ petitioners, the fact that both of them are interest only in thwarting an enquiry by the ITO is too patent to be missed.

36. The ITO combines two functions, viz., to gather the facts and to adjudicate on them in the light of the law. He does not function as a court for all purpose, and is not bound by any technical rules of evidence. After gathering the facts in his own way, he is bound to comply with the principles of natural justice if he proposes to use them in the assessment. The Supreme Court in C. Vasantlal Co. v. CIT [1962] 45 ITR 206, has gone into the scope of the jurisdiction of the ITO to collect evidence. In that case the assessee produced certain books in which there were entries in favour of two firms. It was explained by the assessee that these two parties were its constitutes and that the entries represented certain transactions with them. The ITO was not satisfied with the explanation. He, therefore, examined the partners of the respective firms in whose names the entries had been made. On a consideration of the material so gathered, he came to the conclusion that the entries were "fictitious". He, therefore, disallowed the claim of the assessee in respect of the payments made to these parties, which resulted in making a corresponding additions to the returned income. The question before the Supreme Court was whether the statements of the partners of the respective firms, who featured in those entries, could be utilised in the assessment proceedings, as the said statements had not been recorded in the presence of the assessees. The contention was that those statements did not constitute "legal evidence". The Supreme Court pointed out at page 209 as follows :

"We are unable to hold that the statements made by Achaldas and Poonamchand before the Income-tax Officer were not material on which the Tribunal could act. The case of the assessees was that the transactions in respect of which they had maintained accounts were genuine transactions and that they had received payment from the parties who suffered losses, and had made it over to the parties who had earned profits. The income-tax authorities held that the transaction were not genuine transactions. Again the evidence of Achaldas and Poonamchand clearly showed that these amounts were repaid. In the statement made by these two persons before the Income-tax Officer it was asserted that the repayment of the amounts of the cheques was made to the assessee. Before the Appellate Assistant Commissioner they stated that they handed over the moneys to some other persons whose presence could not be procured. There is nothing on the record to show that the Income-tax Officer had not disclosed to the assessees the material he had collected by examining Achaldas and Poonamchand. In any event, the Appellate Assistant Commissioner in the interest of justice and fair play gave the assessee an opportunity to cross examine these two persons. The Income-tax Officer is not bound by any technical rules of the law of evidence. It is open to him to collect materials to facilitate assessment even by private enquiry. But if he desires to use the material so collected, the assessee must be informed of the material and must be given an adequate opportunity of explaining it. The statements made by Achaldas and Poonamchand before the Income-tax Officer were material on which the income-tax authorities could act provided that the material was disclosed and the assessee had opportunity to render their explanation in that behalf."

37. It is thus manifest that there is great latitude allowed to the ITO in the collection of materials and he does not act as a court at that stage. There are no two parties before him, and the procedure in the adversary system of proceedings cannot be applied to him. However, the ITO, before he uses the materials so collected, is bound to give the necessary opportunity to the assessee to test the evidence, to adduce any evidence in rebuttal and to explain the facts that appear against him. Thus, it is clear that the ITO cannot be asked to put on, or be thrust with, the garb of a court, even at the stage of collection of evidence. There can be no reasonable apprehension of the ITO not utilising the favorable materials appearing in such evidence. The Supreme Court has examined this aspect in Suraj Mall Mohta and Co. v. A. V. Visvanatha Sastri [1954] 26 ITR 1, at page 13 and pointed out the right available under the I.T. Act, as contrasted with the rights available under the Taxation on Income (Investigation Commission) Act, 1947 (Act No. XXX of 1947). It was pointed that while in the proceedings under Act No.XXX of 1947 the assessee would be entitled only to get copies of that portion of the materials, which were brought on record and which were going to be used against to him, the portion of the material which was in his favour and which had not been brought on record may not be available to him. In contrast, it was observed that there was fullest right of inspection under ordinary law and the Civil Procedure Code available to an assessee in order to meet the case made against him. We cannot assume that the ITO is not likely to act i accordance with law and give directions to him. Therefore, the apprehension of the Federation at his stage appears to be absolutely misconceived.

38. The result is that the petitioners are not entitled to any relief in the present writ petitions and the writ petitions are dismissed with costs. Counsel's fee Rs. 250 in each writ petition.

Balasubrahmanyan, J.

39. My learned brother, in his judgment, has given the genies and the factual background to these writ petitions. They arise out of proceedings for assessment taken by the ITO, City Circle I(2), Madras, against an Apex Co-operative Society going by the name of Tamil Nadu Farmers Service Co-operative Federation. The ITO subjected the Federation's account books to close scrutiny. They showed a number of cash credit entries with recitals which made them appear to be debts due by the Federation to the various parties named therein. The ITO, however, had a hunch that these entries were bogus. At any rate, he was not prepared to accept the account entries on their face value and he wished to make a further prove and ascertain the real nature and source of the amounts represented by these cash credits. He, therefore, began investigation, both directly and also by issuing commissions to his colleagues who had territorial jurisdiction over the parties whose names appeared in the cash credit entries. In inquiry set on foot by the ITO involved the summoning of these parties for examination as to the nature and source of the amounts of receipts represented by the credit entries in the Federation's accounts. To any one measurably familiar with the practice and procedure followed by the I.T. department in the investigation of cash credit, there is nothing out of the ordinary in the way the ITO in this case had proceeded with the investigation of the credit entries in the Federation's account books. Hundreds of thousands of assessment are being done every day by the ITOs all over India, and quite a large number of assessment involve an investigation into cash credit entries in business accounts. Indeed, it may be said that cash credit entries have now become the daily bread of the rank and file of the I.T. department. This is, as it should, be because it has been long accepted principle of income-tax law that an assessee is obliged to explain the nature and source of cash credits in his accounts and in the absence of satisfactory explanation on his part, the assessing authorities can very well proceed to treat the amounts of cash credits in question as representing taxpayer's income. This principle has been laid down as early as in G. M. Madappa v. CIT [1948] 16 ITR 385 (Mad), if not earlier. The doctrine has been so well-settled by decisions of courts that when the I.T. Act was amended in 1961, it was incorporated as regular section in Act : see s. 68. Quite apart from this special provision, or the antecedent case law on the subject, it would be reasonable to hold that an assessing authority must have the requisite power to question every entry in the assessee's account books if he has to effectively discharge his functions of assessing or determining the taxpayer's assessable income. In actual practice, ITOs may not go into a detailed investigation of each and every entry of an account-book in every case. But his power to do so can be in no doubt whatever. That is not only because of the extent of his statutory authority, but also of the very nature of the entries in the books of accounts. A taxpayer's income, where he maintains account books and where he records his transactions therein, is ascertainable by comparing the receipts found therein of an income character, on the one hand, and his outgoings of an expenditure character, on the other, over a period of a year. The accounts will show on their debit side items of expenditure; the credit side in the books would carry entries relating to income receipts. But the credit side would also carry various other credit entries which do not represent receipts of an income character. Non-income credit entries can relate to various items, such, for instance, as amounts borrowed by the assessee from the creditors or amounts belonging to the third parties, but kept with the assessees in suspense and the like. What distinguishes credit entries of one kind from credit entries of other kinds are the recitals or the narrations in the accounts which are entered by the book-keeper against each entry. If the recitals of each and every entry are true, then by a mere look at the accounts, without more, a correct assessment of the income can be made, because the entries themselves distinguish the assessee's income receipts from his non-income

receipts. But this will not be the case if the recitals are false. Although the relevant narration in the accounts may show the credit entries as representing loans due by the assessee or moneys of third parties held in suspense, those amounts, in truth, would be the assessee's own income receipts, masquerading under false recitals. It such be the case, the reality of every such credit entry would become apparent only if the nature and source of that credit entry are further probed into. If this investigation be not allowed, or is not carried out, there is risk of taxable income being passed off either as borrowing with all that at implies, such as under-assessment, tax evasion and the like. The ITO, charged with the duty of adjusting the fiscal liability of the taxpayers must, therefore, be held to be not under the slightest obligation to always act on account entries, without further verification. What applies to account entries would also apply o supporting evidence which the assessee may produce, such, for instance, as vouchers, receipts, promissory notes, bonds and the like. Just as account entries can be cooked up or window-dressed, so can supporting documents be fabricated. The case for a complete investigation into all these matters of accounting is, therefore, unanswerable, not only from the point of view of a full and correct assessment of the individual assessee concerned, but also to maintain a fair equality as between different assessees in the same tax brackets.

40. The assessee in the present case, namely, the Co-operative Federation, had taken its stand on the entries in their accounts and asserted that they represent only borrowings from the various persons named in the concerned entries. The petitioners are some of the creditors who figure is those entries. Although it is not their own individual assessments which is the subject-matter of investigation in the present proceedings before the ITO, they are concerned about the investigation which is now being undertaken by the ITO and colleagues of his to whom he had issued commissions in that regard. Their endeavor in these writ petitions is to stop the ITO, who is in charge of the Federation's assessment, from proceeding with the further investigation about the credit entries in the Federation's assessment.

41. Mr. Gopalaratnam for the write petitioners was not beard to deny, in principle, the ITO's power or duty to probe into the entries of taxpayer's account books in the course of assessment proceedings. More particularly, he does not dispute the position that the Officer has jurisdiction to inquire into the nature and source of cash credits which figure in an assessee's accounts. What he urges is that in this case a situation has arisen under which the ITO must be prohibited from proceeding further with his investigation into the credit entries in question. Learned counsel' thesis is that further probe into the matter is closed at the present juncture. He does not say that there is any bar to the ITO's investigation under any specific provision of the income-tax code. Nor does he point to the occurrence of any event which, according to him, brings into force any statutory bar. What is relied upon is the phenomenon of a number of decrees having been passed against the Federation at the instance of the parties who figure in the Federation's accounts as creditors in respect of the very transactions on which the ITO would like to have the benefit of further investigation. The contention of Mr. Gopalaratnam is that when suits had been filed by the petitioners and other creditors of the Federation and decrees had been obtained against the Federation, they, in effect, provide conclusive adjudication as to the truth and genuineness of those credits. It is, in this sense, that the decrees passed by the court against the Federation are stated to bar further investigation in income-tax proceedings. Mr. Gopalaratnam does not forget the fact that

the ITO is not a party to the suits filled against the Federation. The decrees have to be respected by the ITO for no other reason that they are decrees of court. He suggested that the ITO cannot deign to ignore or flout civil court decrees to which the assessee is a party and which effectively adjudicates on the truth of the transactions in question. It is suggested that when once the court had adjudicated on the debts, it is not open to the ITO either to ignore or override that adjudication and take quite a contrary view of the nature and reality of the transaction.

42. This argument of the learned counsel raises a point fundamental to the understanding of our legal system. Time was when courts of law were the only forums which were charged with the duty of deciding disputes of every kind and determine the rights and obligations of parties. But over a period of time and more especially during recent years, there has come into being a number of quasi-judicial tribunals and authorities, who are invested by the law with the power and the duty to adjudicate upon particular kinds of disputes arising between parties. But even after the proliferation of administrative and quasi-judicial tribunals, common law court still continue to retain their individuality. The question, however, is whether the decisions of the common law courts in the present milieu of administration of justice may be regarded as possessing a superior kind of adjudication and an overriding force over the determination of tribunals. In examining this question, we must, of course, leave out of account the position of the superior courts, such as the High Court and the Supreme Court who undoubtedly have a power of superintendence not only over subordinate courts, but also other tribunals of every kind. This power of superintendence the superior court have been exercising by invoking their revisional jurisdiction or their prerogative powers either under article 227 or under article 226 or article 32, as the case may be. Apart from this special position of the superior courts who possess powers of superintendence over inferior courts and tribunals, the question is, whether the tribunals in this country can be regarded as possessing an inferior caliber as compared to common law courts ? The point which has been raised by Mr. Gopalaratnam seems to call for an answer to this fundamental issue.

43. One way of short-circuiting the whole discussion would be to way that the ITO, not being a party to the litigation between the taxpayer and a third party, is not bound by the decision of the court, between them. But in the way the matter has been raised by learned counsel, it would be essential to find out whether a decree of a civil court must be invested with a halo round its head and the ITO, or other administrative tribunals, for that matter, must in every case be held bound to respect and give effect to the decrees of court in any matter in which the decision of the courts become relevant in the course of discharge of the tribunal's own functions. I may at once observe, without any intention to belittle the importance of courts, that they do not exist by divine right. On the contrary, they exist in much the same as any other non-judicial tribunal exists; that is to say, as creatures of law. It is law which had created them and permitted their continued existence. It is to the law that the courts owe their present position. Tomorrow they can be abolished or altered beyond recognition, if the law as wishes. Courts have, therefore, neither permanence nor pre-eminence. They are not only created by law but they also function according to law. All this is part of the rule of law system. In this sense, therefore, we cannot put a special halo over courts of law. Nor can their decrees possess added weight for no other reason that they issue forth from the courts. Under any legal system, the tribunals have their respective parts to play. Their decisions too are important in the way law accords them importance. The ITO is a tribunal of a kind. He is duly appointed under the I.T. Act to

discharge the powers and functions which are well-defined by the statute. His principal job is to make an assessment of the income and levy income-tax on the basis of his determination. For the purpose of discharging these functions, he is invested with the power to gather information, material evidence, and the like. A specific power is conferred on him to summon witnesses, enforce their attendance, issue commissions and the like. In this respect, his powers are co-equal with those of courts of law under the Civil Procedure Code. He is yeld to be a tribunal within the meaning of s. 135(2) of the Code of Civil Procedure, and witnesses who have to appear before him are protected from arrest. He is also a court for purposes of the Criminal Procedure Code. In these circumstance, the ITO, in his own sphere, is a tribunal of plenary jurisdiction subject to no other control and limitations save those which are enacted in the income-tax code. It stands to reason, therefore, that the investigations and inquiries launched by him are not subject to the jurisdiction of ordinary courts. Indeed, there is specific provision in the I.T. Act which forbids courts of law from interfering with the ITO's jurisdiction to assess : vide s. 293. It is, therefore, not correct to regard a decree of court as a self-propelled or a self-acting bar against the powers of inquiry and investigation conferred by the statute on the ITO. Nor can it be supposed that when the ITO pursues his investigation into the reality of a transaction which has relevance to the assessment proceedings before him, he commits an act of disrespect to a court of law, but not accepting an adjudication by that court on the self-same transaction in a litigation between the taxpayer and a third party. In a board sense, no doubt, every one must respect the decisions of courts and no one can interfere with the working of courts. The law relating to contempt has developed only on this board basis. But to say that the ITO is bound to respect a court decree and he cannot proceed with his allotted task of investigating a fact relevant for the assessment of an assessee in his charge cannot be accepted even on the basis that a decree of court has to be shown the respect to deserves. The ITO has a job to do under the I.T. Act and he cannot be prevented from doing it because a court might have passed a decree in a litigation between the assessee and a third party.

44. As was earlier mentioned, if, on the facts, the ITO was not a party to a litigation, then, on the principle that no man is bound by a decree to which he is not party, the fiat of the court cannot run against the ITO. What is more, the ITO cannot be jointed at all as a party to a private litigation in a way which would set at naught any assessment or investigation made by him in the course of assessment. Modern taxation, no doubt, may be bring about many situations in which the taxing authorities and a court of law might have to cross each other's paths. Taxes on a wealth or income are generally on the owners of wealth and the owners of income. It may well be a matter of dispute in giving cases as to who the owner of the wealth or income might be. The issue might arise as between the ITO, on the one hand and the taxpayers, on the other, in assessment proceedings. The same dispute might arise between the taxpayers and another adversary who claims the real ownership. The basic issue may be the same in income-tax proceedings and in civil litigations, namely, the issue as to ownership. But the slant of the proceedings, the objective to be attained and the manner of adjudication are quite different in the two sets of proceedings. In a civil litigation where the title as between the taxpayer and the third party has to be resolved, the court and the court alone has to decide the dispute, because the matter properly arises as an issue in the suit. In such a litigation, the ITO has no place, although he may be interested in knowing who the owner is. His interest is not a proprietary interest by any means. It is only that of an officious by stander. His concern does not go further than to collect the tax on the property or on the income. In proceedings

for assessment, on the other hand, the taxpayer alone has locus standi either to face or fight an assessment. A third party, even though he may claim ownership over the income or property of the taxpayer, cannot intervene and cannot be asked to be made a party to the assessment proceedings. The two proceeding for assessment, are thus entirely different. One is adjudicatory, the other is investigative or inquisitorial. In any given case, the ITO may save himself the trouble of going into the issue of ownership and prefer to abide by the decision of the civil court on that question, if one is available. But he is not bound by the court's decision. The result is that on the basis question of title in any given case, it is quite possible that a court may take one view and the ITO another view, on the principle that one is not bound by the other's decision. In such a case, a piquant situation of two contradictory determinations by two competent decision-makers on the same issue would arise. Lord Denning has characterized this state on affairs as a "disgrace to the law" in In re Vandervell's Trust [1970] 46 TC 341 at 353 (HL). That was a case where the income from certain shares of a company was assessed on the ground that the original holder of the shares by name Vandervell had retained the beneficial interest in the shares even after transfer in favour of a third party. The third party-transferee, in turn, transferred them to certain trustees created under Vandervell's trust. On the dividends which had been declared and distributed, the Revenue had made an assessment to surtax on the executors. A situation thus developed that while the trustees, who had purchased the option from Vandervell's transferee, were in possession of the dividends. The executors accordingly filed on originating summons in the High Court, Chancery Division, against the trustees for an order that the trustees should pay the executors of Vandervell's estate the entire dividends on the shares. In those proceedings, the commissioners of Inland Revenue were sought to be added as parties under O. 15, r. 6(2) of the Supreme Court Rules. This procedural provision enabled the court to order any person whose presence before the court was necessary to ensure that all matters in dispute in the cause or matter might be effectually and completely determined and adjudicated upon. The court originally added the Commissioner, Inland Revenue, as a party. But subsequently on a motion by the trustees they were struck off as defendants. On appeal, the decision was reversed by the Court of Appeal. Lord Denning and other members of the Court of Appeal were of the view that court of law can add the Commissioners of Inland Revenue as parties to an existing proceeding between a taxpayer and a third party. Lord Dennning observed that it would be a just and convenient course to join the Commissioners as proceedings. It was in that conncetion that Lord Denning observed that it would be a disgrace to the law that there should be two parallel proceeding in which the self-same issue was raised leading to different and inconsistent results. The learned Master of the Rolls observed that different and inconsistent results of this kind are to be deplored and avoided and this can achieved by bringing all parties before the court so as to have the issue finally decided between all of them and so that all be bound. This decision of the Court of Appeal, however, was reversed by the House of Lords. Lord Reid, no doubt, thought that "both justice and convenience require that the issue should be decided in proceedings in which all three, the Crown, A and B, are parties, so that all shall be bound by the decision". However, at the end of the discussion, all he clould lay down was that the Commissioners would be bound to treat as res jidicata any decision of a competent court to which the Crown was a party on any issue which may come before them. But he agreed with the other members of the House of Lords in holding that the Crown was not a proper or necessary party in the private litigation betweeen a taxpayer and another even in cases where the pivotal issue is about title to taxable income. Viscount Dilhorne, disagreeing with Lord Denning, said that the Crown cannot be made a party to the civil litigation even by consent,

since they cannot waive their right to make the adjudication in the proceedings for assessment. Viscount Dilhorne proceeded to hold that the determination of the matters in dispute between the taxpayer and his adverse in a civil action cannot effectually or completely determine the liability to tax. He rejected the notice that the action at law on the one hand, and the assessment, on the other, are parallel proceedings or that the issue that arises in the two proceedings can be characterized as the self-same issue. Lord Willberforce, like Lord Reid, thought that it would be convenient if a procedure existed for enabling the Crown to be bound by inter-subject litigation, but he was quite clear that it would introduce a new dimension into litigation, if the Crown can be brought in either generally or in specified case or at the discretion of that court merely because dispute before the court of commercial or dispositive character have tax implications. Lord Wilberforce feared that such a course of action might even spell unwholesome consequences to one at other of the parties concerned. Lord Diplock was more forthright in laying down the proposition that the civil court's decree is not binding on the Revenue even in cases where the correctness of the assessment depends on an issue which had fallen for decision before the court in the action at law between the taxpayer's and a third party. Lord Diplock made it clear that the Crown has no other interest in an issue of that kind excepting its effect upon the taxpayer's liability to tax. The noble Lord conceived of situations in which the taxpayer and the crown might agree to accept as correct facts already found in a judgment of a court, whether or not they were parties to that judgment. But, he was quite definite that the function of the taxing authorities differs from a court of law on the hearing of a civil action. He pointed out that whereas a court of law adjudicates upon issue in dispute between the parties to the civil action which they have chosen to submit to the court's adjudication and that the court is not entitled to adjudicate or any other issue or to make an order which none of the parties to the action has sought. The taxing authorities, by way of contrast, here to satisfy themselves by lawful evidence about the correct quantum of liability. He proceeded to observe that the judgment of the court in the action would not be lawful evidence of the facts found therein. These facts, according to the noble Lord, will have to be proved afresh by the taxpayer if the grounds on which he resists an assessment depend on the truth of those facts. Lord Diplock bases the whole point of his decision on the circumstances that the one and only method by which an assessment and a taxpayer's liability can be determined or challenged is the method prescribed by Parliament, namely, an appeal to the Commissioner. He concluded that it would be an irregularity and trespass upon the jurisdiction which Parliament has confided exclusively to the Commissioners, if the court were regarded as competent to conclude the issue in a civil action even where the Crown were made a party.

45. A similar problem arose across the Atlantic in the Supreme Court of Canada. The case is reported as Her Majesty The Queen v. J. B. & sons Co. LTD. [1970] SCR 220. In that case the court has to decide the question concerning the incidence of sales tax liability on the sale of a mill. Sales of such items were originally exempted under the Canadian Excise Sales Tax Act, 1963. The sale of this mill had been effected when the exemption applied. Subsequently, the exemption was repealed. The amending legislation provided for refund of tax which became payable by the vendor who was not permitted by his contract to add the tax to the purchase price. In the instant case, the purchaser was liable under the contract to pay the seller any sales tax that might be imposed by the law. Under a supplementary agreement, the purchaser paid 3,40,000 Canadian dollars to the seller towards possible sales tax liability. The supplemental agreement, however, made provision for the parties to move the court for adjudicating on the question as to who under the agreement should bear the sales

tax. In accordance with this last provision in the supplemental agreement a subsequent civil action between the purchaser and the seller was initiated. In disposing of that case, the Supreme Court of Ontario held that the purchaser was not be to be made liable for tax. In this action at law between the seller and the purchaser, the Department of Revenue was not made a party. Subsequently, in the assessment proceedings, the seller prayed for a refund of the sales tax of 3,40,000 dollars from the Government. The ground for refund was that the original contract between the parties did not entitle the seller to add the tax to the sale price and that this question was decided by the Ontario Supreme Court. The tax authorities, however, rejected this claim for refund. The seller, thereafter took the matter by petition of right before the Exchequer Court of Canada. In the Exchequer Court, Cattanach J. did not agree with the decision of the Ontario Supreme Court on the construction of the contract of sale between the parties. He did not agree with the view of that court that the original contract of sale did not comprehend future taxes to be paid by the purchaser. Notwithstanding that, the learned judge felt bound by the earlier judgment out of considerations of "judicial comity." He upheld the claim for upheld the claim for refund of tax made by the seller because he felt that judgments of courts of equal or co-ordinate jurisdiction should be valid in the absence of strong reasoning to the contrary. Against this decision of this question, the full court of the Supreme Court of Canada sat to consider the point. After hearing arguments, they gave unanimous judgment in favour of the Crown. Cartwright C.J. held that they were in to way fettered by the judgment of the Supreme Court of Ontario. Judcon J., another member of the Supreme Court, held that the Exchequer Court alone has exclusive jurisdiction to make the decision untrammelled by the declaratory order made by the Supreme Court of Ontario. Pigeon J. held that the proceedings before the Supreme Court of Ontario had only the appearance of contest between the litigants, but its true object was not a determination of the rights of parties between themselves and its only objective was a finding against the Crown and in favour of one of the parties. In the course of his judgment, Cartwright C.J. brought out the anomaly in the existing procedure in the following words :

"It is obvious that the combined result of all the proceedings in this matter up to the present time is gravely unsatisfactory. The Supreme Court of Ontario in a judgment that would appear to bind the respondent but does not bind Her Majesty, has construed the contract that the respondent cannot recover the tax from Atlas (i.e., the purchaser). This court an appeal from the Exchequer Court, in a judgment that will bind the respondent, but would appear not to bind Altas is construing the contract as meaning that the respondent can recover the tax from Atlas and consequently cannot obtain refund of tax from Her Majesty".

46. The learned Chief Justice proceeded to observe on the desirability of contriving some procedure by which this anomaly can be removed. The learned Chief Justice observed :

"Doubts were expressed during the argument as to whether there exists any procedure whereby the right of all three parties concerned, the appellant, the respondent and Atlas, could have been determine in a single proceeding to which all were parties. If such procedure is available in either the Exchequer Court or the Supreme Court or the Supreme Court of the Province it should of course have been resorted to; if no such procedure is available, I venture to suggest that it should be provided by appropriate legislation".

47. It may be observed that this was the view expressed by some of the learned judges in the Vandervell's case [1970] 46 TC 341 also.

48. The comments of the learned judges in the two cases I have referred to make it quite clear that any finding or adjudication on an issue in a civil litigation between the taxpayer and an adversary of his, is not binding in any proceedings for assessment which is entrusted by the statute to be determined by accredited revenue authorities. In these two cases, the discussion of the question was based on the special provisions in the taxing code under which exclusive jurisdiction to determine all matters concerning the assessment is found vested in the taxing authorities. The adjudication by civil courts of matters which have relevance to the assessment have been considered only in the light of the special provisions of the taxing code. There was no occasion in these two cases for any argument to be addressed before these courts on the basis that somehow a decree of a civil court in civil litigation has an overriding force which the taxing authorities are bound to respect and give effect to. But the discussion, such as we find in these cases, amply bear out the real relation between an adjudication in a civil court, on the one hand, and the revenue proceedings, on the other, even with respect to the self-same issue of fact or of law. The conclusion of the courts in Britain as well as in Canada is that the revenue authorities are not in any way bound by the adjudication by the civil courts. Nor are they to be dragged into the vortex of civil litigation so as to render them bound by the adjudication of the disputes by the court.

49. In the judgment of my learned brother, reference has been made to a decision of our Supreme Court in Chhatrasinhji Kesarisinhji Thakore v. CIT [1966] 59 ITR 562, in which the Supreme Court very clearly laid down that the ITO cannot be prevented from determining the quantum of the amount payable by the assessee when the question properly arises before him in the course of proceedings for the assessment. The Supreme Court has proceeded to observe that as between the State and the taxpayer, it is the function of the ITO to determine whether the receipt was income and was taxable. While the determination of the ITO may be questioned in further proceedings in appeal, the officer himself cannot be prevented from determining the question which properly arises before him merely because his determination may not bind some other body or person qua the assessee. In that case it was submitted before the Supreme Court that with reference to the subject-matter of the assessment, several suits had also been filed. But the Supreme Court did not regard the civil proceedings as having any bearing on the jurisdiction of the ITO.

50. I have endeavoured to place what the consensus judicial opinion is, as voiced in the highest appeallate tribunals of three countries, all of whom follow basically the same legal system and are moved by the same legal system and are moved by the same legal traditions. That consensus is that the Revenue has to perform its allotted task under the statute and it cannot be fettered in the discharge of its functions by any adjudication by courts of justice in private litigation even where that adjudication might impinge on the issue which the Revenue has to face and determine. I am, accordingly, satisfied in this case that the fact that decrees have been passed in favour of the petitioners and against the assessee-Federation in this case., cannot by itself act as a curb or bar to the ITO entering on a further and fuller probe into the reality of the transactions in question, either by direct investigation or by issuing commissions to other ITOs. The petitioners cannot resist the investigation by the ITO by merely furnishing the decrees of court which they had obtained against

the Federation.

51. Mr. Gopalaratnam cited a Bench decision of this court in Jerome D'Silva v. The Regional Transport Authority, South Kanara, . There, the question was, whether a Regional Transport Officer can suspend a public carrier permit issue to a lorry-owner on the score that he had allowed the lorry to be engaged in smuggling foodgrains which was against the law, when in collateral criminal proceedings the lorry driver was discharged by a Magistrate on the ground that the charge of smuggling rice had not been made out by the prosecution. In deciding that question, this court took the stand that the subject-matter of the proceedings before the Magistrate and the subject matter of the proceedings before the Regional Transport Authority were one and the same, namely, the offence of smuggling foodgrains contrary to law. While the court was prepared to accept the position that if no prosecution had been launched against the driver or the owner in respect of the offence under the criminal law, there could be nothing to cancel or suspend the permit on the ground that the driver had contravened the terms and conditions of the permit or the provision of the Motor Vehicles Act and the Rules made thereunder, but the fact that the criminal case has been concluded and ended in discharge or acquittal, according to this court, made a great difference. The position in that event was that the person concerned was found by a competent court as not being guilty of the offence. The court observed that the criminal courts of the land were primarily entrusted with the inquiry into offence and hence it was a desirable thing that their findings should be treated as conclusive in proceedings before quasi-judicial tribunals like the Transport Authority under the Motor Vehicles Act.

52. It may be observed that this case is concerned with the importance to be accorded to a determination of a criminal court and its binding nature. The court in that case did not have to examine the position of the adjudication of an issue inter-partes in a civil litigation. Besides, the court did not approach the problem from the point of view of the jurisdiction of the regional Transport Officer or the Regional Transport Authority, as the case may be, and to find out if under the status there was any statutory curb on the exercise of a jurisdiction by the tribunal, by reason of a pronouncement by a criminal court. It seems to me that faced with a similar argument, although in the context of civil litigation, the Supreme Court in the case earlier cited, had very clearly laid down the position that the administrative or quasi-administrative authority, the ITO in that case, could be prevented from determining a question which properly arises before him merely because his determination may not bind some other body or person. The Supreme Court had further observed that when any question properly arises before and ITO in the course of proceedings for assessment, nothing in the I.T. Act prevents the ITO from determining the quantum of the amount because within the limits assigned to him under the Act, the ITO would be a tribunal of exclusive jurisdiction for the purpose of assessment of income-tax. It seems to me that after the decision of the Supreme Court, although the case arose under the I.T. Act, it is doubtful if any broad proposition can be stated to the effect that the findings and orders of courts of law should be treated as conclusive in proceedings before quasi-judicial tribunals. The question, in my opinion, has to be considered in every case by going meticulously into the relative provisions of the status under which the quasi-judicial is created and its powers define. The principle I am able to extract from the Supreme Court's decision is that where a statue creates tribunal and invests it with jurisdiction to go into certain legal relations or results and also provides for a hierarchy of appellate, revisional or other

tribunals and excludes the jurisdiction of courts in those matters which are properly to be dealt with by the tribunal under the Act, then it cannot be said that the tribunals are in any way bound by the decisions of courts. For, by definition, the tribunals have exclusive jurisdiction with reference to matter which properly arise before them in the course of proceedings for presiding over which they have been duly constituted under the statutes.

53. Another Bench decision in Sankaralinga Thevar v. Thirumalammal [1977] 1 MLJ 189, relied on by Mr. Gopalaratnam, also does not tackle the problem with which we are faced in this case. In that case, the narrow question before the court was that a decree passed by a court, which had undoubted jurisdiction to adjudicate on the subject-matter, could be ignore by a tribunal when the bar of jurisdiction of civil courts was removed by a statutory amendment which came into force subsequent to the passing of the decree in question was not retrospective in operation. This was how a later Full Bench of this court has explained the ratio decidendi of this case. The full Bench observed that the Division Bench ruling was authority for the position that s. 16A of the record of Tenancy Rights Act was not retrospective in operation, the implication being that after the introduction of s. 16A, the jurisdiction of the authorised officers was exclusive and they could render their findings untrammelled by decisions of civil courts.

54. Another point in this case to which I would devote some consideration arises out of certain conditions created by the summons issued by officers of the I.T. Department to the various persons whose names figure in the Federation's books of account as creditors. In the course of such investigation, all of them had filed affidavits before the ITO reiterating their stand that they had advanced moneys to the Federation and had obtained decrees in enforcement of these advances. The main purpose behind the summons issued to them by the ITO seems to be to examine them as to the contents of their affidavits. The contention put forward by them in their writ petitions is whether the ITO has power to cross-examine the deponents to the affidavits.

55. The question has to be considered from the point of view of the ITO's jurisdiction. It seems to me that there is really no difficulty in answering this question as a matter of general law or legal procedure. No deponent to an affidavit is entitled, under the law, to require any court or tribunal to treat whatever he had stated in his affidavit as God's truth, not susceptible of further scrutiny by the court or the tribunals concerned. Order 19 of the Code of Civil Procedure deals with the power of the court to order proof of any fact in a suit by means of affidavits. Rule 2 of that Order deals with the court's power to order attendance of a deponent to an affidavit for cross-examination, either by personal appearance before the court or on commission. There is no curb on the discretion of the court to cross examine the deponent to an affidavit. The powers of the ITO to enquire into the subject-matter of assessment will necessarily include the power to summon the deponent of an affidavit in order to cross-examine him on the contents of his affidavit. The Officer is also given specific powers to compel the attendance of a witness in the same way as the court has. In the present cases, the farmers and representatives of the Farmers' Co-operatives having already filed affidavits before the ITO and having taken a stand that the transactions are genuine, cannot now assume a stand that their affidavits should be accepted by the ITO without question. It is in the very nature of affidavit evidence that it is susceptible of being further scrutinised by a viva-voce examination. The Federation, which is the assessee in these cases, might well have rested content

with flourishing the certified copies of decrees in the ITO's face and taken the line that those decrees concluded the matter in their favour and interdicted the ITO from any further problem into the reality of the transactions covered by the decrees. But, the Federation did not stop short with filing the certified copies of decrees. They themselves obtained affidavits from several so-called creditors and filed them with the ITO. Having done so, it would not be in the mouth either of the Federation or of the deponents to the affidavits to say that further probe into the affidavits should not be made and the basis on which the decrees had been obtained by the deponents of the affidavits as against the Federation cannot be traversed. In one sense, therefore, the present trouble has been fairly invited both by the assessee-Federation and also by the deponents of the affidavits who obliged the Federation by swearing to their affidavits.

56. The last point which was argued by Mr. Gopalaratnam was that, in any case, the deponents to the affidavits, when they appear before the ITO, must be given a right of representation by lawyers at the time of their cross-examination. This request is extraordinary. Such a request could hardly have been made by or on behalf of a witness being examined by a court of law at a trial. Learned counsel did not cite any provision or principle of law which recognized any right to be represented by counsel, in a mere witness, who was not a party to the proceeding in question. He, however, submitted that since the parties summoned by the ITO may not know the intricacies of fiscal law, the services of a lawyer would be essential in order that they may be forewarned of the consequences of answering questions which might render them susceptible to further proceedings. I do not regard ignorance of law in a witness as such a handicap that it should be provided for by giving him facility of legal assistance, Apart from the rare instance of an expert witness on foreign law, I should think that the less law a witness knows the better it would be for the inquiry into facts, and the more it would advance the very ends of oral evidence. A contention of the kind now addressed before us on behalf of these writ petitioners does not seem to have been voiced in recorded case law except in a case decided by a learned single judge of the Calcutta High Court in Sarju Prasad Sharma v. ITO [1974] 93 ITR 36. With respect, I agree with that learned judge in holding that a witness before an ITO cannot have assistance of counsel to see him through his cross-examination.

57. I do not deem it necessary to deal with certain other minor aspects of argument which have been noticed by my learned brother. I may conclude the discussion by observing that I fully concur with the conclusions of my learned brother on these points. I agree with him that the writ petitions have to be dismissed. I agree also with his directions as to costs.