K. Muthukrishnan Vs. Ito and ors.

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Court : Chennai

Decided On : Oct-09-2003

Reported in : [2003]264ITR766(Mad)

Appeal No. : Writ Petitions Nos. 42073 to 42075 of 2003 9 October 2003

Appellant : K. Muthukrishnan

Respondent : ito and ors.

Advocate for Pet/Ap. : Murali Kumaran, *for the Assessee* K. Subramanian, *for the Revenue*

Judgement :

P.D. Dinakaran J.

The petitioner in the above writ petitions, claiming himself as a partner of Rajendra Silks, a partnership firm registered before the Registrar of Firms, Erode, sought for the certified copies of the profit and loss account of the said firm, filed by the managing partner before the respondent income-tax authorities, for three assessment years, viz., 1997-98, 1998-99 and 1999-2000, respectively, to substantiate his right in O.S. No. 454 of 2002 on the file of the Sub-Court, Erode, for declaration of the partnership firm. As the respondents refused to furnish the same, the petitioner has preferred the above writ petitions for issue of a writ of mandamus directing the respondents to issue him the certified copies of the profit and loss account of Rajendra Silks which forms an integral part of the balancesheet for the assessment years 1997-98, 1998-99 and 1999-2000, respectively.

2. Learned counsel appearing for the respondents contends that; (a) the petitioner is not an existing partner; (b) the petitioner has not applied for certified copies of the profit and loss account in the prescribed form, viz., in Form No. 46, and in any event, the petitioner is not entitled to a certified copy of the profit and loss account much less the assessment order, in view of the bar under section 138 of the Income Tax Act, which deals with the disclosure of information with respect to assessees unless it is made in the public interest. Therefore, the prayer sought for in the above writ petition is not maintainable.

3. In reply, learned counsel for the petitioner contends that the petitioner is an existing partner of the partnership firm, Rajendra Silks, and the petitioner is also ready and willing to satisfy the respondents that he continues to be a partner of the firm by obtaining necessary certificates from the Registrar of the firm.

I have given careful consideration to the submissions of both sides.

In this regard, I am obliged to refer section 138 of the Act, relied on by learned counsel for the respondents, which reads as follows :

'Section 138 :

(b) Where a person makes an application to the Chief Commissioner or Commissioner in the prescribed form for any information relating to any assessee received or obtained by any income-tax authority in the performance of his functions under this Act, the Chief Commissioner or 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 and his decision in this behalf shall be final and shall not be called in question in any court of law ......'

No doubt section 138(1)(b) provides that where a person makes an application to the respondent income-tax authority in the prescribed form for any information relating to any assessee, the authority concerned, if he is satisfied that it is in the public interest so to do, may cause to be furnished the information asked for and such of his decision shall be final and the same shall not be called in question in any court of law.

In my considered opinion, the said provision is not at all attracted to the facts and circumstances of the case, since the petitioner continues to be a partner of the firm. In this connection, reference to section 140(cc) would be relevant, which reads as under:

'Section 140 :

The return under section 139 shall be signed and verified. . .

(cc) in the case of a firm, by the managing partner thereof, or where, for any unavoidable reason, such managing partner is not able to sign and verify the return, or where there is no managing partner as such, by any partner thereof, not being a minor. . . '

4. A careful reading of section 140(cc) makes it clear that where the managing partner could not sign or verify the returns, any partner of the firm not being a minor, is also competent to sign and verify the returns. In which case, the partner of the firm is deemed to be a competent person to sign and verify the returns of the partnership firm also.

If that be so, when such a partner applies for the certified copy of the profit and loss account of the assessment of the firm or the assessment order, the same shall be deemed to be made on behalf of the assessee-firm itself and the respondent cannot refuse to furnish a copy quoting section 138 of the Act which bars the respondents to furnish copies relating to the assessee except the same is required in the public interest.

5. The provision of section 138 of the Act, in my considered opinion, is to maintain the secret of the income-tax of the assessee and any information relating to the returns of the assessee shall not be furnished to third parties. But, when the petitioner himself is competent to sign and verify the returns of the firm, in his capacity as an existing partner of the firm, he is entitled to a copy of the firm, in which case, the question of refusing to furnish copies of the firm on an alleged ground, viz., want of public interest, is no more available for the respondent, as

section 138 of the Act itself is not attracted in such cases. Therefore, suffice it to permit the petitioner to get a valid certificate from the Registrar of Firms to the effect that he continues to be the partner of the firm and apply for the certified copy of the profit and loss account and the assessment order if it is required, in the prescribed form to the income-tax authorities concerned and in which event, the authorities concerned shall furnish such of the documents sought for within thirty days from the date of receipt of such application.

6. The writ petitions are ordered accordingly. No costs. W. P. M. P. Nos. 62130 to 62132 of 2002 are closed.