

Before M. M. Punchhi, J.

SABROS FINANCE CORPORATION,—Petitioner

versus

HARYANA STATE AND OTHERS,—Respondents.

Civil Revision No. 20 of 1984

May 15, 1984.

*Income Tax Act (XLIII of 1961)—Section 138(2)—Land Acquisition Act (I of 1894)—Section 30—Reference under section 30—Claimant alleging partnership and seeking production of tax assessment files of the firm—Privilege claimed by the Income Tax Officer under section 138(2)—No order of the Central Government relied upon in this regard—Privilege—Whether could be claimed in the absence of an order of the Central Government as envisaged in section 138(2).*

*Held*, that a plain reading of sub-section (2) of section 138 of the Income Tax Act, 1961 makes it clear that the Central Government may 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 assessee or except to such authorities as may be specified in the order. The Central Government alone is the judge in that regard and is to regulate the provision of privilege by manifesting its intention in the official gazette, the regulating basis for the purpose being that it must keep regard of the practices and usage customary or any other relevant factors while making such order. In other words, the provision envisages the Central Government to be alive to the needs of the time which may require furnishing or withholding of any information or document pertaining to a particular class of assessee or from a particular class of authorities. Unless and until such an order is made no absolute privilege can be conceded to the Income Tax Officer on the mere existence of section 138(2). The Income Tax Officer would have to further justify his stance by disclosing the particulars of the notified order of the Central Government whereunder privilege is claimed. There is no such omnibus power with him to withhold information or document.

(Parar 3).

*Petition under Section 115 C.P.C. from the order of the Court of Shri R. D. Aneja, Additional District Judge, Gurgaon, dated 14th November, 1983, upholding the privilege claimed by the Department.*

M. L. Sarin, Advocate, for the Petitioner.

N. C. Jain, Sr. Advocate and S. S. Jain, Advocate, for the Respondent.

Amar Dhiya, Advocate for A.G. Haryana.

## JUDGMENT

*M. M. Punchhi, J, (Oral).*

(1) The petitioner herein, Smt. Viran Wali, an alleged partner of M/s Sabrose Financial Corporation, is a contending party in a reference under Section 30 of the Land Acquisition Act, 1894, pending before the Additional District Judge, Gurgaon. To further her case she required production of tax assessment file pertaining to some back assessment years relating to M/s Sabrose Financial Corporation and for the purpose a direction by the Court to the concerned Income Tax Officer. This was opposed by another contending party Kesar Singh styling himself to be the sole proprietor of M/s Sabrose Financial Corporation, who is the contesting respondent herein. The two applications filed by the petitioner for the purpose were allowed by the Court and the concerned Income Tax Officers were requested to send those files. The Income Tax Officers while sending the requisitioned files in sealed covers, claimed privilege in terms of section 138(2) of the Income Tax Act, 1961 and regretted that the information contained in those files could not be disclosed.

(2) The contending parties mooted the question before the court below as to whether the privilege had rightly been claimed by the Income Tax Officers. Precedents one way or the other way were cited. The Court took the view that the privilege claimed by the Income Tax Department must be upheld. The aggrieved petitioner has approached this Court.

(3) As is plain, privilege has specifically been claimed under Section 138(2) of the aforesaid Act which is in the following terms:—

S. 138(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 assesseees or except to such authorities as may be specified in the order."

A plain reading of that provision makes it clear that the Central Government may by order, notified in the official Gazette, direct that

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no information or document shall be furnished or produced by a public servant in respect of such matters relating to such class of assesseees or except to such authorities as may be specified in the order. The Central Government alone is the judge in that regard and is to regulate the provision of privilege by manifesting its intention in the Official Gazette, the regulating basis for the purpose being that it must keep regard of the practices and usages customary or any other relevant factors while making such order. In other words, the provision envisages the Central Government to be alive to the needs of the time which may require furnishing or withholding of any information or document pertaining to a particular class of assesseees or from a particular class of authorities. Unless and until such an order is made no such absolute privilege as claimed by the Income Tax Officer can be conceded to him on the mere existence of the afore-quoted provision. The Income Tax Officer would have to further justify his stance by disclosing the particulars of the notified order of the Central Government whereunder privilege is claimed. There is no such omnibus power with him to withhold information or document. The impugned order *prima facie* does not disclose that the court was made wiser about it. Here as well, this Court has not been made wiser in that direction despite notice being issued to the concerned Income Tax Officer for the purpose. The parties' counsel were, of course, left groping in dark. Thus, there is no option but to remit the matter back to the court directing it to get in communication with the Income Tax Officer(s) asking them under what specific order of the Central Government have they claimed privilege under section 138(2) of the Act. On receipt of such information the court would be required to reconsider the matter afresh in accordance with law.

(4) For what has been said above, this revision petition is allowed, the impugned order is set aside and the matter is sent back to the Additional District Judge to proceed further in accordance with law and in the light of the afore observations.

(5) The parties through their counsel are directed to put in appearance before the Court on 1st June, 1984.

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N.K.S.