

(1962) 10 OHC CK 0001

In the Orissa High Court

Case No : Special Jurisdiction Cases No's. 40, 41 and 42 of 1961

Commissioner of Sales Tax

APPELLANT

Vs

Aurobindo Auto Service

RESPONDENT

Date of Decision : 23-10-1962

Acts Referred:

Income Tax Act, 1961 — Section 44

Citation : (1963) 29 CLT 67 : (1963) 14 STC 46

Hon'ble Judges : Narasimham, C.J;S. Barman, J

Bench : Division Bench

Advocate : R.K. Ghosh, for the Appellant; None, for the Respondent

Judgement

Narasimham, C.J.—The points of law involved in these three applications are the same and hence they are dealt with in one judgment.

2. Under-section 24(2) of the Orissa Sales Tax Act, 1947, this Court directed the Member, Sales Tax Tribunal, to refer the following two questions of law :-

(i) Whether in the facts and circumstances of the case the Tribunal is right in entering into the merits of the assessment while sitting in judgment over the orders of the first appellate authority rejecting first appeals summarily.

(ii) Whether in the facts and circumstances of the case the Tribunal is right in holding that the notice in the instant case issued in the firm's name and served on one partner only after the dissolution of the partnership is illegal so as to vitiate the assessments made in pursuance of such notice.

3. The relevant facts are as follows : The opposite party was a firm consisting of three partners, namely, R.K. Upadhyaya, B.C. Patnaik and S.K. Sen, dealing in motor car spare parts and accessories. The firm was a registered dealer bearing registration number 2135. The firm has been assessed to sales tax for the three quarters ending the 30th June, 30th September and 30th December, 1955, u/s 12(4) of the Orissa Sales Tax Act. It appears that the firm was dissolved and the

business was closed down sometime towards the end of the calendar year 1955 but no notice of dissolution was given to the Sales Tax Authorities as required by Section 18(b) of the Act read with Rule 14 of the Sales Tax Rules. Hence the Sales Tax Authorities continued the assessment in the name of the firm and served demand notice on Shri B.C. Patnaik, one of the partners. The assessment is in respect of the periods preceding the dissolution of the partnership and the discontinuance of the business.

4. The opposite party appealed before the Assistant Commissioner but the appeal was dismissed summarily under Rule 49 of the Sales Tax Rules for failure to remove defects within a reasonable time. On second appeal the learned Member, Sales Tax Tribunal, dealt with the case at great length both on facts and on law. The first question referred to this Court relates to the right of the Tribunal to enter into the merits of the assessment while sitting in judgment over the order of the first appellate authority (viz., the Assistant Commissioner) rejecting the appeal summarily. This question is concluded by a judgment of the Supreme Court reported in *Mela Ram and Sons Vs. The Commissioner of Income Tax Punjab*, which has been followed in *Commissioner of Sales Tax, Orissa v. Ramkaran Agarwalla* [1962] 13 S.T.C. 407. There it was held that even a summary dismissal of a first appeal would amount to disposal of an appeal within the meaning of Sub-section (2) of Section 23 of the Orissa Sales Tax Act and a second appeal before the Tribunal would lie. Once a second appeal lies before the Tribunal, that authority has full powers to enter into facts and law as authorised by Clause (c) of Sub-section (3) of Section 23 of the Orissa Sales Tax Act. The first question is therefore answered in the affirmative.

5. So far as the second question is concerned the learned Member, Sales Tax Tribunal, has relied on some observations in the judgments of the Calcutta High Court reported in *Manindra L. Goswami Vs. R.N. Bose, Income Tax Officer*, and *R.N. Bose Vs. Manindra Lal Goswami*, dealing with Section 44 of the Indian Income Tax Act and on the observations of the Allahabad High Court in *Jagat Behari Tandon v. Sales Tax Officer, Etawah* [1957] 8 S.T.C. 459, dealing with the interpretation of similar provisions of the U.P. Sales Tax Act, 1948. But there are several later decisions of many other High Courts in which a contrary view has been taken: See *Lalji v. Assistant Commissioner, Sales Tax, Raipur* [1958] 9 S.T.C. 571; *R. Ponnuswami Gramani v. Collector of Chingleput District* [1960] 11 S.T.C. 80; *Jai Dayal v. Deputy Commercial Tax Officer, Osmanganj* [1960] 11 S.T.C. 782; *Bankatlal Badruka v. State of Bombay* [1961] 12 S.T.C. 405; *M. Veerabadra Konar v. The State of Madras* [1962] 13 S.T.C. 556 and *Veerappa Ningappa Sanakal of Munavalli v. The Mysore State* [1962] 13 S.T.C. 796.

6. The decisions of the Supreme Court dealing with the construction of Section 44 of the Indian Income Tax Act prior to the amendment made in 1958, are helpful in this connection. The old Section 44 of that Act was as follows:-

Where any business, profession or vocation carried on by a firm or association of persons has been discontinued, or where an association of persons is dissolved,

every person who was at the time of such discontinuance or dissolution a partner of such firm or a member of such association shall, in respect of the income, profits and gains of the firm or association, be jointly or severally liable to assessment under Chapter IV and for the amount of tax payable and all the provisions of Chapter IV shall, so far as may be, apply to any such assessment.

Section 19(3) of the Orissa Sales Tax Act is as follows:-

If any business carried on by a firm, Hindu undivided family or an association of persons has been discontinued or dissolved, every person who was at the time of such discontinuance or dissolution, a partner of such firm or a member of the Hindu undivided family or such association shall, in respect of the turnover of the firm, Hindu undivided family or association, be jointly and severally liable to assessment u/s 12 and for the amount of tax payable, and all the provisions of the Act shall, so far as may be, be applied to such assessments.

It will be noticed that the aforesaid two provisions are identical in essential respects. There was some controversy regarding the construction of the expression "liable to assessment" occurring in the old Section 44 of the Income Tax Act. One view was that it related only to the actual computation of the income whereas the other view was that it related to the whole procedure laid down in that Act for imposing liability on the taxpayer. The Supreme Court in *C.A. Abraham, Uppoottil, Kottayam Vs. The Income Tax Officer, Kottayam and Another*, held that the word "assessment" in that section is used in its widest connotation and will include the procedure laid down in the Act for imposing liability on the taxpayer. This view was again reiterated in a later Supreme Court decision reported in *Commissioner of Income Tax, Madras, and Another Vs. S.V. Angidi Chettiar*, which also dealt with the construction of old Section 44 of the Income Tax Act. Their Lordships further pointed out that by virtue of that Section, notwithstanding the dissolution of a registered partnership firm the assessment proceedings are liable to be continued against the firm as if it had not been dissolved. It is true that by the amendment of 1958, Section 44 of the Income Tax Act was recast and split up into three Sub-sections, and by Sub-section (1) it was specially enacted that even after the dissolution of the partnership firm, the assessment of the total income of the firm may be made as if no such dissolution took place. But the construction put by the Supreme Court on old Section 44 of the Income Tax Act which, in material respects, is identical with Sub-section (3) of the Orissa Sales Tax Act is sufficient authority for the view that the expression "liable to assessment" in Sub-section (3) of Section 19 of the Orissa Sales Tax Act must be given the widest connotation so as to include the whole process of assessment and that the assessment proceedings may be continued as if, the partnership had not been dissolved.

7. Mr. Ghosh for the Department very properly drew our attention to a recent Full Bench decision of the Punjab High Court reported in *Jullundur Vegetable Syndicate v. The Punjab State* ILR (1961) Cut 585, where the Allahabad view was preferred to the contrary view taken by the other High Courts in the cases

cited above. But in that case the learned Judges do not appear to have noticed the aforesaid two judgments of the Supreme Court. The later Supreme Court judgment was delivered only on 18th January, 1962, whereas the Punjab High Court's judgment was delivered on the 6th February, 1962. With great respect, I am inclined to prefer the view taken by the majority of the High Courts which gains considerable support from the interpretation given by the Supreme Court to the old Section 44 of the Income Tax Act.

8. The second question is therefore answered in the negative. The Tribunal was not right in holding that the notice issued in the partnership's name and served on one of its partners, after the dissolution of the partnership, was illegal.

9. The references are disposed of accordingly, but as there is no appearance for the other side we make no order for costs.

S. Barman, J.

10. I agree.