(1991) 02 DEL CK 0037

In the Delhi High Court

Case No : S.T.R. No. 51 of 1977

Commissioner of Sales Tax APPELLANT

Vs

Sam Enterprises RESPONDENT

Date of Decision : 19-02-1991

Acts Referred:

Citation : (1991) 02 DEL CK 0037

Hon'ble Judges : S. Duggal, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : J.R. Goel, for the Appellant;

Judgement

B.N. Kirpal, J.—In this case the Financial Commissioner has referred the following questions to the court :

1. Whether, on the facts and in the circumstances of the case, the Financial Commissioner was justified in holding that the factum of actual dissolution or otherwise cannot be gone into by the sales tax authorities when once the intimation of dissolution is received and that the assessing authority stands functus officio in the matter of framing assessment after receipt of such intimation ?

2. Whether, on the facts and in the circumstances of the case, the learned Financial Commissioner was justified in accepting the revision petitions and in quashing the assessments made against the firm in respect of the years 1967-68, 1968-69 and 1969-70 ?

3. Whether, the learned Financial Commissioner was justified in holding that there was no question of payment of admitted tax once the firm stood dissolved ?

4. Whether, the payment of admitted tax is a condition precedent to the assumption of jurisdiction by the appellate and revisional authorities ?

5. Whether the finding of the learned Financial Commissioner that the firm stood dissolved before the order of assessment, was based on evidence on record ?

2. In respect of the assessment years 1967-68, 1968-69 and 1969-70 three separate orders were passed on 28th of December, 1971. Appeals against the same were filed but the Assistant Commissioner dismissed the same on the ground of non-payment of admitted tax. The respondents then filed a revision petition but the Deputy Commissioner of Sales Tax dismissed the same on 28th of January, 1974. A second revision petition was filed to the Financial Commissioner which was allowed by the order dated 14th of October, 1974. While relying upon the decision of a single Bench of this Court reported as Ranjit Singh v. Assessing Authority [1972] 29 STC 499 (Delhi) the Financial Commissioner held that once intimation had been sent about the dissolution of the firm then no action could be taken to assess the same and, Therefore, the question of paying the admitted tax did not arise.

3. On an application being filed the aforesaid five questions had been referred.

4. The most important issue, to our mind, which needs to be decided is whether there was, in fact, any dissolution of the firm. This issue is covered by aforesaid question No. 5. The Financial Commissioner has, in his order stated that it was common ground that a letter dated 24th of December, 1969, was sent by the dealer to the department before the passing of the assessment order. The Financial Commissioner has then assumed that by this letter the department was informed about the dissolution of the firm. It is pertinent to note, however, that the Financial Commissioner has himself stated that "I was not able to have the benefit of going through its contents since it was not made available on record at the time of the hearing of the case". It is clear Therefore that reference to the letter of 24th of December, 1969, and to supposed contents thereof, has been made even though the letter was not seen by the Financial Commissioner. The Deputy Commissioner, we find, has referred to the said letter and has observed that "I also find from record that the intimation which the dealer had sent to the department was regarding the closure of the business and did not by implication indicate the factum of dissolution". Merely because the business had closed cannot lead one to the conclusion that the firm has been dissolved. The Financial Commissioner, in our opinion, had no evidence before him on which he could have come to the conclusion that there has been a dissolution of the firm. No dissolution deed has been referred to and the reference to the aforesaid letter dated 24th of December, 1969, is misconceived. That letter referred to the closure of the business and not to the dissolution of the firm. In our opinion, Therefore, question No. 5 has to be answered in favor of the department and against the dealer. In view of our answer to question No. 5 in favor of the department it is not necessary for us to answer the other questions which have been referred to. Ordered accordingly.

5. There will be no order as to costs.

