
(1963) 10 MP CK 0002
In the Madhya Pradesh High Court
Case No : M.P. No. 387 of 1962 (J)

Ghanshyamdas	Vs	APPELLANT
Sales Tax Officer		RESPONDENT

Date of Decision : 16-10-1963

Acts Referred:

Central Provinces and Berar Sales Tax Act, 1947 — Section 11(5)

Citation : (1964) JLI 100

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : J.M. Thakar, H.M. Thakar and A.L. Halve, for the Appellant; R.J. Bhawe, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Dixit, C.J.—By this application under articles 226 and 227 of the Constitution, the petitioner questions the legality of the assessment to sales tax made against a partnership firm doing business under the name and style of M/s Chhotalal Keshaoram and Co., Rajnandgaon, by an order passed by the Sales Tax Officer, Raipur, on 20th July 1954. By that order the taxable turnover of the firm for the period from 17th February 1950 to 30th November 1951 was determined at Rs. 1,96,000 and the amount of sales tax payable by the firm was found to be Rs 6,125. The petitioner also challenges the legality of the notices issued to the firm in Form XII on 8th December 1952, 23rd October 1953, 6th May 1954 and 24th May 1954, u/s 11 (5) of the Central Provinces and Berar Sales Tax Act, 1947, (hereinafter referred to as the Act), pursuant to which the impugned assessment was made. He prays that the said notices, the assessment order made by the Sales Tax Officer, Raipur, the demand notices for payment of Rs. 6,125, and the decisions of the Appellate Assistant Commissioner of Sales Tax, Raipur, and the Commissioner of Sales Tax, Madhya Pradesh, upholding the assessment made by the Sales Tax Officer be quashed by the issue of a writ of certiorari.

2. The material facts are that on 11th January, 19th January 1949 the petitioner

and four other persons, including one Girdharilal Govindji, executed a deed of partnership for doing business of purchase and sale of rendu leaves grown in, plucked and collected from Korar Range, Ranker Forest, for the seasons during the years 1949, 1950 and 1951 ending with 31st March 1952. The partnership actually came into existence on 6th December 1948. One of the terms of the partnership was that it would last for a period of three years ending on 31st March 1952 and that it shall not be terminated during the term of the Korar forest contract which also terminated on 31st March 1952. This partnership was a "dealer" as defined by section 2 (c) of the Act, It did not get itself registered as required by section 8. It did not file any returns even when notices u/s 10 requiring it to file returns were served on it when the Assistant Commissioner of Sales Tax found that the turnover of the firm exceeded the taxable quantum on 22nd November 1949 and it was liable to submit returns from 17th February 1950. In response to the notices issued u/s 11(5), the firm put an appearance before the Sales Tax Officer, Raipur, and contested its liability to assessment. Before the Sales Tax Officer, it was contended on behalf of the firm that it was dissolved by a deed executed on 13th September 1949; that under the terms of dissolution the lease of the forest range in respect of the seasons 1950 and 1951 was made over to Girdharilal Govindji who agreed to furnish security to the petitioner for regular payment of instalments of lease-money in respect of the unexpired term of the forest lease; that Tenia leaves during the season 1950 were plucked and collected by Girdharilal alone; that on 28th February 1951 Girdharilal transferred to the applicant the lease in respect of the unexpired period of the year 1951 which was then worked by the petitioner jointly with M/s Mohanlal Hargovinddas. The Sales Tax Officer rejected this contention and by an order passed on 20th July 1954 held that there was no dissolution of the firm during the material period; and that in this period its taxable turnover amounted to Rs. 1,96,000 and it was liable to pay Rs. 6,125 as sales tax. On 5th September 1954 a notice for the payment of the amount of tax was issued in the name of the firm.

3. The firm then preferred an appeal before the Appellate Assistant Commissioner of Sales Tax, Raipur, objecting to the assessment made by the Sales Tax Officer inter alia on the grounds that the notices issued u/s 11 (5) of the Act were barred by time, and that the firm had been dissolved on 13th September 1949. The Appellate Assistant Commissioner rejected the contention about limitation. He, however, came to the conclusion that the firm was dissolved on 13th September 1949 but as by the dissolution deed dated the 13th September 1949 and the subsequent agreement concluded on 28th February 1951, the petitioner, Ghanshyam as became the transferee of the business of the firm M/s Chhotalal Keshoram and Co., he was liable u/s 18 of the Act for the payment of the tax for the period, and consequently liable to pay the tax assessed by the Sales Tax Officer. The Appellate Assistant Commissioner also added-

The lease stood in the name of Shri Chhotalal Keshoram and Co. throughout the

period under assessment and hence it is partners who are jointly and individually liable to pay for the entire period. The service of the notice to one partner Shri Ghanshyamdas and recovery of tax from him therefore, is correctly being made. In this view of the matter also, the assessment as done by the assessing officer appears to be justified.

He accordingly rejected the appeal.

4. The petitioner then, abandoning the remedy of second appeal before the Deputy Commissioner, Sales Tax, and the revision thereafter before the tribunal and ultimately a reference to this Court, adopted the remedy of a petition u/s 52 (3) of the Act; before the Commissioner for revising the order of the Appellate Assistant Commissioner. The Commissioner agreed with the Appellate Assistant Commissioner that the notices issued to the petitioner u/s 11 (5) were within time. He, however, disagreed with the finding of the Appellate Assistant Commissioner that the firm had been dissolved on 13th September 1949. On a consideration of the terms of the partnership deed, the agreement by which the firm was said to be dissolved and the facts and circumstances appearing on the record, the Commissioner held that there was no dissolution of the firm on 13th September 1949 and that the Sales Tax Officer had rightly assessed the firm.

5. Shri Thakar, learned counsel appearing for the petitioner, did not press before us all the points taken in the petition attacking the validity of the assessment. The first contention that he pressed was that the Commissioner of Sales Tax was not justified in disturbing the finding reached in appeal by the Appellate Assistant Commissioner that the firm M/s Chhotalal Kesharam and Co., had been dissolved on 13th September 1949 when in the revision petition filed by him the applicant had not assailed that finding and had only contended that he could not be made liable for the payment of any sales tax by virtue of section 18 of the Act. It was suggested that the revisional powers of the Commissioner u/s 22-A were restricted to only those matters which the party applying under u/s 22-A sought to be revised. There is no substance in this contention. The revisional powers of the Commissioner u/s 22-A are very wide. The Commissioner can exercise those powers of his own motion or on an application made by a dealer and can subject to the provisions of the Act pass such order, not being an order prejudicial to the dealer, as he thinks fit. The revisional powers are limited only to the extent mentioned in the proviso to sub-section (1) of section 22-A and the proviso to sub-section (2). These provisos nowhere say that where a dealer applies u/s 22-A for revision of an order made under the Act by any authority subordinate to the Commissioner, the Commissioner shall exercise revisional powers only in regard to the matter specifically raised by the party. When the Commissioner takes up a matter in revision, whether suo motu or on application by a dealer, then he is entitled to consider the whole case. It was said that by holding that there was no dissolution of the firm, the Commissioner made an order prejudicial to the petitioner which he could not do for the reason that u/s 22-A (2) an order prejudicial to the dealer could not be passed. We do not agree.

The flaw in the argument lies in assuming that the finding reached by the Commissioner that there was no dissolution of the firm was in itself the operative order made by the Commissioner in revision. The order of the Commissioner was one declining to interfere with the order made by the Appellate Assistant Commissioner upholding the order of the Sales Tax Officer assessing the firm. The second proviso to sub-section (2) of section 22 A, specifically says that the order of the Commissioner declining to interfere shall be deemed not to be an order prejudicial to the dealer. It cannot, therefore, be urged, with any degree of force that in making the order that he did in the exercise of his revisional powers u/s 22-A and in giving his own reasons therefore, the Commissioner acted contrary to the provisions of section 22-A or made an order prejudicial to the dealer.

6. It was next submitted that the notices, which were issued to the petitioner u/s 11 (5) of the Act by the Sales Tax Officer, were without jurisdiction inasmuch as they were issued by the said officer without first satisfying himself that the firm was liable to pay tax under the Act and had wilfully failed to apply for registration and without giving to the petitioner an opportunity of showing cause against the issue of a notice under that provision. The contention is unsubstantial. No doubt, sub-section (5) of section 11 says that if upon information which has come into his possession the commissioner is satisfied that any dealer has been liable to pay tax under the Act in respect of any period and has wilfully failed to apply for registration, the Commissioner shall, within the prescribed time and after giving the dealer a reasonable opportunity of being heard, proceed to make the best judgment assessment in respect of the period and of subsequent periods. An assessment under sub-section (5) can be made only if the dealer is liable to pay tax under the Act and if he has wilfully failed to apply for registration, and the giving to the dealer of a reasonable opportunity of being heard is a mandatory requirement. But sub-section (5), as it is worded, nowhere lays down any condition precedent to the issue of a notice thereunder to a dealer asking him to show cause why he should not be assessed. The satisfaction of the Commissioner that the dealer is liable to pay tax under the Act and the condition that the dealer has wilfully failed to apply for registration are requisite condition for making an assessment under that provision. They are not conditions precedent to the issue of a notice contemplated by the expression "after giving the dealer a reasonable opportunity of being heard" used in sub-section (5). There is nothing in sub-section (5) to indicate that the dealer must be heard before any notice is issued to him under that sub-section with regard to intended assessment. It is not that when a notice is issued to a dealer under, sub-section (5) with regard to an intended assessment, he has no opportunity of urging that he is not liable to pay tax under the Act or there has been no wilful failure on his part in applying for registration. It is open to him to urge these points before the taxing authorities when a notice under sub-section (5) is given to him. In the present case, the petitioner appeared before the Sales Tax Officer, Raipur, in response to the notices issued to him; but at no time he contended before that authority that the

firm did not have taxable turnover or that there was no wilful failure in applying for registration. This contention was not raised even before the Appellate Assistant Commissioner and the Commissioner. The question whether the turnover of a dealer did or did not exceed the taxable limit and whether he wilfully failed to apply for registration are all questions of fact which the petitioner should have raised before the taxing authorities themselves. He cannot be allowed to raise them here and question the finding of fact reached by the taxing authorities that the firm had a taxable turnover and had wilfully failed to apply for registration. If for the purposes of this petition the finding reached by the taxing authorities that the firm was liable to pay tax under the Act and had wilfully failed to apply for registration is accepted then it is very clear that the conditions for making an assessment under sub-section (5) were satisfied.

7. Learned counsel for the petitioner then urged that the assessment was barred by limitation under law as it stood when notices (annexures E and G) u/s 11(5) were issued to the petitioner on 8th December 1952 and 23rd October 1953. The argument was that u/s 11(5), as it was on these dates, an assessment could be made "at any time within three calendar years from the commencement of this Act and thereafter within twelve months from the expiry of such period"; and that the notices issued to the petitioner on 8th December 1952 and 23rd October 1953 for assessment in respect of the period from 17th February 1950 to 30th October 1951 were mere than twelve months after the expiry of the period and were consequently barred by time, this argument, which does not give due weight to the amendment made in section 11(5) by the Madhya Pradesh Sales Tax (Amendment) Act, 1953, cannot be accepted. Section 8 (v) of this Amendment Act deleted the words "from the commencement of this Act and thereafter within twelve months" occurring in sub-section (5) and this amendment was given retrospective effect from 1st June 1947 (see section 24 of the Amendment Act). The plain effect of this amendment is that from the very time the Act came into force, that is from 1st June 1947, section 11 (5) is to be read as empowering the Commissioner to make an assessment u/s 11 (5) "at any time within three calendar years from the expiry of such period". If section 11 (5) is so read, then it is clear that the assessment against the firm, which was initiated on the two notices in question, was within time.

8. Learned counsel for the petitioner further urged that the retrospective amendment made in section 11 (5) with regard to limitation could not empower the taxing authorities to make an assessment against the firm by issuing the two notices they did as on the dates the notices were issued the assessment had already become barred by time under the law as it stood then and the subsequent enlargement of the period of time could not revive the liability of the firm with regard to payment of tax or the right of the taxing authorities to take action for assessment. In support of this contention, learned counsel strongly relied on the obscurations of Kapur J. in S.C. Prashar, Income Tax Officer, Market Ward, Bombay and Another Vs. Vasantsen Dwarkadas and Others, , namely, that if a right of action becomes barred according to the law of limitation in force,

subsequent enlargement of the period of time does not revive the remedy to enforce the right already barred. We are unable to accede to this contention. It is one of the settled canons of construction of statutes that ordinarily an Act does not have retrospective operation on substantive rights which have become fixed before the commencement of the Act; but the Legislature may enact laws affecting substantive rights by making the laws expressly retrospective or by using language which has that result. When the provisions of an Act are made retrospective by the use of express words or by necessary intendment, then the closed transactions or substantive rights, which would have continued undisturbed but for the retrospective operation, are undoubtedly affected and reopened. In the present case, there is no ambiguity whatsoever with regard to the language of the amendment made in section 11 (5) by the amending Act referred to above section 24 of the Amending Act expressly gave to the amendment retrospective effect from 1st June 1947. The question of determining the extent of the retrospective effect of the amendment does not, therefore, admit of any doubt. In view of this amendment even on the dates on which the two notices were issued to the firm, section 11(5) must be read as providing for an assessment "at any time within three calendar years from the expiry of such period". The matter is really concluded by a Full Bench decision of this Court in *Kanhyyalal Vs. Dy. Commr. S.T.*, 9 SIC 503=1958 J.L.J. 344=AIR 1958 MP 201. That was a case which directly dealt with the retrospective effect of the amendment made in section 11 (5) with regard to the period of limitation. Dealing with the retrospective effect of the amendment, *Hidayatullah C.J.*, who delivered the main judgment, said-

The next question is which of the two Acts could be relied upon by the appellate authorities of the Department. The contention of the petitioner is that on the date on which the assessment was made it was patently beyond time because the Act came into force on 23-5-1947, and even three calendar years calculated from that date would expire in 1950 and not in 1952.

He contends that since the assessment was without the authority of law it was void under Art. 26 of the Constitution, and that short of its being validated by legislation it could not be revived otherwise.

He also submitted, on the analogy of a right of appeal being substantive, that the right to immunity from assessment after the expiry of three years from the date of the passing of the Act was a substantive right. We do not accept the contention that there can be any substantive right not to pay a tax. The liability to pay the tax is created by the charging section, and the liability remains.

All that the rule of limitation which is introduced in a taxing statute does is to take away the right of the Department to claim the tax. If the law is at an, time amended, then the rule of limitation disappears, more so, when the law itself makes the new rule of limitation applicable from the commencement of the parent Act, The law which the appellate authorities had to comply with contained no provision for calculating the period of three calendar years from the

commencement of the Act.

It contained a provision for calculating three calendar years from the expiry of the assessment year. In the present case the assessment year must be deemed to expire on 18-8-1949, and three calendar years calculated from 1-1-1950 render all the proceedings in the case within time. We accordingly hold that the assessment upon the petitioner was within the competence of the Department and that even if it was not so at the time when it was made, the assessment became valid once the bar of limitation was removed by the retrospective Legislation.

The Full Bench decision in *Kanhaiyalal's case* (supra) furnishes a complete answer to the petitioner's contention that the assessment was barred by time. It must be noted that the view expressed in *Kanhayyalal's case* (supra) with regard to the effect of subsequent change in the period of limitation for enforcing a liability under a taxing statute accords with that stated in *S.C. Prashar, Income Tax Officer, Market Ward, Bombay and Another Vs. Vasantsen Dwarkadas and Others*, . In that case *Hidayatullah J.*, with whom *Raghubar Dayal J.* agreed stated the effect thus at p. 1386:

Now, we do not think that we can treat the different periods indicated under S. 34 periods of limitation, the expiry of which grant prescriptive title to defaulting taxpayers. It may be said that an assessment once made is final and conclusive except for the provisions of sections 34 and 35 but it is quite a different matter to say that a "vested right" arises in the assessee. On the expiry of the period the assessments, if any, may also become final and conclusive but only so long the law is not altered retrospectively. Under the scheme of the income tax Act a liability to pay tax is incurred when according to the Finance Act in force the amount of income, profits or gains is above the exempted. That liability to the State is independent of any consideration of time and, in the absence of any provision restricting action by a time limit, it can be enforced at any time. What the law does is to prevent harassment of assessees to the end of time by prescribing a limit of time for its own officers to take action. This limit of time is binding upon the officers, but the liability under the charging section can only be said to be unenforceable after the expiry of the period under the law as it stands. In other words, though the liability to pay tax remains it cannot be enforced by the officers administering the tax laws. If the disability is removed or according to a new law a new time limit is created retrospectively, there is no reason why the liability should not be treated as still enforceable. The law does not deal with concluded claims or their revival but with the enforcement of a liability to the State which though existing remained to be enforced.

Again, the learned Judge observed at page 1392-

We wish to say a few words about the well-known principle that subsequent changes in the period of limitation do not take away an immunity which has been reached under law as it was previously. In this sense statutes of limitation have

been picturesquely described as "statutes of repose". We were referred to many cases in which this general principle has been firmly established. We do not refer to these cases because in our opinion it is somewhat inapt to describe section 34 with its many amendments and validating sections as a "section of repose". Under that section there is no repose till the tax is paid or the tax cannot be collected. What the law does by prescribing certain periods of time for action is to create a bar against its own officers administering the law. It tries to trim between recovery of tax and the possibility of harassment to an innocent person and fixes a duration for action from these two points of views. These periods are occasionally readjusted to cover some cases which would otherwise be left out and hence these amendments. An assessment can be said to become final and conclusive if no action can touch it but where the language of the statute clearly reopens closed transactions there can be no finality. We would not raise these prescribed periods to the level of those periods of limitation which confer not only immunity but also give titles by the passage of time.

The observations of Kapur J., relied on by the learned counsel for the petitioner, are not of much assistance to him. Kapur J. said that the principle that if a right of action has become barred according to the law of limitation in force, subsequent enlargement of the period of time does not revive the remedy to enforce the rights already barred, would apply to the periods specified in section 34 of the Income Tax Act and if the period prescribed for taking action had already expired, subsequent change in the law does not make it so retrospective in its effect as to revive the power of an income tax Officer to take action under the new law. As we read these observations, we think they were made on the basis that the provisions by which section 34 of the income tax Act was amended did not contain express words or reveal a necessary intendment to impair the immunity from any action u/s 34 which had become final after the lapse of the specified period of time. It will be seen that the real question to be determined is as to the extent of the retrospective effect of the provision changing the period of limitation for enforcement of the liability to the State. As Hidayatullah J. has observed in *S.C. Prashar's case* (supra), "if the disability is removed or according to a new law a new time limit is created retrospectively, there is no reason why the liability should not be treated as still enforceable. Here, the amendment made in section 11 (1) of the Act was in express words given retrospective effect as from 1st June 1917, and the amended provision shows that assessment u/s 11 (5) can be made "within three calendar years from the expiry of such period" at any time, that is to say, without any limit of time. There is, therefore, no reason to think that if the period originally prescribed in section 11 (5) for taking action had already expired, and then the taxing authority has no power to take action under that provision even though the period of three calendar years "from the expiry of such period" is yet to run out. The two notices issued to the firm in the present case were within three calendar years from the expiry of such period. That being so, it cannot be contended that the assessment made against the firm was barred by limitation.

9. Learned counsel for the applicant then contended that the assessment for part of the period was barred by limitation as for the purpose of section 11 (5) the limitation had to be computed from the expiry of a "quarter". This contention cannot be accepted. It has been pointed out by this Court in *Battulal vs. Commr. of S.T.* 1962 J.L.J. 657=1962 R.N. 407, that the word "period" occurring in section 11 (5) covers the whole period during which a dealer being liable to pay tax had wilfully failed to apply for registration and it does not mean the quarter for which return is to be filed. Learned counsel said that the weight of this, authority was destroyed by the decision of the Supreme Court in *Ghanshyam Das vs. Regional Assistant Commissioner of Sales Tax Civil Appeals Nos. 101 and 102 of 1961-*decided on 16th August 1963. We have pointed out in the case of *M/s L.J. Patel and Co. vs. Commr. of Sales Tax* 1963 J.L.J. 869= 1962 R.N. 674, that the decision in *Battulal's* case (supra) in no way runs counter to the decision of the Supreme Court in *Ghanshyam Das's* case (supra). In *Ghanshyam Das's* case (supra), it was in connection with section 11-A of the Act that the Supreme Court held that "period" in section 11-A could only mean a quarter and that it could not be further split up into months, weeks and days and that the question of "escaped assessment" under that section had to be considered on the ground that each quarter was a separate period of assessment. In *Ghanshyam Das's* case (supra) the question of the meaning of the word "period as used in section 11 (5) did not arise for consideration. It is noteworthy that in *Ghanshyam Das's* case, the Supreme Court, while contrasting the provisions of section 11 (5) and section 11-A, pointed out that u/s 11 (5) the position is different and that there is no statutory obligation cast on a dealer, who does not get himself registered under the Act, to submit a return and the case of such a dealer is "really a case of evasion from his obligation to get himself registered under the Act", and that in the case of such a dealer the assessment can be made only within three years from the expiry of the period in respect whereof he is liable to pay tax. The notices, which were issued to the firm on 8th December 1952 and 23rd October 1953 were within three years from the expiry of the period during which the firm being liable to pay tax wilfully failed to apply for registration.

10. Lastly it was submitted on behalf of the petitioner that "dealer", as defined in section 2 (c) of the Act, includes a firm and a partnership, and it is the firm that can be assessed to tax and not any of its partners in their individual capacity; and that, therefore, if the firm is dissolved, then subsequent to the dissolution of the firm no assessment can be made in respect of the transactions done by the firm while it was in existence. It was said that the Act did not contain any machinery for making an assessment on a firm after its dissolution and that in the absence of any such provision; no assessment could be made against a dissolved firm. To support this contention, learned counsel placed reliance on *Jagat Behari Tandon Vs. Sales Tax Officer, Etawah*, (1957) 8 STC 559; *Jullunder Vegetable Syndicate Vs. Punjab State*, (1962) 13 STC 251 and *Kishenchand Tolaram Vs. Ghanekar*, (1961) 12 STC 562.

11. We are not disposed to accept this contention. It is quite true that under the

Act it is the firm that is assessed to tax and not any of its partners in their individual capacity. But the liability of the firm to assessment to tax in respect of the transactions effected by it while it was in existence does not disappear after its dissolution. The liability of the firm to pay tax under the Act arises during the very period of its existence when its turnover exceeds the taxable limit. When the amount of tax payable by the firm is determined after assessment, that amount really becomes a quantified debt owed by the firm to the State. If the assessment is not made and the tax amount is not determined before the dissolution of the firm, the liability to pay tax does not disappear. It continues to exist, and can be quantified by making an assessment and determining the tax amount in winding up proceedings. Now, u/s 47 of the Partnership Act after the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution. The effect of this provision is that for the purposes of winding up, the partnership is deemed to continue. Now, it cannot be denied that the payment of partnership debts is a part of winding-up process. That it is so is clear from section 49 of the Partnership Act. The combined effect of sections 47 and 49 of the partnership Act is that though a partnership is dissolved it is deemed to continue for the purpose of winding up its: business and discharge of partnership debts. If a partnership is deemed to continue for the discharge of its liabilities incurred while it was in existence, then it is plain that an assessment under the Act can be made against the firm in respect of sale transactions effected by it while it was in existence and doing business. The amount of tax determined in such an assessment would be a State debt recoverable from and out of partnership assets even after dissolution and in the hands of the partners or otherwise. If the firm is deemed to continue, then the notices issued to the firm were valid and in order. In fact, in the assessment proceedings before the sales tax authorities, the petitioner put in his appearance on behalf of the firm and contested the firm's liability for the payment of any tax under the Act.

12. Turning to the authorities cited by the learned counsel for the petitioner, the decision in Jagat Behari Tandon Vs. Sales Tax Officer, Etawah, (1957) 8 STC 459, no doubt supports the petitioner's contention that an assessment cannot be made on a firm after it is dissolved. The decision of the Allahabad High Court proceeded on the reasoning that in the U.P. Sales Tax Act, 1948, there was no provision for assessment and collection of tax from a firm after its dissolution and that a firm as a unit of assessment ceases to exist when it is dissolved. In the Allahabad case, sections 47 and 49 of the Partnership Act were not noticed at all. If the tax liability of a firm under the Sales Tax Act does not disappear on its dissolution, and remains one which is to be discharged even after it is dissolved, then under the aforesaid provisions of the Partnership Act the firm must be deemed to continue and cannot be regarded as having ceased to exist as a unit of assessment, and if it is taken to be continuing for discharge of a debt in the

form of liability for payment of sales Tax, then a special provision in the Sales Tax Act for assessment of a dissolved firm becomes unnecessary.

13. The Full Bench decision of the Punjab High Court in *Jullunder Vegetable Syndicate Vs. Punjab State*, (1962) 13 STC 251 is based substantially on the decision of the Allahabad High Court in *Jagat Behari Tandon's case* (supra). It is noteworthy that in the case of *Jullunder Vegetable Syndicate* (supra) section 47 of the Partnership Act was relied upon by the learned Additional Advocate General appearing for the State of Punjab. The learned Judges of the Punjab High Court, however, took the view that the tax-liability of a dealer under the East Punjab General Sales Tax Act, 1948 was not in the nature of debt prior to its assessment and, therefore, the principles enunciated in the Partnership Act could not be "imported into a taxing statute". They observed that when section 11 of the East Punjab General Sales Tax Act speaks of the assessing authority assessing the amount of tax due, it must follow that the tax becomes due and payable only as a result of the assessment and not before it. Whatever may be the position u/s 11 of the East Punjab General Sales Tax Act, there can be no doubt, so far as the local Act is concerned, that u/s 4 (2) thereof the liability to pay tax under the Act arises "with effect from the date of the expiry of two months after the month" up to the end of which the dealer's turnover calculated from a date specified in sub-section (2-a) exceeds the limits specified in sub-section (5). In view of this provision, it cannot be contended that under the Act the tax liability, in the nature of the liability for the payment of a debt, does not arise until the taxable turnover is actually determined and the tax amount is fixed in assessment proceedings. It must be observed that according to the Full Bench decision of the Punjab High Court, for assessment under the Punjab Act what was necessary was that the firm should exist before the initiation of assessment proceedings and that if proceedings for assessment are initiated before the dissolution of the firm, then an assessment can be made even after the firm is dissolved. With all due respects to the learned Judges of the Punjab High Court, it is difficult to see how on the reasoning adopted by them the existence of a firm at the time of the making of the assessment order is of no consequence and it is the initiation of assessment proceedings before the dissolution of the firm that is material.

14. The decision of the Bombay High Court in *Kishanchand Tolaram Vs. Ghanekar*, (1961) 12 STC 562, is of no help to the applicant. In that case, it was held that on the death of a registered dealer under the Bombay Sales Tax Act, 1953, a notice u/s 15 of the Bombay Act could not be issued to his son in respect of a turnover which has escaped assessment; and that as the father was the registered dealer, it was he who was liable to pay tax and a notice u/s 15 could be issued only against him. There is no analogy between the present case and the Bombay case. Here, as pointed out earlier, the firm must be taken as continuing to exist for discharging its tax liability under the Act.

15. A reference was also made at the Bar to the decision of this Court in *Lalji Vs.*

Asst. Commr. Sales Tax, (1958) 9 STC 571. That decision is not in point here as it deals with the situation where a firm, registered as a dealer under the Act, fails to intimate to the prescribed authority u/s 17 the discontinuance of its business on dissolution. It was held in that case that for the purposes of the Sales Tax Act a firm, which is a dealer registered under the Act, continues to be liable to assessment so long as any change effected in the name or nature of the business is not intimated to the prescribed authority u/s 17. Here, the assessment was made not against a firm registered as a dealer under the Act but against a firm which failed to get itself registered as a dealer under the Act. The petitioner's contention that no assessment can be made against a firm after its dissolution is, therefore, unsubstantial and must be rejected.

16. For the foregoing reasons, our conclusion is that the assessment order made by the Sales Tax Officer, Raipur, assessing the firm M/s Chhatalal Keshaoram and Co., Rajnandgaon, to tax in the sum of Rs. 6125/- is legal and valid. The petitioner's prayer, therefore, for the issue of a writ of certiorari for quashing that order and the decisions of the appellate authorities and notices of demand for payment of tax amount must, therefore, be rejected. The result is that this petition is dismissed with costs. Counsel's fee is fixed at Rs. 200 The outstanding amount of security deposit, if any after deduction of costs, shall be refunded to the petitioner.