
(1976) 10 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 28 of 1973

Glass Palace

APPELLANT

Vs

The Assessing Authority

RESPONDENT

Date of Decision : 20-10-1976

Acts Referred:

Income Tax Act, 1961 — Section 44

Punjab General Sales Tax Act, 1948 — Section 10, 11, 16, 17, 22

Citation : (1977) 39 STC 242

Hon'ble Judges : O. Chinnappa Reddy, Acting C.J.; M.R. Sharma, J

Bench : Division Bench

Advocate : O.P. Sharma, for the Appellant; M.M. Punchhi, for the Respondent

Judgement

M.R. Sharma, J.—The following questions of law have been referred to us u/s 22 of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the Act), by the Chairman, Sales Tax Tribunal, Union Territory, Chandigarh :

(i) Whether the dealer who has died can be assessed under the Punjab General Sales Tax Act, 1948, after his death even though no assessment proceedings had been started before his death ?

(ii) Whether, in the facts and circumstances of the case, a partnership firm constituted out of the successor of the deceased can be assessed as transferee u/s 17 of the Punjab General Sales Tax Act, 1948 ?

2. The facts reported are these :

One Shri D.R. Gupta was the sole proprietor of Messrs. Glass Palace, Sector 18, Chandigarh (hereinafter referred to as the firm). Shri Gupta died in a car accident on 10th May, 1969. After his death, the business of the firm was continued by Sarvashri Subhas Chander Gupta, Ajit Gupta (minor) and Mrs. Inder Gupta, the two sons and the wife of the deceased, as partners. The successor partnership firm did not apply for a fresh certificate of registration under the Act or the Central Sales Tax Act and continued enjoying the benefit of

the old certificates issued in the name of Shri D.R. Gupta, deceased. Assessment proceedings were initiated against the partnership firm in respect of the period 1968-69 for which Shri D.R. Gupta was alive. Vide its order dated 27th December, 1969, the Assessing Authority fixed the total liability of sales tax at Rs. 4,897.60.

3. Before the appellate authority and the Chairman, Sales Tax Tribunal, an argument was raised that after the death of the assessee, assessment proceedings could not be initiated against the next-of-kin of the deceased dealer even though they had continued the same business. The contention was rejected by both of them. Hence this reference.

4. The learned counsel for the petitioner-firm submitted that the word "transfer" used in Section 17 of the Act does not include in its ambit and scope transfer by succession in contradistinction with transfer inter vivos. It is further submitted that the matter stands concluded against the revenue by a Full Bench decision of this Court in Jullundur Vegetables Syndicate v. Punjab State [1964] 13 S.T.C. 251. In particular, reliance is placed on the following passage appearing in the judgment:

In fact it may be said generally that the Act makes no specific provision for assessment of the assessable entity which ceases to exist before the assessment proceedings are taken in hand. u/s 16 if any registered dealer or a dealer, who is required to furnish returns under Sub-section (3) of Section 10, "dies, his legal representative is required to convey the information to the prescribed authority. We asked Mr. Doabia whether, if the dealer had died before the assessment proceedings had commenced, it would still be legal to make an assessment of tax on him for the accounting year during which he was doing business, but the learned Additional Advocate-General expressed his inability to meet the point. There being no provision in the Act similar to Section 24B of the Income Tax Act for enabling assessment to be made in such a case, it must be held that no such assessment can legally be made and on the same principle it would appear to follow that if a firm has been dissolved and is no longer there as a legal entity, it cannot be assessed as such to sales tax.

5. The Court further held that the information which is to be furnished u/s 16 regarding the discontinuance of the business of the firm appears to be only for administrative purposes, such as the cancellation or amendment of the certificate of registration and this section had no connection with the liability to assessment. Section 17 of the Act which laid down that when the ownership of the business of a registered dealer was transferred, any tax payable in respect of such business remaining unpaid, shall be payable by the transferee as if he was a registered dealer, was explained away on the ground that liability to pay the tax accrues after it is duly assessed in accordance with law.

6. We do realise that the counsel for the revenue in that case was unable to effectively answer the question posed by the Bench about the competence of the

revenue to initiate assessment proceedings after the death of the assessee on the basis of the existing statutory provisions, but the helplessness of a counsel to answer a particular point can seldom be allowed to be raised as a bar of estoppel against the revenue. We might further observe that under law a partnership comes to an end upon the death of a partner and the new partnership which is subsequently formed is regarded as an entirely different entity. It is doubtful whether the analogy of a dissolved partnership can be extended to the case of a business run by the karta of a Hindu undivided family which is continued by the remaining members of the family after the death of the karta.

7. Be that as it may, the aforementioned judgment was challenged in appeal before the Supreme Court and the appellate judgment is reported as *State of Punjab Vs. Jullunder Vegetables Syndicate*, . The Supreme Court, after noticing sections 16 and 17 (as it stood then) of the Act, addressed itself to the question whether a firm is a separate assessable entity for the purposes of the Act or whether it is only a compendious term used to denote a group of partners. It held that on dissolution, a firm ceases to be a legal entity and in the absence of an express provision, no assessment can be made on a firm which had lost its character as an assessable entity.

8. The Act was amended by Punjab Act No. 13 of 1959 and Section 17 of the Act was substituted by the following section:

Where the ownership of the business of a registered dealer is entirely transferred and the transferee carries on such business either in its old name or in some other name, the transferee shall for all the purposes of this Act (except for liabilities under this Act already discharged by such dealer) be deemed to be and to have always been registered as if the certificate of registration of such dealer had initially been granted to the transferee ; and the transferee shall on application to the prescribed authority be entitled to have the registration certificate amended accordingly.

9. Apparently, the language employed in the new section is of wide amplitude. It creates a fiction by which the transferee is deemed to have continued as the old business for the purpose of tax liability under the Act. We would like to emphasise that a transferee simpliciter who does not continue the business is not to be burdened with tax liability and only those transferees who while carrying on the same business make use of the facilities provided by the Act to the old firm are made liable to pay the tax. Apart from creating this legal fiction, this section does not serve any other purpose because the liability of the transferee-firm would continue to be governed by Section 4 of the Act, which is the charging section and the procedure for determination of the tax would continue to be that provided u/s 11 of the Act, which relates to the assessment of tax. If the case is viewed in this light, the following observations of their Lord-ships of the Supreme Court in *State of Punjab Vs. Jullunder Vegetables Syndicate*, really clinch the issue against the petitioners :

Strong reliance was placed upon two judgments of this Court. This Court in C.A. Abraham, Uppoottil, Kottayam Vs. The Income Tax Officer, Kottayam and Another, , speaking through Shah, J., held that Section 44 of the Income Tax Act set up a machinery for assessing the tax liability of firms which have discontinued their business. This was followed by this Court again in Commissioner of Income Tax, Madras, and Another Vs. S.V. Angidi Chettiar, . These two decisions are of no help to the revenue in the present case. Indeed, in a sense they are against it. The Income Tax Act contains an express provision for assessing a dissolved firm. Indeed, but for that provision no assessment could be made under that Act on dissolved firms.

10. The aforementioned considerations apart, in Bibhas Chandra Gon v. State of West Bengal [1964] 15 S.T.C. 277 a Division Bench of the Calcutta High Court was concerned with the interpretation of Section 17 of the Bengal Finance (Sales Tax) Act, 1941, as amended by Act No. 19 of 1954, which is in pan materia with Section 17 of the Act and reads as under :

Where the ownership of the business of a registered dealer is transferred absolutely or transferred by way of lease and the transferee or the lessee carries on such business, either in its old name or in some other name, the transferee or the lessee shall for all the purposes of this Act (except for liabilities under this Act already discharged by such dealer) be deemed to be and to have always been registered as if the registration certificate of such dealer had initially been granted to the transferee or the lessee; and the transferee or the lessee shall on application to the Commissioner be entitled to have the registration certificate amended accordingly.

11. The court held that the expression "is transferred absolutely" is of wide import and is broad enough to include absolute transfers by operation of law, including an absolute transfer on intestate succession. We are in respectful agreement with the view taken in that case.

12. For the reasons mentioned above, we answer both the questions in favour of the revenue and against the petitioners. There shall, however, be no order as to costs.