
(1967) 09 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 568 of 1966

Gopalkishan Sachdeva and Another

APPELLANT

Vs

The Sales Tax Officer and Others

RESPONDENT

Date of Decision : 25-09-1967

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1971) ILR (MP) 37 : (1967) JLJ 897 : (1968) 21 STC 109

Hon'ble Judges : P.V. Dixit, C.J.; R.J. Bhavé, J

Bench : Division Bench

Advocate : R.S. Dabir, for the Appellant; A.P. Sen, Advocate-General and K.K. Dubey, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.J. Bhavé, J.—By this petition under Article 226 of the Constitution, the petitioners seek a writ of certiorari for quashing an assessment order dated 4th October, 1966, passed by the respondent No. 1. The petitioners also seek a writ of mandamus restraining the respondents from giving effect to the said order. By the said order, Messrs Bhimsen Sachdeva, Marhatal, Jabalpur, an unregistered dealer, has been assessed to sales tax for the period from 1st April, 1959 to 31st March, 1965. The tax liability has been determined at Rs. 20,600 and a penalty in the like amount has been imposed.

2. The petitioners entered into partnership with their father, Bhimsen Sachdeva, in the year 1964 and carried on the business of iron and steel in the name and style of "Messrs Sachdeva & Company." Bhimsen Sachdeva died on 4th April, 1965. The petitioners' case is that sometime before the death of Bhimsen Sachdeva, he had retired from the partnership and the partnership business thereafter was carried on by the petitioners alone. They hold a registration certificate as a "dealer" under the Madhya Pradesh General Sales Tax Act, 1958, and they have been assessed for the business carried on by them.

3. It appears that a notice was issued by the first respondent in Form XVI prescribed under the M.P. General Sales Tax Act, 1958 (hereinafter referred to as "the Act") in the name of Bhimsen Sachdeva, an unregistered dealer, calling upon him to show cause why he should not be assessed to the best of judgment for the period from 1st April, 1959 to 31st March, 1965, he having failed to apply for registration, and why a penalty u/s 18(6) should not be imposed on him. Bhimsen Sachdeva had died before the notice was issued, and hence it appears that the service was effected on the petitioners, who are his sons. On 30th September, 1965, the petitioners submitted an application protesting against the service of the notice on them. They also brought to the notice of the Sales Tax Authorities that Bhimsen Sachdeva had expired on 4th April, 1965, and that they could not be assessed for the dealings of Bhimsen Sachdeva, carried on by him in his individual capacity, inasmuch as the present firm of the petitioners had not acquired any of the assets or liabilities of Bhimsen Sachdeva. Even after this application, the first respondent insisted on proceeding with the assessment and served the petitioners with another notice informing them the date fixed for appearance and calling upon them to produce all the account books etc. This time the notice was issued in the name of "Messrs Bhimsen Sachdeva, Proprietors, Sachdeva & Company, Marhatal, Jabalpur". The petitioners, it appears, therefore, appeared before the first respondent and thereafter the impugned order was passed.

4. The first respondent observed :

Shri Bhimsen Sachdeva expired in 1965; therefore, a notice in Form XVI was served on his sons, in response to which Shri Gopal Krishna Sachdeva, Shri Lalit Mohan Sachdeva and ,Shri Swarna Singh, their Accountant, along with Shri V.S. Malhotra and Shri S. P. Manocha, Advocates, appeared. Report of the Sales Tax Officer, Flying Squad, Jabalpur, was shown to them to put forth any objection if they had against his findings. None of them objected to the extent of business carried on by Shri Bhimsen Sachdeva. The only objection made was that the business carried on by Shri Bhimsen Sachdeva was not in his personal capacity, but it was carried on in partnership with Shri Vimal Chand Jain, who at present is carrying on the business of iron and steel in the name of M/s. Vimal Iron Traders, Marhatal, Jabalpur. They were asked to furnish proof in support of their statement.

The first respondent thereafter proceeded to consider certain evidence on record and came to the conclusion that Bhimsen Sachdeva was carrying on the business of iron and steel independently with the help of Shri Swaran Singh and Shri Vimal Chand Jain who were being paid by him for the duties rendered to him from time to time and that he was carrying on the business in fictitious names. He determined the turnover for the period from 1st April, 1959 to 31st March, 1965, at Rs. 10,00,000 and assessed the tax accordingly. He also imposed a penalty of Rs. 20,000.

5. From the notice (annexure A) and from the assessment order (annexure D) it

is clear that the proceedings were initiated against "Bhimsen Sachdeva" and the notice was also issued against Bhimsen Sachdeva. From the notice as well the order as also from the demand notice (annexure E), which is again in the name of Bhimsen Sachdeva, it is clear that the proceedings were not initiated nor any order was passed nor any demand was raised against the petitioners in their capacity as legal representatives of Bhimsen Sachdeva. Shri Dabir, learned "counsel for the petitioners, therefore, submitted that the assessment order made against a dead person was, on the face of it, void and was liable to be quashed. He also urged that inasmuch as the order was not against the petitioners, they had no right to prefer an appeal against that order. He urged that though the demand notice was issued against Messrs Bhimsen Sachdeva, the petitioners were apprehensive that coercive action would be taken against them. It is for this reason that they were forced to file this petition seeking the quashing of the order and restraining the respondents from making recovery as per the demand notice.

6. Section 33-B of the Act provides that where a dealer dies, his executor, administrator, or other legal representative shall be deemed to be the dealer for the purposes of the Act and that the provisions of the Act shall apply to him in respect of the business of the said deceased dealer. This provision clearly shows that the legal representative is to be proceeded against as a dealer and the provisions of the Act are to be applied to him. The notices under the Act must, therefore, be issued to the legal representative and the assessment order must necessarily be passed against him. The deeming provision in Section 33-B cannot be relied upon for holding that though the notices are issued in the name of a dead person and the assessment is also made against a dead person, the assessment shall be deemed to be the assessment of the legal representatives. A similar provision was made in Section 24-B of the Indian Income Tax Act, 1922, wherein it was provided that where a person dies before the publication of the notice referred to in Sub-section (1) of Section 22 or before he is served with a notice under Sub-section (2) of Section 22 or Section 34, as the case may be, his executor, administrator or other legal representative shall, on the serving of the notice under Sub-section (2) of Section 22 or u/s 34, as the case may be, comply"therewith, and the Income Tax Officer may proceed to assess the total income of the deceased person as if such executor, administrator or other legal representative were the assessee. No doubt, u/s 24-B of the Income Tax Act, a specific provision has been made for issuing a notice to the legal representative. But that purpose is achieved u/s 33-B of the M.P. General Sales Tax Act by providing that on the legal representative being deemed to be a dealer, the provisions of Act would apply. There is, therefore, no material difference between Section 24-B of the Income Tax Act and Section 33-B of the M.P. General Sales Tax Act.

7. In Shaikh Abdul Kadar Vs. The Income Tax Officer, a Division Bench of this Court held :

The notice u/s 34 is the foundation of jurisdiction, and that notice has to be correct. When a notice is issued to a dead person, the taxing authority cannot catch any living person into whose hands the notice goes and attribute notice to him. In the present case all notices and communications are addressed to Shri Shakir Hussain, which shows that they are all sent to a dead person.

It may be that the legal representatives of Shakir Hussain continue to utilize the name of their father for their own business, but the distinction is quite apparent that they are an "association of persons" and it is not the case of the department that the notice which was addressed to Shri Shakir Hussain was sent to this association of persons. The wording of the notice as well as the letters which have been written by the department on subsequent occasions clearly show that, in so far as the department was concerned, it was dealing with Shakir Hussain who, they knew, was dead. In our opinion, the notice was defective. As such a notice is a condition precedent for action u/s 34 of the Income Tax Act, the assessment cannot be made.

In this view of the matter, the Income Tax Officer was prohibited from making an assessment on the strength of the notice and an appropriate writ was issued. In the present case also, though the first respondent was aware of the death of Bhimsen Sachdeva, the notice was issued in his name. Though the petitioners had protested against the continuance of the proceedings, the first respondent continued the proceedings on the ground that a notice was served on the petitioners, though no such notice has been exhibited before us. The assessment order is also against Messrs Bhimsen Sachdeva and not against the petitioners who carry on the business in the name of "Sachdeva & Company". In the return, an attempt has been made to give an explanation that inasmuch as the assessment was being made for the individual business of Bhimsen Sachdeva as distinguished from the business carried on by the petitioners in the name of "Sachdeva & Company", the notices were issued in the name of Messrs Bhimsen Sachdeva and the assessment was also made in that name. The suggestion is that the name "Messrs Bhimsen Sachdeva" was really another description of the petitioners, namely, "Sachdeva & Company". It is difficult to accept this explanation given at this stage. Shri Sen, learned Advocate-General, appearing for the State, however, relied on the decision of the Bombay High Court in *MAHARAJA OF PATIALA Vs. COMMISSIONER OF Income Tax (CENTRAL), BOMBAY*, wherein it was held by Beaumont, C.J., as under :

...I am not prepared to say that the notice was bad, if it was served on the legal representative, merely because it omitted to state that it was served in that capacity. It "should have been stated that it was served on the legal representative of the late Maharaja, and that the return required was of the late Maharaja's income. It was not so stated, and the present Maharaja himself may have had taxable income for the years in question; but I think there is a good deal of force in the contention of the Tribunal that any irregularities in this respect were waived by the Maharaja, because returns of the late Maharaja's

income were made by the Foreign Minister on behalf of the Maharaja and then subsequently corrections were made in the assessment at the instance of the Maharaja. There is no doubt that the present Maharaja knew perfectly well that what was being assessed was the income of his predecessor.

It was further observed :

Then when one comes to the actual assessment, it is made on the deceased Maharaja. It is, of course, wholly irregular to assess a deceased person. The assessment should have been made on the legal representative in respect of the income of the deceased. However, there again, the Patiala authorities seem to have accepted the view that it was an assessment made on the agent in respect of the income of the deceased person, because they have actually appealed against the assessment, and if the assessment was an assessment on a dead man, it was obviously a nullity, and there is nothing to appeal from. On the whole, though I certainly do not wish to give any countenance to the idea that the provisions of Section 24B need not be strictly complied with, in the particular facts of this case, and having regard to the fact also that the question is merely of academic interest, having regard to the answer to the second question, I am prepared to say that the assessment, though not strictly made in accordance with the provisions of Section 24B, is in the circumstances valid so far as that section is concerned.

On the basis of this observation, it was urged that the petitioners knew that they were being assessed for the business of their father. They had participated in the assessment proceedings and hence, though no proper notice was issued to them, and even though the order was passed in the name of their deceased father, it was not open to them to question it and that the order was binding on them. It may be pointed out that the Bombay decision is not of any help to the department. In that case, the successor Maharaja had actually filed a return regarding the income of the deceased Maharaja. He had also preferred an appeal against the order which, according to his Lordship, should have been treated as a nullity. In these circumstances, it was held in that case that the order was binding on the successor Maharaja. It may also be noted that that question did not, as a matter of fact, arise on the answer given by his Lordship on other questions. In this case, the petitioners had lodged the protest and their participation in the proceedings was under coercion. We, therefore, do not see any reason to take any different view from the one expressed by this Court in *Shaikh Abdul Kadar Vs. The Income Tax Officer*, .

8. Learned Advocate-General, in the alternative, urged that if the order is said to be not an order against the petitioners so as to bind them, and if the demand notice is against a dead person, the petitioners have no locus standi to file this petition, as they are, in no way, adversely affected. He further urged that on the view expressed by this Court as to the validity of the order in question there should not be any scope for any apprehension in the mind of the petitioners that the demand would be enforced against them. In this view of the matter, he urged

that the petition is liable to be dismissed. We are of the view that this submission of the learned Advocate-General is well-founded and must be accepted. On our finding that the impugned order is not binding on the petitioners and is a nullity, it is not necessary for us to quash the impugned order or to issue a writ of mandamus restraining the respondents from giving effect to the order.

9. The petition is, therefore, dismissed. We, however, direct that the respondents shall pay the costs of the petitioners. Hearing fee Rs. 150. The outstanding amount of the security deposit shall be refunded to the petitioners.