
(1976) 11 DEL CK 0003

In the Delhi High Court

Case No : Civil Writ Petition Appeal No. 122 of 1968

Harbans Lal (Dead)

APPELLANT

Vs

Sales Tax Officer

RESPONDENT

Date of Decision : 17-11-1976

Acts Referred:

Citation : (1977) ILR Delhi 212

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Advocate : Balram Sangal, Y.P. Batra and W. Singh, for the Appellant;

Judgement

Avadh Behari Rohatgi, J.

(1) (ORAL). In the sales tax law the question whether a dissolved firm is an assessable unit and legal entity has often been raised. It arose under the Punjab Sales-tax Act. The Supreme Court in *State of Punjab v. Jullundur Vegetables Syndicate*, 1966) 17 S.T.C. 326 held that a dissolved firm could not be assessed. The same question arose under the Central Provinces and Berar Sales-tax Act, 1947. In *Additional Tahsildar v. Gendak*, (1968) 21 S.T.C. 263 the Supreme Court held following *Jullundur* case that a dissolved firm was not an assessable unit. Recently it arose under the Bombay Sales-tax Act of 1953 and the Bombay Sales-tax Act, 1959. This time the Supreme Court in *Murarlal Mahabir Prasad v. B. R. Vaid*, (1976) 37 S.T.C. 77 held by a majority (Chandrachud and Sarkaria JJ., A. C. Gupta J. dissenting) that a firm on dissolution did not cease to be an assessable unit for the purpose of sales-tax. In this writ petition the question has now arisen with regard to the Bengal Sales-tax Act 1941 as extended to Delhi.

(2) The facts of the present case are these. A firm G. L. Amar Nath & Co. Company was carrying on business at Delhi. It was a partnership firm. It was formed on January 24, 1950. In 1965 two of the five partners retired. In 1966 one of the remaining three partners retired. The two partners, namely, Harbans Lal and

Amar Nath continued to carry on their business till June 10, 1967 when by a deed of dissolution of that date the partnership was dissolved. In the dissolution deed Harbans Lal and Amar Nath agreed that none of them shall carry on business in future under the name of G. L. Amar Nath and Company. So far as this partnership was concerned that was its end.

(3) By a letter dated October 5, 1967, Amar Nath on behalf of the dissolved firm informed the sales-tax officer that the firm stood dissolved with effect from June 10, 1967 and the registration certificate granted to it should Therefore be cancelled. He also sent a copy of the dissolution deed along with the letter.

(4) On receipt of the letter the sales-tax officer cancelled the registration certificate with effect from October 7, 1967 which presumably was the date of the receipt of the letter informing him about dissolution. The original certificate was produced before me in the course of hearing. It contains a cancellation order on its face. It is not disputed that the sales-tax commissioner also issued a notification regarding the cancellation of the registration certificate of the firm in the official gazette as required by S. 9 of the Bengal Sales-tax Act as extended to Delhi (the Act), It is not denied that the last assessment of this firm for the year 1967-68 was made for the period from April 1, 1967 to June 10, 1967 as is clearly shown by the assessment order dated October 26, 1971 which has been placed on the file. These facts clearly show that the firm of G. L. Amar Nath and Company was dissolved on June 10, 1967. Accepting the authenticity of the deed of dissolution and infact acting upon it the sales-tax authorities cancelled the registration of the firm, notified the cancellation in the gazette and made the last assessment ending with June 10, 1967. In the counter-affidavit of the sales-tax officer these facts are not disputed though generally it has been said that dissolution is a question of fact and cannot be raised in, the writ proceedings. But as the facts stated above are not disputed I fail to see how the question that G. L. Amar Nath and Company was a dissolved firm is in doubt or in dispute. I would Therefore start with the premise that G. L. Amar Nath and Company was a dissolved firm on June 10, 1967 or at the latest on October 7, 1967, the date on which the certificate w[^]s cancelled. It is not open to the Sales-tax authorities now to go behind this position.

(5) After the dissolution of the firm the sales-tax authorities wanted to make assessments under s. 11 of the Act. They issued a notice to the firm. In answer the erstwhile partner took the stand that since the firm was dissolved on June 10, 1967 the authorities had no power to make the assessment. Harbans Lal one of the partners of the dissolved firm brought this writ petition under Articles 226 and 227 of the Constitution on February 2, 1968 challenging the power of the statutory authorities to assess the dessolved firm.

(6) During the pendency of the petition the authorities were permitted to make the assessments for the period from 1961 to 1968. This was accordingly done. This writ petition is confined only to the assessment years 1961-62, 1963-64, 1964-65 and 1965-66. We are not concerned with the assessment years

1962-63, 1966-67 and 1967-68 which are not the subject-matter of the writ proceedings.

(7) Now the question is : can the firm be assessed for the years in dispute even though it has been dissolved ? At the outset two propositions can be formulated. (1) Unless there is an express provision in the statute no assessment can be made on a firm under the Sales-tax Act which has lost its character as an assessable entity on its dissolution. (2) Can such a power be gathered by necessary implication on reading the various provisions of the Bengal Sales-tax Act as extended to Delhi ? These two propositions were enunciated by the Supreme Court in Jullundur case (supra). As regards the first proposition Mr. Wazir Singh, counsel for the Revenue does not dispute that there was no express provision in the Bengal Sales-tax Act empowering the statutory authority to reassess a dissolved firm until an amendment was made on May 28, 1972. Therefore, it is the second proposition which needs consideration. We have to find that whether by necessary implication or intendment the Act empowers the authorities to assess a dissolved firm.

(8) It is necessary to trace the history of the Act in so far as the assessment of a dissolved firm is concerned. The Bengal Sales-tax Act was enacted by the Bengal Legislature in 1941. It was extended; to Delhi in 1951. On September 3, 1951 the Chief Commissioner in exercise of the powers conferred on him under s. 26 of the Act framed rules. Rules 39 and 39(1A) are relevant for our purpose :

"39. (1) A dealer and his partner or partners shall be jointly and severally responsible for payment of the tax, penalty or any amount due under the Act or these rules. (1A) In case of the dissolution of a firm, every partner thereof and in case of discontinuance of an association, every member thereof, shall be jointly and severally responsible for payment of tax due under the Act or these Rules in respect of the business of the firm or the association as the case may be, conducted before its dissolution or discontinuance."

Rule 39(1A) was framed on March 10, 1959 as it was not there in the rules originally framed.

(9) On May 28, 1972, the Finance Act 1972 received the assent of the President. S. 69 of that Act amended the Bengal Sales-tax Act as enforced in Delhi by introducing a set of new sections beginning from 12A to 12F. S. 12C contains the principle of joint and several liability of the partners of an existing firm to pay tax. S. 12F is specific. It deals with a dissolved firm. It also incorporates the principle of joint and several liability of partners of a firm which has discontinued or dissolved the business. In view of the amendment made by the Finance Act in the Bengal Sales-tax Act rule 39 (1A) was deleted from the rules with effect from March 29, 1973.

(10) These are all the relevant provisions so far as they concern us. But the question remains and it is this. Was there a power in the sales-tax authorities to

assess a dissolved firm prior to the amendment of the Act in 1972 ? The assessment orders of the years 1961-62, 1963-64 and 1964-65 and 1965-66 were admittedly made prior to 1972. At that time there was no such section as S. 12F. If there was any such power as is claimed it must be found in the unamended Act. Counsel for the petitioner says that there was no such power. Counsel for the Revenue contends the contrary.

(11) Basing himself on the latest decision of the Supreme Court in Murarilal Mahabir Prasad (supra) counsel for the Revenue contends that the general scheme and specific provisions, viz., ss. 4, 11, 11A, 16, 17 and 20 of the Act and rule 39 and 39 (IA) quoted above make it abundantly clear that there is no bar in the way of the sales-tax authorities to assess a dissolved firm. As regards the amendment made in 1972 he argues that the amendment made explicit what was implicit in the Act before the amendment. He has adopted nearly all the arguments which prevailed with the majority in the Supreme Court in coming to the conclusion it did in Murarilal Mahabir Prasad's case (supra).

(12) In my opinion the decision in Murarilal Mahabir Prasad's case is not applicable to the Bengal Sales-tax Act. The reason is plain. In Murarilal Mahabir Prasad's case the Supreme Court was concerned with the Bombay Sales-tax Acts of 1953 and 1959. On the general scheme and interpretation of its various provisions the court came to the conclusion that a dissolved firm can be assessed under those Acts. Chandrachud J. speaking for the majority said :

"THE imposition of such a liability is in keeping with the general scheme of the Act, the various provisions of which show that the assessment of a dissolved firm is within the clear intendment of the statute."

(p. 110).

(13) It would indeed be misleading to base our conclusions on the different language of different sections of different Acts. It is the duty of the court first of all to find out what the Act of legislature under consideration means, and not to embarrass itself with decisions on different Acts when considering the construction of a plain statute framed in different words from the other Acts. Any other course would be apt to lead us astray. In the interpretation of statutes the courts decline to consider other statutes proceeding on different lines and including different provisions or the judicial decisions thereon. Lord Macnaght, when discussing the phraseology of two Revenue Acts, said in *Inland Revenue Commissioners v. Forrester* (1890) 15 A. C. 34 :

"THE two Acts differ widely in their scope; and even when they happen to deal with the same subject their wording is not the same. It was argued, indeed that the language was "practically identical"; but that expression, to my mind, involves an admission that language is different."

(14) There are two sections in the Bombay Acts-s. 26(3) of the Bombay Act of 1953 and s. 19(3) of the Bombay Act of 1959 which are conspicuous by their

absence in the Bengal Act. The Bombay High Court as well as the Supreme Court were greatly influenced by the existence of these two sections in the Bombay Acts and Therefore they came to the conclusion that a dissolved firm is a unit of assessment by necessary intendment. It would Therefore be unsafe to base our conclusions on the Bombay Acts different as they are both in their provisions, scheme, scope and wording.

(15) Counsel submitted that if a dissolved firm cannot be assessed and re-assessed under the Act then it was easy to defeat the law and evade the liability by the device of dissolution, a thing easy enough to do. He quoted the words of Chandrachud J :

"SUPPRESS the turn over, evade the sales tax, dissolve the firm and earn your freedom from taxation."

(Murarilal Mahabir Prasad (supra) at p. 109). The answer to this contention is to be found in the words of Subba Rao, J :

"IT is a settled rule of construction that in interpreting a fiscal statute the court cannot proceed to make good the deficiencies, if there be any, in the statute; it shall interpret the statute as it stands and in case of doubt, it shall interpret it in a manner favorable to the taxpayer."

(Jullundur Vegetables Syndicate (supra) at page 431).

(16) The desirability or the undersirability of our conclusion as compared with another cannot furnish a guide in reaching a decision. The result reached must be that which is directed by that which is enacted by the legislature (Shop and Store Development Ltd. v. Commissioners of Inland Revenue (1967) 1 A.C. 472. So long as the legislature did not step in, the taxpayer was entitled to get the benefit of the loophole.

(17) The word "dealer" is defined in s. 2(c) of the Bengal Act. It means any person who carries on the business of selling goods in the Union territory of Delhi and includes the Government. The word "person" as defined in the General Clauses Act includes a firm also. Therefore, a firm is a "dealer". That the firm is treated as a dealer is clear from rule 39. Rule 39 talks of joint and several liability of the partners of a firm. Therefore, a firm can be a dealer and that is what the rulemaking authority thought. That is why it framed that rule. A firm means an existing firm. It does not mean a dissolved firm. A dissolved firm means a firm which is dead or at an end. S. 11 of the Act which deals with assessment contemplates an existing firm. It does not talk of a dissolved firm. If the term "dealer" means also a firm it cannot be argued that it will also include a dissolved firm. For that there has to be an express provision. The statutory authorities have to be empowered expressly to assess a dissolved firm. But admittedly there was no such provision in the Act as it stood before amendment. In Cape Brandy Syndicate v. Commissioners of Inland Revenue (1921) 12 TC 358 in a classic passage marked by a happy turn of phrase Rowlatt J. said:

"IN a taxing statute one has to look at what is clearly said There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

(18) It is true that under rules 39 and 39(IA) the responsibility for the payment of tax has been provided. The partners have been made jointly and severally liable both in case of an existing firm and a dissolved firm. But where is the power of assessment ? The power of assessment and the power to recover tax are two different things. For assessment and reassessment there must be a substantive provision. As Subba Rao J. pointed out in Jullundur case (supra) that there was much confused thinking on the subject as a result of mixing up the question of the statutory power of assessing a dissolved firm with the liability of the partners to pay the tax so assessed on the firm before its dissolution.

(19) Lord Dunedin in *Whitney v. Commissioners of Inland Revenue* (1925) 10 TC 88 clearly delineated the three stages in the imposition of a tax. He said :

"A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omissions or clear direction makes that end unattainable. Now, "there are three stages in the imposition of tax : there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, *ex hypothesi*, has already been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay."

(20) Under S. 11 an existing firm can be assessed but not a dissolved firm. This was a lacuna in the Act. The legislature plugged the loophole and filled in the lacuna by the Finance Act of 1972. It introduced s. 12F. S. 12F in so far as it is material read as under :-

"LIABILITY in other cases. (1) Where a dealer is a firm or an association of persons or a Hindu undivided family, and such firm, association or family has discontinued business- (a) the tax payable under this Act by such firm, association or family up to the date of such discontinuance may be assessed as if no such discontinuance had taken place; and (b) every person who was at the time of such discontinuance a partner of such firm or a member of such association or family shall, notwithstanding such discontinuance, be liable jointly and severally for the payment of tax assessed and penalty imposed and payable by such firm, association or family, whether such tax (including penalty) has been assessed prior to or after such discontinuance, and, subject as aforesaid, the provisions of this Act shall, so far as may be, apply as if every such person or partner or member were himself a dealer."

(21) S. 12F(I)(a) now clearly provides that where a dealer is a firm and it has discontinued business then it may be assessed as if no such discontinuance has

taken place. By importing a fiction the legislature has armed the assessing authority to deal with a firm which though it existed at one time has since discontinued its business. The firm is deemed to continue after discontinuance for the purpose of assessment. This amendment has made the dissolved firm a legal entity for purposes of assessment even though the firm had ceased to exist on dissolution. This is the clear meaning of the keyword "as if used in the section.

(22) Counsel for the Revenue submits that we may for the purpose of this case ignore the amendment and confine ourselves to the unamended Act. I cannot accept this argument. The court is not to be oblivious of the history of law and legislation. Attention must be paid to the historical setting of legislation. In the interpretation of statutes, the interpreter may call to his aid all those external or historical facts which are necessary for comprehension of the subject matter [See Maxwell-Interpretation of Statutes (12th ed.) p. 471.

(23) The introduction of s. 12F in 1972 is both significant and deliberate. The legislature knows its mind when it sets about to amend the Act. There is a common law presumption that the legislature is endowed with wisdom. If the object of the amendment was clarificatory as counsel contends nothing was easier for the legislature than to say that the Act is being amended for the avoidance of doubt and that a dissolved firm shall always be deemed to be an assessable unit. Nor did the legislature make the amendment retroactive. The language of s. 12F does not show that it is retrospective in operation. S. 1(2) of the Finance Act, 1972 says that ss. 2 to 60 shall be deemed to have come into force on 1st day of April, 1972. But s. 69 which introduced the amendment was not given retrospective effect. In my opinion the Amendment Act of 1972 which introduced new s. 12F and conferred power to assess a dissolved firm on the authorities is a fact of outstanding importance in the history of sales-tax legislation and it affords a key to the understanding of the meaning and purpose of the amending legislation. As to an amending Act, the Judicial Committee in D. R. Praser v. Minister of National Revenue (1949) A.C. 24 said :

"WHEN an amending Act alters the language of the principal statute the alteration must be taken to have been made deliberately. In tax legislation it is far from uncommon to find amendments introduced at the instance of the revenue department to obviate judicial decisions which the department considers to be attended with undesirable results."

(24) This is what happened in this case. The revenue department felt that there was a lacuna and a loophole. The Finance Act of 1972 plugged the loophole. In view of the amendment made by the Finance Act of 1972 it cannot be contended by the revenue now with any show of justification that they were endowed with a power to tax a -dissolved firm even without there being a specific provision in the unamended Act.

(25) The case nearest to our Act is the Supreme Court decision in Jullandur case (supra). In that case the respondent firm was dissolved on July II, 1953 and an

intimation of its dissolution was sent to the sales-tax department under s. 16 of the East Punjab General Sales-tax Act, 1948 on July 18, 1953. In the meantime, on May 30, 1953, the firm had been assessed to sales-tax in respect of its turnover for the period October 4, 1952 to March 31, 1953. That assessment was quashed and the sales-tax officer made a fresh assessment on that turnover on September 3, 1955. At the relevant time there was no provision expressly empowering the assessing authority to assess a dissolved firm in respect of its pre-dissolution turnover. In these circumstances the Supreme Court held that the order of assessment dated September 3, 1955 was void. The court held further that unless there was a provision expressly empowering the assessing authority to assess a dissolved firm in respect of its turnover before its dissolution or unless such a power could be gathered by necessary implication from the other provisions of the Act the assessment proceeding against the dissolved firm was not maintainable. K. Subba Rao J., as he then was, speaking for the court said :

"THOUGH under the partnership law a firm is not a legal entity but only consists of individual partners for the time being, for tax law, Income Tax as well as sales-tax, it is a legal entity. On the dissolution of the firm it ceases to be a legal entity, and on principle, thereafter, unless there is a statutory provision permitting the assessment of a dissolved firm, there is no longer any scope for assessing the firm, which ceases to have legal existence."

, On rule 40 of the East Punjab General Sales Tax Rules] 949 (very similar to rule 39 of our rules) the Supreme Court said :

"IT only imposes a joint and several liability on the dealer and its partners for the payment of tax, penalty or any amount due under the Act or the Rules. It does not provide for a case of the dissolution of a firm and the assessment of the dissolved firm."

(26) As in that case so in the present one admittedly the firm was dissolved before the orders of assessment were passed. Therefore the assessment orders and all the proceedings relating thereto after the dissolution of the firm must be held to be bad. Jullundur case was followed by the Supreme Court in Khushi Ram Behari Lal and Co. v. Assessing Authority, Sangrur (1967) 19 S.T.C. 381 and Additional Tahsildar v. Gendalal (1968) 21 S.T.C. 263 (Supra). Referring to these cases Chandrachud J. in Murarilal Mahabir Prasad said:

"IT is plausible that a distinction ought to be made between the death of an individual and the dissolution of a firm. Human beings, as assessed, are not generally known to court death to evade taxes. Death, normally, is not volitional and it is understandable that on the death of an individual, his liability to be assessed to tax should come to an end unless the statute provides to the contrary. With firms it is different, because a firm which incurs during its existence a liability to pay sales tax may, with a little ingenuity, evade its liability by the voluntary act of dissolution. The dissolution of a firm could Therefore be

viewed differently from the death of an individual and the partners could be denied the advantage of their own wrong. But we do not want to strike this new path because the Jullundur case and the two cases which follow it have likened the dissolution of a firm to the death of an individual."

(27) As the court did not "strike this new path" we shall be right in saying that the authority of the decision in Jullundur case remains unshaken.

(28) In *Raj Kishan Goyal v. Sales-tax Officer and Anr.*, 1975 CTR (Delhi) 272, Rangarajan J. held that under the unamended Act there was no provision for assessing a dissolved firm. Rule 39(IA) was relied upon before him as before me. Rejecting the contention of the Revenue he said : .

"RULE I-A does not, however, enable the assessment of a dissolved firm."

And

"RULE 39-A does not constitute or set up any machinery for assessing a dissolved firm."

I have reached the same conclusion though by a different route.

(29) For these reasons I would accept the writ petition and quash the proceedings initiated against the dissolved firm of G. L. Amar Nath and Company and also quash the assessment orders for the assessment years 1961-62, 1963-64, 1964-65 and 1965-66. In the circumstances of the case I would leave the parties to bear their own costs.