(1965) 12 P&H CK 0004

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 1719 of 1964

Harjas Mal Dila Ram APPELLANT

Vs

The Excise and Taxation Officer and Another RESPONDENT

Date of Decision : 15-12-1965

Acts Referred:

Citation : (1966) 18 STC 354

Hon'ble Judges : R.S. Narula, J

Bench : Single Bench

Advocate : S.C. Goyal, for the Appellant; M.R. Agnihotri, for A.G., for the Respondent

Judgement

R.S. Narula, J.—The relevant facts of this case are not in dispute. The petitioner-firm, Messrs Harjas Mai Dila Ram of Rama Mandi was duly registered under the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the Act). This was a partnership firm. The present dispute relates to its turnover for the period from 1st April, 1960, to 31st March, 1961. The prescribed return in respect of the period in question was filed by the petitioner-firm on 9th May, 1961. On 10th April, 1962, the firm was dissolved. Intimation of the dissolution of the firm was sent on the same day to the Registrar of Firms as well as to the Assessing Authority under the Act. First notice for assessment in respect of the period in question (copy annexure G) in prescribed Form S.T. XIV was issued to the petitioner-firm on 17th April, 1964. This was followed by notice of which copy is annexure H to the writ, petition, dated 19th May, 1964, addressed to Dila Ram, ex-partner of the petitioner-firm calling upon him to appear before the Assessing Authority with the relevant books of account, etc. It was at that stage that this writ petition was filed on 28th May, 1964, to quash the impugned notices on the ground that no assessment under the Act could be made against a dissolved firm which was a legal entity separate from its partners. The writ petition was admitted on 20th August, 1964, but no stay order appears to have been passed. This resulted in the final assessment order having been made by the Assessing

Authority on 25th September, 1964. Copy of the order under the Punjab General Sales Tax Act is annexure I and that under the Central Sales Tax Act is annexure J to the writ petition. These copies were filed by the petitioner subsequently.

2. The difficulty in the way of the authorities under the Act to assess partners of a dissolved firm has been got over by the Punjab Governor''s Ordinance (No. 2 of 1963), with effect from 9th January, 1963. The subject-matter of the Ordinance was later passed by the Punjab Legislature in the form of Punjab Act No. 2 of 1963. But this Court (Sharma, J.) has already held on 20th April, 1965, in Bishan Dial Hans Raj v. The State of Punjab C.W. No. 483 of 1963 that the provisions of the amending Act are not retrospective.

3. In view of the abovesaid pronouncement of this Court in Bishan Dial Hans Raj''s case C.W. No. 483 of 1963 the present writ petition has to be decided on the unamended state of law as it existed prior to 9th January, 1963.

4. In Jullundur Vegetable Syndicate v. The Punjab State (1962) 64 P.L.R. 351 a Full Bench of this Court (Tek Chand, Capoor and Pandit, JJ.) answered the following question referred to this Court by the Sales Tax Authorities in the affirmative :

Whether a partnership firm, which is a registered firm under the provisions of the Punjab Sales Tax Act and which was in existence throughout the period for which assessment of sales tax has to be made, ceases to be liable to the said assessment by the mere fact that it has dissolved before the proceedings for assessment are initiated.

5. The Full Bench of this Court, however, decided the case on the assumption that the impugned assessment proceedings had been initiated after the dissolution of the firm though the same related to a pre-dissolution turnover. The State of Punjab went up in appeal against the abovesaid Full Bench judgment of this Court to the Supreme Court of India. The said appeal was registered as C.A. No. 588 of 1964 in that Court. The learned counsel for the State, who appeared in the Supreme Court, argued, inter alia, that the High Court had proceeded on a misapprehension about the assessment proceedings having been initiated afresh after the original order of the Assessing Authority had been quashed by the Financial Commissioner and pressed into service the argument that in fact after the said order of the Financial Commissioner the assessment proceedings, which had originally started before the dissolution of the firm were merely continued. While dealing with that argument of the learned counsel for the State, their Lordships of the Supreme Court held that there cannot be a distinction on principle between an assessment made on a firm under a proceeding initiated before the dissolution and an assessment made under a proceeding started after the dissolution. In either case it has been held by their Lordships of the Supreme Court in their judgment dated 1st November, 1965, in the aforesaid case Since reported as The State of Punjab v. Jullundur Vegetables Syndicate [1966] 17 S.T.C. 326 that unless there is an express statutory provision to that effect, no

assessment can be made on a firm which has lost its character as an assessable entity before the actual oder of assessment is made.

6. In view of the authoritative pronouncement of the Supreme Court on the solitary question involved in this case read with the abovesaid judgment of Sharma, J., this writ petition must succeed. I accordingly quash and set aside the impugned notices, annexures G and H, and the impugned assessment orders dated 25th September, 1964 (copies annexures I and J) and hold that the petitioner-firm is not liable to assessment under the Act in respect of any period prior to its dissolution on 10th April, 1962, in respect of which no subsisting assessment order had been, made before the date of dissolution. In the peculiar circumstances of this case there will be no order as to costs.

