
(1976) 11 DEL CK 0015
In the Delhi High Court
Case No : Civil Writ No. 122 of 1968

Janki Devi and Others

APPELLANT

Vs

Sales Tax Officer and Another

RESPONDENT

Date of Decision : 17-11-1976

Acts Referred:

Citation : (1977) 39 STC 268

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

Bench : Single Bench

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

Final Decision : Allowed

Judgement

Avadh Behari Rohatgi, J.—In the sales tax law the question whether a dissolved firm is an assessable unit and legal entity has too often been raised. It arose under the Punjab Sales Tax Act. The Supreme Court in *State of Punjab Vs. Jullunder Vegetables Syndicate*, . 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. Gendalal* [1968] 21 S.T.C. 263 (S.C.) , the Supreme Court held following *State of Punjab Vs. Jullunder Vegetables Syndicate*, 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 of 1959. This time the Supreme Court in *Murarilal Mahabir Prasad and Others Vs. Shri B.R. Vad and Others*, 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 and Company was carrying on business at Delhi. It was a partnership firm. It was formed on 24th January, 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 10th June, 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 5th October, 1967, Amar Nath on behalf of the dissolved firm informed the Sales Tax Officer that the firm stood dissolved with effect from 10th June, 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 7th October, 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 Section 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 1st April, 1967, to 10th June, 1967, as is clearly shown by the assessment order dated 26th October, 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 10th June, 1967. Accepting the authenticity of the deed of dissolution and in fact 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 10th June, 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 10th June, 1967, or at the latest on 7th October, 1967, the date on which the certificate was 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 u/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 10th June, 1967, the authorities had no power to make the assessment. Harbans Lai, one of the partners of the dissolved firm, brought this writ petition under Articles 226 and 227 of the Constitution on 2nd February, 1968, challenging the power of the statutory authorities to assess the dissolved 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 *State of Punjab Vs. Jullunder Vegetables Syndicate*, . 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 28th May, 1972. Therefore, it is the second proposition which needs consideration. We have to find out 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 3rd September, 1951, the Chief Commissioner in exercise of the powers conferred on him u/s 26 of the Act framed the Rules. Rules 39 and 39(1 A) 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 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 10th March, 1959, as it was not there in the Rules originally framed.

9. On 28th May, 1972, the Finance Act, 1972, received the assent of the President. Section 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. Section 12C contains the principle of joint and several liability of the partners of an existing firm to pay tax. Section 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(1 A) was deleted from the Rules with effect from 29th March, 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, 1964-65 and 1965-66 were admittedly made prior to 1972. At that time there was no such section as Section 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 and Others Vs. Shri B.R. Vad and Others*, , counsel for the revenue contends that the general scheme and specific provisions, viz., sections 4, 11, 11A, 16, 17 and 20 of the Act and rules 39 and 39(1 A) 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 merely all the arguments which prevailed with the majority in the Supreme Court in coming to the conclusion it did in *Murarilal Mahabir Prasad and Others Vs. Shri B.R. Vad and Others*, .

12. In my opinion, the decision in *Murarilal Mahabir Prasad and Others Vs. Shri B.R. Vad and Others*, , is not applicable to the Bengal Sales Tax Act. The reason is plain. In *Murarilal Mahabir Prasad and Others Vs. Shri B.R. Vad and Others*, , 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.

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 Macnaghten, when discussing the phraseology of two Revenue Acts, said in *Inland Revenue Commissioners v. Forrest* (1980) 15 AC 334:

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 the language is different.

14. There are two sections in the Bombay Acts Section 26(3) of the Bombay Act

of 1953 and Section 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 reassessed 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 turnover, evade the sales tax, dissolve the firm and earn your freedom from taxation : Murarilal Mahabir Prasad and Others Vs. Shri B.R. Vad and Others, .

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 : State of Punjab Vs. Jullunder Vegetables Syndicate, .

16. The desirability or the undesirability of one 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 Developments 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 Section 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 rule-making 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. Section 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(1A) 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 *State of Punjab Vs. Jullunder Vegetables Syndicate*, 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 a 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. u/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 Section 12F. Section 12F, in so far as it is material, reads 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. Section 12F(1)(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 key words "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. 47.

23. The introduction of Section 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 the 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 Section 12F does not show that it is retrospective in operation. Section 1(2) of the Finance Act, 1972, says that sections 2 to 60 shall be deemed to have come into force on the 1st day of April, 1972. But Section 69 which introduced the amendment was not given retrospective effect. In my opinion the Amendment Act of 1972, which introduced new Section 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. Fraser v. Minister of National Revenue* [1949] AC 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 *State of Punjab Vs. Jullunder Vegetables Syndicate*, . In that case the respondent-firm was dissolved on 11th July, 1953 and an intimation of its dissolution was sent to the sales tax department u/s 16 of the East Punjab General Sales Tax Act, 1948, on 18th July, 1953. In the meantime, on 30th May, 1953, the firm had been assessed to sales tax in respect of its turnover for the period 4th October, 1952, to 31st March, 1953. That assessment was quashed and the Sales Tax Officer made a fresh assessment on that turnover on 3rd September, 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 3rd September, 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.

26. On Rule 40 of the East Punjab General Sales Tax Rules, 1949 (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.

27. 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.

28. *State of Punjab Vs. Jullunder Vegetables Syndicate*, was followed by the Supreme Court in *Khushi Ram Behari Lal & Co. v. Assessing Authority, Sangrur* [1967] 19 S.T.C. 381 (S.C.) and *Additional Tahsildar v. Gendalal* 1968 21 S.T.C. 263 (S.C.) . Referring to these cases Chandrachud, J., in *Murarilal Mahabir Prasad and Others Vs. Shri B.R. Vad and Others*, 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 State of Punjab Vs. Jullunder Vegetables Syndicate, and the two cases which follow it have likened the dissolution of a firm to the death of an individual.

29. As the court did not "strike this new path" we shall be right in saying that the authority of the decision in State of Punjab Vs. Jullunder Vegetables Syndicate, remains unshaken.

30. In Raj Kishan Goyal v. Sales Tax Officer 1975 CTR (Delhi) 272, Rangarajan, J., held that under the unamended Act there was no provision for assessing a dissolved firm. Rule 39(1A) was relied upon before him as before me. Rejecting the contention of the revenue, he said :

Sub-rule (1A) does not, however, enable the assessment of a dissolved firm.

And

Rule 39(1 A) does not constitute or set up any machinery for assessing a dissolved firm.

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

32. For these reasons, I would accept the writ petition and quash the proceedings initiated against the dissolved firm of G. L. Amarnath 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.