(1972) 10 DEL CK 0012

In the Delhi High Court

Case No : Civil Writ Appeal No. 211D of 1963

Karam Singh Sobti APPELLANT

Vs

H.S. Mumtaz etc. RESPONDENT

Date of Decision : 13-10-1972

Acts Referred:

Citation : (1973) 92 ITR 35 : (1973) RLR 171

Hon'ble Judges : D.K. Kapur, J

Bench : Single Bench

Advocate : M.S. Vohra and B.N. Kripal, for the Appellant;

Judgement

D.K. Kapur, J.

(1) This is a writ petition under Article 226 of the Constitution of India arising out of the proceedings for recovery of tax taken against the partnership firm known as Micheal Overman & Co. According to the statements of fact contained in the writ petition the firm was assessed to Income Tax amounting to Rs. 2,879.00 for the years 1953-55 to 1956.57, The entire tax was demanded from the petitioner, Shri Karam Singh Sobti who had 60% ''sharp whereas Mr. Micheal Overman had a share of 40%. The petitioner represented to the Income Tax Officer that the firm had been dissolved and hence the claim for Income Tax should be apportioned. On this application the Income Tax Officer wrote to the District Collection Officer,. Delhi, that a sum of Rs. 1785.00 should be collected from the petitioner and the balance-of Rs. 1155.70 should be collected from the other partner It was also stated that the petitioner had already paid Rs. 985.00 and would pay the balance of Rs. 750.00 by 15.11.59. The District Collection Officer was directed to collect the balance amount from Shri Micheal Overman, employed by M/s. Oberoi Hotels. The letter of the Income Tax Officer in which this division of the tax liability is set out is dated 31.8.59 and is Annexure ''B'' to the writ petition.

(2) Later on the Tax Recovery Officer sought to recover the balance amount of Rs

1155.79 under the provisions of the Income tax-Act, 961. This was challenged by the present writ petition and the recovery proceedings were stayed by the Circuit Bench of the Punjab High Court. The case of the petitioner lies in a very narrow compass. According to the petitioner, his liability is limited to 60% of the tax liability and he cannot be made liable to the 40% which should have been paid by his partner Shri Micheal Overman. The only ground for this contention, contained in the writ petition, is that an order of apportionment was ''made by Shri M.L Chopra, Income Tax Officer, which was final and conclusive and cannot be reopened.

(3) No provision of the Income Tax Act 1922 or even the Act of 1961 can be pointed out which enables the Income Tax Officer to divide the liability of the firm between its two partners. There is a difference in this respect between the liability of a registered firm and an unregistered firm. It is not the case of the petitioner that the firm M/s. Micheal Overman and Co. was a registered firm, Hence ,the only question to be determined in this case ft the legal effect of the apportionment made by Mr. M.L. Chopra, Income Tax officer, by his letter dated-31 8 1962. Whether the letter dividing the amount can have any legal effect, resulting in the respondent being unable "to collect the balance of the tax due from the partnership firm is dependent on whether there was any legal authority investing the Income Tax Officer with the power to limit the liability of a partner in respect of the debts due from the firm. No such power can be pointed out.

(4) The liability of a partnership firm with respect to its dues and the liability of any one of the partners for these dues cannot be distinguished. It is a feature of a partnership that the partners are jointly and severally liable for debts due 10 the partnership. It is only in the case of registered partnership that the income of the partnership firm is divided among the partners so that the liability of the individual partner is limited only to that partner''s individual share in the income. This being not a registered partnership, liability of each partner is co-extensive. As Shri M.L. Chopra, Income Tax Officer, has no power to apportion and delimit the liability of the petitioner, the letter written by the Income Tax Officer has no legal effect.

(5) It is possible for a creditor of a partnership firm to tell any one of the partners that his liability will be limited, There is no such suggestion, in the letter written by the Income Tax Officer. Even if there was such, a suggestion, it would not be binding on the Union of India because the Income Tax Officer has no power to write off any tax demand. In my view, the Income Tax Officer merely apportioned the demand between the two partners for the sake of convenience. He did not in this letter say that the future liability of the petitioner would be restricted to the amount apportioned to his share Further more, he had-no power in law to so delimit the-petitioner''s liability. Therefore, the letter has no effect at all on the legal obligations of the petitioner which are that he is liable to pay the entire amount due from the partnership ; undoubtedly, if required to pay , entire

liablity, the petitioner has a right to be reimbursed by his partner.

(6) The counsel for the petitioner has referred to Income Tax Officer, Agra v. Radha Krishan (65 ITR 590) decided by the Supreme Court. In that case a partner was held up not liable to pay the share of tax due from one of his other partners. That was a case of registered firm in which the income of each of the individual partners had been assessed. Obviously, it has no application to the facts of the present case. An argument has been sought to be raised before me that the letter of the Income Tax Officer operates as an estoppel against the department. 1 do not think it does. In any case, this point has not been raised in the writ petition and Therefore does not require any further education.

(7) In my view this petition is without merit and is Therefore dismissed with costs. The amount in dispute being small, I fix the costs at Rs. 100.00.

