

(1961) 09 MAD CK 0026

In the Madras High Court

Case No : Tax Case No. 61 of 1959 (Revision No. 41 of 1959)

M. Veerabadra Konar

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 06-09-1961

Acts Referred:

Citation : (1962) 13 STC 556

Hon'ble Judges : Srinivasan, J; Jagadisan, J

Bench : Division Bench

Advocate : V. Venkataraman, for the Appellant; G. Ramanujam, for The Government Pleader, for the Respondent

Judgement

Srinivasan, J.—The assessee was assessed for the year 1953-54 on a turnover of Rs. 2,57,092. Subsequently, it was discovered on a verification of the bank accounts that large amounts had been received by the assessee in the name of Sriranga Konar, Veerabadra Konar and Paramasivam. Veerabadra Konar is the assessee. Paramasivam was his partner in the partnership business covered by the original assessment. Sriranga Konar is said to have been an employee in the business. On the discovery that the business was in receipt of large amounts, a revision of the assessment was undertaken. Notice was served upon the assessee on 15th March, 1957. Beyond asking for time, the assessee did not explain the transactions. As the revision of the assessment would be barred by time by 31st March, 1957, the assessing authority declined to grant any further time and fixed the net turnover at Rs. 6,57,092, that is, by the addition of a sum of Rs. four lakhs. The successive appeals to the Commercial Tax Officer and the Tribunal failed. Veerabadra Konar has now filed the present revision petition.

2. The contentions that have been advanced by the learned counsel on behalf of the petitioner are that the firm was dissolved on 9th February, 1954, and intimation of dissolution was given to the Commercial Tax Authorities on 15th February, 1954; thereafter, it is contended, there could not be an assessment in the name of the partnership. The notice under Rule 17 was issued in the name of

the partnership and served on the assessee only. The arguments of the learned counsel is that the Act and the Rules thereunder contain no provision for making an assessment on a dissolved partnership and that therefore the assessment is wholly invalid. The further contention is that the notice of the final assessment was served upon the assessee on 6th April, 1957, and that should be regarded as the date on which the order against him was made. If that is so, the assessment must be deemed to have been made beyond the three years from the close of the assessment year, and invalid on that ground as well. These contentions have now to be examined.

3. Taking the second of these contentions first, it seems to us to be totally without substance. The notice under Rule 17 for revision of the assessment to bring to tax escaped turnover was issued on 9th March, 1957, and served on the assessee on 15th March, 1957, well within the period of three years from the close of the assessment year. The assessee was informed that his explanation should be sent by 20th March, 1957, failing which the assessment would be revised in the manner stated in the notice. He submitted no explanation. The assessing authority proceeded with the assessment and notice demanding tax on the basis of that assessment was served on the assessee on 6th April, 1957. The argument of the learned counsel is that it is the later date that should be regarded as the actual date on which the order of assessment was made. This argument is rested on the assumption that till the date of such service, there is always the possibility of an alteration being made in the order by the assessing authority and there could be no guarantee that the order was in fact made on 20th March, 1957, as it purports to have been made. We are not satisfied that this argument can be accepted. The assessee was definitely informed by the notice that the matter of the assessment would be proceeded with on 20th March, 1957. The order itself *ex facie* shows that the officer was aware that limitation would expire on 31st March, 1957. The normal presumption is that official acts are properly done and under the circumstances stated, we see no reason why we should not accept the position that the assessment was in fact made on the date on which it purports to have been made. The plea of limitation has, therefore, to be rejected.

4. The fact that a total sum of Rs. 2,79,000 was received in the shape of cheques and drafts from other dealers in Tirunelveli district is not denied. Nor was it the contention before the Tribunal that the drafts do not relate to the business of the firm. Of this total amount, a sum of Rs. 80,362 was in the name of the assessee, Veerabadra Konar, a sum of Rs. 25,108 in the name of Paramasivam, the other partner of the firm, and a sum of Rs. 1,26,060 in the name of the firm itself. The conclusion reached that these drafts related to the business and represented the turnover of the business of the firm was not really in dispute before the Appellate Tribunal. But a vague suggestion was put forward that the partners had individual businesses of their own and if any amendment of the assessment was called for, it should have been effected in relation to the individual business of each of the partners. That was not accepted by the Tribunal. It was stated before

us, however, that the assessee Veerabadra Konar did not have any individual business of his own but that Paramasivam did have such an individual business, a position not controverted by the learned counsel for the department. There may arise different considerations in respect of the sum of Rs. 25,108, which represented the value of the drafts in the name of Paramasivam. We shall deal with that separately. But in so far as the two remaining amounts are concerned, there is no doubt that they represent the turnover of the business of the assessee's partnership.

5. In respect of these two latter amounts, the case of the assessee is that the partnership was dissolved with effect from 9th February, 1954, and that intimation of this had even been given to the department. On and after that date, it is claimed there could be no assessment on the partnership. The learned counsel vehemently argues that the rules contain no provisions whereby the firm or the individual partners of a dissolved partnership could be assessed and made liable for sales tax on the lines which the Income Tax Act contains, and in this view he claims that there could be no assessment in respect of a dissolved business on either of the erstwhile partners of the business,

6. It is true that a firm is an assessable entity in the sense that the expression "dealer" is defined so as to include a firm. But notwithstanding that position, there is no doubt that a firm is not a legal entity and is recognised to be merely a compendious form of expression to indicate a group of persons associated in partnership. Though for purposes of convenience an assessment is made in the firm's name, it seems to us to be nevertheless an assessment which is enforceable against each and every member of the firm. Learned counsel argues that Section 19 which confers the power on the State Government to make rules provides in Sub-section (2)(c) for the making of such rules for the assessment to tax under this Act of all businesses "which are discontinued or the ownership of which has changed". It was open to the State Government to make rules in the exercise of this power and it is claimed that no rules have been made hereunder; and that the conferment of the power to make rules is itself a recognition of the fact that in cases where a business conducted by a partnership stands dissolved, the State has to arm itself with the necessary authority under the rule-making power to enable it to proceed with the assessment to tax all such businesses. According to the learned counsel, there is a lacuna in the rules which prevents a lawful assessment being made upon any partner of a dissolved partnership.

7. We are not disposed to accept this argument. Rule 19 of the Madras General Sales Tax Rules provides for the registration as a dealer of every firm or company consisting of partners. The form of application has to be signed by all the partners. The rule concludes by stating that every partner shall be jointly and severally responsible for the payment of tax, fee or other amount leviable under the Act. Rule 20 provides that if a partnership is dissolved, every person who was a partner shall send a report of the dissolution to the assessing authority within 30 days of such dissolution. The effect of these rules seems to us to be that

notwithstanding the dissolution of a partnership, the responsibility for the tax is joint and several on every partner. An assessment made in the name of the partnership, even though it may be dissolved, has only the effect of an assessment made on each and every one of the individual partners, as the firm, though an assessable entity, is not a legal entity, and must be regarded as representing in a compendious fashion all the partners of the partnership.

8. Reliance has been placed by the learned counsel for the petitioner on a decision of the Allahabad High Court in *Jagat Behari Tandon v. Sales Tax Officer, Etawah* [1957] 8 S.T.C. 459. In this decision it was held that an assessment order cannot be made under the U.P. Sales Tax Act on a firm after it is dissolved and has discontinued the business. The decision proceeded on the basis that the firm as a unit of assessment had ceased to exist. This decision was considered in *Ponnuswami Gramani v. Collector of Chingleput* [1960] 11 S.T.C. 80. The learned Judge took the view that the firm being a dealer as defined in the Sales Tax Act up to the date of its dissolution, it could be assessed to sales tax even after its dissolution and the tax could be recovered from the partners of the dissolved firm. The decision principally proceeded on the basis that though a firm is under the Sales Tax Act an assessable entity, it is not a juristic person and that the assessment could be validly made on the firm as representing the several partners thereof, a view which we have also expressed earlier.

9. In the Bombay High Court also, in *Bankatlal Badruka v. State of Bombay* [1961] 12 S.T.C. 405 in a similar case, it was held that the firm was liable to pay tax in respect of the business carried on by it and as the assessment proceedings were started long before its dissolution, it could not be said that the officer acted wrongly or without jurisdiction in continuing the assessment proceedings and passing the final assessment order thereon. In that case, it appears that the dissolution of the firm was not intimated to the authorities in question. Though the learned Judges rested their decision partly on the fact that the assessment proceedings had been commenced even while the firm was still in existence, it seems to us that that cannot make any difference in principle to the assessability of the dissolved firm. In the present case, the records show that there was no intimation of the dissolution of the firm. The letter addressed by the assessee to the authorities only showed that the firm had ceased to do business, a position which is far different from dissolution.

10. We have indicated earlier that out of the total suppressed turnover of Rs. 2,57,092, a sum of Rs. 25,108 was in the shape of drafts or cheques received in the name of Paramasiva Konar, a partner of the firm. It is not disputed that this Paramasiva Konar had an independent business of his own. While the rest of the amounts which were received in the name of either this assessee or in the name of the firm affords prima facie evidence that those amounts related to the business of the firm itself, in the case of this sum of Rs. 25,108 there is no evidence to establish that that can be regarded as part of the turnover of the firm. The circumstance that Paramasiva Konar had an independent business

must, in the absence of any other material, be taken to indicate that that amount related to that business of Paramasiva Konar. It follows therefore that this sum has to be excluded from the assessable turnover.

11. We accordingly direct the revision of the assessment in the light of the above observations. Since, in respect of the major part of the amount in dispute, the assessee has failed, he will pay the costs of the department. Counsel's fee Rs. 100.