(1970) 04 GUJ CK 0001

In the Gujarat High Court

Madanlal Mathurdas APPELLANT

Vs

Income Tax Officer and Another RESPONDENT

Date of Decision : 10-04-1970

Acts Referred:
Income Tax Act, 1922 — Section 44
Income Tax Act, 1961 — Section 226(3), 226(3)

Citation : (1971) 12 GLR 171

Hon'ble Judges : P.N. Bhagwati, C.J;P.D. Desai, J

Bench : Division Bench

Judgement

P.N. Bhagwati, C.J.—This petition raises a question of law which depends for its determination more on the law of partnership than on the law of Income Tax. There was in Gondal a partnership firm (hereinafter referred to as "the Gondal firm'') which carried on business in the name of Messrs. Govind Oil Mill. The Gondal firm consisted of two groups of partners, each group having an equal one half share in the profits and losses of the firm. One group consisted of the petitioner, his brother Liladhar Madanlal and his minor son Jaishanker Madanlal, while the other group consisted of Kishan Gopal Mahavirprasad and Ghanshyam Agrawal, who were benamidars of a firm called Messrs. Swarupchand Prithviraj and Company, Bombay, as subsequently held by the Revenue authorities. There was some dispute between the parties as to when the Gondal firm was dissolved. Was it dissolved at the end of Samvat Year 2008, i.e. October 1952 as claimed by the petitioner or at the end of Samyat Year 2009, i.e., 6th November 1953 as contended by the revenue? It is not necessary for the purpose of deciding the present petition to resolve this dispute and we will, therefore, assume that it was dissolved at the end of Samvat year 2009, i.e., 6th November 1953. The assessment of the Gondal firm for the assessment year 1951-52 was completed after its dissolution and by an assessment order dated 31st January 1956 it was assessed as an unregistered firm and a tax demand of Rs. 19,540-11-0 was raised against it. The petitioner paid a sum of Rs. 10,000/- on 10th April 1956 and a further sum of Rs. 1,400/- on 27th September 1956 towards part payment of this demand. This assessment made on 31st January 1956 was, however, set aside in appeal and ultimately a fresh assessment was made on 19th June 1967 u/s 23(5)(b) in consequence of which no tax was found due from the Gondal firm. The result was that the aggregate sum of Rs. 11,400/- paid by the petitioner became refundable. The petitioner addressed several letters to the Income Tax Officer claiming refund of the said sum of Rs. 11,400/- but no refund was made to the petitioner until 27th June 1967 when the first respondent who is the relevant Income Tax Officer, refunded only one half of the amount, namely, Rs. 5, 700/- to the petitioner. The first respondent took the view that the said sum of Rs. 11,400/- having been paid on behalf of the Gondal firm, it was refundable only to the Gondal firm and since the petitioner''s group and Messrs. Swarupchand Prithviraj and Company were each entitled to one half share in the Gondal firm, one half of the amount was refundable to the petitioner''s group and the other half to Messrs. Swarupchand Prithviraj and Company. The petitioner disputed the correctness of this view and demanded refund of the balance of Rs. 5,700/- but the first respondent refused to give such refund. The first respondent on the contrary intimated to the petitioner by his letter dated 18th October 1967, that he was issuing a refund order for Rs. 5,700/- in favour of the Income Tax Officer, C-11 Ward, Bombay, being the second respondent before us, as he had received a notice from the second respondent u/s 226(3) of the Income Tax Act, 1961, requiring him to pay the balance of Rs. 5,700/- against the tax dues of Messrs. Swarupchand Prithviraj and Company. The first respondent therefore paid Rs. 5,700/- into the State Bank of Saurashtra as desired by the second respondent in his notice u/s 226(3) and sent to the petitioner a copy of his letter dated 19th October 1967 addressed to the second respondent. The petitioner thereupon filed the present petition claiming two reliefs; one for a declaration that the action of the first respondent in paying the balance of Rs. 5,700/- to the second respondent towards discharge of the tax dues of Messrs. Swarupchand Prithviraj and Company was invalid and the other for a mandamus directing the first respondent to pay the balance of Rs. 5,700/- to the petitioner.

2. The principal argument advanced on behalf of the petitioner in support of his claim was that the assessment of the Gondal firm having been made subsequent to its dissolution u/s 44 of the Income Tax Act, 1922, the liability of the partners to pay the tax assessed was joint and several and, therefore, when the petitioner paid the said sum of Rs. 11,400/- to the Income Tax Department, it was in discharge of his own liability and consequently, when that liability was annulled, the amount paid was refundable to the petitioner. This argument, in our opinion, has no merit. It is based on a misapprehension of the true legal position. It is no doubt true that when assessment is made on a firm after dissolution u/s 44, the liability of the partners for the amount of tax is joint and several and each partner is liable to pay the tax assessed but when he pays such tax, he is discharging the tax liability of the firm and not his own individual tax liability. The payment made by him would go to discharge the tax liability of the firm and would, therefore, in law be payment on behalf of the firm so far as the revenue is

concerned. If that be so, it is apparent that when the tax liability of the firm is annulled, the amount paid in discharge of that tax liability must be refundable to the firm. No partner can claim that he alone is entitled to refund of that amount. The right to claim refund would be in the firm and it is the firm and not the individual partner who would be entitled to maintain an action for refund. It is, therefore, indisputable that when the tax liability of the Gondal firm was annulled, the said sum of Rs. 11,400/- paid by the petitioner towards discharge of that tax liability became refundable to the Gondal firm and the Revenue authorities were bound to refund that amount to the Gondal firm. If the Revenue authorities for any reason failed to refund that amount to the Gondal firm and retained it with themselves, the Gondal firm could always maintain an action for claiming refund of that amount from the Revenue authorities but the petitioner alone, though a partner in the Gondal firm, could not maintain such action. The claim for mandamus made in the present petition is by the petitioner alone and not by the Gondal firm and, therefore, obviously no relief can be granted to the petitioner directing the first respondent to refund the balance of Rs, 5,700/- to the petitioner. The balance of Rs. 5,700/- is refundable to the Gondal firm and it is only the Gondal firm which can claim to recover it from the first respondents.

2.1 The petitioner is, however, on firmer ground so far as his claim for the '' other relief is concerned where he asserts that the action of the first respondent in paying the balance of Rs5,700/- to the second respondent towards discharge of the tax dues of Messrs. Swarupchand Prithviraj and Company is invalid. If the said amount of Rs. 11,400/- was refundable to the Gondal firm-and on the view taken by us it must be held to be so-the debt constituted by the liability to refund that amount belonged to the Gondal firm and no one partner could say that an aliquot share of it belonged to him and was recoverable by him as a debt came to him. It is well-settled that until accounts of the firm are settled and the debts of firm are paid off, it is not possible to say that a partner of firm has any specific defined interest in any asset of the firm. It may be that on taking accounts, nothing is found due to a particular partner but on the contrary some is found due and owing from him to the other partner. It is, therefore, not possible to say that Messrs. Swarupchand Prithvaraj and Company had one half share in the amount of refund due to the Gondal firm. The balance of Rs. 5,700/- was consequently not payable to Messrs. Swarupchand Prithviraj and Company alone but to the Gondal firm and the Income Tax Officer was clearly in error in paying that amount to the second respondent towards discharge of the tax liability of Messrs. Swarupchand Prithviraj and Company. The amount of the refund belonged to the Gondal firm and the first respondent was bound to refund that amount only to the Gondal firm. The action of the first respondent in paying the balance of Rs. 5,700/- to second respondent towards the tax dues of Messrs. Swarupchand Prithviraj and Company must, therefore, be held to be invalid.

3. We, therefore, allow the petition and make the rule absolute to the limited extent that we issue a direction, order or writ declaring that the section of the first respondent in paying the balance of Rs. 5,700/- to the second respondent

towards discharge of the tax liability of Messrs. Swarupchand Prithviraj and Company was invalid. The other reliefs claimed by the petitioner in the petition will stand rejected and the rule will stand discharged to that extent. The respondents will pay the costs of the petition to the petitioner.