(1977) 02 AHC CK 0016

In the Allahabad High Court

Case No : S.T. Ref. No. 280 and 281 of 1973

M/S. YOGESH KUMAR and SONS APPELLANT

Vs

COMMISSIONER OF SALES TAX. RESPONDENT

Date of Decision : 14-02-1977

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 11

Citation : (1977) 6 CTR 145

Hon'ble Judges : D. M. Chandrashekhar, J

Bench : Division Bench

Judgement

D. M. Chandrashekhar, J. - In these two references under S. 11 of the U.P. Sales Tax Act, 1948, (hereinafter referred to as the Act) relating to the same assessee for two different assessment years, the common question referred is :-

"Whether there is any material on record to support the finding of the Judge (Revisions) that Radha Kishan Bagla has a proprietary or partnership interest in the business run in the name of Yogesh Kumar and Sons ?"

2. The material facts necessary for answering the above question, have been set out in the statement of the case by the Judge (Revisions). It is unnecessary to repeat them here. Suffice it to state that in the assessment of the firm M/s. Yogesh Kumar and Sons, a controversy arose whether Radha Kishan Bagla was or was not a partner thereof. He denied that he was a partner of that firm, while the Judge (Revisions) held that he was a partner or proprietor of that firm.

3. The learned counsel for the applicant contended that there was no material on the basis of which the Judge (Revisions) could hold that Radha Kishan Bagla was a partner or proprietor of the firm M/s. Yogesh Kumar and Sons. On the other hand, the learned Standing Counsel, who appeared for the Revenue, contended that there was a relevant material which could form the basis for the finding of the Judge (Revisions) and that once there was some material to come to such conclusion, the sufficiency of such material cannot be examined by this Court in

a reference under S. 11 of the Act.

4. To decide whether or not there was relevant material on the basis of which the Judge (Revisions) could hold that Radha Kishan Bagla was a partner of the assessee firm, it is useful to set out S. 4 of the Partnership Act, 1932, and to analyse the necessary ingredients for constituting a partnership.

5. "Partnership" is defined in S. 4 of the Partnership Act as the relation between persons who have agreed to share the profit of business carried on by all or any of them acting or all.

6. As explained by a Division Bench of the Madras High Court in Meenakshi Achi and another vs. P. S. M. Subramanian Chettiar & others, partnership, as defined above, consists of the following three essential elements :

(i) it must be the result of an agreement between the several persons,

(ii) the agreement must be to share the profits of business, and

(iii) the business must be carried on by all or any of them acting for all.

All the three above elements must exist before a partnership can be said to exist.

7. As stated by a Division Bench of the Chief Court of Oudh in Sheikh Tajammul Hussain vs. Sheikh Ahmad Ali and another, the agreement amongst all the person concerned to share the profits of business, may be either express or implied. The circumstances that the business has been carried on for a number of years and that all the parties concerned have either actively joined or acquiesced in carrying on of the business and have been sharing the profits, justify an inference that there was at least an implied agreement amongst all those persons to carry on business and to share the profits thereof.

8. A mutual understanding between the parties to carry on business together and to share the profits thereof, can be inferred by a consistent course of conduct or by express admission of the parties concerned.

9. The materials relied on by the Judge (Revisions) for inferring that Radha Kishan Bagla was a partner of the assessee firm, were as follows :-

(i) One D. D. Johri, a partner of the firm, M/s. Indian Vanaspati and Co. Kanpur, who had introduced the firm, M/s. Yogesh Kumar and Sons, when the latter had applied for its registration under the Central Sales Tax Act, had deposed before the assessing authority that, as far as he knew, all the transactions of the assessee firm were being conducted by Radha Kishan Bagla himself and that he was looking after the entire business affairs of that firm.

(ii) One Rajendra Nath stated on oath before the assessing authority that he sold 3 or 4 wagons of vanaspati to the assessee firm and that Radha Kishan Bagla had approached him to negotiate those transactions.

(iii) One Paras Ram Khanna, a broker, had deposed before the assessing authority that Radha Kishan Bagla used to negotiate on behalf of the assessee firm.

(iv) One Ram Pratap, a partner of the firm Kishan Lal Ram Prakash, deposed before the assessing authority that he purchased vegetable oil from the assessee firm through Radha Kishan Bagla.

(v) Jitendra Kumar, the landlord of the shop premises in which the assessee firm was carrying on the business, deposed before the assessing authority that he saw Radha Kishan Bagla carrying on the business of the firm and dealing with the registers thereof before the Assistant Sales Tax Officer who had visited the shop of that firm.

Though the Judge (Revisions) has stated in his order that there was on record other evidence also, both oral and documentary, which went to show that Radha Kishan Bagla was actively connected with the assessee firm was its partner, the Judge (Revisions) has not stated what such other oral or documentary evidence was. He has, however, stated in his order that during the course of arguments the learned counsel for Radha Kishan Bagla conceded that he (Radha Kishan Bagla) was merely a broker of the assessee firm.

10. Shri Shanti Bhushan, learned counsel for the applicant, contended that the aforesaid materials which were relied on by the Judge (Revisions could, at best, lead to an inference that Radha Kishan Bagla was managing the business of the assessee firm and nothing more and that the mere fact that a person has been managing the business of a firm, cannot, by itself lead to an inference that he is a partner or proprietor thereof. Sri Shanti Bhushan maintained that business of a firm can be managed not only by a partner or proprietor thereof but also by its manager or Munim and that it is not unusual in business that a manager or Munim would have full authority to carry on negotiations on behalf of the firm, to enter into agreements on its behalf and to be in full charge of the business thereof and even to represent the firm before the sales Tax authorities and the Income Tax authorities. Sri. Shanti Bhushan maintained that the mere fact that Radha Kishan Bagla was managing the business of the assessee firm was a neutral circumstance and that no authority or tribunal could, on the basis of such fact, reasonably come to the conclusion that the person managing the business of the firm was its partner or proprietor. Sri Shanti Bhushan further submitted that there was absolutely no material from which it could be inferred that there was any agreement between Radha Kishan Bagla and Yogesh Kumar Bajpai, who according to applicant was the sole proprietor of that firm, to share the profits of the business of that firm and that such agreement was an essential ingredient of a partnership.

11. Sri Shanti Bhushan sought to derive support for his contention from the decision of the Supreme Court in Commissioner of Income Tax vs. Daulat Ram Rawatmull, and the unreported decision of this court in Raghunath vs. Sales Tax Officer. But those decisions have no bearing on the present case.

12. The learned Standing Counsel contended that from the circumstances that Radha Kishan Bagla was in complete charge of the business of the assessee firm, was himself negotiating with the customers of the firm regarding purchase or sale of goods and was representing the firm before the sales-tax authorities, the Judge (Revisions) could have reasonably come to the conclusion that Radha Kishan Bagla was a partner of the assessee firm. The learned Standing Counsel added that even if this Court would have come to a different conclusion on those circumstances, that could not be a ground for holding that there was no material for the Judge (Revisions) coming to the conclusion that Radha Kishan Bagla was a partner of the assessee firm.

13. The fact that a person is in possession of a property, may give rise to a presumption that is he the owner thereof. But this is only a rebuttable presumption, such person may show that he is in such possession as a lessee, possessory mortgagee, guardian or agent of the owner of that property. Likewise, the fact that a person is in full control and management of a business, may give rise to a presumption that he is the proprietor thereof or a partner of the firm owning that business, but such presumption is rebuttable and such person may show that he is in such management of the business as manager, Munim, receiver and the like.

14. The Judge (Revisions) and the Assistant Commissioner (Judicial) Sales Tax, Kanpur, have rightly set aside the assessment order the remanded the case to the Sales Tax Officer with a direction that Radha Kishan Bagla should be given an opportunity to give his explanation in regard to the materials on which the Sales Tax Officer had inferred that he (Radha Kishan Bagla) was the proprietor of, or a partner is, the business run in the name of Yogesh Kumar and Sons.

15. As a result of the foregoing discussion, our answer to the question referred to us is as follows :-

"The material on record could only give rise to a rebuttable presumption that Radha Kishan Bagla was the proprietor of, or a partner in, the business run in the name of Yogesh Kumar and Sons, but could not, without consideration of his explanation, support the finding that he was the proprietor of, or partner in, such business."

In the circumstances of the case, we direct the parties to bear their own costs in this Reference.