
(1967) 01 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Miscellaneous Writ No. 81 of 1964

Mst. Jeeyakanwar and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-01-1967

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1968) RLW 141 : (1968) 21 STC 461

Hon'ble Judges : I.N. Modi, Acting C.J.; Kan Singh, J

Bench : Division Bench

Advocate : H.N. Kalla, for the Appellant; M.L. Shrimal, Deputy Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Kan Singh, J.—This is a writ petition under Article 226 of the Constitution by Mst. Jeeyakanwar and six others who are the heirs and legal representatives of one Shri Mahaveer Singh Dadha and by it they seek to challenge the recovery proceedings taken by the Sales Tax Officer, Jodhpur, in respect of an assessment of the firm Messrs Modern Shoe Mart, Haidar Building, Jodhpur. The relevant facts necessary for the disposal of this matter are as follows :-

There was a partnership-firm working under the name and style of Messrs Modern Shoe Mart at Haidar Building, Jodhpur. The firm carried on business in the sale of shoes. It consisted of two partners, namely, late Shri Mahaveer Singh Dadha and Mst. Shanti Devi Kackar. According to the petitioner the firm continued its business till 23rd October, 1956, and thereafter the proprietorship of the firm was transferred to one of the partners, namely, Mst. Shanti Devi Kackar. The Sales Tax Officer, Jodhpur, according to the petitioners, issued notices to the firm as also to both the partners thereof in respect of the assessment year 1956-57. It may be mentioned that the accounting period corresponding to this assessment year was 15th November, 1955, to 23rd October, 1956. The grievance of the petitioners is that even though the Sales Tax

Officer was informed that the aforesaid firm stood dissolved with effect from 23rd October, 1956, he proceeded to pass an assessment order and eventually created a demand for a sum of Rs. 3,328.38 nP. against the firm. It was contended by the petitioners that the Sales Tax Officer was not competent to make an assessment against a dissolved firm. When the predecessor of the petitioners, namely, Shri Mahaveer Singh Dadha, received a notice of demand for the said sum, he filed an appeal against the order of assessment before the Deputy Commissioner, Sales Tax (Appeals), Jodhpur, but as Shri Mahaveer Singh Dadha could not deposit the amount required to be deposited by him, the Deputy Commissioner rejected the appeal. It seems that after the rejection of the appeal Shri Mahaveer Singh Dadha expired and, therefore, the petitioners as his legal representatives filed a revision petition before the Board of Revenue, Ajmer, against the order of rejection of the appeal. The Board of Revenue, however, did not entertain the revision petition as, according to it, the same was not competent on the ground that no appeal had been filed against the order of the Sales Tax Officer, Jodhpur. It is in these circumstances that the petitioners have filed this writ petition. Their main contention before us is that the Sales Tax Officer could not have assessed the dissolved firm of which late Mahaveer Singh Dadha was a partner after it was dissolved in the year 1956. We ought to mention that this assessment order was passed by the Sales Tax Officer, Jodhpur, on 6th March, 1961.

2. The writ petition has been opposed by the respondents. It is contended on their behalf that we should not entertain this writ petition under Article 226 of the Constitution as the petitioners had not availed of the statutory remedy of an appeal and by not depositing the amount of tax they had themselves failed to avail of it. It was next contended that as by the Rajasthan Taxation Laws (Amendment) Act (No. 13 of 1964), Section 9 of the Rajasthan Sales Tax Act, 1954 (hereinafter to be referred as the "Act"), under which the assessment was made had been amended with retrospective effect, the Sales Tax Officer could have proceeded against the individual partners of the dissolved firm.

3. From the above it will be evident that the writ petition raises a short question whether the dissolved firm could have been assessed under the Act. The question is, however, not *res Integra* and stands concluded by a Bench decision of this Court in *Smt. Shanti Bai v. State of Rajasthan and Ors.* D.B. Civil Writ Petition No. 6 of 1963; since reported at page 458 *supra* decided on 22nd August, 1966, to which one of us was a party. The amended Section 9 of the Act was also taken note of in that judgment. Besides this there is a Supreme Court case reported as *State of Punjab Vs. Jullunder Vegetables Syndicate*, which lays down that there cannot be an assessment of a dissolved firm under the Sales Tax Act. Their Lordships held that though under the partnership law a firm is not a legal entity yet for tax law such as Income Tax as well as sales tax, it is a legal entity and they added that, if that is so, then on dissolution the firm ceases to be a legal entity and thereafter in the absence of any statutory provision permitting the assessment of a dissolved firm, there could be no scope for assessing the firm

which had ceased to have a legal existence. Their Lordships further clarified the position that there could be no distinction on principle between an assessment made on a firm under a proceeding initiated before the dissolution and that made in a proceeding started after the dissolution. It was pointed out that in either case, unless there was an express provision, no assessment could be made on a firm which had lost its character as an assessable entity.

4. In Smt. Shanti Bai's case, D.B. Civil Writ Petition No. 6 of 1963 decided on 22nd August, 1966; since reported at page 458 supra referred to above, it was pointed out that if the firm stood dissolved, then the case could not have but been dealt with u/s 9(3)(b) of the Act as amended by the Rajasthan Taxation Laws (Amendment) Act, 1964. In Smt. Shanti Bai's case, D.B. Civil Writ Petition No. 6 of 1963 decided on 22nd August, 1966; since reported at page 458, as there was a controversy about the dissolution of that firm, the case was sent back to the Sales Tax Officer for a determination of the question and then to proceed further according to law. But, in the present case, it is not disputed that the firm Messrs Modern Shoe Mart stood dissolved in 1956. The Sales Tax Officer passed his assessment order long after the dissolution of the firm by his order dated 6th March, 1961. In view of this position the matter is completely covered by the decision of this Court in Smt. Shanti Bai's case¹, as also by the judgment of their Lordships of the Supreme Court to which we have already made a reference.

5. Learned Deputy Government Advocate, Shri Shrimal, who appeared for the respondents, submitted that the assessment was in principle and reality made against the individual partners and not against the dissolved firm as such. We have given our most earnest consideration to this submission, but are unable to find any substance in it. A perusal of the assessment order unmistakably reveals that it was Messrs Modern Shoe Mart, the firm which has been shown as the assessee. Then there is a reference to the registration certificate No. 55/5467, which again is of the firm. Then again the status of the assessee has been described as "partnership". Apart from this the body of the assessment order makes a reference to the assessee as a dealer. It is not denied that for the relevant assessment year it was the firm who was the dealer and not the individual partners. Therefore, we are wholly unable to construe the assessment order to be one against the individual partners and not against the dissolved firm. That being so, we are satisfied that the assessment order is bad.

6. Lastly, we may make a mention of Shri Shrimal's submission about the availability of an alternative remedy of an appeal to the petitioners. Now, normally the existence of an alternative remedy and a particular litigant not availing of it is a matter that weighs with us, but in a case where there is total lack of jurisdiction in the Tribunal, then the mere existence of an alternative remedy under the statute by itself is no ground for not granting relief to the petitioners. Therefore, we do not find any force in this plea either.

7. The result is that we allow the writ petition with costs, set aside the

assessment order (exhibit C on the record) and restrain the respondents from taking any recovery proceedings against the petitioners in respect of this assessment order. We may, however, make it clear that if the respondents could take any other proceedings according to law against the petitioners, they will be free to do so.