

(1970) 10 DEL CK 0012

In the Delhi High Court

Case No : Civil Writ Appeal No. 96D of 1962

Ranjit Singh and Another

APPELLANT

Vs

The Assessing Authority and Others

RESPONDENT

Date of Decision : 16-10-1970

Acts Referred:

Citation : (1972) 8 DLT 116 : (1972) 29 STC 499

Hon'ble Judges : Prakash Narain, J

Bench : Single Bench

Advocate : R.K. Makhija and B. Kirpal, for the Appellant;

Judgement

Parkash Narain, J.

(1) The petitioners in this case pray for the issue of a writ in the nature of certiorari or other appropriate writ, order or direction for quashing the assessments of sale tax made by respondent No. 1 and pray for the issue of a writ in the nature of prohibition or mandamus restraining the respondents from Realizing the tax due under the said two assessments which were made on 24. 10. 1959. They contend that the sales-tax sought to be recovered from them is not payable inasmuch as the assessments have been made against a dissolved partnership firm which is not permitted by law and the sales tax, if any, payable on the turnover of the relevant period was the responsibility of one Manohar Lal who took over all the assets and liabilities of the partnership firm on its dissolution of which the two petitioners and Manohar Lal were partners till 10. 3. 1957. The partnership firm used to carry on work under the name and style of M/ s. Juginder Pal Rarjit Singh and comprised of three partners This firm was a registered dealer within the meaning of section 2(c) of the Bengal Finance (sales-tax) Act, 1941 as extended to the Union Territory of Delhi. The firm was dissolved by a deed of dissolution dated 10. 3. 1957 where under all the business assets and liabilities of the erstwhile partnership firm were taken over by Manohar Lal and the two petitioners, Juginder Pal and Ranjit Singh retired after receiving Rs. 500.00 each It is the contention of the petitioners that this fact of

dissolution of the firm was intimated to the respondents and was duly received by them on or about 15.4. 1957, In spite of. the information, being so conveyed two assessments for Rs. 4414.13 for the assessment year 1955-1956 were made by the respondents on 25. 10. 1959 and that to without any notice and now the amount is sought to be recovered from the petitioners.

(2) The respondents in their counter-affidavit admit receipt on 15. 4. 1957 the intimation about the dissolution of the firm but allege that no proof of dissolution was produced by the petitioners before the Assistant Sales-Tax Officer, inspire of notice asking them to do so and so the dissolution of the firm was not recognised and the assessments were finalised. It is admitted in the counter-affidavit that personal service of notice could not be effected for finalising the assessments and so service was effected by substituted service on the address of the firm. It is further admitted that the registration certificates of the firm being No. 16175 dated 10. 1. 1956 was cancelled with effect from 21, 12. 1956.

(3) The short question, Therefore, that arises is : Could this assessment be made and whether it could be made in the manner that the assessment has been finalised ?

(4) It is not in dispute that the partnership firm was a registered dealer. It is not the respondents case that the firm fell within the ambit of section 8 of the Act and so obviously the firm was a dealer to which section 10 of the Act was applicable. Since the firm was a dealer within the meaning of sub-section (2) of Section 10 of the Act, if there was a change in the constitution of the firm or the business of the firm was sold or otherwise disposed of section 16 of the Act was attracted. Under this provision the dealer was bound to inform the prescribed authority about the change in its constitution and the disposal of its business. It is admitted that this information was given as required by rule 10 of the Delhi Sales Tax Rules, 1951. The respondent's case is that though this intimation was given no proof of the dissolution of the firm was produced inspire of notice being served on the petitioners to do so. A copy of the notice dated 14th June, 1957 has been placed on record. It is admitted that on the date fixed by this notice an application was received from Ranjit Singh petitioner requesting, for an adjournment on the ground of his sickness. Thereafter whether any date was fixed or notice was given to the petitioners for appearance or not is not known or disclosed. Be it as it may, the fact remains that the registration certificate was admittedly cancelled with effect from 21st December, 1956 and respondents have not disclosed in what circumstances the certificate was cancelled and whether they received a satisfactory Explanation of the dissolution of the firm or cancelled it for some other reason.

(5) According to Rule 16 of the aforesaid Rules all that intimation of the change should be given. This intimation was given. It is not provided by the rules or the statute that any proof of change must be produced and in any case even if there was any such requirement the duty was on the respondents to fix a hearing and not to proceed with the assessment till they were satisfied that assessment could

be made.

(6) The Act is a fiscal enactment and must be strictly construed. If there is lacuna in the statute or the Rules framed there under the benefit of the same must go to the citizen. It is settled law that a partnership firm ceases to be liable to assessment by the mere fact of its dissolution where the proceedings for assessment are initiated after the dissolution. (See in this connection the decision of the Supreme Court in the State of Punjab v. M/s. Jullundur Vegetables Syndicate. "The petitioners" firm in the present case stood dissolved before the initiation of the assessment proceedings. Intimation of this dissolution was admittedly received by the respondents on 15th April, 1957 and the Rules do not require anything further to be done by the tax-payer. It is urged by Mr. B. N. Kirpal, the learned counsel for the respondents that mere intimation could not have the effect of absolving the petitioners of their liability under the statute. According to him proof of dissolution is necessary prior to the department recognising the dissolution. No rule has been brought to my notice and there is no provision in the statute which justifies this stand. As already observed by me earlier, the Act and the Rules constitute a fiscal statute and it is not for the courts to supply the deficiencies in the statute. The language of the statute or the rules cannot be strained to hold that unless the competent authority is satisfied about the dissolution the former partners of the dissolved firm will continue to be liable for payment of sales-tax, under the Act. The result is that this petition must succeed and I hereby issue a writ quashing the demands made against the petitioners and restraining the respondents from realizing from the petitioners the amounts due under the assessments made on 25th October, 1959. The petitioners" will also be entitled to their costs of this petition.