
(1969) 12 BOM CK 0015

In the Bombay High Court

Case No : Spl. Civil Application No. 2050 of 1969

Roopchand Raghavji Phande and Others

APPELLANT

Vs

Abhyankar and Others

RESPONDENT

Date of Decision : 08-12-1969

Acts Referred:

Bombay General Clauses Act, 1904 — Section 3(35)
Bombay Sales Tax (Amendment) Act, 1959 — Section 11, 12, 15(1), 18, 19
Bombay Sales Tax (Validating Provisions) Act, 1957 — Section 2(1)
Bombay Sales Tax Act, 1953 — Section 2(6), 5, 7
Constitution of India, 1950 — Article 226, 227
Income Tax Act, 1922 — Section 2(2), 22(2), 3, 33(4)

Citation : AIR 1970 Bom 351

Hon'ble Judges : Vaidya, J;Palekar, J

Bench : Division Bench

**Advocate : S.P. Mehata, I.M. Munim, V.H. Patil and V.P. Metha, for the Appellant;
R.K. Joshi, instructed by Little and Co., Attorneys, for the Respondent**

Judgement

Vaidya, J.—These two petitions under Article 226 of the Constitution of India raise an important question relating to assessment of a dissolved partnership firm under the Bombay Sales Tax Act, 1953, and the Bombay Sales Tax Act, 11959. Miscellaneous Application 564 of 1965 is a petition filed on the Original Side of this Court which is directed, at the instance of the petitioners therein, to be heard along with the Special Civil Application No. 2050 of 1969 filed on the Appellate Side of this Court

2. Miscellaneous Application No. 584 of 1965 is filed by M/s. Murarilal Mahabirprasad, petitioner No. 1, a dissolved firm, and its former partners, petitioners 2 to 5. The firm was constituted under a deed of partnership dated December 3, 1853. It carried on business as Importers, Commission Agents, Indenting Agents, del Credere Agents and Financiers, at 30 Commercial Chambers Masjid Bunder Road, Bombay 3, and also as wholesale dealers in colours, chemicals, dyes, spices, condiments and as general merchants. The petitioners alleged that

the firm was dissolved under a deed of dissolution dated May 20, 1962. Petitioners 2 to 5 and one Sultanchand Lala Sardarimal Jain (who died on 10th March 1965) were the partners of the firm. It was registered as a dealer both under the Bombay Sales Tax Act, 1950 (1952?) and the Bombay Sales Tax Act 1953. According to the petitioners the firm discontinued its business from May 1961 and the winding up of the business was done by petitioner No. 5 with the assistance of petitioners 2 to 4 who were ordinarily residing in Delhi.

3. The said turnovers of the said firm were assessed by the Sales Tax authorities for the periods from July 1953 to March 31. "1958 on the basis of the returns filed by the firm under various assessment orders passed prior to its dissolution, the last order being dated October 11, 1960 in respect of the period from April 1, 1957 to January 11, 1958. On November 10, 1960, the Sales Tax Officer (VIII), Enforcement Branch, Bombay, visited" the office of the petitioners" firm and seized its stock-books, account-books. for 1958-1961 and other documents. These seized documents were inspected and verified by the said officer in his office between November 10, 1960 and November 20, 1963 for the purposes of assessment of the firm for the period from 1/4/1958 to 31/3/1961 calling the representatives of the firm from time to time. The firm was represented in these proceedings by a Sales Tax Practitioner. It is further alleged in the petition that the Sales Tax Officer, B-II Ward, had called upon the firm by his letter dated June 1, 1961 to produce its deed of dissolution on June 13, 1961, and accordingly the firm produced the said deed of dissolution after the said date and also surrendered their certificate of registration, authorisation and licences under the Bombay Sales Tax Act and also the Central Sales Tax Act, to the Sales Tax Officer, B-II, Ward, Bombay on June 13, 1962, and as the firm had already closed its business as stated above in or about May 1961, the Sales Tax Officer, B-II Ward had by his order dated June 26, 1962 cancelled the Central Sales Tax Registration Certificate as well as the registration certificate, authorisation and licence under the Bombay Sales Tax Act, of the firm.

4. In spite of this, however, on November 20, 1963, the Sales Tax Officer (VIII), Enforcement Branch," who is respondent No. 1 in this petition, sent a notice to the firm to explain several items and discrepancies discovered in the books of accounts by him as a result of the verification of the seized account-books and other documents. Another notice was also sent on the said day to the firm purporting to be u/s 15 of the Bombay Sales Tax Act, 1953, calling upon the firm to show cause why the assessment already made for the period from 1/4/1957 to 31/3/1958" should not be reopened and reassessment made regarding the turnovers which had escaped assessment. It is alleged in the petition that on April 13, 1964, petitioner No. 1 sent a reply through their advocate contending that all transactions were not of the firm but many of them were on behalf of the constituents for whom the firm was acting as Commission Agents.

5. On December 8. 1964, however, a further show-cause notice was served on the firm to explain several discrepancies in the books of accounts of the firm. A

reply to that notice was sent by the firm on December 21, 1964 stating that the transactions were old, their employees had left then* service, they had explained most of the transactions and that they would explain the remaining entries at the final hearing after taking full extracts thereof. It is further alleged in the petition that as Sultanchand Lala died suddenly in Delhi due to heart-attack on March"10, 1965, the partners of the firm had to go to Delhi, and hence on April 3, 1965, a letter was addressed to the respondent No. 1, the Sales Tax Officer (VIII), Enforcement Branch, requesting him to fix up the matter for hearing in May 1965, that respondent No. 1 issued a notice thereafter on May 26, 1965 addressed to the petitioner No. 1 firm intimating that the case would be taken up for hearing from -day to day from June 14, 1965 and the partners should be present and no adjournment would be granted. According to the petitioners, the said notice was served on a wrong firm by name M/s. Murarilal Balkrishan by hand-delivery, but realising the mistake, a copy of the notice was sent by registered-post to the old address of the petitioner-firm which was received by an unauthorised person and not by or on behalf of petitioner No. 1 firm. It is also alleged that on June 17, 1965, another notice was sent by respondent No. 1 to the firm and it was returned by postal-authorities with the endorsement "Addressee had left", the said notice dated June 17, 1965 called upon the petitioner No. 1 to attend the office of the respondent No. 1 on July 8, 1965.

6. Thereafter on August 31, 1965, respondent No. 1 passed five orders. The first was an assessment order for the period from April 1, 1957 to March 31, 1958, by which the respondent No. 1 held that Rs. 1.95,582.47 P. was to be paid by the petitioner No. 1-firm as sales tax in respect of suppressed sales and purchases which escaped assessment (the firm having elected to pay sales-tax). The second order was passed in respect of the period from April 1, 1958 to March 31, 1959, by which the petitioner-firm was held liable to pay sales-tax of Ra 2,20,070, 08 P. and deducting"therefrom Rs. 13,518. 13 P. which the firm had paid along with the returns, the petitioner-firm was directed to pay the balance of Rs. 2,06,551, 95 P. In the said order, the respondent No. 1 gave detailed reasons for all the orders and gave a summary of the verification made by him of the books of accounts and other documents of the petitioner No. 1-firm. The third order was in respect of the period from April 1, 1959 to December 31, 1959, and by this order the respondent No. 1 found that the petitioner No. 1-firm had suppressed transactions worth Rs. 32,82,340/- in respect of sales and Rs. 32,88,442/- in respect of purchases. The petitioner No. 1-firm was called upon to pay the balance of tax amounting to Rs. 1,60,074.53. By his fourth order which related to the period from January 1, 1960 to March 31, 1960 the petitioner-firm was held to be liable to pay Rs. 18,960.00, and after deducting Rs. 2202/- paid by the petitioner No. 1-firm the balance was ordered to be paid by the petitioner No. 1-firm. The fifth order related to the period- from April 1, 1960 to March 31, 1961 by which the petitioner No. 1-firm was held liable to pay total tax of Rs. 1,02,083.70 and was directed to pay the balance after deducting Rs. 12,283.29 which the firm had paid along with the returns. Thus, under these five

assessment orders, a total sum of Rs. 6,56,365.47 was found due on the sales and purchases suppressed by the petitioner No.1-firm from the sales-tax authorities as against Rs. 32,908.85 which was paid by them with the returns, and the petitioner No. 1-firm was held liable to pay the balance of tax of Rs. 6,70,659. 96 including the balance of proper taxes payable on the sales which were shown in their returns by the petitioner No. 1-firm.

7. The petitioners alleged in the petition that the said five assessment orders with their respective demand notices in respect of the respective periods were sent by registered-post to the petitioner No. 1-firm's office address on October 6, 1965, but they were not received by the petitioner No, 1-firm. On October 22, 1965, the notices were affixed by a Sales-Tax Inspector to the former office of the dissolved petitioner No. 1-firm. As petitioner No. 5 was out of India from October 2, 1965 till November 7, 1965, petitioner No. 4 was Informed by a trunk-call by the Firm of Messrs Murarilal Balkissan who were occupying the premises of petitioner No. 1-firm about the pasting of the notices to the office-premises. Thereafter the petitioners inquired about the matter and came to know about the assessment orders and demand-notices issued against the petitioner No. 1-firm calling upon them to pay the dues before November 17, 1965. The petitioners, therefore, filed the petition under Article 226 of the Constitution on the Original Side of this Court on November 24, 1965.

8. The petition was declared by petitioner No. 5. Petitioner No. 4 also filed an affidavit in support of the petition, declaring that he was one of the partners in Messrs. Murarilal Balkissan, but that Firm, though occupying the premises formerly occupied by. petitioner No. 1, was a different firm, and Ramavatar, who was the person who had received the notice addressed to petitioner No. 1-firm, was never an employee of the dissolved petitioner No. 1-firm. The petition challenged the assessment orders and the demand notices on several grounds set out in para 17 of the petition which may be summarised as falling under three main heads, viz., (i) that the Sales Tax authorities had passed the impugned order-without giving a fair and proper opportunity to the petitioner No. 1-firm notwithstanding that the petitioner No. 1-firm had done everything to co-operate with the sales-tax authorities in the course of the verification of the documents and accounts-books since the time of the seizure on 10th November 1960, and further that the orders passed were arbitrary and in violation of principles of natural justice; (ii) that since the suit firm was dissolved prior to the various assessment orders, the said assessment and re-assessment made by the respondent No. 1 were without jurisdiction and contrary to the provisions of the Bombay Sales Tax Act, 1953 and the Bombay Sales Tax Act, 1959; and (iii) that the said orders were passed by the respondent No. 1 without applying his mind properly to all the documentary evidence before him and on the basis of mere guess work and conjectures without any legal evidence b"-fore him.

9. The petition was filed against the respondent No. 1, the Sales Tax Officer (VIII). Enforcement Branch, Greater Bombay, respondent No. 2, the

Commissioner of Sales Tax; and respondent No. 3, the State of Maharashtra. The petitioners prayed that a writ in the nature of certiorari or any other appropriate writ under Article 226 of the Constitution may be issued against the respondents quashing and setting aside the aforesaid five orders dated 31st August 1965 and the corresponding demand-notices dated 30th September 1965 and also for an injunction or direction against the respondents from enforcing the said orders.

10. The petition was resisted by the respondents who rely on an affidavit in reply filed by the respondent No. 1. In his affidavit, he contends that the assessment orders and demand notices were Issued in exercise of the powers vested in him under the provisions of the Bombay Sales-tax Act, 19,53 and the Bombay Sales Tax Act, 1959 and he had passed the assessment orders and issued the demand-notices after duly following the procedure prescribed under the said Acts. Although in the affidavit, he stated that the fact of the dissolution of the petitioner No. 1-firm was not brought to his notice and no Intimation about the dissolution of the said firm was given to the Sales Tax Department as required by the said Sales Tax Acts, it is not disputed on behalf of the respondents now before us that the deed of dissolution was produced before the Sales Tax Officer, B-II Ward and that the said Sales Tax Officer had directed the cancellation of the registration and licences and authorisation issued to the petitioner No. 1-firm as stated by, the petitioners in their petition. Respondent No. 1 has further stated that the initial notices having been served on the petitioner No. 1-firm relating to the assessment and reassessment proceedings before him, it was the duty of the petitioner No. 1-firm to be present at the hearing before the Sales Tax authorities at the time specified for hearing and to take adjournments from time to time. He has given the summary of the proceedings and contended that full opportunities were given to the petitioner No.1-firm for remaining present and making submissions and representations with regard, to the orders which he proposed to pass, and in spite of this, the petitioner No. 1-firm failed to remain present before him after March 11, 1965 and hence he had to pass the orders ex parte against petitioner No. 1-firm. He has further contended that the orders which he had passed were all validly passed after taking into consideration all the submissions and representations made on behalf of the petitioner No. 1-firm by its representatives, and after applying his mind to all the transactions noted in the books of accounts and other documents which were seized from the petitioner No. 1-firm in accordance with law. On behalf of the petitioner No. 1-firm a further affidavit in rejoinder was filed by petitioner No, 5 reiterating the contentions in the petition.

11. In view of these pleadings, the questions involved in the petition are, (i) whether the Impugned assessment orders and demand-notices were authorised under the Bombay Sales Tax Act, 1933 and the Bombay Sales Tax Act, 1959, after the dissolution of the petitioner No, 1-firm on May 20, 1962; (ii) whether the respondent No. 1 followed the procedure laid down by law in passing the said orders and issuing the said demand notices; and (iii) whether the assessment and reassessment made against the petitioner No- 1-firm is proper and based on

the turnovers of the petitioner No. 1-firm as stated in the said orders. Although the petitioners approached this Court under Article 226, they had also filed appeals against the assessment orders, and those appeals are admittedly pending before the. Assistant Commissioner of Sales Tax, and hence it will not be proper for this Court at this stage to decide the second and third questions involved in the petition. The only question, therefore, which survives is with regard to the right of the Sales-tax authorities to assess or reassess a dissolved firm in respect of its pre-dissolution turnovers under the Bombay Sales Tax Act, 1953 and the Bombay Sales Tax Act, 1959, it is a question which goes to root of the proceedings against the petitioners under the said Acts,

12. In Special Civil Application NO. 2050 of 1969 the four petitioners are four out of the six partners of a dissolved firm Messrs, Ramchand Motichand Phade. The firm was constituted under a deed of partnership dated April 14. 1959 and was carrying on business in sugar, oil and oil seeds at Akluj, Taluka Malshiras. District Sholapur, The firm was dissolved with effect from October 28, 1962 under a deed of dissolution dated November 1, 1962, and discontinued its business. Prior to its dissolution. It was registered as a dealer Under the Bombay Sales Tax Act and had filed returns and paid the taxes and was also assessed in respect of the periods from 1-4-1955 to 31-3-1956, 1-4-1956 to 31-3-1957, and 1-4-1957 to 31-3,1958. In spite of this on February. 3, 1966, two show-cause notices were issued to the firm, one u/s 31 of the Bombay Sales Tax Act, 1953, to show cause why the assessment orders passed against the firm should not be revised as it was found that the firm had sold some goods in contravention of the undertaking given by it in the certificates furnished by it in Form "J", and as such, it was liable to pay the purchase-tax on the transactions covered by Form "J". The second notice was issued u/s 39-A of the said Act to show cause why penalty should not be levied on the firm for contravening the undertakings given in the said certificates in "J" Form, in reply to the said notices, the four petitioners admitted that there were some sales in contravention of the said undertaking 61 Form "J" but contended that it was not a fit case for levying a penalty u/s 39-A, The Assistant Commissioner of Sales Tax. Central Division, Range in, Sangli, the Respondent No. 1 in the petition, however, rejected the contentions of the petitioners and passed three orders on March 31, 1966. By the first order which covered the period from 1-4-1955 to 31-3-1956 he held that during the period the firm was also liable to pay the purchase-tax in respect of purchases worth Rs. 96,000/- made from the Brihan Maharashtra Sugar Syndicate, and this liability was admitted by the dealer who appeared for the firm before him, and the dealer had no objection to the revision of the assessment order previously passed. After considering the submissions made on behalf of the firm, he ordered that a penalty of Rs, 3,000/- and purchase-tax of Rs. 3,000/-. totalling Rs. 6000/-, was to be recovered from the firm. The second order related to the period from 1-4-1956 to 31-3-1957. By that order the respondent No. 1 held that the firm was liable to pay the purchase tax amounting to Rs. 11,952/- and penalty of Rs. 11,952/-, totalling Rs. 23,904/-. The third order related to the

period from 1-4-1957 to 31-3-1958, and for the reasons stated in the first order, the respondent No. 1 ordered that purchase-tax of Rs. 3,251.85 should be paid by the firm in respect of the purchases which had escaped assessment together with a penalty of Rupees 3,251.85, totalling Rs. 6,502.70. Feeling aggrieved by the said orders, petitioner No. 2, who described himself as a partner of Messrs. Ramchand Motichand Phade, has filed three appeals on June 22, 1966 before the Deputy Commissioner of Sales Tax, Central Division, Poona, Respondent) No. 2, and the said appeals are pending before the Deputy Commissioner since that date.

13. The petitioners Have moved this Court under Article 226 contending that the assessment-orders were passed without jurisdiction by respondent No. 1, inasmuch as. there was no specific provisions under the Bombay Sales Tax Act, 1953 authorising the Sales Tax authorities to assess a partnership firm after its dissolution, and that after the dissolution of the partnership firm, no action whatsoever could be validly initiated in the name of the firm, and in spite of this, respondent No. 2 was prolonging the passing of the orders on the appeals even after hearing the appeals as far back as February 20. 1967, and once again, exhaustively, on December 12. 1968. The petitioners further contended that in any event the case being one which would be reassessed u/s 15, the respondent No. 2 could not, exercise his powers of revision u/s 31 of the Bombay Sales Tax Act, 1953, and hence "the respondent No. 2 ought to have set aside the orders passed by the respondent No. 1, but the respondent No. 2 was postponing the passing of the orders in appeal filed by the petitioners. The petitioners, therefore, prayed that a writ may be issued to the respondent No. 2 by this Court in exercise of its powers under Articles 226 and 227 of the Constitution of India quashing and setting aside the orders passed by respondent No. 1, or in the alternative, a writ in the nature of mandamus be issued against the second respondent asking him to give his decision in the said appeals heard by him as soon as it was possible. The petitioners further prayed for a writ directing "the respondents to refund Rs. 36,407.70 which they had paid before filing the aforesaid appeals. The petitioners have joined the State of Maharashtra as Respondent No. 3 in this petition.

14. The respondents have resisted the petition relying on an affidavit in reply filed by the Commissioner of Sales Tax, Maharashtra State. In that affidavit, it is inter alia contended that the appeals were not being decided by the respondent No. 2 because the question of the validity of assessment of dissolved firm was a subject-matter of a reference made by Maharashtra Sales Tax Tribunal to this Court, and the reference and several other petitions are pending in this Court involving the same question. He submits that although the firm of Messrs. Ramchand Motichand Phade was dissolved with effect from October 28, 1962, it could still be assessed in view of the provisions of Section 19 of the Bombay Sales Tax Act, 1959, which, according to the respondents, was an express provision authorising the assessment of a firm even after its dissolution under the earlier law i.e., the Bombay Sales Tax Act 1953. Respondent No. 2 denied the

other contentions made on behalf of the petitioners and submitted that the petition was liable to be dismissed with costs.

15. Even in this petition, as appeals are already filed, by the petitioner No. 2 against the assessment orders pending before the respondent No. 2, we shall deal only with the question of the right of the Sales Tax authorities to assess a firm after its dissolution in respect of its Pre dissolution turnovers, As this question is common to the two petitions, they shall be disposed of by a common judgment.

16. Thus the common ground on which the petitioners have challenged the impugned orders in the two petitions is that there is no provision authorizing the Sales Tax authorities for assessing a dissolved firm under the provisions of the Bombay Sales Tax Act, 1953 and the Bombay Sales Tax Act, 1959. There is no dispute that the firms in the respective petitions were in fact dissolved by deeds of dissolution long before the impugned orders of assessment, reassessment and orders of penalty were respectively passed against them by the Sales Tax Officer, But what is contended on behalf of the respondents is that the dissolved firms continued to be assessable units in respect of their liability to pay the taxes under the Bombay Sales Tax Act, 1953 and the Bombay Sales Tax Act, 1959, on the turnovers of the firm prior to the dissolution. It is, therefore, necessary to consider the provisions in the two Acts, if any, on the subject of assessment of a dissolved firm.

17. The material provisions of the Bombay Sales Tax Act, 1953. referred to in the course of the arguments as relevant are the following :--

Section 2(6) defines a "dealer." it reads:

"Dealer means any person who carries on the business of selling or buying goods in the Pre-Reorganization State of Bombay excluding the transferred territories, whether for commission, remuneration or otherwise and includes a State Government which carries on such business and any society, club or association which sells goods to, or buys goods from. Its members."

Section 5 as far as is relevant is as follows :--

"(1) Every dealer whose turnover either of all sales or of all purchases made during--

(a) the year ending on the 31st March 1954, or

(b) the year commencing on the 1st April 1954 has exceeded or exceeds--

(i) in the case of a dealer who brings any goods into the State of Bombay or to whom any goods are despatched from any place outside the State of Bombay whether by land, water or air, Rs. 10,000/-provided that the aggregate value of the goods so brought or despatched during the said period is not less than Rs. 2,500/-;

(ii) in the case of a "dealer who produces, collects, extracts, manufactures or processes any goods Rs. 10,000/- provided that the value of the goods produced, collected, extracted, manufactured or processed during the said period is not less than Rs. 2,500/-:

(iii) in the case of any other dealer Rs. 25,000/- shall be liable to pay the tax under this Act on his turnover of sales and his turnover of purchases made on or after the appointed day....."

Then Section 14 so far as relevant b as follows :--

(1) The amount of the tax due from s registered dealer shall be assessed separately for each year during which he is liable to pay the tax.....

(2) if the Collector is satisfied without requiring the presence of a dealer or the production by him of any evidence that the returns furnished in respect of any period are correct and complete, he shall assess the amount of the tax due from the dealer on the basis of such returns.

(3) (a) if the Collector is not satisfied without requiring the presence of a dealer; who has furnished his returns or the production of evidence that the returns furnished in respect of any period are correct and complete, he shall serve on such dealer a notice in the prescribed manner requiring him, on a date and at a place specified therein either to attend in person or to produce or to cause to be produced any evidence on which such dealer may rely in support of such returns or such other evidence as may be specified in such notice.

(b) On the date specified in the notice or as soon afterwards as may be, the Collector shall, after considering such evidence as the dealer may produce and such other evidence as the Collector may require on specified points, assess the amount of the tax due from the dealer.

Then Section 15 is as follows :--

(1) if in consequence of any Information which has come into his possession the Collector is satisfied that any turnover in respect of sales or purchases of any goods chargeable to the tax has escaped assessment in any year or has been underassessed or assessed at a lower rate or any deductions have been wrongly made therefrom, the Collector may. In any case where such turnover has escaped assessment or has been underassessed or assessed at a lower rate for the reason that the provisions of Sub-section (1) of Section 2 of the Bombay Sales Tax (Validating Provisions) Act, 1957 were not then enacted, at any time, within eight years, and in any case whether he has reason to believe that the dealer has concealed the particulars of such sales or purchases or has knowingly furnished incorrect returns, at any time within eight years and in any other case at any time within five years, of the end of that year, serve on the dealer liable to pay the tax in respect of such turnover a notice containing all or any of the requirements which may be Included in a notice under Sub-section (3) of Section 14 and may proceed to assess or reassess the amount of the tax due from such

dealer and the provisions of this Act shall apply accordingly as if the notice were a notice served under that Sub-section :--....."

Section 16 is as follows :--

(1) The tax shall be paid in the manner hereinafter provided at such Intervals as may be prescribed.

(2) Before any registered dealer furnishes the returns required by Sub-section (1) of Section 13, he shall, in the prescribed manner, pay into a Government treasury the full amount of the tax due from him according to such returns.

(3) Before any registered dealer furnishes a revised return in accordance with Sub-section (2) of Section 13 which shows a greater amount of tax to be due than was payable in accordance with the original return, he shall pay into a Government treasury the extra amount of the tax.

(4) if the tax is not paid by any dealer within the prescribed time, the dealer shall pay by way of penalty in addition to the amount of tax a sum equal to

(i) one per cent of the amount of tax for each month for the first three months after the expiry of the prescribed time,

(ii) two and one-half per cent for each month subsequent to the first three months as aforesaid. "

during which he continues to make default in the payment of the tax;

Provided that where the tax has not been paid by any dealer within the prescribed time but the dealer has filed an appeal or an application for revision in respect of such tax. the authority hearing the appeal of the application for revision may direct that the penalty in respect of any period shall be paid at such rate as it may think fit, the rate being not less than one per cent, and not more than two and one-half per cent of the amount of tax for each month:

Provided further that the Collector, may, subject to such conditions as may be prescribed remit the whole or part of the amount of the penalty payable by a dealer in respect of any period under this subsection.

(5) (i) The amounts of tax--

(a) due where the returns are furnished without full payment thereof, or

(b) assessed for any period u/s 14 or u/s 15 less the sum, if any, already paid by the dealer En respect of such period, or

(ii) the amount of the penalty payable under Sub-section (4) shall be paid by the dealer into a Government treasury by such date as may be specified in a notice issued by the Collector for this purpose and the date to be so specified shall be not less than thirty days from the date of service of such notice.

Provided that the Collector may, in respect of any particular dealer and lor

reasons to be recorded in writing extend the date of such payment or allow such dealer to pay the tax due and the penalty if any, by instalments,

(6) Any amount of the tax together with the penalty, if any, which remains unpaid after the date specified in the notice Issued under Sub-section (5) shall be recoverable as an arrear of land revenue."

Section 26 so far as is relevant is as follows):

(1).....

(2)

(3) (i) When a firm liable to pay the tax is dissolved, or

(ii) Where an undivided Hindu family liable to pay the tax is partitioned, such firm or family as the case may be shall be liable to pay the tax on the goods allotted to any partner or member thereof as if the goods had been sold to such partner or member unless he holds a certificate of registration or obtains it within the prescribed period.

(4)

18. A full and fair consideration of these provisions shows that under the Bombay Sales Tax Act, 1953, a firm was regarded as an assessable unit if it was a dealer. Although the Act did not contain a definition of the word "person" used in Section 2 (6), the definition of that word contained in Section 3 (35) of the Bombay General Clauses Act, 1904, would be attracted in interpreting the word "dealer" as defined under the Bombay Sales Tax Act, 1953. The said Section 3 (35) defines "person" as follows:--

" "person" shall include any company or association or body of Individuals, whether incorporated or not."

Again the firm as a dealer incurred a liability to pay a tax on its turnover subject to the conditions laid down in Section 5. It was liable to be assessed for determining the taxes due from it as long as its business continued. Section 26 (3) clearly shows the intention of the Legislature to make the firm liable for assessment, reassessment and penalties under the Bombay Sales Tax Act, 1953 even after its dissolution. In our opinion, this is a conclusion which clearly emerges on a careful consideration of the relevant provisions, scheme and object of the Bombay Sales Tax Act, 1953.

19. The liability under the Act is imposed u/s 5 on a dealer. That section, which is the charging section under Act, makes a dealer liable to pay the tax under the provisions of the Act on his turnovers of sales and purchases. Section 6 lays down--

"(1) Subject to any rules made u/s 18-B there shall be paid by every dealer who is liable to pay tax under this Act.

(1a) Sales tax or purchase-tax on his sales or purchases in accordance with the provisions of Section 7-A.

(a) a sales tax on his sales levied in accordance with the provisions of Section 8,

(b) a general sales tax on his sales levied in accordance with the provisions of Section 9, and .

(c) a purchase tax on his purchases levied in accordance with the provisions of Section 10,

(d) a tax on his purchases levied in accordance with the provisions of Section 10-AA,

These sections are contained in Chapter III which deals with the "Incidence and levy of tax". Chapter IV deals with "Registration of and Grant of Licences and Authorizations to Dealers." Chapter V. deals with "Returns, Assessment, Payment, Recovery and Refund of the tax and levy of tax on purchases", and Section 13 therein requires every registered dealer and any other dealer who is called upon by the Collector to furnish such returns by such dates and to such authority as may be prescribed. So far as the facts of these petitions are concerned, it is not in dispute that the two firms had filed their returns in respect of the relevant periods even prior to their dissolution u/s 13. Section 13 requires the returns to be filed at the end of the quarter. Section 14 of the Act deals with the assessment of taxes payable by the dealers either accepting the returns by the dealers or after further verification. It seems to us that the "registered dealer" referred to in this section must be understood to mean a dealer who is liable to pay the taxes. Section 15 again refers to the reassessment of a dealer in respect of sales or purchases of any goods chargeable to the tax which escaped assessment in any year or has been underassessed or assessed at a lower rate, or any deductions have been wrongly made therefrom. It empowers the Collector to assess or reassess the turnovers at any time within eight years in respect of certain turnovers which escaped assessment for the reason that the provisions of Sub-section (1) of Section 2 of the Bombay Sales Tax (Validating Provisions) Act, 1957, were not enacted, and in any other case at any time within five years of the end of that year in which the turnovers had escaped assessment or were wrongly assessed. The section requires the Collector to serve a notice on the dealer liable to pay the tax. It is difficult to assume that the Legislature could have given these powers to the Collector to reassess the dealers liable to pay the tax without regard to the fact that when dealers are firms they may be dissolved at any time within the said period of five years. Section 16 which refers to payment and recovery of taxes, non-payment of taxes and penalty to be payable in respect of such non-payment, also refers to a registered dealer. Chapter VI of the Act deals with the "liability to produce accounts, to supply information and to pay the tax in the case of transfer of business", and imposes all these duties under Sections 22, 23, 24 and 25 on the dealers. What was meant by the Legislature in referring to the dealer in all these sections is clearly indicated in

Section 26 which deals with the subject of the liability of a transferee of business to pay tax, Clause (1) of that section deals with a case where the entire ownership of the business of a dealer is transferred and holds both the transferor and the transferee jointly and severally liable to pay the tax. Clause (2) of that section deals with a case of a transfer of a part of the business, Clause (3), which is already quoted above, deals with the liability to pay the tax after dissolution of a firm or a partition of Hindu joint family. The Legislature knew very well that after the partition of a Hindu joint family, the joint family, ceases to exist as such, and after the dissolution of a firm who was the dealer under the ordinary law, the firm would cease to exist as a firm under the general law except for the purpose of winding up and for making the former partners liable to third parties till publication of the notice of dissolution as required by law.

20. In spite of this position under the general law, the Legislature when enacting Clause (3) of Section 26 laid down that even after the partition of the undivided Hindu family the family shall be liable to pay the tax on the goods allotted to any member thereof as if the goods had been sold to such member unless he holds a certificate of registration. Similarly, even after the dissolution of a firm, the firm is made liable to pay the tax on the goods allotted to any partner notwithstanding its dissolution. In our judgment, this clause in Section 26 is a clear indication of the intention of the Legislature to keep alive, notwithstanding its dissolution, the personality of the firm for the purposes of its liability to pay tax incurred by it prior to its dissolution or any other liability incidental or consequential to that liability under the provisions of the Act. The personality of the firm is preserved in spite of its dissolution by laying down that the firm will be liable to pay tax on the goods allotted to any partner. We do not think that it would be straining the language of provisions of this Act to say that the entire machinery of enforcing the liability to pay the tax set up under the Bombay Sales Tax Act, 1953, indicates that once a dealer incurs a liability to pay tax, that dealer whether a firm or individual or corporation continues to be regarded as separate assessable unit for all purposes of the Act. Once the liability to pay the tax is preserved the machinery which deals with all dealers would be available to the Sales Tax authorities to enforce that liability against even a dissolved firm.

21. This conclusion of ours is supported by a consideration of Chapter VIII of the Act which deals with "offences and penalties," Section 36 of which inter alia, lays down that a dealer, who fails to furnish any return or statement as required by Section 13 or furnishes a false return or statement, or who fails to keep a true account of the value of the goods brought and sold by him as required by Section 22, or fails to comply with any requirement made of him u/s 23, or who knowingly produces incorrect account, registers or documents, or knowingly furnishes incorrect information, is liable to be prosecuted. Section 36-A provides--

"(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as

well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :"

It will be difficult to hold that this liability to be prosecuted for the offences under the Act, which is imposed not only on the firm but also on its partners who were in Charge of and responsible for the firm for the conduct of its business, would come to an end and the moment the firm comes to an end by a dissolution.

22. It is true that the Bombay Sales Tax Act, 1953, does not expressly state that a firm will be deemed to be in existence for the purposes of assessment, recovery of tax and penalties etc. On a proper consideration of the entire scheme of the Act and the aforesaid provisions. In our opinion, it must necessarily lead to the conclusion that the Legislature clearly intended that once a firm was a dealer as defined in the Act liable to pay the tax, it was liable to pay the taxes and liable to be assessed as a separate assessable unit or legal entity even after its dissolution. It is manifest on a fair reading of the Act as a whole that a Vinculum juris is established between a firm who is liable to pay tax under the Act and the Sales Tax authorities who have to assess and recover taxes for which the firm is liable. The dissolution of the firm by, acts of the partners cannot put an end to the liability of the firm and its existence as an assessable unit under the provisions of the Act. The liability of the firm is to file returns for payment of taxes, to be assessed and reassessed if certain turnovers have escaped assessment, to pay taxes or penalties imposed by the authorities on the firm under the provisions of the Act and to furnish information called for by the authorities. There is even the liability to be prosecuted in case of certain defaults by the partners. All these liabilities necessarily imply that the law keeps the firm alive as a legal entity or an assessable unit, notwithstanding its dissolution, for all the purposes of the Act in respect of its Pre dissolution liability to pay taxes and all matters incidental and consequential to the making of that liability effective. This is clearly indicated as stated above by words of Section 26 (3),

23. It is, however, contended on behalf of the petitioners that such an interpretation would be contrary to the well-known strict rules of interpretation of a taxing statute. Reliance was placed on the said rules as enunciated and followed in several cases. The first case relied upon on behalf of the petitioners was Commissioner of Income Tax Vs. Ellis C. Reid, , which was a case under the Indian Income Tax Act, 1922. In that case an assessee had been asked to file a return of his income u/s 22 (2) of the Indian Income Tax Act, 1922, but he died before he did so, and it was held that it was not competent to the Income Tax Officer to make an assessment u/s 33 (4) of the Income of the deceased after the assessee's death. Beaumont, C. J. referred to the definition of the word "assessee" given in Section 2(2) of the Income Tax Act which read : "Assessee" means a person by whom Income Tax is payable", and came to the conclusion that that definition in terms only applied to a living person, the words being "a person by whom Income Tax is payable", and not "a person by whom or by whose estate Income Tax is payable", and then observed after referring to, the

charging Section 3 of the Act]

"There appears to be nothing in that charging section to suggest that a man who has once become liable to tax can avoid payment by dying, and must confess that I do not myself see any intelligible reason why when tax is once charged upon a subject in respect of a period during which he was alive and enjoying the benefits of the proceeds of taxation, he should escape liability by dying before the tax has been assessed or paid. But one has to look at the rest of the Act to see whether there are any appropriate provisions for collecting tax from the estate of a deceased person. I think there is nothing else material in the Act till one comes to Sections 22 and 23 which are the sections dealing with the procedure for assessment,"

He then proceeded to consider the provisions of the Act and held that there was throughout the Act no reference to the deceased of a person on whom the tax had been originally charged, and it was very difficult to suppose the omission to have been unintentional, and then went on to observe--

"It must have been present to the mind of the legislature that whatever privileges the payment of Income Tax may confer, the privilege of immortality is not amongst them. Every person liable to pay tax must necessarily die and, in practically every case, before the last instalment has been collected, and the legislature has not chosen to make any provisions expressly dealing with assessment of, or recovering payment from, the estate of a deceased person."

He further observed:

"In my judgment, in construing a taxing Act the Court is not justified in straining the language in order to hold a subject liable to tax. If the legislature intends to assess the estate of a deceased person to tax charged on the deceased in his lifetime, the legislature must provide, proper machinery and not leave it to the Court to endeavour to extract the appropriate machinery out of the very unsuitable language of the statute...."

Strong reliance is placed on the last quoted observation of the learned Chief Justice by the learned Counsel for the Petitioner who contend that one has to extract the appropriate machinery for enforcing the liability of a dissolved firm in respect of its pre-dissolution turnovers, even in the present cases. In Our opinion, there is no merit in this contention and the above case decided by the learned Chief Justice Beaumont and Mr. Justice Barlee can be easily distinguished. In that case also, with respect, the Court considered the provisions of the Act and found no reference to the estate of the person on whom the tax had been originally charged. That is not the position in the present cases. We have already referred to the relevant provisions of the Act and particularly Section 26(3) which specifically deals with the dissolution of the firm and it cannot be contended that the Legislature did not provide a machinery for imposing liability which it had imposed on a firm prior to its dissolution.

24. The learned Counsel for the petitioners also relied on the decision in Commissioner of Sales Tax Vs. Allimullah Haji Salamat, in which a Division Bench of this Court held that no assessment proceedings can be initiated against a person as the legal representative of the deceased, in the absence of any specific statutory provision in that behalf under the Bombay Sales Tax Act, 1953. It is urged that similarly, in the absence of specific statutory provision providing for assessment of a dissolved firm, it is not open to us to hold that a dissolved firm could be proceeded against either by way of reassessment or assessment after its dissolution. With respect, that decision was right on the facts of the case, because there was no provision under the Bombay Sales Tax Act, 1953 imposing a liability to pay taxes on the legal representative of a deceased dealer. That, however, is not the position so far as the firm is concerned as pointed out above. It is made liable to pay tax after its dissolution. Hence the case is distinguishable.

25. Reliance was also placed on a decision in Dy. Commr. of Commercial Taxes, Guntur Division, Guntur v. K. Bakthavatsalam Naidu, (1955) 6 STC 657 (AP) in which a Division Bench of the Andhra High Court consisting of Subba Rao. C, J. and Satyanarayana Bajju, J., as they, then were, held that under the Madras General Sales Tax Act a firm was a "dealer" and therefore, in respect of a transaction done by a firm, which was in existence during the assessment year but was dissolved subsequently, it was the firm that was to be assessed to tax and not any of its partners in their individual capacity. That decision again turned upon a construction of the particular provisions in the Madras General Sales Tax Act, 1939, which did not charge the partners of the firm but charged only, the firm, and hence it cannot help the petitioners in their contention.

26. Support was also sought from the decision of the Supreme Court in State of Punjab Vs. Jullunder Vegetables Syndicate, , in which the Supreme Court laid down as follows:--

"It is a settled rule of construction that in Interpreting a fiscal statute the Court cannot proceed to make good the deficiencies, if there be any, in the statute; it shall interpret the statute as it stands and in case of doubt, it shall interpret it in a manner favourable to the tax-payer: See C.A. Abraham, Uppoottil, Kottayam Vs. The Income Tax Officer, Kottayam and Another,"

Applying this rule of construction, the Supreme Court examined the East Punjab General Sales Tax Act, 1948, and the rules made thereunder and came to the conclusion that the Act and the Rules did not make any provision for assessment of a firm after its dissolution. It was in view of that conclusion that Subba Rao, J., as he then was, speaking for the Court, held that the impugned assessment order on the dissolved firm could not be supported under the provisions of the Act, and confirmed the order of the High Court of Punjab quashing the assessment order. But the judgment in that very case shows that the Supreme Court observed that Section 16 of the East Punjab General Sales Tax Act, 1948, which was relied on behalf of the State of Punjab, did not expressly state that a dealer, if it happens to be a firm, continued to have legal existence even if it. had

ceased to be a firm, nor did the section permit a necessary implication to that effect it is, therefore, difficult to appreciate how this decision of the Supreme Court can help the petitioners in contending that even where a firm is charged with a liability to pay the tax expressly as u/s 5 of the Bombay Sales Tax Act, 1953, and a machinery for enforcing that liability is by necessary implication provided in the Act itself, a dissolved firm could not be assessed. Similarly, the Supreme Court decision in *Addl. Tahasildar v. Gendalal* (1968) 21 STC 263 (SC) which merely followed the earlier decision in *State of Punjab Vs. Jullunder Vegetables Syndicate*, does not advance the case, of the petitioners any further.

27. In holding that the Bombay Sales Tax Act, 1953, provided for a complete machinery for enforcing the liability of a dissolved firm, particularly in view of the clear indication of the intention of the Legislature in Section 26(3), we are giving effect to the words used by the Legislature without straining any language used by the statute. We have merely followed the well known principles of construction of a taxing-statute which may be stated in the words of Lord Morris, as expressed in *Shop and Store Development Ltd. v. Commr. of Inland Revenue*, (1967) 1 AC 472, at p. 493--

"My Lords, the decision in this case calls for a full and fair application of particular statutory language to particular facts as found. The desirability or the undesirability of one conclusion as compared with another cannot furnish a guide in reaching a decision. The result reached must be that which is directed by that which is enacted."

We are definitely of the opinion that on a full and fair consideration of the provisions contained in the Bombay Sales Tax Act, 1953, the conclusion to which we have reached is one "which is directed by what is enacted by the legislature".

28. Furthermore, we are concerned in these petitions with order of reassessment u/s 15 and the orders of assessment u/s 14 of the Bombay Sales Tax Act, 1953. These sections provide for a machinery for assessing and reassessing a dealer who is liable to pay sales tax. The rules of interpretation of even taxing-statutes, so far as the machinery sections of the statutes are concerned, are more liberal and must be reasonably applied (See (1940) 8 ITR 442 (Privy Council) , and *Gursahai Saigal Vs. Commissioner of Income Tax, Punjab* ,). In the latter case the Supreme Court approved the following observations of Lord Dunedin in *Whitney v. Commrs. of Inland Revenue*, (1925) 10 TC 88, 110, at page 900:--

"My Lords, I shall now permit myself a general observation. Once that it is fixed that there is liability, it is antecedently highly improbable that the statute should not go on to make that liability effective. A statute is designed to be work-able and the interpretation thereof by a Court should be to secure that object, unless crucial omission or clear direction makes that end unattainable. Now there are three stages in the imposition of a tax: there is the declaration of liability, that is the part of the statute which determines what persona in respect of what property are liable. Next, there is the assessment. Liability does not depend on

assessment That, ex hypothesi, has already been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly, come the methods of recovery. If the person taxed does not voluntarily Pay."

And the Supreme Court further approved in that case the rule regarding the interpretation of the machinery, laid down by the Privy Council in Mahaliram Ramji-das's case, AIR 1940 PC 124 and observed. "The proper way to deal with such a provision is to give it an interpretation which, to use the- words of the Privy Council in Mahaliram Ramjidas's case "makes the machinery workable, utters valeat potius quam pereat"."

29. Now, in the present cases the liability of the firms to pay taxes in respect oil the Pre dissolution turnovers cannot be disputed by the petitioners. We find on a fair reading of the various provisions contained in the Bombay Sales Tax Act, 1953, that this liability is enforced by necessary implication by providing that the firm would continue to be liable to be assessed or reassessed as the case may be even after its dissolution as a legal entity or as an assessable unit. This, in our judgment, is made crystal clear by the language of Section 26(3). where the Legislature has in unmistakable terms made the firm liable for sales tax even after its dissolution in respect of the goods allotted to a partner. For these reasons, the contention on behalf of the petitioners that our conclusion regarding the machinery provided for enforcing the liability of a dissolved firm to pay taxes is contrary to the rules of construction of a taxing statute must be rejected.

30. It was next contended that such a conclusion principally based on the wording of Section 26(3) is erroneous, because Section 26(3) was enacted by the legislature for the specific purpose of creating a legal fiction of sale regarding allotment of goods, and this legal fiction is held to be ultra vires the powers of the Bombay Legislature in State of Gujarat v. Ramanlal Sankalchand and Co., AIR 1965 Guj 60 -- (1965) 16 STC 329 . In that case a Division Bench of the Gujarat High Court consisting of J, M. Shelat and P. N. Bhag-wati, JJ. as they then were, held that Section 26(3) in so far as it purported to tax allotment of goods of a firm amongst partners on dissolution was ultra vires the State Legislature, because in enacting that section what the Legislature did was not to enact an ancillary or subsidiary provision intended to ensure the proper and effective functioning of the main legislation under Entry 54 of List II of the Seventh Schedule to the Constitution, but to directly and expressly bring to tax a transaction which was not a sale within the meaning of the Indian Sale of Goods Act by fictionally treating it as such sale. This decision was substantially based on the decision of the Supreme Court in The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd., . It is also true that in Commissioner of Income Tax, Madhya Pradesh Vs. Dewas Cine Corporation, in the context of the Indian, Income Tax Act also, the Supreme Court was of the view that the expressions "sale" and "sold" had to be interpreted according to- the ordinary meaning of the said words; and that "Sale" was a transfer of property for a price, and adjustment of the rights of the partners in a dissolved firm by allotment of its

assets was not a transfer, nor was it for a price. But the petitioners did not allege in the petitions before us that they were relying on the ultra vires nature of the Section 26(3). Normally this Court would not declare a section of the legislature ultra vires even when the Court is required to do so without giving notice to the Advocate-General that behalf. The petitioners did not at any time move this Court for issuing such a notice. Hence it is not possible for us to proceed on the footing that the section is ultra vires. Even assuming that the decision of the Gujarat High Court is correct, that does not preclude us from looking into the section to find out whether the legislature intended to provide a machinery for enforcing the liability of a dissolved firm. If the Court wants to declare a section ultra vires, the Court has to look into the section. Here we are only looking into it for a collateral purpose for finding out what was intended by the legislature with regard to the question of a firm as a legal entity after its dissolution for the purposes of enforcing its liability to pay taxes. When the section was enacted, it was an integral part of the statute, and we cannot refuse to see what is stated in the statute. We have to give full effect and meaning to all the words used by the legislature, and we have no difficulty in holding, as stated above, that Section 26(3) clearly indicates the mind of the legislature to continue the firm as a legal entity after its dissolution for the purposes of assessment, reassessment or for imposing penalty under the Bombay Sales Tax Act, 1953. What is declared ultra vires by the Gujarat High Court is only the legal fiction which the legislature wanted to create by describing allotment of the goods of a firm amongst its partners as a sale. That object of the Legislature might be in contravention or beyond the powers conferred on the Legislature by Entry 54 {Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 92-A of list I) contained in List II of the Seventh Schedule to the Constitution. Merely because that section is declared ultra vires, the words used by the Legislature cannot be considered as wiped off the section for all purposes. We can take into consideration the words to find out the intention of the Legislature. Further, any doubt or impediment arising out of the provisions of the Bombay Sales Tax Act, 1953, is completely set at rest by the same Legislature while enacting the Bombay Sales Tax Act, 1959. In which express provision, to which presently we shall refer, was made by enacting that a firm was liable to be assessed even after its dissolution.

31. The relevant provisions of the Bombay Sales Tax Act, 1959, which came into force on January 1, 1960, may now be considered. The material portions of the relevant sections referred to in the course of the arguments are as follows;

32. Section 2(11) defines a "dealer". It reads--

"dealer" means any person who whether for commission, remuneration or otherwise carries on the business of buying or selling goods in the State, and includes the Central Government, or any State Government which carries on such business, and also any society, club or other association of persons, which buys goods from, or sells goods to. Its members Section 2(19) defines a

"person" :

" "Person" includes any company or association or body of individuals, whether incorporated or not, and also a Hindu undivided family, a firm and a local authority;"

Section 15(1) as far as is material states --

(1) Where a dealer, liable to pay tax under this Act.--

(a)

(b)

(c) is a firm, company, society or other association of persons, or a trust, which is dissolved, . liquidated. wound up or revoked, or

e)

ana the stock of goods held by such dealer immediately before the dissolution, liquidation, winding up, revocation as the case may be, includes taxable goods purchased by him on a certificate given by him u/s 11 or 12, then, there shall be levied a purchase tax on the purchase price of such taxable goods at the relevant rate of purchase tax applicable thereto as if such dealer had become liable to pay purchase tax on such goods u/s 143

Section 18 is as follows:

"Notwithstanding any contract to the Contrary, where any firm is liable to pay tax under this Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payments

Provided that, where any such partner retires from the firm, he shall be liable to pay the tax and the penalty (if any) remaining unpaid at the time of his retirement, and any tax due up to the date of retirement though unassessed at that date."

Section 19(3) is--

"Where a dealer, liable to pay tax under, this Act, is a firm, and the firm is dissolved, then every person who was a partner shall be jointly and severally liable to pay to the extent to which he is liable u/s 18, the tax (including any penalty) due from the firm under this Act or under any earlier law, up to the time of dissolution, whether such tax (including any penalty) has been assessed before such dissolution but has remained unpaid or is assessed alter dissolution....."

Just as in the ease of the Bombay Sales Tax Act, 1953, the firm is made liable as a dealer to pay the tax subject to the conditions mentioned in Section 3 of the Bombay Sales Tax Act, 1959. There are provisions for registration, licences, authorisations, recognitions, and permits relating to the firm as dealer under

Chapter IV of the Act of 1959, Section 32 requires the dealer to file returns of turnovers done by the firms prior to their dissolution. Section 33 empowers the Sales Tax authorities to assess a dealer. Section 34 provides--

"Where in respect of any tax (including any penalty) due from a dealer under this Act or under any earlier law, any other person is liable for the payment thereof u/s 19, all the relevant provisions of this Act or, as the case may be, of the earlier law. shall in respect of such, liability apply to such person also, as if he were the dealer himself,"

Section 35 empowers the Sales Tax authorities to reassess a dealer in respect of escaped turnovers or suppressed transactions. It is not necessary to refer to any other provisions of the Act for the purposes of the disposal of these petitions except Sections 76 and 77 under which the Bombay Sales Tax Act, 1953 was repealed but was kept in force for the purposes of the levy, assessment, reassessment, collection, refund or set-off of any tax or the granting of a drawback in respect thereof, or the imposition of any penalty, which levy, assessment, reassessment, collection, refund, set off, drawback or penalty related to any period before the appointed day on which the Bombay Sales Tax Act, 1959 came into force.

33. It is patent that in using the words in Section 19(3) viz. "Whether such tax (including any penalty) has been assessed before such dissolution but has remained unpaid or is assessed after dissolution", the Legislature has clearly expressed its mind to provide a machinery for assessing a dissolved firm. It is a well settled principle in dealing with matters of construction that a subsequent legislation may be looked into in order to see what is the proper interpretation to be put upon the earlier Act when the earlier Act is obscure or ambiguous or readily capable of more than one interpretation. In *Payne v. Bradley*, 1962 AC 343, Lord Denning relying on the decision of the House of Lords in *Ormond Investment Co. v. Betts*. 1928 AC 143, observed--

"It is permissible to look at a later statute, not perhaps to construe the earlier statute, but to see the meaning which Parliament puts on the self-same phrase in a similar context, in case it throws any light on the matter."

The decision of the House of Lords in 1928 AC 143 has been approved by the Supreme Court in *State of Bihar Vs. S.K. Roy*, . The same Legislature which enacted the Bombay Sales Tax Act, 1953, enacted the Bombay Sales Tax Act, 1959, and kept the earlier Act in force in respect of all liabilities incurred under the earlier law by dealers. Hence, it would be legitimate to rely on the provisions of Section 19(3) and hold that the Legislature always intended and did provide a machinery for enforcing the liability of a firm which was a dealer under the earlier enactment Inasmuch as in the feet Section 19(3) provided that the firm continued to be a legal entity even after its dissolution for the purposes of assessment, reassessment, penalty, etc. under the earlier Act, as well as under the Bombay Sales Tax Act, 1959. Section 19(3) deals expressly with the

dissolved firm and lays down that after dissolution, every person who was a partner shall be jointly and severally liable to pay to the extent to which he is liable u/s 18 the tax (including any penalty) due from the firm. The words "tax due" means tax ascertained after assessment. (See the decision of the Supreme Court in the State of Rajasthan and Others Vs. Ghasilal,). This necessarily implies that the Legislature laid down, that the firm could be assessed as a firm in spite of the dissolution Section 19(3) refers to the liability of a partner as a liability to the extent to which he is liable u/s 18 which lays down--

"Notwithstanding any contract to the contrary, where any firm is liable to pay tax under this Act The firm and each of the partners of the firm shall be jointly and severally liable for such payment:

The extent referred to in Section 19(3) is only the extent referred to in the proviso to Section 18, which lays down--

"Provided that, where any such partner retires from the firm, he shall be liable to pay the tax and the penalty (if any) remaining unpaid at the time of his retirement, and any tax due up to the date of retirement though unassessed at that date."

Otherwise, the liability of a partner is coextensive with the liability of the firm although the partner himself was not liable individually as a dealer. This provision is further clarified by the provisions contained in Section 34 which is already quoted above. Thus, the Legislature made it abundantly clear that for the dues of the firm, both under the earlier law and under the provisions of the Bombay Sales Tax Act, 1959, the firm as well as its partners were liable to be assessed and in certain, circumstances, reassessed. Furthermore, the words "including any penalty" in Section 19(3) shows that even after the assessment if the tax assessed is not paid by the firm. It was liable to be proceeded against under the provisions of the Act providing for a penalty. It is, therefore, clear that once the liability was incurred by a firm as a dealer, the Sales Tax Law, both under the Acts of 1953 and of 1959, continued the firm as a legal entity for all the purposes of the said Acts, although in the event of a dissolution the partners were also made liable jointly and severally for the dues of the firm.

34. It is, however, contended on behalf, of the petitioners that this conclusion of ours is contrary to the decision of the Supreme Court in State of Punjab Vs. Jullunder Vegetables Syndicate, , because even Sn that case, it was urged before the Supreme Court relying on Rule 40 of the East Punjab General Sales Tax Rules, 1949, that beca" use that rule laid down that a dealer and his partner or partners shall be jointly and severally responsible for payment of the tax, penalty or any amount due under the Act or the Rules, the Act provided for a machinery for assessing a firm after its dissolution, But the Supreme Court rejected this contention observing--

"It only imposes a joint and several liability on the dealer and its partners for the

payment of tax, penalty or any amount due under the Act or the Rules. It does not provide for a case of the dissolution of a firm and the assessment of the dissolved firm.

"Nor the provisions of the Partnership Act can possibly be called in aid to resuscitate a dissolved firm for the purpose of assessment. They deal only with the relationship between the partners and their rights and liabilities, They have no bearing on the question of, assessment under a different statute. There is, therefore, a lacuna in the Act, which was filled up later on by an Amending Act; but the said Amending Act, it is conceded, is not retrospective in operation."

With respect Their Lordships were quite right in holding that Rule 40 was not concerned with the dissolved firm and as there was no other provision in the Act or the Rules providing a machinery, there was a lacuna therein. But that is not the position so far as the Acts with which we are concerned in these petitions. We have already pointed out above that the entire machinery for enforcing the liability of dealers is provided under both the Acts of 1953 and 1959, and the Legislature clearly intended that where a dealer is a firm the firm or the dealer will continue to be liable to be assessed in respect of the firm's liabilities as a separate legal entity, and there is no lacuna in these Acts as found by the Supreme Court in *State of Punjab Vs. Jullunder Vegetables Syndicate*, .

35. On the contrary that very decision refers to the two earlier decisions of the Supreme Court in *C.A. Abraham, Uppotttil, Kottayam Vs. The Income Tax Officer, Kottayam and Another*, . and *Commissioner of Income Tax, Madras, and Another Vs. S.V. Angidi Chettiar*, . and distinguished those cases on the ground that Section 44 of the Income Tax Act set up a machinery for assessing the tax liability of firms which had discontinued their business, because the said provision was an express provision for assessing a dissolved firm. In *C.A. Abraham, Uppotttil, Kottayam Vs. The Income Tax Officer, Kottayam and Another*, . the Supreme Court had to construe the effect of Section 44 of the Income Tax Act, 1922, prior to its amendment by Act 11 of 1958 which read as follows :

"Where any business, profession or vocation carried on by a firm or association of persons has been discontinued, or where an association of persons is dissolved, every person who was at the time of such discontinuance or dissolution a partner of such firm or a member of such association shall. In respect of the income, profits and gains of the firm or association, be jointly and severally liable to assessment under Chapter IV and for the amount of tax payable and all the provisions of Chapter IV shall, so far as may be, apply to any such assessment."

These provisions. In our opinion, are in *pari materia* with the provisions contained in Section 19(3) read with Section 18, and Section 34 of the Bombay Sales Tax Act, 1959, and while considering Section 44, Mr. Justice Shah speaking for the Court observed--

"In effect, the Legislature has enacted by Section 44 that the assessment proceedings may be commenced and continued against a firm of which business is discontinued as if, discontinuance has not taken place. It is enacted manifestly with a view to ensure continuity in the application of the machinery provided for assessment and imposition of tax liability notwithstanding discontinuance of the business of firms. By a fiction, the firm is deemed to continue after discontinuance for the purpose of assessment under Chapter IV."

36. This effect has never been challenged in any later decision. On the contrary, the same interpretation is followed in Commissioner of Income Tax, Madras, and Another Vs. S.V. Angidi Chettiar, , and the later decisions in Shivram Poddar Vs. Income Tax Officer, Central Circle II, Calcutta, and Another, and Commissioner of Income Tax, Hyderabad Vs. Sri Rajareddy Mallaram, . This Court has also followed the decision in C.A. Abraham, Uppoottil, Kottayam Vs. The Income Tax Officer, Kottayam and Another, in the Commissioner of Income Tax (Central), Bombay Vs. Devidayal and Sons, . It is impossible to hold that even though the provisions contained in Sections 18, 19(3) and 34 of the Bombay Sales Tax Act, 1959 -are similar to the provisions of Section 44 of the Indian Income Tax Act, 1922, before its amendment in 1958, and although it is well established by weighty authority that the firm continues as a legal entity after its dissolution for the purposes of the Income Tax Act, it does not exist for the purposes of the Sales Tax Act

37. It is next urged that the construction, which we think is the only proper construction, will lead to an absurd result, because if a firm had only two partners, and both of them die, it would be impossible to assess the firm which continued to be liable. We do not find any substance in this contention because Section 34 makes a partner as if he were a dealer himself and Section 19(1) makes the legal representatives of dealers liable only in certain, circumstances. Perhaps, the legislature did not intend to make the legal representatives of the partners of a firm to be liable to the dues of the firm except in the circumstances mentioned in Section 19(1). However, we do not wish to pronounce any final opinion on the point and we have to deal in the present cases with partners, the majority of whom are living and available for being proceeded against by the sales tax authorities.

38. It was lastly urged that when the bill in respect of the Bombay Sales Tax Act, 1959, was published, Section 44 of the Indian Income Tax Act was already amended by Act 11 of 1958, and as amended. Section 44 clearly stated that the Income Tax Officer shall make assessment of the total income of the firm as if no dissolution had taken place, and if the Legislature wanted to impose any such fiction on a dissolved firm, it would have adopted the same language under the Sales Tax Act, it is true that it would have been better if the legislature had adopted the same phraseology which was adopted by Act 11 of 1958 in substituting the new section for the old Section 44 in the Indian Income Tax Act, 1922. That, however, does not affect our interpretation of the provisions of the

Bombay, Sales Tax Act, 1959, as enacted by the Legislature, which must be done on the basis of the words used by the Legislature, Merely because better words or phraseology had not been used by the Legislature, we cannot refuse to give effect to the plain meaning of the words used by the Bombay Legislature, which, according to us, clearly wanted to make a dissolved firm liable to be assessed and proceeded against under the provisions of the Sales Tax legislation.

39. In the result, we hold that the Sales Tax authorities had jurisdiction to proceed against the respective firms in the two cases under the Bombay Sales Tax Act 1953, as well as under the Bombay Sales Tax Act 1959, notwithstanding their dissolution as if the firms continued to exist for all purposes under the said Acts.

40. As stated above, we cannot deal with the other questions raised by the petitioners. They raise several questions of fact which cannot be gone into, at this stage in any event and ordinarily in the exercise of the jurisdiction of the Court under Article 226 of the Constitution. Even the questions raised with regard to the legality of the procedure followed by the Sales Tax authorities can be agitated by the petitioners before the Appellate authorities, and we must not be taken to have expressed any opinion on any questions other than the main question which we have discussed above.

41. For the above reasons, we find no substance in these petitions and the petitions must be rejected. Rule in both the petitions discharged with costs. The petitioners in Miscellaneous Application No, 564 of 1965 shall pay costs on the Long-Cause scale to the respondents. The petitioners in Special Civil Application No, 2050 of 1969 shall pay Rs. 500/- as costs of the respondents.

42. Petitions rejected.