(1973) 08 AHC CK 0036

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 98 of 1973

Sant Bux Singh APPELLANT

Vs

Sales Tax Officer and Others RESPONDENT

Date of Decision : 17-08-1973

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1974) 34 STC 289

Hon'ble Judges : R.L. Gulati, J;H.N. Seth, J

Bench : Division Bench

Advocate : R.N. Singh, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.L. Gulati, J.—This is a petition under Article 226 of the Constitution.

2. One Sheo Prasad Rai ran a brick-kiln in village Sonkhari. Proceedings were taken against him for assessment of sales tax on the turnover of bricks sold during the assessment years 1962-63 to 1966-67. On 6th September, 1967, he filed before the Sales Tax Officer an affidavit in which he declared himself to be the sole owner of the business. On that basis the assessment order was passed against him for the assessment years 1962-63 to 1965-66 on the basis of best judgment as he had failed to produce proper accounts. Later on, however, on 22nd January, 1970, he filed another affidavit before the Sales Tax Officer declaring that the petitioner was also a partner with him and to support this contention he produced a partnership deed. The Sales Tax Officer thereupon recorded a finding for the assessment year 1966-67 that the petitioner was also a partner along with Sheo Prasad Rai. No notice of any kind was given to the petitioner before passing the aforesaid order. As no tax for any of the assessment years was paid, the Sales Tax Officer started recovery proceedings. A recovery certificate was issued not only against Sheo Prasad Rai, but also against the petitioner in respect of the tax relating to all the assessment years.

3. The petitioner says that he came to know of the recovery proceedings only on 27th December, 1972, when the qurq amin visited him for the recovery of the amount of tax mentioned in the recovery certificate. He has now approached this Court under Article 226 of the Constitution praying for the quashing of the assessment orders as also the recovery proceedings against him.

4. The petitioner has alleged that he was never a partner with Sheo Prasad Rai. With regard to the partnership deed, he has stated that the same was executed for starting a brick-kiln at village Ahan, but due to subsequent dispute between him and Sheo Prasad Rai that business was never started and that the business which has been assessed to tax relates to brick-kiln at village Sonkhari with which he has no concern. He has further stated that as no notice of any kind was given to him during the assessment proceedings, nor was any notice of demand served upon him, he could not present his case before the Sales Tax Officer. The fact that no notice was given to him is not denied in the counter-affidavit of Sri Mani Shanker Lal Srivastava, Sales Tax Officer, Jaunpur.

5. Having regard to the circumstances of the case, particularly the fact that Sheo Prasad Rai had himself once declared to be the owner of the business and the partnership deed produced by him before the Sales Tax Officer related to the brick-kiln at village Ahan, it was the duty of the Sales Tax Officer to have issued notice to the petitioner before recording any finding in this regard. The assessment order for the year 1966-67 is accordingly void having been passed in violation of the principles of natural justice.

6. We may point out that an assessment order should contain not only the assessment of turnover and tax but should also indicate the person liable to pay the same. The department will be well-advised to amend the form of return so as to include therein a column showing the status of the assessee, namely, as to whether the assessee is an individual, a firm, a Hindu undivided family, a company or an association of persons, etc. When the assessee is a firm, the application for registration must be signed by all the partners. Whenever there is a doubt or dispute with regard to the status of an assessee, proper enquiry should be made after notice to all concerned and a finding should be recorded. If this procedure is followed, the cases like the one before us will not arise.

7. Reverting to the facts of the present case, the assessment orders for the years 1962-63 to 1965-66 were obviously passed by the Sales Tax Officer against Sheo Prasad Rai on his own admission. At that stage the question of the petitioner being a partner was never raised or considered by the Sales Tax Officer. Thus, Sheo Prasad Rai alone was the assessee. A recovery certificate can only be issued against an assessee and not against an outsider. The petitioner was not an assessee and, as such, recovery certificate could not be issued against him, even though subsequently the Sales Tax Officer came to believe that the petitioner was a partner. The tax could not be demanded from the petitioner, nor could any recovery certificate be issued against him without amending the assessment order by taking appropriate proceeding. Not only that there is no finding with

regard to the petitioner being a partner, but even notice of demand has not been served upon him. In the circumstances, the petitioner cannot be said to be a defaulter and the recovery proceedings against him are wholly without Jurisdiction. However, it is not necessary to quash the assessment orders, because they have not been made against the petitioner and are not binding upon him. It would be enough to declare that the recovery proceedings against the petitioner in respect of the assessment years 1962-63 to 1965-66 are unauthorised and without jurisdiction. So far as the assessment year 1966-67 is concerned, the assessment order does contain a finding that the petitioner was a partner, but the finding having been recorded without notice to the petitioner is not sustainable in law.

8. We accordingly allow this petition, quash the assessment order for the year 1966-67 and the recovery proceedings against the petitioner in respect of the assessment years 1962-63 to 1966-67 both inclusive.

9. The petitioner is entitled to the costs.

10. A copy of this judgment may be sent to the State Government for consideration of the suggestion with regard to the amendment of the form of return.