(1966) 08 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Writ No. 6 of 1963

Smt. Shanti Bai APPELLANT

Vs

State and Others RESPONDENT

Date of Decision : 22-08-1966

Acts Referred:
Rajasthan Sales Tax Act, 1954 — Section 9(3)(b)

Citation : (1968) 21 STC 458

Hon'ble Judges : V.P. Tyagi, J;I.N. Modi, J

Bench : Division Bench

Advocate : P.N. Datta, for the Appellant; Raj Narain, Deputy Government Advocate, for the Respondent

Judgement

1. This is a writ application by Smt. Shanti Bai (widow of Sayarchand) and other heirs and legal representatives of the deceased Suganchand against an assessment order under the Rajasthan Sales Tax Act, 1954. The assessee was a partnership firm M/s. Rampratap Suganchand which carried on business in cloth at Sikar. This firm consisted of two partners Suganchand and Rampratap. The period for which the assessment was made extended from 15th May, 1957, to 15th April, 1958. It is admitted that this firm was a registered one u/s 6 of the Rajasthan Sales Tax Act, 1954. The assessment order was passed on 28th February, 1961, by which the tax amounting to Rs. 3,789 less Rs. 1,330.59 already deposited, was apparently imposed on the deceased Suganchand and he was further asked to pay a penalty of Rs. 4,800 u/s 16(1)(c) of the Act.

2. We need not narrate at length the course which this case assumed thereafter, as it is admitted before us that it was the deceased Sugan-chand''s case throughout that the firm in question was dissolved on 15th April, 1958, but the Sales Tax Officer while passing the assessment order did not take the trouble of carefully examining this aspect of the case, nor has he given any positive finding on it. We have no doubt that if the firm stood dissolved, then this 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 (No. 13 of 1964). This has apparently not been done. If on the other hand the firm was not dissolved as alleged, then the assessment order should not have been passed against Suganchand alone but against the firm itself. The question whether the firm was or was not dissolved as alleged by the petitioners before us is, however, a question of fact, and it is not within our province to go into it. And in any case that is a question which seems to us to go to the root of the assessment in the case. In this state of circumstances learned counsel for both parties agree that the assessment order dated 28th February, 1961, be quashed and the case sent back to the Sales Tax Officer concerned with a direction that he shall examine the case set up by the petitioner that the assessee-firm was dissolved on 15th April, 1958, after recording such evidence as may be necessary and then pass a fresh order in accordance with law. We order accordingly. Having regard to all the circumstances of the case we leave both the parties to bear their own costs in this Court.