

(1993) 01 GUJ CK 0028
In the Gujarat High Court
Case No : Sales Tax Reference No. 6 of 1984

State of Gujarat

APPELLANT

Vs

Patel Oil Mills

RESPONDENT

Date of Decision : 19-01-1993

Acts Referred:

Gujarat Sales Tax Act, 1969 — Section 15, 2, 2(28), 25, 29

Citation : (1993) 01 GUJ CK 0028

Hon'ble Judges : M.B. Shah, J;C.V. Jani, J

Bench : Division Bench

Advocate : R.D. Pathak, for the Appellant; Y.F. Mehta, Additional Government Pleader, instructed by H.V. Chhatrapati, for the Respondent

Judgement

M.B. Shah, J.—The Gujarat Sales Tax Tribunal has referred the following question, u/s 69 of the Gujarat Sales Tax Act, 1969, for our decision :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the value of groundnut seeds of Rs. 96,460 cannot be treated as purchases made by the opponent-firm from the partners and hence purchase tax levied thereon should be removed ?

2. The aforesaid question arises in the context of the following facts : The opponent, M/s. Patel Oil Mills, a registered partnership firm, is doing the business of running an oil mill. In Samvat Year 2032 (for the period from November 4, 1975 to October 23, 1976), the opponent-firm was assessed by the Sales Tax Officer on March 31, 1978. The Sales Tax Officer had not assessed the purchase tax on the purchase of groundnut seeds of the value of Rs. 96,460 on the ground that some of the partners had brought it as their capital contribution. Groundnut seeds were their agricultural produce. On scrutiny, the Assistant Commissioner of Sales Tax exercised the suo motu power of revision u/s 67 of the Gujarat Sales Tax Act, 1969 and issued notice to the opponent-firm on December 14, 1978, calling upon it to show cause as to why on the said amount of Rs. 96,460 purchase tax should not be levied. After hearing the opponent-firm and

considering the contentions raised by the opponent-firm, he levied purchase tax on the groundnut seeds purchased by the opponent-firm from its four partners. It was held that the said produce was purchased from the unregistered dealers. He considered the fact that, out of five partners, four partners have brought groundnut seeds of different value; there was nothing on record to show that when they brought groundnut seeds the opponent-firm was in need of any capital amount, the opponent-firm was doing the business at the relevant time; the opponent-firm has purchased groundnut seeds from the four partners as if it was purchasing from other persons by paying its market price; in the accounts the amount was debited for the purchase of groundnut seeds and thereafter it was credited in the personal accounts of the concerned partners. The Assistant Commissioner of Sales Tax also observed that in a case where a new partnership firm comes into existence or a new partner enters into the running partnership firm and if the partner brings in amount, goods or machinery towards contribution as capital, it may not be a sale transaction. But, in the present case the transaction was a purchase made by the opponent-firm from the unregistered dealers. He, therefore, by his order dated March 31, 1981, held that the opponent-firm was liable to pay purchase tax as provided u/s 15 of the Gujarat Sales Tax Act, 1969.

3. Against that order, the opponent-firm preferred Revision Application No. 57 of 1981 before the Gujarat Sales Tax Tribunal. Before the Tribunal, it was contended on behalf of the opponent-firm that the opponent-firm cannot be said to have purchased groundnut seeds in question because as per the mutual understanding arrived at amongst the partners, instead of bringing capital contribution by each partner, the partnership deed provided that from time to time looking to the nature and requirements of the business of the partnership the partners will invest the capital to the extent necessary for doing the business. It was, therefore, contended that groundnut seeds purchased by the opponent-firm would not be a transaction of sale or purchase under the Sales of Goods Act. Reliance was placed on the decision of this Court in the case of *State of Gujarat v. Ramanlal Sankalchand and Co.* [1965] 16 STC 329 Guj and it was contended that whenever the partnership firm was dissolved and the surplus stock of the partnership firm was distributed, it cannot be regarded as transaction of sale. Reliance was also placed on the decision of the Supreme Court in the case of *Commissioner of Income Tax, West Bengal Vs. Hind Construction Ltd.*, contending that whenever a partner delivered the goods to the firm towards share capital such transaction could not be regarded as transaction of sale of goods. As against this, on behalf of the applicant-revenue, it was contended that the opponent-firm had purchased groundnut seeds from its partners; the amount of value of groundnut seeds was given credit in the capital (personal ?) account of the partners and it was debited in the purchase account in the books of accounts of the opponent-firm; therefore, the transaction should be regarded as one of the purchases of groundnuts. The Tribunal, after considering the contentions raised by the parties held that, in accordance with the condition in the partnership

deed, groundnut seeds were delivered to the opponent-firm and hence the transaction cannot be regarded as transaction of purchase made by the opponent-firm. The Tribunal came to the conclusion that the transaction of groundnut seeds of the value of Rs. 96,460 could not be regarded as purchase of groundnut seeds made by the opponent-firm and for this purpose the Tribunal relied upon the decision of the Supreme Court in the case of Commissioner of Income Tax, West Bengal Vs. Hind Construction Ltd., . Being aggrieved by the judgment and order passed by the Tribunal, the State Government has preferred an application for reference and the Tribunal has referred the aforesaid question for our decision.

4. At the time of hearing of the reference, on behalf of the applicant, the learned Assistant Government Pleader submitted that, for the purposes of the Sales Tax Act, the partnership firm is a different entity; that, according to the law, there is no prohibition that the partnership firm cannot purchase any goods from its partners; that in the present case, the opponent-firm purchased groundnut seeds from its four partners by paying its market price; that the four partners are unregistered dealers; and that the sale consideration is credited in the names of the concerned partners. As against this, Mr. Pathak, learned advocate appearing on behalf of the opponent-firm, vehemently submitted that in law the partnership firm cannot enter into a contract with its partners for purchase of goods and, therefore, there cannot be any sale by its partners to the partnership firm. For this contention, he relied upon the decision in the case of Commissioner of Income Tax, West Bengal Vs. Hind Construction Ltd., and also the decision of the Calcutta High Court in the said case reported in Commissioner of Income Tax Vs. Hind Construction Ltd.,

5. For deciding the question under reference, we would first refer to the definitions of the words "dealer", "goods", "person" and "sale" given in section 2 of the Gujarat Sales Tax Act, 1969, which are as under :

"(10) "dealer" means any person who buys or sells goods in connection with his business; and includes Central Government, a State Government or any local authority and also any society, club or others association of persons which buys goods from or sells goods to its members or to other persons;

Explanation I. - Explanation II. - Explanation III. - (12) "goods" means all kinds of movable property (not being newspapers or actionable claims, or stocks, shares or securities) and all materials, articles and commodities, including standing timber and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale;

(18) "person" includes any company or association or body of individuals whether incorporated or not, a society, club or other institution and also a Hindu undivided family, a firm, a local authority, Central Government or a State Government;

(25) "registered dealer" means a dealer registered u/s 29 or 30 and includes a dealer -

(i) who holds a certificate of registration deemed to have been granted under this Act; and

(ii) to whom a fresh certificate of registration has been granted u/s 30A;

(28) "sale" means a sale of goods made within the State, for cash or deferred payment or other valuable consideration, and includes any supply by a society or club or an association to its members on payment of a price or of fees or subscription, but does not include a mortgage, hypothecation, charge or pledge, and the words "sell", "buy" and "purchase" with all their grammatical variations and cognate expressions, shall be construed accordingly."

6. Then the next relevant provision for our purpose is section 15 of the Gujarat Sales Tax Act, 1969, which is as under :

"15. Where a dealer who is liable to pay tax under this Act purchases any goods specified in Schedule II or III from a person who is not a registered dealer then, unless the goods so purchased are resold by the dealer, there shall be levied subject to the provisions of section 9 -

(i) in the case of goods specified in Schedule II, a purchase tax on the turnover of such purchases at the rate set out against them in that Schedule, and

(ii) in the case of goods specified in Schedule III, a purchase tax on the turnover of such purchases at a rate equivalent to the rate of sales tax set out against them in that Schedule."

7. Considering the scheme of the aforesaid sections, it is clear that (a) "person", inter alia, includes a firm. For the purposes of the Sales Tax Act, the firm is a distinct legal entity : (b) the firm can be a dealer; and (c) it can also be a registered dealer, and, admittedly, in this case the opponent-firm is a registered dealer. Further, "dealer" includes any society, club or other association of persons which buys goods from or sells goods to its members or to other persons. This would mean that even the transaction of buying or selling of goods by the partnership firm to its members is contemplated and covered by this definition of the word "sale" u/s 2(28). "Sale" or "purchase" as defined includes sale or purchase of the goods for cash or deferred payment and also includes any supply by a society or club or an association to its members on payment of a price or of fees or subscription. By the definition of "goods", it is explicitly made clear that, "goods" do not include stocks. Therefore, if any goods are brought as stock of partnership firm then it would be excluded. Further, u/s 6 of the Gujarat Sales Tax Act, liability to pay tax is that of the dealer. Therefore, it would be the liability of the firm to pay sales tax. u/s 25 of the Gujarat Sales Tax Act, it is provided, "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". This would also indicate that the

partnership firm is considered to be distinct legal entity for the purposes of assessment and recovery of tax. No doubt, by this section, apart from the firm each partner of the firm is jointly and severally liable for payment of such tax. Further, u/s 15 of the Act, it is clear that, where a dealer, that is, partnership firm, purchases any goods specified in Schedule II or III from a person who is not a registered dealer, then it is required to pay purchase tax unless the goods so purchased are resold by the dealer. The only exception provided is for resale by the dealer, but there is no exception to the effect that if it is purchased by the firm from its partner it would not be required to pay purchase tax. Therefore, in our view, there is no reason for holding that when the goods are purchased by a partnership firm from its partners it is not required to pay purchase tax.

8. Learned Advocate Mr. Pathak submitted that the dealer, which is a firm, in law cannot contract to purchase any goods from its partners. There are no two different contracting parties. In our view, this submission is totally misconceived. Under the Indian Partnership Act or under any other statute, there is no prohibition that the partnership firm cannot enter into a contract of purchase or sale of any goods with its partners. It is always open to a partner to purchase or sell the goods to the firm of which he is a partner. The partner of the firm is not required to go to another dealer for sale of his goods or for purchase of goods which he requires when the firm deals in those goods. Further, for the purposes of the Sales Tax Act, the partnership firm is separate entity from its partners.

9. In the case of Commissioner of Income Tax, Bombay South Vs. W.L. Dahanukar, the Division Bench of the Bombay High Court (consisting of S. T. Desai and K. T. Desai, JJ., as they then were), had dealt with the similar contention in the context of the Income Tax Act. The court considered as to whether any taxable income had accrued to the assessee who has conveyed the land to the partnership firm consisting of himself and other persons. The court held as under :

"It is competent to a person in law to sell his property to a partnership firm consisting of himself and another. Such a transaction would be valid and binding and would have all the incidents of a legal and binding transaction of sale, and the difference between the purchase price of the land and the selling price would be the profit that would accrue to the person who purchased and sold the land."

10. Further, in the case of Hajee Abdul Shukoor and Company v. State of Madras [1955] 6 STC 352 Mad at Madras High Court considered the question as to whether there can be sale by a partner to the firm. The court held that transfer of property or goods by a member of the firm to the firm is a sale within the meaning of the Madras General Sales Tax Act. The relevant observations of the court are as under :

"..... The other was a legal contention accepting the finding that the purchase from the Bangalore merchants was made by Ibrahim individually but that as Ibrahim was a partner in the assessee-firm there could not legally be a sale by

him to the assessee-firm because a person cannot contract with himself and another. The Tribunal rejected this argument and in our opinion, rightly. For supporting this point learned counsel for the assessee relied on the decision in *Rustomji v. Sheth Purshotamdas* 25 Bom 606.

The actual question which arose for decision does not bear on the point we have to consider. This was whether where an individual was a common partner in two firms, any suit could be brought by one firm against the other on any transaction between them, a procedural problem which has been solved by the enactment of Order 30, rule 9, of the CPC (vide also Order 48A, RSC). In the absence of any legislative guidance, we would have had to consider the very interesting question as to how far the mercantile concept of a firm being invested with juristic personality effected by the combined operation of the terms of the Partnership Act and Order 30 of the CPC has rendered a partner sufficiently distinct from the firm of which he is a member as to render it possible for contracts being concluded between them. In this connection reference may be made to a passage in the judgment of Sir John Beaumont in *B. M. Goculdas v. Alembic Chemical Works Co. Ltd.* [1948] 2 MLJ 237; 75 IA 147 where he said :

"The Indian Partnership Act goes further than the English Partnership Act of 1890 in recognising that a firm may possess a personality distinct from the persons constituting it; the law in India in that respect being more in accordance with the law of Scotland than with that of England."

We are however relieved of this necessity by reason of the explanation to section 2(b) of the General Sales Tax Act, which runs :

"A Co-operative society, a club, a firm, or any association which sells goods to its members is a dealer within the meaning of this clause."

It follows that a transfer of the property in goods by a member of a firm to the firm is a sale within the meaning of the General Sales Tax Act."

11. For the purposes of the Gujarat Sales Tax Act, the partnership firm is a distinct entity. The question as to whether the partnership firm can be a distinct entity for the purposes of the Sales Tax Act was considered by the Supreme Court in the case of *State of Punjab v. Jullundur Vegetables Syndicate* 1996 17 STC 326 SC. The Supreme Court considered the similar definition of word "dealer" under the East Punjab General Sales Tax Act, 1948. As per that Act, "dealer" means any person, firm or Hindu joint family, engaged in the business of selling or supplying goods in East Punjab. The court considered the question as to whether a firm is a separate assessable entity for the purposes of the Act or whether it is only a compendious term used to denote a group of partners. The court held that though under the partnership law a firm is not a legal entity but only consists of individual partners for the time being, for tax law, Income Tax as well as sales tax, it is a legal entity. The relevant observations are as under :

"The first question is whether a firm is a separate assessable entity for the

purposes of the Act or whether it is only a compendious term used to denote a group of partners. The definition of "dealer" takes in three categories of assessable units, namely, person, firm or a Hindu joint family. The substantive and the procedural provisions of the Act prescribe the mode of assessment and realization of the tax assessed on such a dealer. If we read the expression "firm" in substitution of the word "dealer", it will be apparent that a firm is an independent assessable unit for the purposes of the Act. Indeed, a firm has been given the same status under the Act as is given to it under the Income Tax Act. u/s 3 of the Income Tax Act also a "firm" is treated as a unit of assessment and as a distinct assessable entity. Though under the partnership law a firm is not a legal entity but only consists of individual partners for the time being, for tax law, Income Tax as well as sales tax, it is a legal entity. If that be so, on dissolution, the firm ceases to be legal entity. Thereafter, on principle, unless there is a statutory provision permitting the assessment of a dissolved firm, there is no longer any scope for assessing the firm which ceased to have a legal existence."

12. The aforesaid principle is relied upon by the Supreme Court in the case of Commissioner of Sales Tax, Madhya Pradesh, Indore and Others Vs. Radhakrishnan and Others, . Similar is the position under the Gujarat Sales Tax Act, 1969. "Dealer" means any person who buys or sells goods in connection with his business and includes Central Government, a State Government or any local authority and also any society, club or other association of persons which buys goods from or sells goods to its members or to other persons. Not only this, but it is also specifically provided that "person" includes any company or association or body of individuals, whether incorporated or not, a society, club or other institution and also a Hindu undivided family, a firm, a local authority, Central Government or a State Government. Therefore, for the purposes of the Gujarat Sales Tax Act, 1969, the partnership firm would be a legal entity.

13. Mr. Pathak, learned advocate appearing on behalf of the opponent-firm however, having relied on the following observations of the Supreme Court in the case of Commissioner of Income Tax, West Bengal Vs. Hind Construction Ltd.,

"A sale contemplates a seller and a purchaser. If a person revalues his goods and shows a higher value for them in his books, he cannot be considered as having sold these goods and made profits therefrom. Nor can a person by handing over his goods to a partnership of which he is a partner and that as his share of capital be considered as having sold the goods to the partnership."

14. In our view, the aforesaid principle would have no bearing in the present case because :

(a) there is no question of re-valuing the goods by its owner showing it at higher value in his books of account;

(b) the purchaser, i.e., the partnership firm, is a different entity. Seller of goods is also a different entity who is not a registered dealer; and

(c) admittedly, the goods are not handed over by the partner as his share capital. Goods are sold at market price. That sale price is credited in the personal account of the partner. Admittedly, the partnership was in existence prior to assessment year, Samvat Year 2032.

15. Mr. Pathak further relied upon the observation of the Calcutta High Court in the aforesaid case reported in Commissioner of Income Tax Vs. Hind Construction Ltd., that, "the transfer or sale is a bilateral transaction and there must be at least two persons - the transferor or the vender on the one hand and the transferee or the purchaser on the other". The Calcutta High Court further observed, "a firm accordingly is neither a natural nor an artificial person. It is no natural, because a firm represents only a relationship or arrangement between persons who carry on business with a view to profit. It is not a living being. If a firm represents individual partners and, as such is called a natural person, there is relationship of identity between partners and their firm. Nor can it be called a legal or artificial person because there is no general law by which its personality is recognized". After considering this aspect, the court finally held that the transfer, if at all, is a transfer to itself or to its own account. As stated earlier the finding given by the Calcutta High Court was confirmed by the Supreme Court that there was no sale either at the time when the assessee mentioned inflated price of the machinery which fell to its share at the time of the division or at the time when the new partnership was created and, therefore, the assessee was not liable to pay Income Tax on the basis of book value profit. In our view, the aforesaid finding was confirmed in the peculiar facts and circumstances of the case, as stated in the statement of case. In that case, the assessee-company and M/s. Patel Engineering Company Ltd., were the persons having interest in the stock machinery of the partnership firm remaining unsold. The stock was divided between the assessee and M/s. Patel Engineering Co. Ltd. The assessee received machinery valued at Rs. 2,06,372 as its share. Thereafter, they formed a new partnership firm known as Hind Patel Company in which each had an eight annas share. The machinery was brought in the new partnership firm as stock towards share capital and in that context the Supreme Court held that there was no sale either at the time when the assessee mentioned inflated price of the machinery which fell to its share at the time of the division or when the machinery was used as the capital of the new firm of which it was a partner. Hence, in our view, the aforesaid decision would not have any bearing in deciding the question as to whether the partnership firm, which is a different entity, can be a purchaser of goods from its partners who are unregistered dealers.

16. Learned advocate Mr. pathak further submitted that the aforesaid decision in the case of Commissioner of Income Tax, West Bengal Vs. Hind Construction Ltd., is approved by the Supreme Court in the case of Sunil Siddharthbhai Vs. Commissioner of Income Tax, Ahmedabad, Gujarat, . In that case the court observed that in the case of Commissioner of Income Tax, West Bengal Vs. Hind Construction Ltd., the assessee entered into a partnership and as its share of the capital it transferred its stock of machinery to the partnership firm, and the court

held that when the assessee made over its machinery to the partnership firm there was to sale and the assessee did not derive any income. In the background of these facts, the court held that when a partner hands over a business asset to the partnership firm as his contribution to its capital he cannot be said to have effected a sale and that there was no difficulty in accepting that proposition. However, it is to be noted that from this decision it cannot be stated that the Supreme Court has laid down the law that the partnership firm cannot purchase any goods from the person who is its partner. It only lays down that, when a partner hands over the business asset to the partnership firm as his contribution towards capital, it cannot be stated that there was a sale by the partner to the partnership firm. It is pertinent to state that even in such a case the court arrived at the conclusion that the transaction may not amount to a sale, but it can be described as a transfer of the property. The court held as under :

"..... When a partner brings in his personal asset into a partnership firm as his contribution to its capital, an asset which originally was subject to the entire ownership of the partner becomes now subject to the rights of other partners in it An exclusive interest in it before it enters the partnership is reduced on such entry into a shared interest."

17. The court thereafter held that when the assessee brought the shares of the limited companies into the partnership firm as his contribution to its capital there was a transfer of a capital asset within the terms of section 45 of the Income Tax Act. Therefore, from the aforesaid judgments of the Supreme Court, it can only be stated that, when the partnership was formed for the first time and one of the members of the partnership brings into the firm assets as his contribution towards capital, it cannot be stated that he has effected a sale of the said assets to the partnership firm. At the same time, it would amount to transfer of assets in favour of the partnership firm. The aforesaid decision of the Supreme Court is relied upon by the Division Bench of this Court in the case of Commissioner of Income Tax Vs. Shantilal Rugnathji Desai, and the court has observed that, when an individual converts his private property into partnership property, it becomes the property of the firm and the individual loses his exclusive proprietary rights therein and to that extent, there is a transfer of a capital asset in the ordinary sense of the term as well as u/s 2(47) of the Income Tax Act. The aforesaid decision, in our view, also does not advance the contention raised by the learned advocate for the applicant.

18. In view of the aforesaid discussion, it can be stated that for the purposes of the Gujarat Sales Tax Act, 1969, a firm, which is a dealer, is a distinct entity; it can be also a registered dealer; and, when a dealer purchases goods from a person who is not a registered dealer, then, u/s 15 of the Gujarat Sales Tax Act, 1969, the dealer is bound to pay purchase tax unless the goods are resold. For the purposes of the Gujarat Sales Tax Act, 1969, the registered dealer, which is partnership firm, would be a different entity from its partners. Further, there is no bar under any statutory provisions that the partnership firm cannot enter into

the transaction of purchase or sale of movable property with its partners. Hence, in our view, the Tribunal erred in holding that the value of groundnut seeds of Rs. 96,460 cannot be treated as purchases made by the opponent-firm from the partners and hence purchase tax levied thereon should be removed.

19. In the result, we answer the question under reference in the negative, against the assessee and in favour of the Revenue. There shall be no order as to costs.

20. Reference answered in the negative.