(1986) 01 KAR CK 0043

In the Karnataka High Court

Case No : Writ Petition No. 23720 of 1980

V.B. Kori APPELLANT

Vs

Assistant Professional Tax Officer RESPONDENT

Date of Decision : 10-01-1986

Acts Referred:

Citation : (1986) 161 ITR 668

Hon'ble Judges : S.R. Rajashekhara Murthy, J

Bench : Single Bench

Advocate : G. Sarangan, for the Appellant; H.L. Dattu, for the Respondent

Judgement

S.R. Rajasekhara Murthy, J.—The petitioner is a partner in a partnership firm under the name and style of M/s. V. B. Kori and Company, Gadag. The partnership was formed by two tax consultants-Sriyuths V. B. Kori and G. S. Parvathimath. The said partnership firm had been enrolled as an assessee under the provisions of the Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976.

2. Under the charging section 3 of the Act, a tax on profession, trade, calling or employment is levied. Such a tax is levied on every person who exercises any profession or calling or is engaged in trade or holding any appointment, public or private, or is employed in any manner in the State specified in the second column of the Schedule, at the rates mentioned therein.

3. "Person" is defined under the Act in section 2(h). It reads thus :

"2. (h) ''person'' means, any person who is engaged in any profession, trade, calling or employment in the State of Karnataka and includes a Hindu undivided family, firm, company, corporation or other corporate body, any society, club or association, so engaged but does not include any person who earns wages on a casual basis."

4. In this case, "firm" is one of the entities falling under the definition of "person"

and liable to pay tax under the Act.

5. The contention of the petitioner is that since the firm of which he is a member pays the tax under the Act, there cannot be a levy again on each individual partner of the firm. The contention of the petitioner is that he is not liable to pay the tax over again since he is carrying on profession as a member of the partnership. It is, therefore, contended that the demand to pay tax by the individual partner amounts to double taxation and is not permissible under the scheme of the Act.

6. Sri Sarangan, learned counsel for the petitioner, has advanced his argument largely based on the scheme of the Income Tax Act. In this context, he has relied upon the definition of "person" in section 2(31) of the Act, which defines "person" as follows :

"person'' includes -

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm,

(v) an association of persons or a body of individuals, whether

incorporated or not,

(vi) a local authority, and

(vii) every artificial juridical person, not falling within any of the

preceding sub-clauses."

7. Section 4 of the Income Tax Act is the charging section which corresponds to the charging section 3 under the Profession Tax Act. The definition of "person" in both the enactments is more or less the same.

8. The main contention of Sri Sarangan is that the petitioner is not pursuing any profession or vocation in his individual personal capacity and the services rendered by him to the firm as a tax consultant is in his capacity as a partner of the firm. Therefore, since tax is imposed on the firm under the Schedule to the Act, there cannot be a tax on the partner over again.

9. This argument of the learned counsel is opposed to the very concept that the partner of a firm is different from a firm as the firm as such is a separate and distinct legal entity for purposes of taxation. In the definition of "person" occurring in the Act, any person who is engaged in any profession, trade or calling, tax is leviable on such profession. The tax is levied not on the person but on the profession, trade or calling. Therefore, a firm which carries on a profession is an entity different and distinct from its partners. The petitioner is

primarily a tax consultant and by virtue of his being a tax consultant by profession, he entered into partnership with another professional person for purposes of carrying on the profession of tax consultants.

10. Therefore. under the scheme of the Act, tax is levied on profession, trade or calling pursued by a person. "Person" as defined in the Act includes a Hindu undivided family, corporation and other corporate body, even a society, club or association. Therefore, the argument of the petitioner that he cannot be subjected to levy under the Act cannot be accepted and is contrary to the scheme of the Act.

11. Thus, the petitioner as a practitioner pursuing the profession of tax consultant and the firm in which he is a partner, are both subjected to levy of tax under the Act and it cannot be assailed on any ground. The petitioner has not been able to convince why both the partner as well as the firm should not be subjected to tax so long as it is competent for the lecture to tax both the entities.

12. No other argument is advanced in support of the prayer for restraining the respondents from levying tax on the petitioner.

13. Certain decisions rendered under the Income Tax Act have been cited by the learned counsel before me.

14. They are : (i) Commissioner of Income Tax, U.P.,Lucknow Vs. Kanpur Coal Syndicate, , (ii) M.M. Ipoh and Others Vs. Commissioner of Income Tax, Madras, , (iii) CIT v. Mrs. Banno E. Cowasji [1934] 147 ITR 744 and (iv) State of Uttar Pradesh and Another Vs. Raza Buland Sugar Co. Ltd., Rampur,

15. In the first decision, the Supreme Court held that under the Income Tax Act, the Income Tax Officer has the option to assess either the association of persons or the members of the association of persons separately.

16. In Ipoh''s case, it was further observed that the Income Tax Officer''s discretion to assess the association of persons or the shares of the members separately is not final; it is subject to appeal to the Appellate Assistant Commissioner and to the Tribunal.

17. It was further held that if an association of persons is taxed in respect of its income, the same income cannot be charged again in the hands of the members individually and vice versa.

18. The M. P. High Court in Commissioner of Income Tax Vs. Mrs. Banno E. Cowasji, followed the ratio of the Supreme Court in the above case.

19. These cases do not help the petitioner''s case and have no bearing on the issue that arises in the writ petition.

20. On behalf of the State, reliance is placed on the decision in Munshi Ram and Others Vs. Municipal Committee, Chheharta, rendered under the Punjab Municipal Act.

21. In Munshi Ram and Others Vs. Municipal Committee, Chheharta, , the levy made on each of the six partners who constituted the firm, u/s 61(1) (b) of the Punjab Municipal Act, was challenged. The contention was that tax could be levied only on the firm and not on the partners individually.

22. The Supreme Court held that under the provisions of the Punjab Municipal Act, "person" included firms and individuals.

23. Section 61(1) (b) of the Punjab Act provided as follows 118 ITR 491 :

"Subject to any general or special orders which the State Government may make in this behalf and the rules, any committee may, from time to time, for the purposes of this Act, and in the manner directed by this Act, impose in the whole or any part of municipality any of the following taxes, namely :- ...

(b) a tax on persons practising any profession or art or carrying on any trade or calling in the municipality.

Explanation. -A person in the service or person holding an office under the State Government or the Central Government or a local or other public authority shall be deemed to be practising a profession within the meaning of this sub-section."

24. Rejecting the contention of the appellants, the Supreme Court observed as follows (at page 493) :

"There is nothing in the language of section 61 or the scheme of the Municipal Act which warrants the construction that persons who are carrying on a trade in association or partnership with each other cannot be individually taxed under clause (b) of section 61(1). On the contrary, definite indication is available in the language and the scheme of this statute that such partners can be taxed as persons in their individual capacity. As noticed already, clause (b) makes it clear in no uncertain terms that this is a tax on '' persons ''. Its incidence falls on individuals, who belong to a class practising any profession or art, or carrying on a trade or calling in the municipality. To hold that persons who are collectively carrying on a trade in the municipality cannot be taxed individually, would be to read into the statute words which are not there. There are no words in clause (b) or elsewhere in the statute which, expressly or by necessary implication, exclude or exempt persons carrying on a trade collectively in the municipality from being taxed as individuals. To attract liability to a tax under this clause, it is sufficient that the person concerned is carrying on a trade in the municipality, irrespective of whether such trade is being carried on by him individually or in partnership with others. Thus, both the conditions necessary for levying a tax under clause (b) of sub-section (1) of section 61 of the Municipal Act existed in this case. The appellants are '' persons'' and they are carrying on a trade in Chheharta Municipality."

25. The liability to pay tax by both the firm and the partners in their individual capacity arises under the scheme of the Profession Tax Act. No argument can be advanced that by virtue of the firm being an assessee, the partner cannot be

assessed to tax on his profession independently which is opposed to the very scheme of the Act.

26. Under the Income Tax law, a partnership firm is different from the members composing it and is a separate assessable entity though a firm is a compendious expression which includes its partners who compose it. Therefore, reliance on the scheme of the Income Tax Act is misplaced.

27. The decision of the Supreme Court in Munshi Ram and Others Vs. Municipal Committee, Chheharta, is a complete answer to every one of the contentions urged by Sri Sarangan.

28. "Person" as interpreted by the Supreme Court in the Punjab Municipal Act should be applied to the term "person" as defined in the Karnataka Tax on Professions, Trades, Callings and Employments ACt.

29. On the other hand, "person" in the Karnataka Act means, any person who is engaged in any profession, trade, calling or employment in the State of Karnataka and includes a "firm".

30. There is, therefore, no substance in the argument of Sri Sarangan and the writ petition is accordingly dismissed.