

State of Punjab

Vs

M/s. Jullunder Vegetables Syndicate

Civil Appeal No. 588 of 1964

(K. Subba Rao, J. C. Shah, S. M. Sikri JJ)

01.11.1965

JUDGMENT

SUBBA RAO, J. –

This appeal on a certificate issued by the High Court of Punjab at Chandigarh raises the question whether a firm could be assessed to sales-tax after it was dissolved.

The facts may briefly be stated. Messrs. Jullunder Vegetables Syndicate was a firm doing business in Jullunder from October 4, 1952 to July 11, 1953. It was dissolved on July 11, 1953. An intimation of the dissolution of the firm under s. 16 of the East Punjab General Sales Tax Act, 1948, hereinafter called the Act, was sent to the Department on July 18, 1953. The firm was assessed to sales-tax on May 30, 1953, by the Sales-tax Officer under the provisions of the Act in respect of its turnover for the period between October 4, 1952 and March 31, 1953; but the said assessment order was quashed on April 11, 1955, by the Financial Commissioner on the ground that the authority which made the assessment had no jurisdiction to do so. On September 3, 1955, the Sales-tax Officer made a fresh assessment on the turnover of the said firm. Its taxable turnover was fixed at Rs. 15,04,091-11-3 and was assessed to sales-tax in a sum of Rs. 47,002-14-0. It is not clear from the record whether after the order of the Financial Commissioner fresh proceedings were initiated by the Sales-tax Officer or whether the earlier proceedings initiated by him before the dissolution of the firm were continued thereafter. But from the question formulated for the decision of the Full Bench of the High Court, which is the subject-matter of this appeal, it appears that the firm was dissolved before the proceeding for the assessment were initiated. The frame of the question indicates that the order of the Financial Commissioner quashing the original order of assessment on the ground that the assessing authority had no jurisdiction, fresh proceeding were stated for assessment. We shall, therefore, proceed to consider the question raised in the appeal on that assumption. On appeal, the Deputy Excise and Taxation Commissioner, by his order dated October 20, 1956, reduced the figure of turnover and also correspondingly reduced the tax payable to a sum of Rs. 30,049-20-0. On revision, the Financial Commissioner, rejecting the contention of the firm that the assessment proceedings could not be taken against a firm after its dissolution, confirmed the assessment. At the instance of the assessee the following question was referred to the High Court for its decision under s. 22 of the Act :

"Whether a partnership firm, which is a registered firm under the provisions of the Punjab Sales Tax Act and which was in existence throughout the period for which assessment of sales tax has to be made, ceased to be liable to said assessment by the mere fact that it has dissolved before the proceeding for assessment are initiated."

A Full Bench of the Punjab High Court answered the question in the affirmative. The main reason given by it for its decision was that a firm was a separate assessable entity under the Act and that there was no machinery provided under the Act for assessing a firm after its dissolution in respect of its turnover of business before the said dissolution. The State of Punjab, on a certificate issued by the High Court, has preferred the present appeal to this Court.

Mr. K. S. Chawla, learned counsel for the State, raised before us the following points : (1) a firm under the Act is not a separate legal entity and, therefore, an assessment thereunder can be made on the group of partners who constituted the firm before it was dissolved; (2) even if it was a separate assessable unit, dissolution of a firm does not put an end to its liability for assessment till its registration certificate is cancelled by the appropriate authority; (3) the High Court proceeded on a misapprehension that the assessment proceedings were initiated afresh after the order of the assessing authority was quashed by the Financial Commissioner, but in fact after the said order of the Financial Commissioner, the assessment proceedings started before the dissolution of the firm were continued. On that assumption, the argument proceeded, that the proceedings validly started against a firm could be continued though the said firm was dissolved and the notice of such a dissolution was given to the appropriate authority till the registration of the firm was cancelled.

Mr. M. S. Gupta, learned counsel for the firm, contended that a firm under the Act, just like a firm under the Indian Income-tax Act, was a separate assessable legal entity and that, unlike under the Income-tax Act, there was no machinery provided under the Act for making the assessment on such a firm after its dissolution and that, irrespective of the fact whether the proceeding were initiated before or after its dissolution, the assessing authority had no power or jurisdiction to assess the firm after such a dissolution. He further argued that in the present case the High Court proceeded on the assumption that the assessment proceedings were started *denovo* after the order of the Financial Commissioner and therefore, this Court should not permit the appellant to contend that the assessment proceedings were only the continuation of the earlier proceedings, particularly in the absence of any material on the record supporting the said fact.

Before we advert to the rival contentions it will convenient to clear the ground. It is a settled rule of construction that in inter preting a fiscal statute the court cannot proceed to make good the deficiencies, is there be any, in the statue : 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 v. Income tax Officer, Kottayam* ([1961] 2 S.C.R. 765). In considering a taxing Act, the court is not justified in straining the language in order to hold a subject liable to tax.

We are concerned in this appeal with the question of the statutory right of a taxing authority under the provisions of the Act to assess a dissolved firm in respect of its pre-dissolution turnover. That question falls to be decided on the relevant provisions of the Act. The provisions of the India Partnership Act regulating the relationship between the partners and their liability to third parties have, except in so far as those provisions are expressly or by necessary implication incorporated in the provisions of the Act, no relevance to the present appeal. The question also falls to be decided on the provisions of the Act as it stood in 1953. Further, we cannot discover any distinction in the matter of assessability of a dissolved firm between a case where the proceedings were initiated before and that after the said dissolution. We shall proceed, therefore, to consider the question irrespective of that distinction.

The relevant provisions of the Act may now be read :

Section 2. In this Act, unless there is anything repugnant in the subject or context -

(d) "dealer" means any person, firm or Hindu joint family, engaged in the business of selling or supplying goods in East Punjab;.....

Section 4. (1) Subject to the provisions of sections 5 and 6, every dealer whose gross turnover during the year immediately preceding the commencement of this Act exceeded the taxable quantum shall be liable to pay tax under this Act on all sales effected after the coming into force of this Act.

Section 7. (1) No dealer shall, while being liable to pay tax under this Act, carry on business as a dealer unless he has been registered and possesses a registration certificate.

Section 16. If any dealer to whom the provisions of sub-section (2) of section 10 apply -

(b) discontinues his business or changes his place of business or opens a new place of business, he shall within the prescribed time inform the prescribed authority accordingly; and if any such dealer dies, his legal representatives shall in like manner inform the said authority.

Section 17. When the ownership of the business of a registered dealer is transferred, any tax payable in respect of such business remaining unpaid at the time of the transfer shall be payable by the transferee as if he was the registered dealer; and the transferee shall within 30 days of the transfer apply for registration under Section 7.

Rule 40 of the East Punjab General sales Tax Rules, 1949, reads :

(1) 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 these rules.

The scheme of the Act is a simple one. A firm is a dealer; the said dealer is assessable to tax on its turnover, if its turnover exceeds the prescribed limit. It cannot do business while being liable to pay tax under the Act without getting itself registered and possessing a registration certificate. It is assessed to tax under s. 11 of the Act in the manner prescribed thereunder. If it discontinues its business, it shall within the specified time inform the prescribed authority accordingly. A dealer and its partners are jointly and severally responsible to pay the tax assessed on the dealer. But there is no provision expressly empowering the assessing authority to assess a dissolved firm in respect of its turnover before its dissolution. The question is whether such a power can be gathered by necessary implication from the other provisions of the Act.

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. Under s. 3 of the Income-tax Act also "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 a 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. As in the present case, admittedly, the firm was dissolved before the order of assessment was made, the said order was bad.

In this context, as we have stated earlier, there cannot be a distinction on principle between an assessment made on a firm under a proceeding initiated before the dissolution and that made in a proceeding started after the dissolution. In either case, unless there is an express provision, no assessment can be made on a firm which has lost its character as an assessable entity.

To get over this legal position, a strong plea was made on the basis of s. 16 of the Act. Section 16, so far as is relevant to the present enquiry, only says that if a dealer discontinues his business, it shall within the prescribed time inform the prescribed authority accordingly. This section does not expressly state that a dealer, if it happens to be a firm, continues to have legal existence even if it has ceased to be a firm. Nor does the section permit a necessary implication to that effect. It serves only a limited purpose. It is enacted for administrative purposes so that the appropriate authority may take the necessary action.

Nor does r. 40 of the East Punjab General Sales Tax Rules, 1949, carry the matter further. 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 provision 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.

The decisions cited at the Bar reflect conflicting views on the question. We have carefully gone through them. It is enough if we briefly touch upon them.

The Allahabad High Court in *Jagat Bahari Tandon v. The Sales Tax Officer, Etawah* ([1955] 6 S.T.C. 125.) maintained the assessment of a dissolved firm on ground that it was not a separate entity. The Madhya Pradesh High Court in *Lalji v. The Assistant Commissioner, Sales-tax, Raipur* ([1958] 9 S.T.C. 571) relied upon s. 17 of the C.P. and Berar Sales Tax Act, 1947, similar to s. 16 of the present Act, to sustain the continuity of a firm as a legal entity till a notice contemplated by that section was given. The Madras High Court in *R. D. Fernandes, in re* ([1957] 8 S.T.C. 368) relied upon the provisions of the Partnership Act to reach the desired end. The Punjab High Court in *Khushi Ram Behari Lal & Co. v. The Assessing Authority Sangrur* ([1954] 15 S.T.C. 165) distinguished the Full Bench decision, which is the subject matter of the present appeal before us, on the ground that the dissolution of the firm in the case before it was long after the assessment proceedings were initiated. It also relied upon s. 16 of the Act of the support its conclusion that the liability of the firm continued till the registration was cancelled. It may also be noticed that the question in that case arose after the amended definition wherein the expression "firm" was omitted. The Madras High Court in *R. Poonuswami Gramani v. The Collector of Chingleput District* ([1960] 11 S.T.C. 80.) followed the earlier decision of that Court; and it does not contain any reasoning on

the question. The Bombay High Court in *Bankatlal Badruka v. The State of Bombay* ([1961] 12 S.T.C. 405.) based its conclusion only on the circumstance that the notice of dissolution under r. 35 of the Hyderabad General Sales Tax Rules, 1950, was not given before the assessment. The Orissa High Court in *Commissioner of Sales-tax, Orissa v. Aurobinde Auto Service* ([1963] 14 S.T.C. 46.) also sustained the assessment after dissolution *inter alia*, on the ground that no notice of dissolution was given under s. 18(b) of the Orissa Sales Tax Act, 1947, read with r. 14 of the Orissa Sales Tax Rules, 1947. But the main reason for that decision was based upon s. 19(3) of the Orissa Sales Tax Act which is *pari materia* with s. 44 of the Income-tax Act, which has been construed by this Court to confer a power on the assessing authority to make such an assessment. All these decisions, if we may say so with respect, were overburdened with the consequences of a contrary construction on the incidence of taxation and also by their mixing up the question of the statutory power of assessing a dissolved firm with the liability of the partners thereof to pay the tax so assessed on the firm before dissolution. For the reasons we have already given earlier, we cannot accept the validity of the reasons given in the said judgments for maintaining an assessment on a dissolved firm, whether the proceedings were initiated before or after the firm was dissolved.

Strong reliance was placed upon two judgments of this Court. This Court in *C. A. Abraham v. Income-tax Officer, Kottayam* ([1961] 2 S.C.R. 765), speaking through Shah, J., held that s. 44 of the Income-tax Act set up a machinery for assessing the tax liability of firms which have discontinued their business. This was followed by this Court again in *Commissioner of Income-tax, Madras v. S. V. Angidi Chettiar* ([1962] 44 I.T.R. 739.). These two decisions are of no help to the Revenue in the present case. Indeed, in a sense they are against it. The Income-tax Act contains an express provision for assessing a dissolved firm. Indeed, but for that provision no assessment could be made under that Act on dissolved firms.

For the foregoing reasons we hold that the High Court was right in holding that the assessment order on the dissolved firm could not be supported under the provisions of the Act. The High Court has given a correct answer to the question propounded for its decision.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

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