

Kalva Suryanarayana

Vs

Income-Tax Officer, A-3 Ward, Hyderabad

Civil Appeal No. 998 of 1966

(A. N. Grover, J. C. Shah, V. Ramaswami – I JJ)

28.08.1968

JUDGMENT

RAMASWAMI J. -

This appeal is brought, by the special leave, from the judgment of the High Court of Andhra Pradesh dated December 21, 1964, in Writ Petition No. 1294 of 1961.

The appellant had entered into a partnership with there others named D. Sayappa, H. Siddappa and M. Veeraiah to carry out a "Gulmoha" contract for the year 1949-50. The firm was known as Messrs. Kalva Suryanarayana. After completion of the contract the partnership came to an end. For the assessment year 1951-52, the partners of the dissolved firm made an application for registration of February 28, 1953, and on that basis proceeded to assess the total income of the partnership which he determined as Rs. 1,64,546 (O.S.), and he total income was apportioned among the four earners in proportion of their respective shares. Subsequently, the Commissioner of Income-tax in exercise of his revisional power under section 33B of the Income-tax Act, passed an order of February 26, 1955, holding that the partnership had suppressed income to the extent of Rs. 1,72,149 (I.G.) by inflating the expense under railway freight and by the not accounting for the sale of old gunnies. The Commissioners of Income- tax accordingly di

The provision of section 23(5) and section 44 of the Act as they stood at the material time are reproduced below :

"23. (5) Notwithstanding anything contained in the foregoing sub- sections, when the assessee is a firm and the total income of the firm has been assessed under sub-section (1), sub-section (3) or sub- section (4), as the case may be, -

(a) in the case of a registered firm, the sum payable by the firm itself shall not be determined but the total income of each partner of the firm, including therein his share of its income, profits and gains of the previous year, shall be assessed and the sum payable by the on the basis of such assessment shall be determined....."

"44. Liability in case of a discontinued firm or association. - Where any business, profession or vocation carried on by a firm or association of person has been discontinued, or where an association of person is dissolved every person who was at the time of such discontinuance or dissolution a partner of such firm or a member of such association shall, in respect of the income, profits and gains of the firm or association, be jointly and severally liable to assessment under Chapter IV and for

the amount of tax payable and all the provisions of Chapter IV shall, so far as may be, apply to any such assessment."

In support of this appeal, the argument was addressed that the appellant who was an individual assessee under section 23(5) could not be held liable for payment of the tax due from the ex-partners of the partnership and there was no joint and several liability imposed under the provisions of the Act in such a case, In our opinion, the argument put forward on behalf of the appellant is well-founded and must be accepted as correct. Under the scheme of the Act a partnership is a unit irrespective of whether the partnership is registered or unregistered. After the income of the partnership is computed in a case where the partner in the Income of the partnership is registered under section 26A the share of each partner in the income and total income so computed is brought to tax. If the partnership is unregistered, the tax payable by the partnership is, except when the income-tax officer otherwise directs in the interests of revenue, determined as in the case of any other entity, and the demand for tax is mad

For these reasons we hold that the respondent had no jurisdiction to the issue the impugned notice dated June 22, 1961, under section 45 of the Act and the proceedings taken against the appellant in pursuance of that notice should be quashed by grant of a writ in the nature of certiorari under article 226 of the Constitution. We accordingly set aside the judgment of the High Court of Andhra Pradesh dated December 21, 1964, and allow this appeal with costs here and in the High Court.

Appeal allowed.

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