

S. T. O., Sector II, Kanpur and Others

Vs

Jwala Prasad, (dead) by Lrs.

Civil Appeal No. 919 of 1971

(V.D. Tulzapurkar, E.S. Venkataramiah, A.N. Sen JJ)

18.03.1981

ORDER

1. On undisputed facts as found on the record it is impossible to sustain the impugned order of the High Court quashing the assessment orders passed against the firm M/s. Jwala Prasad Krishna Pal for the years 1957-58 to 1961-62.
2. Initially the respondent Jwala Prasad (since deceased) came to the court with the case that the kirana business carried on in the name and style of M/s. Jwala Prasad Kishan Pal was a proprietary business of his son, Ram Pal, and therefore, he was not liable for the sales tax due of the said business carried on by Ram Pal. But on the material that was brought on record, particularly the partnership deed dated November 20, 1961 it became clear that the business belonged to the joint family of which the respondent was the karta and was not the proprietary business of Ram Pal. The Revenue, therefore, sought to hold the respondent liable for the dues of the family business. Thereupon the respondent amended his writ petition claiming that the assessment orders were invalid because no notice of the assessment proceedings was served upon him. The High Court took the view that it was incumbent upon the sales tax authorities to serve a notice of the proposed assessment proceedings upon the karta and non-service of such notice upon the respondent vitiated the assessment orders.
3. Once the court came to the conclusion that the business carried on in the name of M/s. Jwala Prasad Kishan Pal was a joint family business and not a proprietary business of Shri Ram Pal, it was difficult for the respondent to avoid the liability of the tax dues arising from the assessment made on the such joint family business. Further it has also been found on record that the said joint family business was actually managed by Ram Pal and before making assessments for the years in questions notices were served on Ram Pal, though not on the respondent as karta. But it is clear under Rule 77 that service of notice effected on Ram Pal, who was in actual management of the business, would be proper service and the assessments made on the joint family firm would also be proper. In fact, against the assessments made appeals were preferred by Ram Pal to the Appellate Authority. In our view, the assessment orders, therefore, could not be quashed or set aside on the ground that on notice had been served upon the respondent as karta before assessing the joint family business. Further, recovery from the respondent could not be avoided by him because he would be liable in respect of the demand arising against the business of the joint family of which he was a member.
4. In the result the appeal is allowed and the impugned order of the High Court is set aside with costs.

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