

ALLAHABAD HIGH COURT

Jagat Behari Tandon

Vs.

Sales-tax Officer

Civil Misc. Writ No. 361 of 1954
(M.L. Chaturvedi, J.)

17.01.1955

ORDER

M.L. Chaturvedi, J.

1. This is a petition under Article 226 of the Constitution.
2. Firm Banagopal Amarnath was constituted in the year 1948 and it used to deal in bullion and ornaments. The petitioner was a partner in this firm having a one-third share. The other two-third was owned by Amarnath and Kedar Nath in the proportion of one-half each. The firm was registered under Section 8A, U.P. Sales Tax Act, 1948, as a registered dealer. The firm elected to submit quarterly returns of its turn over, as provided by Rule 39(1) of the Rules framed under the Act. Amarnath subsequently left the firm on 16-7-1950, and the other two partners, namely, Kedar Nath and the petitioner then became owners of this firm in the proportion of half and half. The firm was subsequently assessed to sales tax by an order dated the 19th July 1952. The reconstituted firm was known as Bansgopal Amarnath and this firm was also dissolved on 18-4-1952. The assessment was, however, made on this firm for the year 1951-52 on 17-3-1953. The taxes were not paid and the papers were sent to the Collector for realizing the amounts assessed by both the orders, mentioned above, as arrears of land revenue. The petitioner filed an appeal against the second assessment order before the Judge (Appeals) Sales Tax, Kanpur Range, and that appeal is still pending. Before sending the papers for the realization of the tax as arrears of revenue, a notice was issued in the name of the firm, which was served on the petitioner, and the petitioner filed certain objections to the assessment and recovery of this tax. His objections were overruled and the papers were then sent to the Collector for the recovery of the tax.
3. In the present petition it is prayed that a writ in the nature of certiorari be issued quashing the assessment order dated 19-7-1952 and 17-3-1953, and a writ in the nature of mandamus be issued directing the respondent 1, namely. The Sales Tax Officer, to withdraw the certificate under Section 8, U.P. Sales Tax Act, which was for recovery of both the taxes. It is also prayed that a writ in the nature of mandamus be issued directing the District Magistrate and Collector of

Etawah not to collect the taxes from the petitioner assessed under the two orders, mentioned above.

4. In support of the petition the learned counsel for the petitioner has submitted two points. His first contention is that under the U.P. Sales Tax Act an order of assessment cannot be passed on a firm after it has been dissolved, and the second is that the previous partner of the firm cannot be proceeded against for the recovery of the taxes after the dissolution of the firm. Both the points may be considered together.

5. The learned counsel for the petitioner referred me to the definition of the word "dealer", as defined in Section 2(c) of the Act. In this Sub-Section "dealer" has been defined as meaning any person or association of persons carrying on the business of buying or selling and supplying goods in the United Provinces, and it includes any firm or Hindu joint family and any society, club or association, which sells or supplies goods to its members; but it does not include any department of the State Government or the Indian Government. The argument of the learned counsel is that the word "dealer" includes a firm also and, in the present case, the firm were assessed to tax and not the individual partners the money, therefore, could not be realized from the petitioner. I am unable to accept the contention, because in my opinion, the word "dealer" includes not only the firm but also the partners of that firm, as they were also persons who were doing the business of buying and selling bullion. The word "dealer" would include not only the firm but also the individual partners of that firm, and the definition of the word, as given in Section 2(c) of the Act, does not help the petitioner. Section 3 is the charging section and it says that, subject to the provisions of the Act, every dealer shall pay on turnover in each assessment year a tax at a particular rate. The word used in the section is "dealer", and if that word includes the partners of the firm as well then these partners also, must be taken to have been assessed and are liable to pay the tax. The only Rule about the registration of dealers is contained in Section 8A of the Act. This section says that any dealer may get himself registered under the section, and the registration enables the registered dealer to realize sales tax from the purchasers.

6. Neither the above Rule as to registration, nor any other provision in the Act makes a registered firm different from the partners of that firm. As far as the general law goes, it is well known that a firm is not a person, though different statutes have, for purposes of convenience dealt with firms in a manner different from the individual partners of the firm. There is, however, an essential difference, between a company, registered under the Companies Act, and a firm popularly so called. The essential difference is that a company is a body quite distinct from the share-holders, and it has an individuality of its own. But the case of a firm is different and a firm has no individual existence of its own as distinguished from the partners of the firm. Under the scheme of the U.P. Sales Tax Act it does not appear that a firm is to be dealt with differently from the partners of the firm. There is no rule about the registration of the firm excepting the one which I have quoted above, though, for purposes of convenience, the word "dealer" has been defined as to include a firm, or an association of persons and even a joint Hindu family. The fact

that a firm comes within the definition of the word "dealer" does not by itself go to show that the partners of the firm cease to be dealers, as defined in the Act. If a partner is carrying on a trade by himself, he would clearly be included within the definition and, if two of them join together and give their concern a composite name, it does not mean that they cease to be dealers themselves.

7. Reference was then made to Section 18 of the Act, which says that where there is a change in the constitution of a firm, or the business of a firm is discontinued, all the partners or owners of the firm shall give notice of the fact to the assessing authority within 14 days of such change or discontinuance. Under Sub-Section (2), if the change or discontinuance takes place during the course of an assessment year, the tax is to be reduced in proportion to the unexpired period of such year. It is true that, when the constitution of a firm has changed or a firm has discontinued to work, the firm and its partners can only be liable for the period during which the firm had been working, and a reduction of tax for the period, during which it did not work, has consequently been provided, for in the section. But it does not touch the question that is under consideration before me. As long as the firm has continued to work, the partners of the firm, till it ceased working, would be liable for the tax due, for that period, and the partners, who subsequently come in, would be liable for the tax for the subsequent period. The section nowhere suggests that a firm and the partners are distinct entities, and if a firm has been assessed, the partners cannot be deemed to have been assessed of the partners would not be liable to pay the tax assessed on the firm.

8. Reference in this connection was made to the definitions of the words "assessee", "person", "firm" and "partner", as given in the Indian Income-tax Act, and a reference was then made to Section 24B of that Act. This section was added by the Central Act No. 18 of 1933, and Sub-Section (1) says that where a person these his executor, administrator or other legal representative shall be liable to pay, out of the estate of the deceased person to the extent to which the estate is capable of meeting the charge, the tax assessed as payable by such person. The argument that has been made is that when a firm ceases to exist, the position is the same as which a person has died, and it is said that there is no corresponding provision in the U.P. Sales Tax Act, which makes the executor or the heirs liable for the payment of the tax assessed on the deceased. As far as the position stood before the introduction of Section 24B Indian Income-tax Act, the learned counsel for the petitioner has been able to cite only one case in which it was held that there could be no assessment of tax after the person, liable to pay it, had died. While discussing the question, their Lordships observed that there were no appropriate provisions for collecting the tax from the estate of a deceased person and, under the circumstances, they held that there could be no assessment after the death of the person liable to pay the tax, vide - '*Commissioner of Income Tax, Bombay v. Ellis C., Reid*', This, case, in my opinion, may have been of some help if the question had arisen after the death of the partners of a firm, but in the case before me the position is very different. There is no allegation that the other partners are not alive, and, as far as the petitioner is concerned, he was admittedly a partner in both the firms. All the partners of these

firms were the real assesseees under the assessment order, and it makes no difference that they were trading under a particular firm name. If the argument of the learned counsel is accepted, it would lead to the result that the moment the firm has ceased to exist, which may be by a voluntary act of the partners, there can be no assessment after that date, nor can the

¹ AIR 1931 Bom 333

tax be realized from any of the partners. The argument further leads to the conclusion that, even if a firm is continuing to act, the tax can be recovered only from the property of firm and not from its partners, because it has been urged that the firm is quite distinct from the partners.

9. Reference was then made to Section 44, Indian Income-tax Act, which provides that where any business, profession or vocation carried on by a firm or association of persons has been discontinued, or the association has been dissolved, every persons, who was at the time of such discontinuance or dissolution a partner of such firm, or a member of the association, shall be jointly and severally liable to assessment and to the payment of the tax. It has been argued that there is no similar provision in the U.P. Sales Tax Act and, in the absence of such a provision, the assessment can be made on a partner after the dissolution of a firm, nor can the assessed tax be recovered from him. It is true that in the Indian Income-tax Act a clear provision has been made for the assessment and recovery of a tax from a partner after the dissolution of a firm. But this may have been done by way of abundant caution, and no case has been cited before me to show that before this provision was added in the Act by Act No. 7 of 1939, the tax could not be recovered from the partner. The mere absence, of the provision in the U.P. Sales Tax Act like the one in Section 44, Indian Income-tax Act does not, I think, lead necessarily to a conclusion that after the discontinuance of the firm the partners of that firm cannot be taxed or that the tax cannot be recovered from them.

10. The learned counsel then referred to the case of - '*Public Prosecutor v. K. Jacob Nadar*²', In this case it has been held that a combined reading of Sections 2, 9 and 15, Madras General Sales Tax Act established that a firm was a person and that, for the purpose of assessment, that firm was, treated as one entity and that, in default of payment pursuant to the notice, the firm was liable to be prosecuted. In this case notice demanding the payment of arrears of tax from a firm was served upon a partner of the firm and the amount not having been paid in time, the other partner, who was not served with a notice, was prosecuted for non-payment of the tax. The learned Judge held that this prosecution was illegal. On a reading of the relevant sections of the Madras Act, the opinion of the learned Judge was that the only person that could be prosecuted was the assessee and the assessee was the firm and not all the partners of it. I am not able to interpret the wordings of the U.P. Sales Tax Act in the manner that the provisions of the Madras Sales Tax Act were interpreted by the learned Judge. A distinction was sought to be drawn in that decision between the case where notice of demand had been served on the partner and the case where it was not so served, and a previous case of the same Court was distinguished on the ground that in that case both the partners of the firm were prosecuted and not one. It was

observed that, as both the partners were made accused in the previous case, it may be taken that the firm itself was the accused; but in the case of 'K. Jacob Nadar (B)' only one of the partners was prosecuted and, therefore, it could not be said that the firm was being prosecuted. This case is of no help to the determination of the present question.

11. Reference was then made to the three cases reported in the Income-tax Reports,

² AIR 1951 Mad 886 (a)

namely - '*Commr. of I.T., Madras v. Chengalvaroya Chettiar*³', - '*Commissioner of Income Tax, Madras v. Karuppiah Pillai*⁴', and - '*Income-tax Commissioners for City of London v. Giffs*⁵'. The facts of these cases were very different, but reliance was placed on the observations made to the effect that the firm was art entity by itself for purposes of assessment and was distinct from the partners. Those observations have to be read in connection with the facts of those cases. I do not find in any of these cases any observation, which would go to show that an assessment cannot be made after the firm has been dissolved or that the tax cannot be recovered, after the dissolution of the firm, from the partners who were the partners in the firm during the period for which the tax has been assessed.

12. For the reasons given above, I do not see any force in this petition and dismissed it with costs.

Petition dismissed.

³ AIR 1937 Mad 300 (SB)

⁴ AIR 1941 Mad 255 (SB)

⁵ 1942-10 ITR (suppl.) 121