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would act in that arbitrary manner. If and when that happens it may be open to argument that such an action can no longer be regarded as based on a mistake and it is a deliberate *mala fide* act, which may make the suit entertainable by the Civil Courts. But no opinion need be expressed about it as in the present case there can be no doubt that there is only a mistake being made, if at all, in levying duty under item 122 when it can be levied under item 105 but such a mistake could be got rectified in appeal under section 84 or by asking for a reference to this Court. If the Committee persists in perpetuating that mistake it may even be open to the plaintiffs to bring that matter up to this Court under Article 226 of the Constitution, but the Civil Courts cannot entertain and decide the present suit and that is the answer that must be given to the question which is before the Full Bench for determination.

The learned counsel for the parties agree that no other point arises for decision in this case, with the result that the suit shall stand dismissed, but in the circumstances there will be no order as to costs.

Dulat, J. S. S. DULAT, J.—I agree.

Mahajan, J. D. K. MAHAJAN, J.—I agree.

B.R.T.

FULL BENCH

Before Tek Chand, S. B. Capoor and Prem Chand Pandit, JJ.

M/s JULLUNDUR VEGETABLE SYNDICATE,—*Petitioner.*

versus

THE PUNJAB STATE,—*Respondent.*

Sales Tax Reference No. 1 of 1959.

1962

February, 6th.

East Punjab General Sales Tax Act (XLVI of 1948)—Section 11—Partnership firm registered as a dealer under the Act dissolved before the commencement of proceedings for assessment for a period during which it was in

existence—Whether ceases to be liable to such assessment.

Held, that according to the definition of a "dealer" as given in the East Punjab General Sales Tax Act, 1948, a partnership firm is a distinct entity from the partners constituting the firm. It is open to the assessing authority to assess either individual partners or the firm as such, but these entities must be kept apart as distinct assessable entities. Since there is no provision in the Act enabling assessment to be made in the case of a dissolved firm, it follows that if a firm has been dissolved and is no longer there as a legal entity, it cannot be assessed as such to sales tax, if the proceedings for assessment are commenced after its dissolution despite the fact that the firm was in existence throughout the period for which assessment of sales tax has to be made.

Case referred by the Division Bench consisting of Hon'ble Mr. Justice Mehar Singh and Hon'ble Mr. Justice K. L. Gosain on 14th December, 1960, to a larger Bench for decision of the important question of law involved in the case. The case was finally decided by the Full Bench consisting of Hon'ble Mr. Justice Tek Chand, Hon'ble Mr. Justice S. B. Capoor and Hon'ble Mr. Justice P. C. Pandit. on 6th February, 1962.

H. L. SIBAL AND S. C. SIBAL, ADVOCATES, for the Petitioner.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL AND A. M. SURI, ADVOCATE, for the Respondent.

JUDGMENT

CAPOOR, J.—This is a reference made by the Financial Commissioner (Revenue), Punjab, under the provisions of section 22 of the East Punjab General Sales Tax Act, 1948 (East Punjab Act XLVI of 1948, hereinafter referred to as the Act). It came up originally before a Division Bench of this Court and in view of the conflict of authority on the question involved in the reference the Division Bench has referred the case for decision to a Full Bench. The Financial Commissioner (Revenue), Punjab, did not specifically pose the question of law. It has been formulated by the

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learned Judges constituting the Division Bench as follows:—

> "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, ceases to be liable to the said assessment by the mere fact that it was dissolved before the proceedings for assessment are initiated."

The facts giving rise to this reference are stated in the referring order by the Division Bench and so far as material are these. The firm, which was the petitioner before the Financial Commissioner (Revenue), Punjab, is Messrs Jullundur Vegetable Syndicate, which is a partnership firm. It commenced business on the 4th of October, 1952 and was dissolved with effect from the 11th of July, 1953 and intimation of dissolution of the firm under section 16 of the Act was sent to the Department on the 18th of July, 1953. The firm had carried on business throughout the accounting period from the 4th of October, 1952 to the 31st of March, 1953 and an assessment of sales tax under the Act was made on the 30th of May, 1953, for this period, but it was quashed by the Financial Commissioner (Revenue) on the ground that the assessing authority had no jurisdiction to make the assessment. Then a fresh assessment was made under section 11 of the Act on the 'best judgment basis' on the 3rd of September, 1955, i.e., more than two years after the notice of dissolution of the firm had been received by the Department, but on appeal by the assessee the Deputy Excise and Taxation Commissioner by his order dated the 20th of October, 1956 reduced the figure of taxable turnover to Rs. 9,61,591-11-3 and the tax payable to Rs. 30,049-12-0. The revision taken by the assessee to the Financial Commissioner failed and in that revision one of the objections raised by the assessee was that proceedings for assessment of the sale tax could not be

initiated after its dissolution. This objection was repelled by the Financial Commissioner by his order dated the 25th of March, 1958 and then on being moved by the assessee the reference under section 22 of the Act was made.

The Act has been amended from time to time, but we are concerned with the Act as it stood before its amendment by Punjab Act No. X of 1954. The definition of the term "dealer" in clause (d) of section 2 of the Act as it then stood (omitting the Explanations which are not relevant for our purpose) was as follows:—

> " 'dealer' means any person, firm, association or Hindu joint family, engaged in the business of selling or supplying goods, whether for commission, remuneration or otherwise, in Punjab and includes the Government or its Departments, and where the main place of business of any such person, firm, association or Hindu joint family is not in the said State, 'dealer' means the manager or other agent of such person, firm, association or Hindu joint family in Punjab in respect of such business."

Sub-section (1) of section 4 of the Act, which was the charging section, provided that subject to the provisions of sections 5 and 6, every dealer except one dealing exclusively in goods declared tax free under section 6 whose gross turnover during the year immediately preceding the commencement of the Act exceeded the taxable quantum shall be liable to pay tax under the Act. Section 5 provided that there shall be levied on the taxable turnover every year of a dealer a tax at such rates not exceeding two pice in a rupee as the State Government may by notification direct. Section 7 provided for the registration of dealers. Under section 10 tax was payable under the Act in the manner provided at such intervals as may be prescribed, and the general scheme was that registered dealers and such dealers as may be

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required so to do by the assessing authority were to furnish returns periodically and to deposit into a Government treasury or the Reserve Bank of India the full amount of tax due according to such returns. Under sub-section (1) of section 11 if the assessing authority was satisfied without requiring the presence of a registered dealer or the production by him of any evidence that the returns furnished in respect of any period were correct and complete, the authority shall assess the amount of tax due from the dealer on the basis of such returns. If, however, the assessing authority did not consider the returns to be satisfactory it had to serve on the dealer a notice under sub-section (2) and after hearing evidence under sub-section (3) to assess the amount of tax due from the dealer. If the dealer failed to submit the returns or to comply with the terms of the notice issued under sub-section (2), the assessing authority was empowered within three years after the expiry of the period mentioned in the period mentioned in the notice to assess to the best of his judgment the amount of tax due from the dealer (*vide* sub-sections (4) and (5)). Section 16 of the Act required dealers under the Act to furnish to the prescribed authority information regarding change of business, such as discontinuance of business or change in place of business,—(*vide* clause (b), thereof), and if any such dealer died, his legal representative was required in like manner to inform the prescribed authority within the prescribed time. If the ownership of the business of a registered dealer was transferred, the tax payable in respect of such business remaining unpaid at the time of the transfer was payable by the transferee as if he were the registered dealer, and the transferee was required within thirty days of the transfer to apply for registration under section 7 (see section 17). Offences and penalties under the Act were provided in section 23 and one of the offences was neglect to furnish any information required by section 16. These are the material provisions of the Act which will arise for consideration in this case.

The crux of the arguments advanced by Mr. H. L. Sibal on behalf of the assessee is as follows. This case is concerned solely with the question whether the assessee, which is a partnership firm, is as such liable to assessment of sales tax after its dissolution, and not whether the partners, who constituted the erstwhile firm, are liable to assessment or payment of the tax. A firm in the definition of a "dealer" as given in the Act is a distinct entity from its individual partners. There is no machinery provided in the Act for making assessment on the firm as such after its dissolution, and in the absence of such provision a firm which has been dissolved cannot as such be assessed to tax even on the sales made by it during its existence in the whole or part of the accounting period. The application of a statute imposing a tax cannot be extended by analogy or on logical consideration of what the legislature might be supposed to have intended.

Now there can be no cavil as to the last proposition of law. As stated in Maxwel on Interpretation of Statutes at page 288 of the tenth edition—

> "Statutes which impose pecuniary burdens, also, are subject to the same rule of strict construction. It is a well-settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language, because in some degree they operate as penalties. The subject is not to be taxed unless the language of the statute clearly imposes the obligation".

As observed by Beaumont C. J. in *Commissioner of Income-tax, Bombay* v. *Ellis C. Reid* (1), in construing a taxing Act the Court is not justified in straining the language in order to hold a subject liable to tax. These principles have been consistently applied by the Courts in India in construing the

(1) A.I.R. 1931 Bom. 333 at P. 335

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taxing statutes. In the case just referred to the Income-tax Officer had made an assessment under sub-section (4) of section 23 of the Income-tax Act after the assessee's death. Section 3 of this Act, which was the charging section, made liable to the tax all income, profits and gains of the previous year of every individual, Hindu undivided family, company, firm and other association of individuals. Beaumont C. J. who delivered the main judgment of the Court while confessing that he did not see any intelligible reason why, when tax was once charged upon a subject in respect of a period during which he was alive and enjoying the benefits of the proceeds of taxation, he should escape liability by dying before the tax had been assessed or paid, found after reviewing all the relevant provisions of the Income-tax Act that unless violence was done to the language of the various provisions assessment could not be made on a dead man under the Act as it then stood. Subsequently the lacuna was made good by the insertion of section 24-B by the Income-tax (Second Amendment) Act XVIII of 1933. It is needless to multiply cases on this proposition as Mr. H. S. Doabia on behalf of the State did not attempt to controvert it.

It appears indisputable that according to the definition of "dealer" as given in the Act a partnership firm is a distinct entity from the partners constituting the firm. It is open to the assessing authority to assess either individual partners or the firm as such, but these entities must be kept apart as distinct assessable entities. For this proposition there is an authority from the Supreme Court in *Commissioner of Income-tax, West Bengal* v. *A. W. Figgies and Company and others* (2). The learned Judges of the Supreme Court were considering the question in the context of section 3 of the Indian Income-tax Act which was the charging section and was in the following terms:—

> "Where any Central Act enacts that income-tax shall be charged for any year at

(2) (1953) 24 I.T.R. 405, pages 408 to 409

any rate or rates tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority and of *every firm* and other association of persons or *the partners of the firm* or the members of the association individually".

They observed as follows:—

"It is true that under the law of partnership a firm has no legal existence apart from its partners and it is merely a compendious name to describe its partners but it is also equally true that under that law there is no dissolution of the firm by the mere incoming or outgoing of partners. A partner can retire with the consent of the other partners and a person can be introduced in the partnership by the consent of the other partners. The reconstituted firm can carry on its business in the same firm's name till dissolution. The law with respect to retiring partners as enacted in the Partnership Act is to a certain extent a compromise between the strict doctrine of English Common Law which refuses to see anything in the firm but a collective name for individuals carrying on business in partnership and the mercantile usage which recognizes the firm as a distinct person or quasi corporation. But under the Income-tax Act the position is somewhat different. A firm can be charged as a distinct assessable entity as distinct from its partners who can also be assesed individually. Section 3 which is the charging section is in these terms.—

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The partners of the firm are distinct assessable entities, while the firm as such is a separate and distinct unit for purposes of assessment".

This pronouncement applies with equal force to the status of a firm which is a "dealer" under the East Punjab General Sales Tax Act.

The question then arises that when section 11 of the Act enables the assessing authority to make an assessment on a partnership firm which is a "dealer", does it also provide machinery for assessment of tax on the taxable turnover during the accounting year of a firm which is dissolved prior to the assessment ? There is no such provision specifically in the Act.

The material provisions of the Act as summarised above, such as those for the issuing of notice under sub-section (2) of section 11, for the hearing to be given to the "dealer" under sub-section (3) of the same section, for appeal and revision under sections 20 and 21, respectively, for the imposition of penalties under section 23, contemplate that the dealer who is assessable entity in a particular case must be in existence at the material times. The Act does not envisage the contingency of the firm ceasing to exist as an assessable entity except in clause (b) of section 16, and that is concerned only with information to be given to the prescribed authority with regard to the discontinuance of business. The Act is silent as to how the assessing authority is to proceed to assessment of a dissolved firm either before or after the receipt of this information. In fact it may be said generally that the Act makes no specific provision for assessment of the assessable entity which ceases to exist before the assessment proceedings are taken in hand. Under section 16 if any registered dealer or a dealer, who is required to furnish returns under sub-section (3) of

section 10, dies, his legal representative is required to convey the information to the prescribed authority. We asked Mr. Doabia whether, if the dealer had died before the assessment proceedings had commenced, it would still be legal to make an assessment of tax on him for the accounting year during which he was doing business, but the learned Additional Advocate-General expressed his inability to meet the point. There being no provision in the Act similar to section 24-B of the Income-tax Act for enabling assessment to be made in such a case, it must be held that no such assessment can legally be made, and on the same principle it would appear to follow that if a firm has been dissolved and is no longer there as a legal entity, it cannot be assessed as such to sales tax. The information which is to be furnished under section 16 regarding the discontinuance of the business of the firm appears to be only for administrative purposes, such as cancellation or amendment of the certificate of registration and the default in giving such information makes the person responsible for default liable to penalty under clause (h) of section 23(1). It has no connection with the liability to assessment, and in fact Mr. Doabia took up the position that whether notice of discontinuance of business was given or not, the dissolved firm would still be liable to assessment on its taxable turnover during the whole or part of the accounting year in which it was in existence. The provisions of section 16 are, therefore, of no assistance for the decision of the question referred to this Bench.

It would be useful at this stage to refer to certain provisions in the Indian Income-tax Act with regard to the assessment of income-tax in case of dissolution of the various assessable entities under the Act. Section 24-B of the Indian Income-tax Act has already been mentioned. Other cases in which difficulty was likely to arise on account of the disappearance of the assessee before the time comes for assessment are those of—

(1) a Hindu undivided family which has disrupted; and

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(2) a firm or an association of individuals which has, prior to the assessment, been dissolved or discontinued.

To meet the former case section 25-A was introduced by section 4 of the Indian Income-tax (Amendment) Act, 1928 (III of 1928). Section 44 of the Indian Income-tax Act provides the machinery for assessment in case of a discontinued firm or association. This is the eventuality which arises for consideration in this reference. There is nothing corresponding to section 44 of the Indian Income-tax Act in the body of the Act. The learned Additional Advocate-General contended that rule 40 of the East Punjab General Sales Tax Rules, 1949, made under the Act by notification No. 1350-E and T, dated the 30th of March, 1949, corresponded to section 44 of the Indian Income-tax Act. Rule 40 is as follows:—

"40(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.

(2) Every dealer liable to pay tax under the Act shall pay the tax quartely unless directed otherwise by the appropriate Assessing Authority.

(3) The tax due for any quarter shall be paid before furnishing the return in form S.T. VIII for that quarter."

This rule finds its place under the heading "Payment of Tax and other Dues", while the rules relating to "Assessment to Tax and Imposition of Penalty" are rules 32 to 39. The stage of payment of tax arises after the assessment to tax. There is nothing in the rules enabling the assessing authority to assess a dissolved firm to tax. The only material part of rule 40 is sub-rule (1) and it is not possible to read into it a power to assess to tax a dissolved firm. The sub-rule, if it means

anything, only means that all the partners in a firm are jointly and severally responsible for payment of the tax or penalty assessed or any amount due under the Act or the rules. This merely embodies the general principle of the liability of partners for debts due or liabilities incurred, and it cannot be stretched to mean that the dissolved firm and the erstwhile partners in the firm are not only liable to assessment to tax on the turnover during the period the firm existed but shall be jointly and severally responsible for payment of the tax. Sub-section (1) of section 44 of the Indian Income-tax Act, to which, according to Mr. Doabia, rule 40 of the East Punjab General Sales Tax Rules, 1949, corresponds, is as follows:—

> "44(1) Where any business, profession or vocation carried on by a firm or other association of persons has been discontinued or where a firm or other association of persons is dissolved, the Income-tax Officer shall make an assessment of the total income of the firm or other association of persons as such as if no such discontinuance or dissolution had taken place".

This sub-section specifically provides for the assessment of a firm the business of which has been discontinued or which has been dissolved and sub-rule (1) of rule 40 of the East Punjab General Sales Tax Rules, 1949, bears no resemblance to the said provisions of the Indian Income-tax Act.

Mr. Doabia sought to derive some support from section 17 of the Act. He argued that when the ownership of the business of a registered dealer, which is a partnership firm, is transferred, there is impliedly a dissolution of the former firm. In every case of dissolution of a firm, the ownership of the business is split up between the partners; the erstwhile partners should be deemed to be liable to pay the tax on the analogy of section 17 and the firm must be deemed to exist as an assessable entity in the eyes of the law. The

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argument is neither cogent nor logical and the last part, viz., as to the dissolved firm existing as an assessable entity in the eyes of the law, does not follow from the previous parts of the argument. Even if the argument was logical, it is only by way of analogy which is not permissible in the application of a taxing statute. It is, therefore, not possible to hold that section 17 of the Act provides machinery for the assessment to sales tax of a dissolved firm.

Another argument advanced by the learned Additional Advocate-General was that the tax liability under the Act was in the nature of a debt and it would, therefore, be assessed on the firm even after its dissolution. It was pointed out that a firm exists for certain purposes even after its dissolution, such as for the purposes of winding up its business, adjusting the rights of the partners *inter se* and payment of the debts due to the partnership or realising the debts owing to it. In this connection sections 45 and 47 of the Indian Partnership Act, 1932 (Act No. IX of 1932), and *Motilal Chimanram and another* v. *Sarupchand Prithiraj and others* (3), and *Chaturbhuj Durgadas Factory* v. *Damodar Jamnadas Zawar and others* (4), were relied upon. It does not, however, follow that the liability to pay sales tax under the Act, which the partnership firm had incurred before its dissolution, becomes, even prior to its assessment, a debt which can be recovered from a dissolved firm even though the Act does not provide any machinery for making an assessment of the tax on the firm after its dissolution. When section 11 of the Act speaks of the assessing authority assessing the amount of tax due it must follow that the tax becomes due and payable only as a result of the assessment. *In the matter of Recols (India) Ltd.*, (5), a Full Bench of the Calcutta High Court had occasion to consider various provisions of the Bengal Finance (Sales Tax) Act, 1941, in connection with the priority to be accorded to sales tax

(3) A.I.R. 1937 Bom. 81
(4) A.I.R. 1960 Bom. 424
(5) (1953) 4 S.T.C. 271

demands under section 230(1)(a) of the Indian Companies Act, read with section 5(a) of that Act. It was held by Chakarvartti C.J. (with whom Lahiri J. agreed) that—

> "The Bengal Finance (Sales Tax) Act, 1941, does not intend that the tax payable under the Act, would become due and payable at the time the return became due to be filed. The amount paid under section 10(3) according to the return cannot be tax payable under the Act in the true sense of the term. The tax is payable on the taxable turnover and the taxable turnover is to be determined by making the various deductions specified in section 5. The assessee can make the deductions as best as he can, on his own understanding of the provisions of section 5 and on his own view of the facts, but before the deductions are checked and finally settled as allowable or disallowable and the taxable turnover is thereby determined, no tax due and payable under the Act can come into existence.
>
> The only two types of tax debts under the Sales Tax Act that may possibly come to be considered under section 230(1)(a) of the Indian Companies Act, 1913, are (i) the balance of tax due according to a return, and (ii) the tax due under an assessment. In both cases, the debt becomes payable only when a notice of demand is served".

The third learned Judge constituting the Full Bench, i.e., Sinha J., agreed with these conclusions. The provisions of the Bengal Finance (Sales Tax) Act, 1941, are in *pari materia* with those of the Punjab Act under consideration. I fully agree with the view of the matter taken by the Full Bench of the Calcutta Court. It is, therefore, impossible to hold, as contended by Mr. Doabia, that

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the tax liability of a "dealer" under the Act is in the nature of a debt even prior to its assessment. While, therefore, it may be correct to say that a dissolved firm continues to exist for certain purposes, it would not at all follow that it can after dissolution be assessed to sales tax under the Act in the absence of machinery provided in the Act to that end. The principles enunciated in the Indian Partnership Act cannot be imported into a taxing statute.

No authority of the Supreme Court directly bearing on the question referred to the Bench was cited at the Bar. The learned Additional Advocate-General, however, sought support from certain observations contained in *Y. Narayana Chetty and another* v. *The Income-tax Officer, Nellore, and others* (6). The Income-tax Officer, Nellore, had taken certain proceedings under section 34 of the Income-tax Act against three firms and after the dissolution of the firms notice under section 34(1)(a) was issued against the firms and some of the appellants who had been partners of the firms. The argument was based on the provisions of section 23(5) of the Income-tax Act, as they stood before the amendment introduced in 1956, which in substance were as follows:—

> "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 in the previous year shall be assessed and the sum payable by him on the basis of such assessment shall be determined."

It was argued that this provision showed that the person liable to pay the tax was each individual partner of the firm and so it is the individual partners of the firm who are entitled to statutory notice under section 34(1)(a). This argument was

(6) A.I.R. 1959 S.C. 213 at pp. 216 and 217.

repelled on a consideration of the various provisions of the Income-tax Act and their Lordships observed as follows:—

> "It is true that section 23(5) as it then stood required the Income-tax Officer to determine the total income of each partner of the firm including his share of the firm's income and to assess each partner in respect of such income, and in that sense individual partners of the firm undoubtedly became liable to pay income-tax; but it is clear that in determining the total income of each partner his share in the firm's income has to be included and so the firm does not cease to be an assessee for the purpose of section 23(5)."

Another argument put forward on behalf of the appellants was that the Income-tax Officer was bound to issue notices to all the individual partners of the firms because at the material time all the firms had been dissolved. The counsel for the appellants conceded that it was section 63(2) of the Income-tax Act under which a notice or requisition under the Act may in the case of a firm be addressed to any member of the firm, but he contended that this applied to a firm in existence and not to the firm dissolved. This argument was repelled in these words:—

> "If the appellants' case is that as a result of dissolution of the firms the firms had discontinued their business as from the respective dates of dissolution they ought to have given notices of such discontinuance of their business under section 25(2) of the Act. Besides, in the present case, the main appellant has in fact been served personally and the other partners who may not have been served have made no grievance in the matter. We are, therefore, satisfied that it is not open to the appellants to

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contend that the proceedings taken by the Income-tax Officer under section 34(1)(a) are invalid in that notices of these proceedings have not been served on the other alleged partners of the firms".

Although the observations in the judgment of the Supreme Court relied upon by Mr. Doabia proceeded upon the particular provisions of the Income-tax Act, under section 44 of that Act, already referred to, the Income-tax Officer is authorised to make an assessment of the total income of the firm or other association of persons even after its discontinuance or dissolution. The case relied upon is thus no authority for the proposition that assessment to sales tax can be made on a partnership firm even after its dissolution.

The principal authority so far as Sales Tax Acts are concerned on which the learned counsel for the assessee places his reliance is *Jagat Behari Tandon and another* v. *Sales Tax Officer, Etawah, and another* (7), which is by a Division Bench of the Allahabad High Court. The precise point which is under reference before us was before that Court and it was held that an assessment order cannot be made under the U.P. Sales Tax Act, 1948, on a firm after it is dissolved and has discontinued business. The partnership firm was a separate unit of assessment under that Act and was distinguishable from its partners. After it was dissolved the firm as a unit of assessment had ceased to exist and there was no machinery in the U.P. Sales Tax Act provided for assessment on a dissolved firm. It was not urged by Mr. Doabia that the provisions of the U.P. Sales Tax Act were in any material respect different from the provisions in the Punjab Act. Since this decision is exactly in point the following paragraph may usefully be quoted.

"The position which arises on the dissolution and discontinuance of a firm is

(7) (1957) 8 S.T.C. 459.

analogous to that which arises on the disruption of a Hindu joint family. A difficulty arose under the Income-tax Act when an undivided family had received income in the year of account but was no longer in existence as such at the time of assessment. That difficulty was met by the introduction into the Act of section 25-A. Unless, however, the provisions of this section have application, proceedings cannot be taken against a Hindu joint family after it is separated as the joint family has ceased to exist. Thus it has been held that proceedings under section 28 of the Income-tax Act, a section which authorises the Income-tax authorities to impose a penalty for concealment of income, cannot be instituted against a Hindu joint family after the joint family had by separation ceased to exist: *Commissioner of Income-tax, Bihar and Orissa* v. *Sanichar Sah Bhim Sah* (8), *S. A. Raju Chettiar* v. *Collector of Madras* (9). So also a former Hindu joint family cannot be assessed to excess profit tax if there has been a separation before the order of assessment is made as the family has then ceased to exist and the Excess Profits Tax Act contains no provision corresponding to section 25-A: *Commissioner of Excess Profits Tax, Madras* v. *Jivaraj Topun and Sons, Madras* (10). In the recent case of *Manindra Lal Goswami* v. *Income-tax Officer* (11), a learned Judge of the Calcutta High Court has held that there is no provision in the Income-tax Act which enables a firm to be assessed after its discontinuance or dissolution."

(8) (1955) 27 I.T.R. 307
(9) (1956) 29 I.T.R. 241.
(10) (1951) 20 I.T.R. 143.
(11) (1956) 30 I.TR. 550

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The *ratio decidendi* was that there was no machinery provided in the U.P. Sales Tax Act, 1948, for making assessment on a firm after it has been dissolved and had discontinued business, and the ratio applies equally to the Punjab Act under consideration in this reference. While that decision of the Allahabad High Court has been referred to in some of the cases cited by the learned Additional Advocate-General in support of his position, its ratio has not been discussed.

The first case cited by Mr. Doabia under the Sales Tax Act of the various States is *The Deputy Commissioner of Commercial Taxes, Guntur Division, Guntur* v. *K. Bakthavatsalam Naidu* (12). In that case assessment under the Madras General Sales Tax Act (IX of 1939) was for the assessment year 1949-50 made on one of the partners of the firm by order of the Deputy Commercial Tax Officer, dated the 20th of March, 1952. It was found that the partnership subsisted during the year of assessment and was dissolved on the 17th of December, 1951. One of the erstwhile partners who had been assessed contended in appeal to the Commercial Tax Officer that the assessment ought to have been properly made only against the firm. The Commercial Tax Officer dismissed his appeal. On a further appeal before the Sales Tax Appellate Tribunal it was held that the business was conducted as a partnership business and that, therefore, the assessment ought to have been properly made only against the firm. This view was affirmed by the learned Judges of the Andhra High Court on a consideration of the fact that the definition of "dealer" in section 2(b) of the Madras General Sales Tax Act, 1939, read with section 3 of that Act which was the charging section, led to the conclusion that it was the firm that was to be treated as a "dealer" and that must be assessed to tax. It does not appear from the report of the case that the assessment proceedings had not commenced before the

(12) (1955) 6 S.T.C. 657

dissolution of the firm, and no argument was addressed to the learned Judges as to the firm not being liable to assessment on account of its having been dissolved before the assessment was commenced or made. So this case does not help the position taken up by Mr. Doabia.

The next case cited on behalf of the Department is *In re R. D. Fernandes* (13). It was held in that case that sales tax, which is a State debt, will be recoverable from and out of the partnership assets even after dissolution of the firm and in the hands of the partners or otherwise. This conclusion was arrived at on a consideration of sections 45 to 55 of the Indian Partnership Act. One of the points urged before the learned Judge was that the assessment order made on a firm after its dissolution was without jurisdiction, but there is no discussion of this contention in the judgment and the principal ground which appears to have weighed with the learned Judge in dismissing the criminal revision against the conviction and sentence of the petitioner under section 15(b) of the Madras General Sales Tax Act was that section 16-A of the same Act provided that the validity of the assessment of any tax, or the liability of any person to pay any tax under the Act shall not be questioned in any criminal Court. This case is, therefore, again of no assistance to the learned Additional Advocate-General.

The next case relied on is *Lalji* v. *The Assistant Commissioner, Sales Tax, Raipur* (14), which is from the High Court of Madhya Pradesh at Jabalpur. Certain assessments and the notices of demand made on the petitioner under the C.P. and Berar Sales Tax Act (XXI of 1947) were

(13) (1957) 8 S.T.C. 365

(14) (1958) 9 S.T.C. 571

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impugned on the ground that after the dissolution of the partnership the tax could not be assessed or levied on the firm. Reliance was placed by the petitioner upon *Jagat Behari Tandon* v. *Sales Tax Officer, Etawah* (7). The learned Judges did not discuss the ratio of that case. They observed that for purposes of the sales tax, a registered dealer continues to be liable to assessment so long as any change effected in the name or nature of the business was not intimated to the prescribed authority under section 17 of the C.P. and Berar Sales Tax Act (which more or less corresponds to section 16 of the Punjab Act). Since according to Mr. Doabia the giving of notice of the discontinuance does not affect at all the liability of the dissolved firm to assessment, the reasoning adopted by the learned Judges of the Madhya Pradesh High Court is of no help to him. They merely expressed agreement with the view taken in *The Deputy Commissioner of Commercial Taxes, Guntur Division, Guntur* v. *K. Bakthavatsalam Naidu* (12), which, as already discussed, is of no real assistance to the Department.

The next case relied on behalf of the Department is *State of Mysore* v. *N. A. Saravathulla and Company and another* (15). This dealt with certain appeals preferred by the State of Mysore against the acquittal of the accused persons in respect of an offence under section 20(b) of the Mysore Sales Tax Act, 1948, i.e., failure to pay within the time allowed the tax assessed on the accused person. The counsel for the respondent in one of the criminal appeals urged that the order of assessment was not a valid order since it was made after the dissolution of the firm. Meeting this argument the learned Judges observed as follows:—

> "We find it difficult to accept this contention. Rule 37 of the Mysore Sales Tax Rules requires that if a partnership is

(15) (1958) 9 S.T.C. 593

dissolved, every person who was a partner shall send a report of the dissolution to the assessing authority within 30 days of such dissolution. It is not disputed in this case that no such report was sent within 30 days as required under rule 37. When this rule has not been complied with, the party who failed to comply cannot make a grievance of the result of such non-compliance

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In the absence of compliance with rule 37 and in the absence of proper proof of the alleged dissolution prior to the date of assessment, we do not find any substance in this contention."

For the reasons given in discussion of the previous case, this case cannot again lend any support to the position taken up by Mr. Doabia.

The next case is *R. Ponnuswami Gramani* v. *The Collector of Chingleput District and others* (16). The learned Judge has set out the authorities cited before him by the respective parties, including *Jagat Behari Tandon* v. *Sales Tax Officer, Etawah* (7). The reasoning in those cases was not examined, but the learned Judge preferred to follow certain judgments of the Madras High Court, *R. D. Fernandes, In re* (13), and Writ Petition No. 397 of 1954. The observations made by Rajagopalan J., in the latter case were reproduced as follows:—

"It is no doubt true that neither the Act nor the rules framed thereunder make any separate provision for assessing the turnover of the dissolved firm or for the recovery of the taxes due by a dissolved firm, which was a dealer as defined by section 2(b) of the Act up to the date

(16) (1960) 11 S.T.C. 80

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of its dissolution. To that extent it differs from the Income-tax Act. That however, in my opinion, is not enough to sustain the contention of the learned counsel for the petitioner, that the partners of the dissolved firm are not in any way liable for the sales tax due by the dissolved firm. * * * * Though there is no specific provision in the Act or the rules thereunder for collection of arrears of tax due from a dissolved firm, the liability of the petitioner as a partner of the dissolved firm to pay whatever was lawfully due by the partnership of which he was a partner can be enforced, if it is established that there was default within the meaning of section 10. The arrears could be recovered from him independent of his possession of any of the assets of the dissolved partnership, as if the arrears of tax constituted an arrear of land revenue."

If I may say so with respect to the learned Judge of the Madras Court, the above line of reasoning does not meet fairly and squarely the fundamental objection to the assessment to sales tax of the partnership firm after dissolution as detailed in *Jagat Behari Tandon* v. *Sales Tax Officer, Etawah* (7), viz., the absence of machinery in the statute for enabling assessment of a partnership firm after its dissolution.

The next two cases relied upon by Mr. Doabia are *Jai Dayal* v. *Deputy Commercial Tax Officer Osmanganj* (17), and *Bankatlal Badruka and others* v. *The State of Bombay and others* (18). Both these cases were concerned with liability to assessment under the Hyderabad General Sales Tax Act (XIV of 1950) and the Hyderabad General Sales Tax Rules, 1950, of partnership firms after their dissolution. The relevant

(17) (1960) 11 S.T.C. 782
(18) (1961) 12 S.T.C. 405

statutory provisions and the rules have been reproduced at pages 785 and 786 of the former case. It appears that section 26 of that Act enabled the Government to make rules "to carry out the purposes of this Act", and in particular and without prejudice to the generality of that power, such rules may provide, *inter alia*, by clause (c) for "the assessment to tax under this Act of businesses which are discontinued or the ownership of which has changed". The argument, that the above statutory provisions and the rules taken together provide the machinery for assessment of sales tax on a firm after its dissolution, could have a certain degree of plausibility. The rule-making power in the Punjab Act, however, unlike section 26 of the Hyderabad Act, does not give power to the Government to make rules to provide for the assessment to sales tax of businesses which are discontinued. In *Jai Dayal's case* the principal consideration which weighed with the learned Judge in deciding in favour of the validity of the assessment was that admittedly the dissolution was not brought to the notice of the authorities. It was observed that the petitioner, who was a member of the dissolved firm, could not escape the liability by failing to discharge the duty imposed on it by the statutory rules and that the assessing authority could proceed on the basis that there was no dissolution. If the firm could be assessed then notice could be issued to the petitioner on the basis that he was a partner of that firm and represented the firm. Significantly, it was further observed that the position might have been different if the Department had been notified of the dissolution. In the second case, *Bankatlal Badruka and others* v. *The State of Bombay and others* (18), it appears that the assessment proceedings were started long before the dissolution and the learned Judges before whom the matter came by way of a writ petition observed that in those circumstances it could not be said that the officers acted wrongly or without jurisdiction in continuing the assessment proceedings and passing final orders thereon. Both these cases, therefore, do not favour the extreme position taken up by Mr. Doabia, viz.,

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that proceedings for assessment of a partnership firm to sales tax can be commenced after its dissolution, and despite notice of dissolution having been served on the Department even before the issue of a notice as a preliminary to assessment. Moreover, since the Hyderabad General Sales Tax Act, 1950, provided some machinery for the assessment to tax a business which was discontinued, these two cases cannot be relied upon as authorities against the judgment of the Allahabad High Court in *Jagat Behari Tandon and another* v. *Sales Tax Officer, Etawah, and another* (7).

The conclusion, therefore, is that none of the cases under the various Sales Tax Acts cited on behalf of the Department really affects the line of reasoning as given by the learned Judges of the Allahabad High Court in *Jagat Behari Tandon and another* v. *Sales Tax Officer, Etawah, and another* (7), with which we are in respectful agreement.

For the reasons set out above we would answer the question referred to in the affirmative. The assessee will have his costs of this reference, counsel's fee being assessed at Rs. 250.

Tek Chand, J.

TEK CHAND, J.—I agree.

Prem Chand Pandit, J.

PREM CHAND PANDIT, J.—So do I.

B.R.T.

FULL BENCH

Before Tek Chand, S. B. Capoor and P. C. Pandit, JJ.

THE PUNJAB DISTILLING INDUSTRIES LTD,—
Petitioner

versus

THE COMMISSIONER OF INCOME-TAX,—*Respondent.*

Income-Tax Reference No. 9 of 1959.

1962

February 21.

Income-tax Act (XI of 1922)—Section 2 (6A)(d)—Whether ultra vires *the Central Legislature—Dividend—Meaning of—Reduction of Capital sanctioned in one*