

Khushiram Behari Lal & Co vs Assessing Authority, Sangrur & Anr on 8 October, 1976

Equivalent citations: 1976 AIR 2372, 1977 SCR (1) 752, AIR 1976 SUPREME COURT 2372, 1976 TAX. L. R. 1290, 1975 U J (SC) 838, (1976) 1 S C J 116, (1975) 2 I T J 480, 1975 UPTC 691, 1976 SCC (TAX) 1, (1976) 1 ANDH WR 16, (1976) 1 S C C 241, 101-I T R 465

Author: Hans Raj Khanna

Bench: Hans Raj Khanna, Jaswant Singh

PETITIONER:

KHUSHIRAM BEHARI LAL & CO.

Vs.

RESPONDENT:

ASSESSING AUTHORITY, SANGRUR & ANR.

DATE OF JUDGMENT 08/10/1976

BENCH:

KHANNA, HANS RAJ

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KHANNA, HANS RAJ

SINGH, JASWANT

CITATION:

1976 AIR 2372

1977 SCR (1) 752

1976 SCC (4) 322

ACT:

Writ jurisdiction of the High Court--Scope for interference with findings of departmental authorities.

HEADNOTE:

In response to a notice from the assessing authority under Punjab General Sales Tax Act that the appellant had not filed a return in respect of the assessment year 1959-60, the appellant claimed that the firm had ceased to do any work since February, 1961 and that a formal document to that effect was executed in August, 1961. The assessing authority made an order of assessment in March 1962. In a writ petition under Art. 226 of the Constitution filed by the appellant; the High Court directed the Sales Tax

Officer to enquire and report if the appellant-firm had proved its dissolution in August 1961 or before the date of assessment order. The Sales Tax Officer reported that it had not, The High Court itself examined the matter and came to the same conclusion of that reached by the Sales Tax Officer. It also found that though intimation was required to be given under the Act regarding the dissolution of the firm within 30 days of such dissolution no such intimation was given under April, 1962 and dismissed the writ petition.

Dismissing the appeal to this Court,

HELD: (1) There is no sufficient ground to interfere with the judgment of the High Court. The facts and circumstances referred to by the High Court throw a considerable doubt upon the correctness of the appellant's statement that it had stood dissolved in August, 1961. [754 D & B]

(2) The High Court was dealing with the matter on the writ side. In a writ petition, the scope for interference with a finding of the departmental authorities is much more restricted and the court can normally interfere only if the finding is based upon extraneous or irrelevant evidence or is otherwise perverse. The same cannot be said of the finding of the sales tax authority embodied in its report sent to the High Court in the present case. [754 C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 442 of 1974. (From the Judgment and Order dated the 17th of August, 1970 of the Punjab & Haryana High Court in Civil Writ No. 413/62).

V.C. Mahajan and O.P. Sharma, for the Appellant. Harbans Singh, for Respondent No. 2.

The Judgment of the Court was delivered by KHANNA, J. This is an appeal on certificate against the judgment of the Punjab and Haryana High Court whereby the High Court held that the appellant-firm had failed to prove that it had stood dissolved on a date prior to the date of assessment, viz., March 12, 1962.

The appellant-firm carries on business as commission agents of cotton and food grains. In respect of the year 1959-60, the appellant did not submit any return under the Punjab General Sales Tax Act. A notice was thereupon issued to the appellant-firm and the case was fixed for July 1, 1960. The appellant challenged the validity of the assessment proceedings by means of a writ petition in the High Court. The High Court during the pendency of the petition, stayed the proceedings. Ultimately, it seems, the writ petition was dismissed and the assessment proceedings were resumed on November 30, 1961. Various dates were fixed thereafter. February 17, 1962 was fixed as the final date of hearing. On that date, intimation was given on behalf of the appellant that the appellant-firm had ceased to do any work since February 1961. It was also represented that a formal document had been executed on August 8, 1961. The assessing authority despite that intimation

proceeded to make an order of assessment dated March 12, 1962. The appellant thereupon filed another petition under article 226 of the Constitution in the Punjab High Court, praying for the quashing of the assessment order. It was stated on behalf of the appellant that the appellant-firm had been dissolved before the date of assessment order and as such, the sales tax authorities could not make an order for assessment. The High Court dismissed the petition on the ground that the assessment proceedings had been initiated long before the alleged date of dissolution of the firm. The appellant thereafter came up to this Court in appeal against the said decision of the High Court. This Court set aside the judgment of the High Court, following its decision in the case of State of Punjab v. M/s Jullundur Vegetables Syndicate.⁽¹⁾ The case was remanded to the High Court as no definite finding had been given by the High Court regarding the dissolution of the appellant-firm and about the fact as to whether the said dissolution had taken place before the date of the order of assessment, namely, March 12, 1962.

After remand, the High Court called upon the sales tax officer to make an enquiry and submit a report on the point as to whether the appellant-firm had been dissolved on August 8, 1961 as alleged by the appellant. The sales tax officer thereafter made an enquiry and submitted a report that the appellant-firm had not proved its dissolution on August 8, 1961 or before the date of assessment order. The High Court, 'after receipt of the report, itself examined the matter and came to the conclusion that on the material on record brought by the appellant, it had not been proved that the appellant-firm had stood dissolved on a date prior to March 12, 1962. It is the correctness of the above decision of the High Court which has now been assailed before us by the appellant in this appeal.

We have heard Mr. Mahajan on behalf of the appellant and find no cogent ground to take a view different from that of the High Court. The High Court, in the course of its judgment, has pointed out that though the assessment order was made on March 12, 1962 a large number of hearings took place between March 8, 1961, the alleged date of dissolution and March 12, 1962. At no hearing, was any intimation given by the appellant to the assessing authority that the firm had stood dissolved. All that was intimated on February 17, 1962 was that the firm had ceased to do work in February 1961 and (1) 119661 2 S.C.n. 457.

that a formal document had been executed on August 8, 1961. It was also not the case. of the appellant that all the six partners of the appellant firm, had signed that document. Another factor which weighed with the High Court was that though intimation is required to be given under section 16 of the Punjab General Sales Tax Act regarding the dissolution of a firm within thirty days of such dissolution no such intimation was given by the appellant-firm until April 2, 1962, i.e., nearly eight months after the alleged date of dissolution.

In our opinion, the facts and circumstances referred to by the High Court throw a considerable doubt. upon the correctness of the statement made on behalf of the appellant-firm' that it had stood dissolved on August 8, 1961. It has to be borne in mind that the High Court was dealing with the matter on the writ side. In a writ petition, the scope for interference with a finding of the departmental authorities is much more restricted and the court can normally interfere only if the finding is based upon no evidence or is based upon extraneous or irrelevant evidence or is

otherwise perverse. The same cannot be said of the finding of the sales tax authority embodied in its report sent to the High Court in the present case. We see no sufficient ground to interfere with the judgment of the High Court. The appeal fails and is dismissed. There will be no order as to costs.

P . B . R .

Appeal