STATE OF U. P. & ANR. A

v.

RAZA BULAND SUGAR CO. LTD., RAMPUR

February 27, 1979

[R. S. SARKARIA, P. S. KAILASAM AND O. CHINNAPPA REDDY, JJ.] B

U.P. Agricultural Income-tax Act (1948)—*S.* 18 *Assessment of tax—If could be made against partners of a firm without issuing notice to the firm. Plea not taken at the first instance—If could be raised later.*

Two joint stock companies entered into agreements with a former Princely State for the grant of agricultural land on payment of fair and equitable land C revenue. Later the two companies formed into a partnership firm. On the merger of the State with the Union of India, the Assessing Authority under the U.P. Agricultural Income-tax Act issued notices to the two companies to submit their returns of agricultural income, which the companies did.

In writ petitions filed by the companies challenging the assessment orders, the High Court accepted the contention that since the lands were neither assessed to land revenue nor were they assessed to any local rate or cess as required D by s. 2(a) of the Act, they were not assessable to agricultural income-tax and remanded the cases to the Assessing Authority for determination of this question.

Before the Assessing Authority, on remand the companies raised for the first time the contention that since no notice had been issued to the firm of which they were partners, the assessment was invalid. The Assessing Authority E rejected this contention. He also held that the lands satisfied the requirements of s. 2(a).

In writ petitions filed by the two companies a single Judge of the High Court upheld the contention that the Assessing Authority committed an error of law in assessing the two partners without assessing the firm. This view was affirmed by a Division Bench on appeal. F

On further appeal to this Court it was contended that in the absence of a prohibition in the Act, the two companies could be validly assessed to tax without assessing the firm.

Allowing the appeal,

HELD : 1. The Assessing Authority was not in error in assessing tax on G the returns submitted by the two companies and therefore the argument that assessment of the companies, without assessing the firm, was not legal, is without substance. [425 H—426 A]

2. "Person" defined in the section means an individual and includes a firm or a company. [423 G]

3. There is nothing in the Act prohibiting the Assessing Authority from H proceeding against individuals forming a partnership. Section 18 enables the authorities, while proceeding with assessment of a firm or a company, not to

A determine the tax payable by the firm or the company but to proceed to determine the agricultural income of each member of the firm. The provisions do not apply to a case where the returns were submitted by the partners and the assessment made on that basis. The section would be applicable if assessment proceedings against a firm are stopped and the share of the individual is to be determined under the provisions of s. 18. [424 F]

B 4. The well established position under the Income-tax Act (Central Act) with regard to assessment of firms is that where a firm has not made a return it is open to the department to assess a partner directly in respect of his share of the firm's income without resorting to the machinery provided under the Act and without making an assessment on the firm, the only prohibition being against double taxation. [424 H]

C *C.I.T.* v. *Murlidhar Jhawar & Purna Ginning & Pressing Factory*, 60 ITR 95 SC; referred to.

5. Secondly, the plea that assessment proceedings ought to have been taken against the firm, was not taken by them in the first instance either before the Assessing Authority or before the High Court. This plea cannot be allowed to be taken at a later stage. The assessees submitted their returns on the basis of their respective incomes. [425 F—426 A]

D

6. The Assessing Authority has correctly come to the conclusion that the agreement between the parties provided for payment of land revenue. [426 F-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2281 of 1969

E Appeal by Special Leave from the Judgment and Order dated 6th December, 1965 of the Allahabad High Court in Special Appeal No. 978/62.

Shiv Pujan Singh and *M. V. Goswami* for the Appellant.

B. P. Maheshwari and *Suresh Sethi* for the Respondent.

F The Judgment of the Court was delivered by

KAILASAM, J.—This appeal is by the State of U.P. by special leave granted by this Court against the judgment and order of the High Court at Allahabad in Special Appeal No. 978 of 1962.

Two companies, the Raza Sugar Co. Ltd. and the Buland Sugar G Co. Ltd., were incorporated under the Rampur State Companies Act, 1932. Messrs. Govan Brothers (Rampur) Ltd. were the common managing agents of the two companies. On 10th May, 1933 the Raza Ltd. and on 11th December, 1934, the Buland Ltd. entered into agreements with the erstwhile State of Rampur. The agreements provided that the Rampur State should grant to the companies leases H of the agricultural land with adequate irrigation facilities suitable for cultivation of sugar-cane. The companies were required to pay fair and equitable land revenue which was to be agreed upon by the com-

panies and the Rampur State. On 5th May, 1935, a partnership deed was a executed by the Raza Ltd. and the Buland Ltd. constituting a partnership firm of the two companies in equal shares known as the Agricultural Company, Rampur. In the year 1939 the Rampur State leased 2,000 acres of land and in the year 1946 another 2,000 acres of land to the Agricultural Company, Rampur. In 1949 the State of Rampur acceded to the Union of India and was merged with the State of Uttar Pradesh with effect from 1st December, 1949. The Rampur State had agreed to exempt the Raza Ltd. and the Buland Ltd. from all taxes for a period of 15 years from the date of commencement of their business.

The U.P. Agricultural Income Tax Act was applied to the areas which formed part of the erstwhile State of Rampur on 1st July, 1950. The Assessing Authority issued notices under section 16(4) of the U.P. Agricultural Income Tax Act to the Raza Ltd. and the Buland Ltd. for furnishing returns of their agricultural incomes for the years 1357 F to 1361 F. It may be noted that the notice was not issued to the Agricultural Company, Rampur. The Raza Ltd. and the Buland Ltd. submitted their returns. The Assessing Authority assessed the two companies to agricultural income-tax for the years concerned. The companies preferred an appeal against the assessment to the Commissioner, Rohilkhand Division, and also filed writ petition No. 2385 of 1959 in the High Court of Allahabad challenging the assessment orders. On 17th April, 1961 the writ petition was allowed and the order of assessment was quashed with a direction that fresh assessments may be made. The Commissioner also directed the Assessing Authority to make fresh assessments in the light of the observations made by the High Court in its judgment dated 17th April, 1961, allowing the writ petition No. 2385 of 1959.

When the Assessing Authority started fresh hearing in pursuance of the order of the High Court an objection was raised with regard to the assessability of the two companies on the ground that no notice had been sent to the Agricultural Company, Rampur. The Assessing Authority negatived the plea and assessed the Raza Ltd. and the Buland Ltd. for the years 1357 F to 1361 F and also for the years 1362 F to 1363 F. Against the order of the Assessing Authority the two companies which in the meantime became amalgamated as the Raza Buland Sugar Co. Ltd., Rampur, filed a writ petition No. 1982 of 1962 in the High Court of Judicature at Allahabad and prayed for the quashing of the assessment order dated 29th June, 1962, made by the Assessing Authority against the Raza Ltd. and the Buland Ltd. for the assessment years 1357 F to 1363 F.

A The writ petition was heard by a single Judge of the High Court who by his order dated 4th October, 1962 allowed the writ petition on the ground that the Assessing Authority committed an error of law in assessing the two partners of the Agricultural Company, Rampur, and not assessing the firm as such. Aggrieved by the order the State filed Special Appeal No. 978 of 1962 before the Division Bench of B the High Court at Allahabad. The Division Bench of the High Court by its order dated 6th December, 1965, dismissed the Special Appeal. An application for leave to appeal to the Supreme Court was dismissed by the High Court. The appellants then preferred Special Leave Petition No. 1724 of 1969 to this Court and on the leave being granted C this appeal is now before us.

The main contention that has been raised before us by the appellants is that there being no express prohibition under the U.P. Agricultural Income Tax Act an assessment can be validly and legally made on the individual partners, in the present case the two companies, without proceeding against the firm. It was pleaded that the tax could D be assessed either on the partnership firm or on the partners invididually and that the view of the High Court that the tax can only be recovered from the firm is erroneous.

The facts of the case disclose that on receipt of a notice by the Assessing Authority under section 16(4) of the U.P. Agricultural E Income Tax Act, the two companies Raza Ltd. and the Buland Ltd. submitted their returns relating to the income of the two companies. In the return it was stated that the income was half of the income received from the partnership firm, the Agricultural Company, Rampur. The assessment was made on the basis of the returns. The assessment F was questioned before the Commissioner and in the writ petition before the High Court of Allahabad on the ground that the lands were neither assessed to land revenue in the United Provinces nor were they subject to local rate or cess assessed and collected by an officer of the Provincial Government. This contention was accepted by the High Court which directed the Assessing Authority to determine the ques- G tion whether the lands were assessed to land revenue, in the United Provinces or they were subject to local rate or cess assessed and collected by an officer as required under section 2(a) of the U.P. Agricultural Income Tax Act, 1948. After remand the Assessing Authority found that the lands from which the income accrued satisfied the requirements of the section. For the first time before the Assessing H Authority the point was raised that as no notice was issued to the partnership firm, the partners i.e. two companies cannot be proceeded with for assessment of the tax. When this plea was rejected by the

Assessing Authority the matter was taken up before the High Court, first before a single Judge and then before the Division Bench, which accepted the contention of the two companies and held that in the absence of notice to the partnership firm proceedings cannot be taken against the two companies for assessment of the tax.

The relevant provisions under the United Provinces Agricultural Income-Tax Act, 1948, may be noticed. Section 2(5) defines "Assessee" as meaning a person by whom agricultural income-tax is payable. "Company" is defined under section 2(8) as meaning a company as defined in the Indian Income-tax Act, 1922. The Indian Income-tax Act, 1922, section 2(5A) defines a company as follows :—

"(5A) "company" means —

(i) any Indian company, or

(ii) any association, whether incorporated or not and whether Indian or non-Indian, which is or was assessable or was assessed as a company for the assessment for the year ending on the 31st day of March, 1948, or which is declared by general or special order of the Central Board of Revenue to be a company for the purposes of this Act;"

"Firm" is defined in section 2(9) as having the same meaning assigned to it in the Indian Partnership Act, 1932. Section 4 of the Indian Partnership Act, 1932, states that "Persons who have entered into partnership with one another are called individually 'partners' and collectively a firm and the name under which their business is carried on is called the 'firm name' ". "Person" is defined in section 2(11) as meaning an individual or association of individuals, owning or holding property for himself or for any other, or partly for his own benefit and partly for that of another, either as owner, trustee, receiver, manager, administrator or executor or in any capacity recognized by law, and includes an undivided Hindu family, firm or company but does not include a local authority. It may be noted that by the definition the word "person" means an individual and includes a firm or a company. The liability of the person whether he be an individual, partner or the company for the agricultural income-tax is therefore beyond question. The only point that is raised in this case is as to when there is a registered firm of which the two companies were partners the assessment proceedings cannot be taken against the two partners, namely the two companies, without proceeding against the

A firm. In support of this contention section 18 of the U.P. Agricultural Income Tax Act was strongly relied on. Section 18 confers the power to assess individual members of certain firms, associations and companies. Sub-section (1) of section 18 enables the Assistant Collector with the previous approval of the Collector of the district concerned to pass an order under the circumstances stated in the sub-Sec. that the B sum payable as agricultural income-tax by the firm or association shall not be determined, and thereupon the share of each member in the agricultural income of the firm or association shall be included in his total agricultural income for the purpose of his assessment thereon. Section 18(2) states that under certain circumstances the Collector may, with the previous approval of the Commissioner of the C area concerned, pass an order that the sum payable as agricultural income-tax by the company shall not be determined and thereupon the proportionate share of each member in the agricultural income of the company, whether such agricultural income has been distributed to the members or not, shall be included in the total agricultural income of D such member for the purpose of his assessment thereon. The submission of the learned counsel for the respondent which was accepted by the High Court was that if the Agricultural Income-tax authorities wanted to proceed against the individual members of the firm they ought to have taken proceedings under section 18(1) and in the absence of such proceedings the partners, in this case the two companies, could E not have been proceeded with. The argument thus presented though looks attractive does not stand scrutiny. There is nothing in the provisions of the Act prohibiting the Assessing Authority from proceeding against the individuals forming the partnership. Section 18 enables the authorities while proceeding with the assessment of a firm or a company not to determine the tax payable by the firm or the company but F proceed to determine the agricultural income of each member of the firm. The provisions do not apply to a case where the returns are submitted by the partners, as in this case, and the assessment made on that basis. The section would undoubtedly be applicable if assessment proceeding against the firm is stopped and the share of the individual is to be determined under the provisions of section 18. Our attention G was not drawn to any provision in the Act which would bar the income-tax authorities from proceeding against the individual partners on the returns submitted by the partners as such. Under the Indian Income-tax Act it has been held that where a firm has not made a return and has not offered its income for assessment, the Department may assess a partner directly in respect of his share of the firm's income without H resorting to the machinery provided under the Act and without making an assessment on the firm, (*CIT* v. *Murlidhar Jhawar & Purna Ginning*

& Pressing Factory(1). It has been further held that once the Department has exercised its option and assessed the partners individually it cannot thereafter assess the same income in the hands of the firm as an unregistered firm. It is not necessary for us to refer to the distinction that is maintained under the Income-tax Act between a registered and unregistered firm for no such distinction is maintained under the U.P. Agricultural Income Tax Act. The only prohibition is against double taxation. In this case no assessment proceedings have been taken against the firm much less any tax imposed on it. The principle that is applicable in tax statutes is that the income is subject to tax in the hands of the same person only once. Thus, if an association or a firm is taxed in respect of its income the same income cannot be charged again in the hands of the members individually and *vice versa*. The trust income cannot be taxed in the hands of the settlor and also in the hands of the trustee or beneficiary or in the hands of both the trustee as well as the beneficiary. These principles are, of course, subject to any special provision enabling double taxation in the statute. In the circumstances, we are unable to share the view of the High Court that without proceeding against the firm the Assessing Authority was in error in proceeding against the two partners of the firm on the basis of the returns submitted by them.

There is yet another objection to the upholding of the plea of the respondents. Apart from submitting the returns their only plea in the earlier writ petition before the High Court was that the lands did not satisfy the requirements of the provisions of the U.P. Agricultural Income Tax Act in that they were not assessed to land revenue in the United Provinces nor were they subject to local rate or cess. This plea was accepted but the High Court remanded it for the determination of the question whether the land was assessed to land revenue or was subject to local rate or cess. The plea that the assessment proceedings ought to have been taken against the firm was not taken. This plea cannot be allowed to be taken in proceedings after remand. The objection was taken only before the Assessing Authority after remand. It is true that in the proceedings before the Assessing Authority the assessment relating to two Fasli years 1362 and 1363 which did not form part of the proceedings before the High Court was also taken up. But here again the returns were submitted by the two companies on the basis of their respective income. In the circumstances, it cannot be said that the tax authorities were in error in assessing a tax on the returns submitted by the two companies. The plea, therefore, that the

(1) 60 I.T.R. 95 (SC)

A assessment on the two companies, in the absence of proceedings against the firm of which the companies were partners, is not legal cannot be upheld.

The second contention that was raised before us was that it has B not been established that the lands were either assessed to land revenue in the United Provinces or were subject to local rate or cess assessed and collected by an officer of the Provincial Government. As the Single Judge of the High Court and the Division Bench of the High Court accepted the plea of the assessees that the assessment proceedings against them could not be sustained because of the failure of the C authorities to take proceedings against the firm, they considered it unnecessary to go into this question. It is unfortunate that this aspect of the matter was not considered either by the Single Judge or by the Division Bench of the High Court. We do not think it desirable to remit the case to the High Court for the determination of this question as the matter has been long pending. This plea has been elaborately D considered by the Assessing Authority which has pointed out that agreements with the Raza Sugar Co. Ltd. and the Buland Sugar Co. Ltd. show that it was stipulated that the Rampur State shall from time to time grant to the Company lease of agricultural land. It was further provided that such fair equitable land revenue as may be agreed between the Rampur State and the Company shall be payable in respect E of such land and shall be subject to revision by agreement every 15 years. The lease also provided that fair and equitable water rates and cesses shall be payable in respect of the land. In section 4(7) of the U.P. Land Revenue Act it is mentioned that the word "Mal Guzari" will be applicable where it has been duly assessed or has been deter- F mined by means of an auction or by any other means. On a consideration of all the relevant facts the Assessing Authority came to the conclusion that the agreement in favour of the companies provided for payment of land revenue and the word "rent" used in the leases has to be considered in relation to the original agreements and as such it is seen that the agreement provided for payment of land revenue. The G learned counsel appearing for the respondents was unable to challenge the correctness of the finding of the Assessing Authority. On a consideration of all the facts that were placed before the Assessing Authority, we do not see any reason for not accepting the conclusion arrived at by the Authority. This issue also we find against the assessee.

H

In the result we hold that the High Court was in error in coming to the conclusion that the assessment proceedings against the respon-

dent were unsustainable. We set aside the judgment and order of the High Court and restore the order of the Assessing Authority. A

N.V.K. *Appeal allowed.* B