

Uma Shanker Vs. the Collector and ors.

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Court : Allahabad

Decided On : Jan-31-1974

Reported in : 1974CriLJ731

Judge : Satish Chandra and ;N.D. Ojha, JJ.

Appeal No. : Civil Misc. Writ No. 7949 of 1972

Appellant : Uma Shanker

Respondent : The Collector and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : K.N. Saxena, Adv.

Judgement :

Satish Chandra, J.

1. On 15th February, 1968, the Sales Tax Officer, Jhansi, Passed two assessment orders against the firm Ram Sewak Pramod Kumar. The assessment orders stated that this firm commenced business on 12th November, 1965, in grains, etc. In paragraph 2 of both these assessment orders it has been stated that in response to the notice under Rule 41(5), Sri Ram sewak, Proprietor of the firm, appeared. The firm was assessed to a tax of Rs. 1, 500 for the year 1965-66 and to a tax of Rs. 5,327.65 for the other year. Finding that the tax had not been paid,

the Sales Tax Officer issued a recovery certificate to the Collector, Jhansi. The recovery certificate required the Collector to recover Rs. 1,500 for the year 1965-66 and Rs. 5,327.65 for the assessment year 1966-67 along with the penal interest at the rate of 18 per cent. The recovery certificate further mentioned Ram Sweak and Uma Shanker as partners of the firm Ram Sewak Pramod Kumar. In the recovery certificate there covering authority attempted to arrest the petitioner. The objected on the ground that he had no concern whatsoever with this firm and that he was never a partner in it, but did not receive any favourable response. He accordingly came to this court under Article 226 of the Constitution. His case is the he was not a partner in the firm M/s. Ram Sewak Pramod Kumar.

2. In the counter-affidavit it has been stressed that in the application for registration it was stated that Ram Sewak and Petition Uma Shankar were partners of the firm. But it has not been mentioned or stated that the petitioner ever signed that application for registration.

3. In the assessment order there is no finding as to who are the partners of this firm liable to pay the tax levled on it. From paragraph 2 of the assessment order it appears that Ram Sweak was treated as proprietor of this firm. From these facts it is clear that the assessing authority either treated Ram Sewak to be the proprietor of the firm, as being distinct from a partnership-firm. Even if this statement of fact is accepted to be correct, it is irrelevant in view of the fact the Sales Tax Officer did not make an enquiry or record any finding as to who were the partners of this firm. When the petitioner did not sign the application for registration it cannot be said that from the record of the assessment proceedings it appears that it was held there that the petitioner was a partner in this firm.

4. In Sant Bux Singh, jaunpur v. State of U.P. and Ors., 1973 U.P.T.C. 539, a Bench of this Court observed:

We may point out that an assessment order should contain not only the assessment of turnover and tax but should also indicate the person liable to pay the same. The department will be well-advised to amend the form of return so as to include therein a colum showing the status of the assessee, namely, as to whether the assessee is an individual, a firm, a Hindu undivided family, a company

o an association of persons, etc. When the assessee is a firm, the application for registration must be signed by all the partners. Whenever there is a doubt or dispute with regard to the status of an assessee, proper enquiry should be made after notice to all concerned and finding should be recorded. If this procedure is followed, the cases like the one before us will not arise.

5. In that case also the petitioner had alleged that he had no concern with the firm which was assessed to sales tax and that without any enquiry or evidence he should not have been proceeded against. The Bench quashed the recovery proceedings. The dictum of this decision is applicable to the present case. In our opinion, the Sales Tax Officer should have held an enquiry into the question as to who were the partners of the assessee-firm and thereafter should have amended the recovery certificate appropriately.

6. In the results, the petition succeeds and is allowed in part. The respondents are directed to stay proceedings for recovery as against the petitioner, pending disposal of the question whether the petitioner was a partner in the assessee-firm by the Sales Tax Officer, Jhansi. The petitioner would be entitled to costs.