

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5802 OF 2005

SHABINA ABRAHAM & ORS.

... APPELLANTS

VERSUS

COLLECTOR OF CENTRAL EXCISE
& CUSTOMS

...RESPONDENT

J U D G M E N T

R.F. Nariman, J.

1. *“Nothing is certain except death and taxes.”* Thus spake Benjamin Franklin in his letter of November 13, 1789 to Jean Baptiste Leroy. To tax the dead is a contradiction in terms. Tax laws are made by the living to tax the living. What survives the dead person is what is left behind in the form of such person’s property. This appeal raises questions as to whether the dead person’s property, in the form of his or her estate, can be taxed without the necessary machinery provisions in a tax statute. The precise question that arises in the present case is whether an assessment proceeding under the Central Excises and Salt

Act, 1944, can continue against the legal representatives/estate of a sole proprietor/manufacture after he is dead. The facts of the case are as follows.

2. One Shri George Varghese was the sole proprietor of Kerala Tyre and Rubber Company Limited. By October 1985, this proprietary concern had stopped manufacture and production of tread rubber. By a show cause notice dated 12.6.1987, for the period January 1983 to December 1985, it was alleged that the assessee had manufactured and cleared tread rubber from the factory premises by suppressing the fact of such production and removal with an intent to evade payment of excise duty. The provisions of Section 11A, as they then stood, of the Central Excises and Salt Act were invoked and duty amounting to Rs.74,35,242/- was sought to be recovered from the assessee together with imposition of penalty for clandestine removal.

3. On 14.3.1989, the said Shri George Varghese died. As a result of his death, a second show cause notice was issued on 18.10.1989 to his wife and four daughters asking them to make submissions with regard to the demand of duty made in the

show cause notice dated 12.6.1987. By their reply dated 25.10.1989, the said legal heirs of the deceased stated that none of them had any personal association with the deceased in his proprietary business and were not in a position to locate any business records. They submitted that the proceedings initiated against the deceased abated on his death in the absence of any provision in the Central Excises and Salt Act to continue assessment proceedings against a dead person in the hands of the legal representatives. The said show cause notice was, therefore, challenged as being without jurisdiction.

4. As the Central Excise Authorities posted the matter for hearing and refused to pass an order on the maintainability of the show cause notice alone, the legal heirs approached the High Court under Article 226 of the Constitution by filing a Writ Petition in January, 1990. The learned single Judge of the High Court quashed the proceedings against the legal heirs stating that the Central Excises and Salt Act did not contain any provisions for continuing assessment proceedings against a dead person. Against this, revenue went in appeal. The

Division Bench of the High Court of Kerala reversed the single Judge's judgment.

5. Shri Rajshekhar Rao, learned counsel appearing for the legal heirs made submissions before us with great clarity and persuasiveness. He submitted that a reading of Sections 2(f), (3), Section 4(3)(a), Section 11 and 11A as they stood at the relevant time would show that unlike the provisions of the Income Tax Act, there is no machinery provision in the Central Excises and Salt Act for continuing assessment proceedings against a dead individual. He stressed the fact that an assessee under the said Act means "the person" who is liable to pay the duty of excise under this Act and further stressed the fact that in cases of short levy, such duty can only be recovered from a person who is chargeable with the duty that has been short levied. He further invited our attention to the Central Excise Rules and Rules 2(3) and 7 in particular to buttress his submission that there is no machinery provision contained either in the Act or in the Rules to proceed against a dead person's legal heirs. He cited certain judgments before us which we will advert to later on in this judgment.

6. Shri A.K. Panda, learned senior advocate appearing on behalf of the revenue contended that a close reading of Section 11 of the Central Excises and Salt Act will indicate that sums are recoverable from an assessee by an attachment and sale of excisable goods belonging to such assessee and further that if the amount so recoverable falls short, it can be recovered from the person himself as an arrear of land revenue. Inasmuch as a dead man's property can be attached and sold and proceeded against, it is clear that the necessary machinery is contained in the Central Excises and Salt Act. His further submission is that Section 11A of the said Act is a machinery provision and, therefore, the rule to be applied is that that construction should be preferred which makes a machinery Section workable. He also referred us to the definition of "person" in Section 3(42) of the General Clauses Act to buttress his submission that a legal representative would be included within a "person" as so defined. He referred us to Section 6 of the said Act dealing with registration and argued that registration of a person makes him a legal entity liable to be assessed as such. His other submission is that the general

principle, namely, that a cause of action abates when a person who institutes a proceeding dies is not applicable in the present case and cited various judgments before us in support of the said principle. He also submitted that the position under the Income Tax Act would be entirely different as income tax is a tax leviable on a person whereas a duty of excise is leviable on manufacture of goods. He also cited a number of decisions which will be dealt with in the course of this judgment.

7. We have heard learned counsel for the parties. Before entering into a discussion on the merits of the case, it is necessary to set out the statutory provisions contained in the Central Excises and Salt Act at the relevant time, which are given below:-

2(f) "manufacture" includes any process incidental or ancillary to the completion of a manufactured product; and

- (i) In relation to tobacco includes the preparation of cigarettes, cigars, cheroots, biris, cigarette or pipe or hookah tobacco, chewing tobacco or snuff,
 - (ia) in relation to manufactured tobacco, includes the labeling or re-labelling of containers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer.

- (ii) In relation to salt, includes collection, removal, preparation, steeping, evaporation, boiling, or any one or more of these processes, the separation or purification of salt obtained in the manufacture of saltpeter, the separation of salt from earth or other substance so as to produce elementary salt, and the excavation or removal of natural saline deposits or efflorescence;
- (iii) In relation to patent or proprietary medicines, as defined in Item No. 14-E of the first Schedule and in relation to cosmetics and toilet preparations as defined in Item No.14-F of that Schedule, includes the conversion of powder into tablets or capsules, the labeling or relabeling of containers intended for consumers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumers;
- (iv) In relation to goods comprised to Item No.18-A of the First Schedule, includes sizing, beaming, warping, wrapping, winding or reeling, or any one or more of these processes, or the conversion of any form of the said goods into another form of such goods;
- And the word “manufacturer” shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account.”

3. Duties specified in the First Schedule to be levied. (1) There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India and a duty on

salt manufactured in, or imported by land into, any part of India as, and at the rates set forth in the First Schedule.

4. Valuation of excisable goods for purposes of charging of duty of excise. –

(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to value, such value shall, subject to the other provisions of this section be deemed to be –

(a) the normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for the sale.”

(4) For the purposes of this section, -

(a) “assessee” means the person who is liable to pay the duty of excise under this Act and includes his agent;”

11. Recovery of sums due to Government. - In respect of duty and any other sums of any kind payable to the Central Government under any of the provisions of this Act or of the rules made thereunder, the officer empowered by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963, to levy such duty or require the payment of such sums may deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control, or may recover the amount by attachment and sale of excisable goods belonging to such person; and if the amount payable is not so recovered he may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the Collector of the district in which such person

resides or conducts his business and the said Collector, on receipt of such certificate, shall proceed to recover from the said person the amount specified therein as if it were an arrear of land revenue.

11A. Recovery of duties not levied or not paid or short levied or short paid or erroneously refunded.-

(1) When any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, a Central Excise Officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, as if for the words "six months", the words "five years" were substituted."

Rule 2(3) and Rule 7 of the Central Excises Rules, 1944, read as under:

"2. Definitions.—In these rules, unless there is anything repugnant in the subject or context—

(3) "assessee" means any person who is liable for payment of duty assessed and also includes any producer or manufacturer of excisable goods or a

registered person of a private warehouse in which excisable goods are stored;

7. Recovery of duty.- Every person who produces, cures or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty or duties leviable on such goods, at such time and place and to such persons as may be designated, in, or under authority of these rules, whether the payment of such duty or duties is secured by bond or otherwise.

Provided that nothing contained in this rule shall apply to molasses produced in a khandsari sugar factory.

Provided further that in respect of goods falling under Chapter 62 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), manufactured on job-work, the provisions of these rules shall apply subject to the provisions of rule 7AA.”

8. On a reading of the aforesaid provisions, it is clear that Shri Rajshekhar Rao, learned counsel appearing on behalf of the appellants is correct – there is in fact no separate machinery provided by the Central Excises and Salt Act to proceed against a dead person when it comes to assessing him to tax under the Act.

9. The position under the Income Tax Act, 1922 was also the same until Section 24B was introduced by the Income Tax

(Second Amendment) Act of 1933. Prior to the introduction of the aforesaid Section, the Bombay High Court had occasion to deal with a similar question in **Commissioner of Income Tax, Bombay v. Ellis C. Reid**, A.I.R. 1931 Bombay 333. A Division Bench of the Bombay High Court noticed the definition of “assessee” contained in Section 2(2) of the 1922 Act which definition stated that “‘assessee’ means a person by whom income tax is payable”. The Division Bench went on to say that the words “or by whose estate” are conspicuous by their absence in the said definition. The Division Bench then went on to say that there appears to be nothing in the charging Section to suggest that a man who has once become liable to tax can avoid payment of tax by dying before such tax has been assessed or paid. However, the Act has to contain appropriate provisions for continuing an assessment and collecting tax from the estate of a deceased person which was found to be absent in the 1922 Act before it was amended by insertion of Section 24B. Having noticed various provisions of the said Act, the Division Bench went on to say:-

“These are, I think, the only material provisions, of the Act. It is to be noticed that there is throughout the Act no reference to the decease of a person on whom the tax has been originally charged, and it is very difficult to suppose the omission to have been unintentional. It must have been present to the mind of the legislature that whatever privileges the payment of Income-tax may confer, the privilege of immortality is not amongst them. Every person liable to pay tax must necessarily die and in practically every case, before the last installment has been collected, and the legislature has not chosen to make any provisions expressly dealing with assessment of, or recovering payment from, the estate of a deceased person. In order that the Government may succeed and the assessment made in this case may be held legal I think, one must do a certain amount of violence to the language of Section 23(4); I think one must either do a certain amount of violence - I should say a considerable amount of violence - to the language of Section 27, or else hold that the privilege conferred on a living person assessed under Section 23(4) of getting the assessment set aside is not to be enjoyed by the estate of a deceased person - a distinction for which I can see no logical reason. One must also construe Section 29 so as to give to the word "assessee" one meaning in one place and another meaning in another place.

In my judgment, in construing a taxing Act the Court is not justified in straining the language in order to hold a subject liable to tax. If the legislature intends to assess the estate of a deceased person to tax charged on the deceased in his lifetime, the legislature must provide proper machinery and not leave it to the Court to endeavor to extract the appropriate machinery out of the very unsuitable language of the statute. We are not concerned with the case which may arise of the death of a person

after assessment but before payment.” (at page 335)

10. Given the aforesaid decision of the Bombay High Court, the legislature was quick to amend the Income Tax Act, 1922 by inserting Section 24B which reads as follows:-

Section 24B : Tax of deceased person payable by representative-

(1) Where a person dies, 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, or any tax which would have been payable by him under this Act if he had not died.

(2) Where a person dies before the publication of the notice referred to in sub-section (1) of section 22 or before he is served with a notice under sub-section (2) of section 22 or section 34, as the case may be, his executor, administrator or other legal representative shall, on the serving of the notice under sub-section (2) of section 22 or under section 34, as the case may be, comply therewith, and the Income-tax Officer may proceed to assess the total income of the deceased person as if such executor, administrator or other legal representative were the assessee.

(3) Where a person dies, without having furnished a return which he has been required to furnish under the provisions of section 22, or having furnished a return which the Income-tax Officer has reason to believe to be incorrect or incomplete, the

Income-tax Officer may make an assessment of the total income of such person and determine the tax payable by him on the basis of such assessment, and for this purpose may, by the issue of the appropriate notice which would have had to be served upon the deceased person had he survived, require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which he might under the provisions of sections 22 and 23 have required from the deceased person.”

11. This judgment of the Bombay High Court has been affirmed in two judgments of this Court. In **Commissioner of Income Tax, Bombay City I v. Amarchand N. Shroff**, [1963] 48 I.T.R. 59, this Court referred with approval to **Ellis C. Reid** and held:-

“The correct position is that apart from section 24B no assessment can be made in respect of the income of a person after his death. See *Ellis C. Reid v. Commissioner of Income-tax*. In that case, and that was a case before section 24B was enacted, a person was served with a notice under section 22(2) of the Income-tax Act but no return was made within the period specified and he died. It was held that no assessment could be made under section 23(4) of the Act after his death. At p.106 it was observed:-

"It is to be noticed that there is throughout the Act no reference to the decease of a person on whom the tax has been originally charged, and it is very difficult to suppose the omission to have been unintentional. It must have been present in the

mind of the legislature that whatever privileges the payment of income-tax may confer, the privilege of immortality is not amongst them. Every person liable to pay tax must necessarily die and, in practically every case, before the last instalment has been collected, and the legislature has not chosen to make any provisions expressly dealing with assessment of, or recovering payment from the estate of a deceased person".

The individual assessee has ordinarily to be a living person and there can be no assessment on a dead person and the assessment is a charge in respect of the income of the previous year and not a charge in respect of the income of the year of assessment as measured by the income of the previous year. *Wallace Brothers & Co. Ltd. v Commissioner of Income-tax*. By section 24B the legal representatives have, by fiction of law, become assesseees as provided in that section but that fiction cannot be extended beyond the object for which it was enacted. As was observed by this Court in *Bengal Immunity Co. Ltd. v. State of Bihar* legal fictions are only for a definite purpose and they are limited to the purpose for which they are created and should not be extended beyond that legitimate field. In the present case the fiction is limited to the cases provided in the three sub sections of section 24B and cannot be extended further than the liability for the income received in the previous year." (at page 66)

12. Similarly, in **Commissioner of Income Tax, Bombay v. James Anderson**, [1964] 51 I.T.R. 345, this Court referred with approval to the judgment in **Ellis C. Reid's case** and further

held that even after Section 24B was enacted tax cannot be assessed on receipts on the footing that it is the personal income of the legal representative. This Court held:-

“It was then urged that apart from section 24B, the legal representatives of a deceased person also represent his estate in the matter of taxation of income and it is competent to the taxing authorities to assess them on income received on behalf of the estate. Counsel did not rely upon any specific provision of the Act in support of the contention, and merely asserted that the Act seeks to tax all assessable incomes, and income received by a legal representative of the estate of a deceased person should not be permitted to escape tax to the detriment of public revenue. But if the Legislature has failed to set up the procedure to assess such income, the Courts cannot supply it. The expression "assessee" in section 2(2) as substituted by the Indian Income Tax (Amendment) Act, (25 of 1953), with effect from April 1, 1952, means a person by whom income-tax or any other sum of money is payable under the Act, and includes every person in respect of whom any proceeding and this Act has been taken for the assessment of his income or of the loss sustained by him or of the amount of refund due to him. By section 3 where income-tax is chargeable for any year at any rate or rates prescribed by the Act of the Central Legislature, tax at that rate shall be charged for that year in accordance with and subject to the provisions of the 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. The charge to income-tax has therefore to be in

accordance with and subject to the provisions of the Act, and the Legislature has not provided that the income received by a legal representative which would, but for the death of the deceased, have been received by such deceased person, is to be regarded for the purpose of assessment as the personal income of the legal representative. To assess tax on such receipts on the footing that it is the personal income of the legal representative is to charge tax not in accordance with the provisions of the Act.” (at page 352)

13. In **Commissioner of Income Tax, Bombay v. Darabsha Nasarwanji Mehta**, A.I.R. 1935 Bombay 167, the Bombay High Court held that Section 24B of the 1922 Act was not retrospective and stated that as Avabai N. Mehta died before the said Act came into force and before she had made any return, her estate was not liable to be assessed to tax particular regard being had to the opening words of Section 24B which state “where a person dies” which are words in the present tense.

14. Pursuant to the 12th Law Commission Report, a new Income Tax Act was passed in 1961 which contained elaborate provisions for assessment of deceased persons after they die. The anomalies left by Section 24B of the 1922 Act, as pointed

out in the two Supreme Court judgments referred to above, were sought to be rectified in the new provisions contained in the 1961 Act. Sections 159 and 168 of the Act are apposite in this regard and read as follows:-

“159. (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.

(2) For the purpose of making an assessment (including an assessment, reassessment or recomputation under section 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of sub-section (1),—

(a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased;

(b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and

(c) all the provisions of this Act shall apply accordingly.

(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.

(4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of

the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

(5) The provisions of sub-section (2) of section 161, section 162, and section 167, shall, so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.

(6) The liability of a legal representative under this section shall, subject to the provisions of sub-section (4) and sub-section (5), be limited to the extent to which the estate is capable of meeting the liability.”

“168. (1) Subject as hereinafter provided, the income of the estate of a deceased person shall be chargeable to tax in the hands of the executor,—

(a) if there is only one executor, then, as if the executor were an individual; or

(b) if there are more executors than one, then, as if the executors were an association of persons;

and for the purposes of this Act, the executor shall be deemed to be resident or non-resident according as the deceased person was a resident or non-resident during the previous year in which his death took place.

(2) The assessment of an executor under this section shall be made separately from any assessment that may be made on him in respect of his own income.

(3) Separate assessments shall be made under this section on the total income of each completed previous year or part thereof as is included in the period from the date of the death to the date of complete distribution to the beneficiaries of the estate according to their several interests.

(4) In computing the total income of any previous year under this section, any income of the estate of that previous year distributed to, or applied to the benefit of, any specific legatee of the estate during that previous year shall be excluded; but the income so excluded shall be included in the total income of the previous year of such specific legatee.”

15. It will be noticed that under Section 159(2), for the purpose of making any assessment, any proceeding taken against the deceased before his death is by deeming fiction deemed to have been taken against his legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased. Further, the legal representative under sub-section (3) of 159 is again by deeming fiction deemed to be an assessee himself. However, the liability of such representative is limited only to the extent to which the estate left by the deceased is capable of meeting the tax liability subject to the contingencies mentioned in sub-sections (4) and (5) of Section 159.

16. Similarly, under Section 168, where the assessee has left a Will, the income of the estate of the deceased person

becomes chargeable in the hands of the executor of such will. This is made clear by Section 168.

17. It will be seen that the definition of “assessee” contained in Section 4(3)(a) of the Central Excises and Salt Act is similar to the definition of assessee contained in the Income Tax Act, 1922. Under that Act, as we have already seen, an assessee means “a person by whom income tax is payable.” Under the Central Excises and Salt Act, an assessee means “the person who is liable to pay the duty of excise under this Act”. The present tense being used, it is clear that the person referred to can only be a living person as was held in **Ellis C. Reid** (supra). Further, the only extension of the definition of “assessee” under the Central Excises and Salt Act is that it would also include an assessee’s agent, which has nothing to do with the facts of the present case. It is well settled that a “means and includes” definition is exhaustive in nature and that there is no scope to read anything further into the said definition.

18. As has been correctly pointed out by learned counsel for the appellants, the notice that is served under Section 11A is

only on the person chargeable with excise duty, which takes us back to “assessee” as defined.

19. Learned counsel for the revenue relied upon Section 11 of the Act, which, according to him, indicates that an attachment and sale of excisable goods can belong to a dead person and such attachment and sale can continue notwithstanding the death of such person. Apart from the fact that there is nothing about dead persons in Section 11, Section 11 is limited only to recovery of sums that are due to the Government. The very opening words in Section 11 show that duty and other sums must first be payable to the Central Government under the Act or the rules. If such sums are not “payable” then the provisions of the Section do not get attracted at all. We have seen that the Act contains no machinery provisions for proceeding against a dead person’s legal heirs, such as are contained in the Income Tax Act. Obviously, therefore, duty and other sums do not become “payable” without such machinery provisions. Further, Section 11 deals with modes of recovery of tax payable and does not deal with the subject matter at hand – namely machinery provisions for assessment in the hands of the estate

of a dead person and, therefore, does not have much bearing on the matter in issue in the present case. The argument, therefore, as to the insertion of the proviso to Section 11 by an Amendment Act of 2004 so as to provide that if a person from whom some recoveries are due transfers his business to another person, then the excisable goods in the possession of the transferee can also be attached and sold again leads us nowhere. In fact learned counsel for the appellants also relied on this proviso to argue that the Legislature's need to add the proviso shows that nothing can be read into the Central Excises and Salt Act by implication. As has been stated above, Section 11 deals with an entirely different situation and the addition of the proviso therein is not of much significance as far as the question we have to answer is concerned.

20. Learned counsel for the revenue, however, contended that the principles applied in the case of the Income Tax Act should not be applied to the Central Excises and Salt Act as the latter Act is a tax on manufacture of goods and not on persons. We are afraid this argument cannot be countenanced in view of this Court's judgment in **State of Punjab v. M/s Jullunder**

Vegetables Syndicate, [1966] 2 S.C.R. 457. In that judgment, the question before this Court was whether a dissolved firm could be assessed to sales tax under the East Punjab General Sales Tax Act, 1948, with respect to its pre-dissolution turnover. After analyzing the East Punjab General Sales Tax Act, this Court held:-

“The scheme of the Act is a simple one. A firm is a dealer; the said dealer is assessable to tax on its turnover, if its turnover exceeds the prescribed limit. It cannot do business while being liable to pay tax under the Act without getting itself registered and possessing a registration certificate. It is assessed to tax under Section 11 of the Act in the manner prescribed thereunder. If it discontinues its business, it shall within the specified time inform the prescribed authority accordingly. A dealer and its partners are jointly and severally responsible to pay the tax assessed on the dealer. But there is no provision expressly empowering the assessing authority to assess a dissolved firm in respect of its turnover before its dissolution. The question is whether such a power can be gathered by necessary implication from the other provisions of the Act.” (at page 461)

The Court went on to say:

“Though under the partnership law a firm is not a legal entity but only consists of individual partners for the time being, for tax law, income-tax as well as sales-tax, it is a legal entity. If that be so, on dissolution, the firm ceases to be a legal entity. Thereafter, on principle, unless there is a statutory

provision permitting the assessment of a dissolved firm, there is no longer any scope for assessing the firm which ceased to have a legal existence. As in the present case, admittedly, the firm was dissolved before the order of assessment was made, the said order was bad.” (at page 462)

The Court went on to consider various High Court decisions and ultimately concluded as follows:-

“Strong reliance was placed upon two judgments of this Court. This Court in C.A. Abraham v. Income-tax Officer, Kottayam, speaking through Shah, J., held that S.44 of the Income-tax Act set up a machinery for assessing the tax liability of firms which have discontinued their business. This was followed by this Court again in Commissioner of Income-tax, Madras v. S.V. Angidi Chettiar. These two decisions are of no help to the Revenue in the present case. Indeed, in a sense they are against it. The Income-tax Act contains an express provision for assessing a dissolved firm. Indeed, but for that provision no assessment could be made under that Act on dissolved firms.

For the foregoing reasons we hold that the High Court was right in holding that the assessment order on the dissolved firm could not be supported under the provisions of the Act. The High Court has given a correct answer to the question propounded for its decision.” (at page 464)

21. This judgment is a complete answer to the contention of learned counsel for the revenue inasmuch as on a parity of reasoning, sales tax is not a personal tax but a tax on the sale

of goods. Nevertheless, this Court held that in the absence of any machinery provisions to assess and collect sales tax from a deceased person – in that case it was a dissolved partnership firm – all proceedings against such deceased person/dissolved firm abate. The aforesaid judgment has been followed by this Court in **Khushi Ram Behari Lal & Co. v. Assessing Authority, Sangrur**, (1967) 19 STC 381 and in **Additional Tahsildar, Raipur v. Gendalal**, (1968) 21 STC 263.

22. Learned counsel for the revenue, however, strongly relied upon **M/s. Murarilal Mahabir Prasad and others v. Shri B.R. Vad and others**, (1975) 2 SCC 736, a case arising under the Bombay Sales Tax Act, 1953. Since this judgment has been relied upon as the sheet anchor of the revenue's case, it is important to deal with it in some detail.

23. The question that arose in the aforesaid case was whether a dissolved firm could be re-assessed to sales tax in respect of its pre-dissolution turnover. By a two to one (2:1), decision, this Court held that the Bombay Act contained the necessary provisions to re-assess such a dissolved firm in respect of its pre-dissolution turnover. The majority judgment

referred to the definition of “dealer” in the Bombay Act of 1953 and referred to this Court’s judgment in **State of Punjab v. M/s Jullunder Vegetables Syndicate** (supra). We find that the majority judgment of this Court relied heavily on the fact that dishonest persons may dissolve a firm in order to escape liability to assessment of taxes legitimately due from them but which have escaped assessment. In paragraph 19, the majority held:

“It is plausible that a distinction ought to be made between the death of an individual and the dissolution of a firm. Human beings, as assesseees, are not generally known to court death to evade taxes. Death, normally, is not volitional and it is understandable that on the death of an individual, his liability to be assessed to tax should come to an end unless the statute provides to the contrary. With firms it is different, because a firm which incurs during its existence a liability to pay sales-tax may, with a little ingenuity, evade its liability by the voluntary act of dissolution. The dissolution of a firm could therefore be viewed differently from the death of an individual and the partners could be denied the advantage of their own wrong. But we do not want to strike this new path because the Jullundur case (supra) and the two cases which follow it have likened the dissolution of a firm to the death of an individual. Let us therefore proceed to examine the other provisions of the 1953 Act.”

It then went on to quote Section 15(1) of the Bombay Sales Tax Act, 1953 and then arrived at this conclusion:

“22. Section 15(1) contains an important clause that action thereunder can be taken by the Collector after giving a notice to the assessee under Section 14(3) of the Act within the prescribed period. Once such a notice is given, the Collector gets the jurisdiction to assess or re-assess the amount of tax due from the dealer and all the provisions of the Act "shall apply accordingly as if the notice were a notice served under" Section 14(3). Section 14(3) speaks of the power of the Collector to assess the amount of tax due from the dealer after giving notice to him, if the Collector is not satisfied that the returns furnished are correct and complete. The jurisdiction to assess or reassess which is conferred by section 15(1) is thus equated with the original jurisdiction to assess the dealer under section 14. By this method, the continuity of the legal personality of the assessee is maintained in order to enable the assessment of turnover which has escaped assessment. It is no answer to a notice under section 15 that the partners having dissolved the firm, the assessment cannot be reopened. It puts a premium on one's credulity to accept that having created a special jurisdiction to assess or reassess an escaped turnover, the Legislature permitted that salutary jurisdiction to be defeated by the device of dissolution. The argument of the appellants really comes to this: suppress the turnover, evade the sales-tax, dissolve the firm and earn your freedom from taxation.”

The Court then went on to add:

“24. Section 15A confers on the Collector analogous powers to assess or re-assess a dealer for taxes due prior to November 21, 1956 when the States were reorganised, if either no assessment was made for the prior period or if any turnover had escaped assessment. This provision, like the one contained in Section 15, is of general application and makes no exception in favour of dissolved firm. Therefore, if a firm was not assessed prior to the re-organisation of States or if any part of its turnover had escaped assessment, it is competent to the Collector to assess or re-assess the firm notwithstanding its subsequent dissolution. This is the necessary implication of Section 15A. It must follow as a corollary that the power to rectify a mistake apparent from the record can be exercised by the Collector under Section 35 of the Act of 1953 even after the dissolution of an assessed firm, though on conditions specified in the section. The section contains a compelling implication that evident errors can be corrected no matter whether the firm is in existence or is dissolved. Dissolution is not a panacea for liability to pay sales-tax.”

It also added in paragraph 32:

“It is indisputable that the first appellant firm was liable to be charged to sales tax on its business turnover. The charging provisions are contained in Chapter III of the Act of 1953 and Chapter II of the Act of 1959. In this appeal, we have to construe the machinery provisions of those Acts. In accordance with the view taken in the cases cited above, the machinery sections ought to be construed so as to effectuate the charging sections. The construction which we have placed on the machinery provisions of the 1953 Act will give meaning and content to the charging sections, in the sense that our construction will effectuate the provision contained in the

charging sections. The resourcefulness and ingenuity which go into well-timed dissolution of firms ought not to be allowed to be used as convenient instruments of tax evasion. As observed by Lord Dunedin in *Whitney v. Commissioners of Inland Revenue*:

"A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission of clear direction makes that end unattainable."

Far from there being any crucial omission or a clear direction in the present case which would make the end unattainable, the various provisions to which we have drawn attention leave it in no doubt that a dissolved firm can be assessed on its pre-dissolution turnover."

24. It is clear that on a conjoint reading of these paragraphs this Court found that the machinery provisions contained in the Bombay Sales Tax Act, 1953, were sufficient to reassess a dissolved firm in respect of income that had escaped assessment before its dissolution. A distinction was drawn between an individual who dies and a firm that is dissolved as a device to evade tax. The Court laid great stress on the provision contained in Section 15(1) of the said Act by which the jurisdiction to assess or reassess under Section 15(1) is equated with the original jurisdiction to assess the dealer under

Section 14. By this method, the Court found the continuity of the legal personality of the assessee is maintained in order to enable the assessment of turnover which has escaped assessment. The crucial difference, therefore, between Section 15(1) of the Bombay Sales Tax Act, 1953 and Section 11A of the Central Excises and Salt Act is that Section 11A does not contain any such provision as is contained in Section 15(1) which equates the jurisdiction to assess or reassess with the original jurisdiction to assess the dealer in the very first place. Further, this Court also construed Section 19 of the Bombay Sales Tax Act, 1959 which would throw light on the earlier Bombay Sales Tax Act, 1953, as containing the necessary machinery provisions to assess dissolved firms in respect of escaped turnover pre-dissolution. Hence, this Court added:

“35. It is relevant, though we did not refer to this aspect while dealing with the provisions of the 1953 Act, that section 19(3) of the 1959 Act contains a clear indication that the legislature intended that a dissolved firm could be assessed under the 1953 Act also. Section 19(3) speaks of the liability of partners for the tax due from a dissolved firm and provides that they shall be jointly and severally liable to pay the tax due from the firm under the Act of 1959 or "under any earlier law", whether such tax has been assessed before or after dissolution.

Section 2(12) of the 1959 Act defines "earlier law" to mean, inter alia, the Bombay Sales Tax Act, 1953. Thus, one of the postulates of section 19(3) at any rate is that a dissolved firm could be assessed under the 1953 Act. Such a postulate accords with the principle that if the legislature provided for a charge of sales-tax, it could not have intended to render that charge ineffective by permitting the partners to dissolve the firm, an easy enough thing to do. Nothing, in fact, would be easier to evade a tax liability than to declare that the firm, admittedly liable to pay tax, has been dissolved. Section 19(3) of the 1959 Act not only makes clear what was necessarily implied in the 1953 Act, but it throws additional light on the true construction of the earlier law. But we thought it advisable to keep section 19(3) of the 1959 Act apart while construing the 1953 Act because it is the courts, not the legislature, who have to construe the laws of the land authoritatively. As said in Craies on Statute Law:

Except as a parliamentary exposition, subsequent Acts are not to be relied on as an aid to the construction of prior unambiguous Acts. (6th Ed., p. 146).

The limited use which may be made of the language of section 19(3) of the 1959 Act, though such a course is unnecessary, is for saying that it serves to throw some light on the Act of 1953, in case the argument is that the Act of 1953 is ambiguous.

36. Section 19(3) being quite clear and explicit, it is unnecessary to dwell on the other provisions of the Act of 1959 in order to show that a dissolved firm can be assessed under it. We may only point out that the Act of 1959 contains provisions similar to those in sections 15, 15A and 35 of the Act of 1953 on which we have dwelt at some length. Those

provisions can be found in sections 35, 35A and 62 of the Act.”

25. A reading of the ratio of the majority decision contained in **Murarilal’s case** (supra) would lead to the conclusion that the necessary machinery provisions were already contained in the Bombay Sales Tax Act, 1953 which were good enough to bring into the tax net persons who wished to evade taxes by the expedient of dissolving a partnership firm. The fact situation in the present case is entirely different. In the present case an individual proprietor has died through natural causes and it is nobody’s case that he has maneuvered his own death in order to evade excise duty. Interestingly, in the written submissions filed by revenue, revenue has argued as follows:-

“It is pertinent to mention that in the present case, Shri George Varghese (predecessor in interest of the appellants herein) was doing business in the name of manufacturing unit namely M/s. Kerala Tyre & Rubber Company and after the death of Shri George Varghese, his legal representatives (appellants herein) might have been in possession of the plant, machinery, stock etc. and continuing the same business, but might be in some other name in order to avoid the excise duty chargeable to the previous manufacturing unit.”

26. It is clear on a reading of the aforesaid paragraph that what revenue is asking us to do is to stretch the machinery provisions of the Central Excises and Salt Act, 1944 on the basis of surmises and conjectures. This we are afraid is not possible. Before leaving the judgment in **Murarilal's case** (supra), we wish to add that so far as partnership firms are concerned, the Income Tax Act contains a specific provision in Section 189(1) which introduces a fiction qua dissolved firms. It states that where a firm is dissolved, the Assessing Officer shall make an assessment of the total income of the firm as if no such dissolution had taken place and all the provisions of the Income Tax Act would apply to assessment of such dissolved firm. Interestingly enough, this provision is referred to only in the minority judgment in **M/s. Murarilal's case** (supra).

27. The argument that Section 11A of the Central Excises and Salt Act is a machinery provision which must be construed to make it workable can be met by stating that there is no charge to excise duty under the main charging provision of a dead person, which has been referred to while discussing Section

11A read with the definition of “assessee” earlier in this judgment.

28. Learned counsel for the revenue also relied upon the definition of a “person” under the General Clauses Act, 1897.

Section 3(42) of the said Act defines “person as under:-

“(42) “Person” shall include any company or association or body of individuals whether incorporated or not.”

It will be noticed that this definition does not take us any further as it does not include legal representatives of persons who are since deceased. Equally, Section 6 of the Central Excises Act, which prescribes a procedure for registration of certain persons who are engaged in the process of production or manufacture of any specified goods mentioned in the schedule to the said Act does not throw any light on the question at hand as it says nothing about how a dead person’s assessment is to continue after his death in respect of excise duty that may have escaped assessment. Also, the judgments cited on behalf of revenue, namely, **Yeshwantrao v. The Commissioner of Wealth Tax, Bangalore**, AIR 1967 SC 135 at pages 140, 141 para 18:

(1966) Suppl. SCR 419 at 429 A-B, **C.A. Abraham v. The Income-Tax Officer, Kottayam & Another**, AIR 1961 SC 609 at 612 para 6: (1961) 2 SCR 765 at page 771, **The State of Tamil Nadu v. M.K. Kandaswami & Others**, Air 1975 SC 1871 (para 26): (1975) 4 SCC 745 (para 26), **Commissioner of Sales Tax, Delhi & Others v. Shri Krishna Engineering Co. & Others**, (2005) 2 SCC 695, page 702, 703 paras 19 to 23, all enunciate principles dealing with tax evasion in the context of construing provisions which are designed to prevent tax evasion. The question at hand is very different – it only deals with whether the Central Excises and Salt Act contains the necessary provisions to continue assessment proceedings against a dead man in respect of excise duty payable by him after his death, which is a question which has no relation to the construction of provisions designed to prevent tax evasion.

29. Learned counsel for the revenue also cited **Girja Nandini Devi & Ors. v. Bijendra Narain Choudhury**, [1967] 1 S.C.R. 93 at paragraph 15, and **Shri Rameshwar Manjhi (deceased) Through his son Shri Lakhiram Manjhi v. Management of Sangramgarh Colliery & Ors.**, (1994) 1 SCC 292 at paragraph

12, in support of the general principle that an action begun in a court of law by a person does not cease with his death. The context of both decisions was very different. The first decision was in the context of proceedings in relation to partition of a joint family whereas the second was under the Industrial Disputes Act. Neither judgment has any direct bearing on the controversy before us.

30. It remains to consider a judgment cited by learned counsel for the appellants, namely, **Commissioner of Central Excise, Bangalore –III v. Dhiren Gandhi**, 2012 (281) E.L.T. 64 (Karnataka). This judgment is correct in its conclusion that while interpreting the provisions of the Central Excises and Salt Act, legal heirs who are not the persons chargeable to duty under the Act cannot be brought within the ambit of the Act by stretching its provisions. To the extent that this judgment holds what is set out hereinbelow, it is correct:-

“We do not find any provision in the Act which foists any such liability in the case of intestate succession. In other words, there is no provision which empowers the authorities to recover due from a deceased assessee by proceeding against his legal heirs. The way section 11 and 11A are worded, it is amply clear, the legislature has consciously kept

away the legal heirs from answering to liabilities under the Act.” (at page 69)

31. The impugned judgment in the present case has referred to **Ellis C. Reid's case** but has not extracted the real ratio contained therein. It then goes on to say that this is a case of short levy which has been noticed during the lifetime of the deceased and then goes on to state that equally therefore legal representatives of a manufacturer who had paid excess duty would not by the self-same reasoning be able to claim such excess amount paid by the deceased. Neither of these reasons are reasons which refer to any provision of law. Apart from this, the High Court went into morality and said that the moral principle of unlawful enrichment would also apply and since the law will not permit this, the Act needs to be interpreted accordingly. We wholly disapprove of the approach of the High Court. It flies in the face of first principle when it comes to taxing statutes. It is therefore necessary to reiterate the law as it stands. In **Partington v. A.G.**, (1869) LR 4 HL 100 at 122, Lord Cairns stated:

“If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable, construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute”.

32. In **Cape Brandy Syndicate v. IRC**, (1921) 1 KB 64 at 71, Rowlatt J. laid down:

“In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.”

33. This Court has, in a plethora of judgments, referred to the aforesaid principles. Suffice it to quote from one of such judgments of this Court in **Commissioner of Sales Tax Commissioner, Uttar Pradesh v. Modi Sugar Mills**, 1961 (2) SCR 189 at 198:-

“In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions

or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency.”

34. We are, therefore, of the view that this appeal must be allowed and the judgment of the High Court of Kerala is, accordingly set aside and that of the learned Single Judge restored.

.....J.
(A.K. Sikri)

.....J.
(R.F. Nariman)

New Delhi;
July 29, 2015.

JUDGMENT