

commences. An order of acquittal either under section 247 or under section 248, until set aside, holds good, and if, as stated, the Legislature intended that it should not have an effect like any other acquittal under the Code, it could well have explained this away in the explanation as has been pointed out. I am, therefore, of the opinion that the view in the second set of cases more conforms with the collective reading of the sections under Chapter 20 with section 403 of the Code of Criminal Procedure. Any other view seems to divide one form of acquittal from another form of acquittal. Such a division is, of course, possible if it is expressly provided for, but the word 'tried' as used in subsection (1) of section 403 not having been defined and no accepted definition of the word 'tried' having been stated, it would not be reasonable to interpret that word in a narrow sense so as to confine it in cases in which either the trial has actually reached the stage of close as held in one of the cases cited or at least must reach the stage of section 242 before the acquittal can be said to have resulted in a complaint 'tried' according to section 403. In this approach the reference made by the learned Additional Sessions Judge is accepted and the proceedings against the respondent are quashed.

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B.R.T.

CIVIL MISCELLANEOUS

Before P. D. Sharma, J.

M/S INTERNATIONAL COTTON (WASTE) CORPORATION,
BOMBAY,—*Petitioner.*

versus

THE ASSESSING AUTHORITY, BHATINDA, AND OTHERS,—
Respondents.

Civil Writ No. 364 of 1963.

*Punjab General Sales Tax Act (XLVI of 1948)—S. 5(2)(a) (vi)
—Exemption under—Firm having Head Office at one place and
Branch Office at another place—Branch Office purchasing goods and
Head Office exporting those goods to foreign countries—Whether
entitled to exemption.*

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Held, that, in law, a partnership has no existence distinct and independent of the members composing it. The name under which

a firm carries on business is in point of law a conventional name to have one entity and not two. If the Branch Office of the firm carries on business at two places under the same name, it will continue to have one entity and not two. If the Branch office of the firm purchases goods which are exported by the head office to foreign countries, the firm is entitled to the exemption from its gross turnover under section 5(2)(a)(vi) of the Punjab General Sales Tax Act.

Petition under Article 226 of the Constitution of India praying that a writ in the nature of Certiorari, Prohibition or any other appropriate writ, order or direction be issued quashing the order passed by respondent No. 1, dated the 1st February, 1963.

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

M. R. AGNIHOTRI, ADVOCATE FOR THE ADVOCATE-GENERAL, for the Respondents.

ORDER

Sharma, J.

SHARMA, J.—The facts giving rise to the present Civil Writ petition under Article 226 of the Constitution of India are as follows:—

Messrs International Cotton (Waste) Corporation is a partnership firm (hereinafter referred to as the firm), with its Head Office at Bombay and Branch Office at Bhatinda. Their main business is to buy cotton and cotton waste and to export the same outside India. The main area of their operation is in the Punjab and Rajasthan. The firm got registered under the provisions of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the Act), at Bhatinda. The registration number is BAT. III. 6000. The assessment for the year commencing from 7th December, 1961, and ending on 31st March, 1962, came up for consideration before the Assessing Authority, Bhatinda. The petitioner firm claimed before the Assessing Authority that during the above period cotton had been purchased for about four lacs for the purpose of export from India to other countries and also furnished evidence in support of this contention. They prayed that the amount spent on the purchase of cotton might be deducted from their gross turnover under section 5(2) (a) (vi) of the Act, but the same was declined by the Assessing Authority and they were directed to pay Rs. 7,937 as the sales-tax, for this period,—*vide* assessment order, dated 1st February, 1963,

(copy annexure A). The petitioners in this petition have prayed for quashing of the said assessment on the ground that the Branch Office, Bhatinda, was not a separate legal entity from the Head Office Bombay and that the registration of the firm at Bhatinda was merely a procedural matter and did not change the legal entity of the main buying firm. It was further pleaded that since the cotton was purchased for export outside India and was in fact exported outside India, the mere fact that the Branch Office Bhatinda made the purchases and the Head Office Bombay exported it outside India did not matter at all. In the circumstances the exemption claimed should have been allowed in terms of section 5(2) (a) (vi) of the Act.

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The Assessing Authority while assessing the firm separated the item of baled cotton into two parts, one cotton pure and second part packing material comprised of hessian cloth. The tax on the hessian cloth has been levied at the rate of 5 per cent. and on cotton at the rate of 2 per cent. The petitioners alleged that the hessian cloth should also have been taxed at the same rate as the cotton because according to section 14 of the Central Sales Tax Act, 1956, tax could not be more than 2 per cent on the baled cotton as a whole. The order of the Assessing Authority is, therefore, alleged to have contravened the provisions of the Central Sales Tax Act and that being so, was void in law.

The Assessing Authority is said to have proceeded to levy the tax in the manner it did on the basis of the instructions received from the Excise and Taxation Commissioner, Punjab. The firm, therefore, thought that no useful purpose could have been served by filing an appeal or revision against the order of the Assessing Authority and so instituted the present petition straightaway.

The Assessing Authority, Bhatinda, the Excise and Taxation Commissioner, Punjab, and the State of Punjab, respondents in their written statement admitted that Messrs International Cotton (Waste) Corporation, Bhatinda, stood registered under the Punjab General Sales Tax Act, 1948, and added that the Branch Office at Bhatinda was a separate entity and local agent of the firm was the dealer for all purposes under the Act and not the Head Office at Bombay. Further, the purchases and sales of cotton on the strength of the registration certificate

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were to be made by the Branch Office at Bhatinda and not by the Bombay Office. They further pleaded that the Bhatinda Office of the firm transferred the cotton purchased in the territory of Punjab to their Head Office at Bombay which subsequently sold the same in the course of export out of the territory of India. According to them only the sales made by the Branch Office in the State of Punjab were to be taken into account while making the assessment because the same was a dealer under the Act in respect of the business done by this Branch only and not of any other Branch outside the State. As regards the levying of tax on the hessian cloth at a higher rate, it was contended that cotton only was liable to tax at the rate of 2 per cent and not the packing material. They finally urged that the writ petition was incompetent because the petitioners had failed to avail of the remedies provided under sections 20 and 21 of the Act.

There is no manner of doubt that in law, a partnership has no existence distinct and independent of the members composing it. The name under which a firm carries on business is in point of law a conventional name applicable to the persons, who are members of the firm. If any authority for this proposition is necessary, reference may be made to the case of *Commissioner of Income-tax, West Bengal v. A. W. Figgies and Company and others* (1), where Supreme Court observed 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.”

The Assessing Authority in this case for reasons so obvious did not properly appreciate that the Head Office and Branch Office of the firm were one and the same entity. If a person carries on business at two places under the same name he will continue to have one entity and not two simply because he has business centres at two places. The respondents admitted, as is also clear from the impugned assessment order (copy annexure A), that the cotton purchased by the Bhatinda Branch was exported by the Head Office Bombay to foreign countries. The Bhatinda Branch Office can be said to have purchased the cotton in

(1) (1953) 24 I.T.R. 405.

the course of export out of the territory of India. It was, therefore, not proper for the Assessing Authority to hold that since the purchases of cotton were made by the Branch Office, Bhatinda and the cotton was then transferred to the Head Office at Bombay, which in turn exported it outside India, the exemption claimed by the petitioners under section 5(2) (a) (vi) of the Act, could not be granted. In this view of the matter, the Assessing Authority should have allowed the exemption claimed by the petitioners from their gross turn-over under section 5(2) (a) (vi) of the Act and the omission to do so invalidated the impugned order.

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The respondents' objection that the writ petition did not lie because the petitioners had failed to avail of the remedies open to them by way of appeal and revision under sections 20 and 21 of the Act can not prevail. The petitioners alleged in paragraph 7 of the writ petition that the Assessing Authority had disallowed their claim in accordance with the instructions received by him from the Excise and Taxation Commissioner. This has not been controverted by the respondents and so has to be accepted as correct. In these circumstances the right of appeal had been reduced to a mere formality, if not rendered farcical. The petitioners would not have gained anything substantial by preferring an appeal. Their failure to file the appeal or revision is no bar to the filing of the present writ petition. This finds support from the decision in case *Messrs New Rajasthan Mineral Syndicate, Nizampur v. The State of Punjab and another* (2).

For the reasons given above, the civil writ is allowed with costs and the assessment order, dated 1st February, 1963, (copy annexure A), is quashed.

K.S.K.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan and S. K. Kapur, JJ.

BACHAN SINGH,—*Petitioner.*

versus

ELECTION COMMISSION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No. 477-D of 1964.

*Representation of the People Act (XLIII) of 1951—S. 88—
Place of trial of an election petition—Whether can be fixed outside
the State in which the election took place—Petition pending in*

1965

February, 9th.