(2014) 08 KAR CK 0174

In the Karnataka High Court

Case No : Writ Petition Nos. 7212-7213 and 7880/2014 (T-IT)

A.S. Chinnaswamy Raju APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 21-08-2014

Acts Referred:
Income Tax Act, 1961 — Section 179

Citation : (2015) ILR 1050

Hon'ble Judges : H.G. Ramesh, J

Bench : Single Bench

Advocate : S.S. Naganand, Sr. Counsel for S. Sriranga, Advocate for the Appellant; K.V. Aravind, Sr. Standing Counsel, Advocate for the Respondent

Judgement

H.G. Ramesh, J.—These writ petitions are directed against the two orders dtd. 14.11.2013 passed by respondent No. 3. By the impugned orders, the petitioners, who are directors of a Private Company by name Sunray Computers (P) Ltd. are directed to pay the tax due relating to the said company.

2. I have heard Sri S.S. Naganand, learned Senior Counsel appearing for the petitioners and Sri K.V. Aravind, learned Standing Counsel appearing for the respondents and perused the impugned orders.

3. The sole contention urged by the learned Senior Counsel is that the impugned orders are contrary to S. 179 of the Income Tax Act, 1961 (''the Act'') inasmuch as no finding is recorded by respondent No. 3 that the tax due cannot be recovered from the company. In the absence of such a finding, he contended that the impugned orders are liable to be set aside. However, Sri K.V. Aravind, learned Standing Counsel supported the impugned orders.

4. To examine the contention urged, it is relevant to refer to S. 179 of the Act which reads as follows:

"179.(1) Notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), where any tax due from a private company in respect of any income of any previous year or from any other company in respect of any income of any previous year during which such other company was a private company cannot be recovered, then, every person who was a director of the private company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

(2) Where a private company is converted into a public company and the tax assessed in respect of any income of any previous year during which such company was a private company cannot be recovered, then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax due in respect of any income of such private company assessable for any assessment year commencing before the 1st day of April, 1962.

Explanation.--For the purposes of this section, the expression "tax due" includes penalty, interest or any other sum payable under the Act."

(Emphasis supplied)

5. S. 179 of the Act imposes a personal liability on the Directors of a Private Company in respect of the Tax due from the company in the circumstances referred to therein. As could be seen from the impugned orders, nowhere respondent No. 3 has referred to any of the proceedings initiated against the company to show that it is not possible to recover the tax due from the company. In the absence of such a finding, no liability could be fixed on the Directors under S. 179 of the Act to pay the tax due. Hence, the impugned orders and the consequent demand notices are liable to be set aside and are accordingly set aside. The matter is remitted to respondent No. 3 for reconsideration in accordance with law after affording an opportunity of hearing to the petitioners. All contentions of both the parties are kept open.

Petitions disposed of.

