
(1971) 10 AP CK 0009

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 4568 and 4784 of 1970

G. Venkatasubbaiah

APPELLANT

Vs

Tax Recovery Officer and Another

RESPONDENT

Date of Decision : 21-10-1971

Acts Referred:

COMPANIES ACT, 1956 — Section 560
Income Tax Act, 1961 — Section 179, 297

Citation : (1973) 1 AnWR 82 : (1974) 44 CompCas 294 : (1974) 94 ITR 375

Hon'ble Judges : Vaidya, J;Sriramulu, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Vaidya, J.—These two writ petitions are by the directors of Andhra Automobiles (Private) Ltd., Vijayawada, a company, registered under the Indian Companies Act in the year 1946. The 1st petitioner in Writ Petition No. 4568 of 1970 died and his son has been brought on record. Writ Petition No. M.P. 5544/71 to that effect has been filed and ordered to-day.

2. The case of the petitioners is that the company ceased to carry on any business after 1955. On 26th June, 1955, the Registrar of Companies, Hyderabad, issued a notification u/s 560(5) of the Companies Act, 1956, striking off the company from the register. This company had been assessed to Income Tax under the Income Tax Act, 1922, for the assessment years 1953-54 to 1957-58 and a sum of Rs. 31,172.24 was found due by the company towards Income Tax. On March 5, 1970, the Income Tax Officer, Ward-I, Vijayawada, issued notices to the petitioners stating that they were personally liable to pay the tax due by the company u/s 179 of the Income Tax Act, 1961. It is these notices which are sought to be quashed in these writ petitions.

3. Three contentions were raised by the petitioners in these writ petitions: (1) Section 179 of the Income Tax Act, 1961, is not applicable as this company never went into liquidation and was not wound up after the commencement of the

1961 Act. (2) The petitioners had a vested right under the Income Tax Act, 1922, inasmuch as there was no personal liability cast on them. The provision in Section 179 of the Income Tax Act, 1961, cannot take away the right vested in them. Section 179, therefore, is not applicable. (3) The provisions of the Income Tax Act, 1922, are applicable to assessments completed prior to the enforcement of the 1961 Act. The 1961 Act has not been given retrospective effect. Section 297(2)(e) of the 1961 Act saves the provisions of Section 23A of the 1922 Act for the assessment year ending March 31, 1962, and earlier years. The repeal applied only to proceedings prior to March 31, 1962. Section 179 therefore, has no retrospective effect and is not attracted.

4. We will now take up for consideration the first contention raised by the learned counsel for the petitioners. Section 179 of the 1961 Act reads:

" Notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), when any private company is wound up after the commencement of this Act, and any tax assessed on the company, whether before or in the course of or after its liquidation, in respect of any income of any previous year 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."

5. The basic condition that is necessary for the application of the aforesaid Section 179 is that a private company should have been wound up after the commencement of the 1961 Act. It is only when this condition is fulfilled that the other provisions of Section 179 are attracted. The question for consideration, therefore, is whether Section 179 is applicable to a case where the company has not been wound up at all and there is nothing to show that it was wound up after the commencement of this Act. The petitioners in ground No. 5 taken in W. P. No. 4784 of 1970 have specifically stated that:

"The provisions of Section 179 of the Income Tax Act of 1961 would apply only to companies in liquidation but not to the companies which were struck off the register u/s 560(5) of the Companies Act. Since the company was not wound up, the provisions of Section 179 of the Income Tax Act, 1961, are not applicable to the instant case. "

6. Thus a specific plea has been taken that the provisions of Section 179 of the Income Tax Act, 1961, are not attracted as the company was not wound up. The Income Tax Officer, in his counter, has not denied the averment made by the petitioners in the affidavit that the company was not wound up. On the other hand, a reading of paragraph 5 of the counter shows that the company had become defunct. As there is no specific assertion by the department that the company was wound up after the commencement of the 1961 Act, we have to proceed on the footing that the company was not wound up after the

commencement of the 1961 Act.

7. The question for consideration then is what is the meaning to be attributed to the expression "wound up" occurring in Section 179 of the 1961 Act. The argument of the learned counsel for the petitioners is that the expression "wound up" has to be given the same meaning as has been given in the Companies Act. It cannot be given a wider meaning so as to take in even a company which has become defunct and struck off by the Registrar of Companies u/s 560(5) of the Companies Act, 1956, without its being wound up. The learned counsel for the department urges that the expression "wound up" has to be given a liberal meaning and in the context it only means a company which has ceased to function or which has been dissolved.

8. It is to be remembered that Section 179 has been introduced to create a liability which did not exist under the 1922 Act; and, further, that section creates a liability which is contrary to the provisions of the Companies Act. It is very clear from the section itself as it starts with saying "notwithstanding anything contained in the Companies Act, 1956". As the section creates a new liability and is in a taxing statute, it has to be strictly interpreted unless a liberal interpretation has to be given by way of necessary intendment. On an examination of Section 179 of the 1961 Act, it is found that not only the expression "wound up" has been used in the said section but also while determining the taxes which cannot be recovered it has been specifically stated that those taxes may have been assessed on the company before or in the course of or after its liquidation. The material date, therefore, is the date of the company's liquidation. If the expression "wound up" and the word "liquidation" found in Section 179 are read together, the only meaning that can be attributed to the expression "wound up" is the meaning which is given to that expression in the Indian Companies Act. The provisions of Section 179 are, therefore, limited only to those private companies against which proceedings for winding-up have been taken and have been wound up after the commencement of the 1961 Act. The expression "wound up" cannot be liberally interpreted so as to include also companies dissolved as having become defunct without being wound up. It cannot be said that Parliament, when it enacted Section 179, was not aware of the meaning to be given to the expression "wound up". If it was intended that Section 179 should apply also to companies which have been struck off u/s 560(5) of the Indian Companies Act, without being wound up, nothing precluded Parliament from saying so in so many words in Section 179. A reading of the whole of Section 179 clearly shows that it is applicable only to cases where proceedings for winding-up are taken under the Indian Companies Act and the company is wound up under the said Act after the commencement of the Income Tax Act, 1961. As already pointed out by us, there is nothing to show that the winding-up of Andhra Automobiles was at any time taken up, and that it was wound up after the commencement of the 1961 Act. We have, therefore, no hesitation in holding that the provisions of Section 179 are not attracted to the case before us.

9. Having reached the conclusion that the provisions of Section 179 of the 1961 Act are not attracted, we do not find it necessary to discuss the other question raised before us by the learned counsel for the petitioners.

10. In the result the writ petitions are allowed with costs. Advocate's fee Rs. 150 (Rupees one hundred and fifty only) one set in W. P. No. 4784/70.