(1999) 12 CAL CK 0014

In the Calcutta High Court

Case No : Writ Petition No. T of 1957 of 1999

Gurudas Hazra APPELLANT

Vs

P.K. Chowdhury and Others RESPONDENT

Date of Decision : 01-12-1999

Acts Referred:

Income Tax Act, 1961 — Section 179
Income Tax Rules, 1962 — Rule 4

Citation : (2002) 109 CompCas 530

Hon'ble Judges : Ajoy Nath Ray, J

Bench : Single Bench

Advocate : Mitter, for the Appellant;

Final Decision : Dismissed

Judgement

Ajoy Nath Ray, J.—The writ petitioner challenges a notice dated October 12, 1999, by which the Tax Recovery Officer from Calcutta requested the State Bank of India, Bela Industrial Estate Branch, Muzaffarpur, to freeze the bank account maintained there by M/s. H. Guru Industries.

2. According to the writ petitioner, who is 73 years old, that is his proprietorship business, is completely separate from H. Guru Instruments Private Limited, of which, however, he was a managing director at the material time.

3. Mr. Mitter submits for the writ petitioner that even if there are dues of or in regard to Income Tax of the company, the stoppage of the bank account of the writ petitioner himself is illegal.

4. According to him, for unpaid tax debts of the company, such attachment has the effect of prohibiting the carrying on of business by the writ petitioner himself altogether for all times in future unless the company''s debts are met.

5. On behalf of the Revenue, affidavits are prayed for, interim order is opposed and reliance is placed on Section 179 of the Income Tax Act. That Section is as

follows :

"179. Liability of directors of private company in liquidation.--(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 first day of April, 1962."

6. The marginal note or heading of the Section is misleading, because the body applies now to companies, whether those are in liquidation or not.

7. Reliance is also placed on Rule 4 contained in the Second Schedule to the Act, which provides for the mode of recovery. That rule is as follows :

"4. Mode of recovery.--If the amount mentioned in the notice is not paid within the time specified therein or within such further time as the Tax Recovery Officer may grant in his discretion, the Tax Recovery Officer shall proceed to realise the amount by one or more of the following modes :

(a) by attachment and sale of the defaulter''s movable property ;

(b) by attachment and sale of the defaulter''s immovable property ;

(c) by arrest of the defaulter and his detention in prison ;

(d) by appointing a receiver for the management of the defaulter''s movable and immovable properties."

8. From the Section it is clear that if at the material time a person was a director of the defaulting company, his duty before the Revenue is very heavy, he is to prove that the non-recovery of the company''s tax debts cannot be attributed to (i) any gross neglect, (ii) misfeasance or (iii) breach of duty on his part.

9. The third item, viz., breach of duty is a very wide expression.

10. Mr. Mitter submitted that there has been no determination of the director writ petitioner''s liability in regard to the company''s tax debts u/s 179 yet. Section 179 does not specifically provide for any determination or any hearing. But

hearing and determination are to be read into the section, according to the principles of natural justice and the law in this regard is well-settled.

11. But such hearing has to be asked for by the director who seeks relief from liability of the company debts. He is to take the initiative in obtaining a hearing and he is to produce all documents, papers and records to show that he never broke any duty. It is a heavy burden.

12. If we look at the facts, we find that the director has addressed letters to the Tax Recovery Officer and the Chairman of the Central Board of Direct Taxes, but details and particulars over several years during which he is supposed to be proving punctilious observance of his duties as a director are notably absent. The real question is whether he caused the company''s funds to be siphoned off during these years. There is no material on record before me whereby it can be said that this question should, in all like hood be answered in favour of the writ petitioner. The writ petition is 12 pages long and it contains a few letters and some statement of accounts of the outstandings of the company.

13. I do not wish to be uncharitable and, therefore, I merely brand the writ petition as impossibly sketchy.

14. No attempt has been made to take the initiative and obtain a hearing before the Tax Recovery Officer or for forwarding the relevant documents to him.

15. Mr. Mitter submitted that in any event Schedule 2 would not apply to a company''s director, regarding attachment of his personal account because he is not the assessee in default which is the company itself. Mr. Mitter drew my attention to the definition rule, being Rule 1; but that rule starts by clarifying that the definitions are as given unless the context otherwise requires.

16. Clearly to give Section 179 meaning and effect attachment powers as against the company must be equally available against directors at the material time.

17. Because of the advanced age of the writ petitioner the court is bound to have sympathy with him but that sympathy cannot extend to absolving him when he does not deserve to be absolved.

18. Order and observations, however worded shall not prejudice the case of the writ petitioner, if he approaches the Tax Recovery Officer for satisfying him that there was no default of duty on the part of the writ petitioner. Liberty in that regard is not in any manner curtailed.

19. The respondents'' prayer for affidavits is turned down. Allegations in the petition, however, cannot be taken as admitted or any submissions conceded on their part.

20. This writ application is summarily rejected.