
(2024) 11 RAJ CK 1294

In the Rajasthan High Court, Jodhpur Bench

Case No : Civil Writ Petition No. 18378 Of 2017, Connected with Civil Writ
Petition No. 18092 Of 2017, No. 18542 Of 2017, No. 19145 Of 2017

Akhilesh Kumar Bhatra

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 20-11-2024

Acts Referred:

Citation : (2024) 11 RAJ CK 1294

Hon'ble Judges : Arun Monga, J

Bench : Division Bench

Advocate : V.D. Vaishnav, Priyanshu Gopa, Vinit Sanadhya

Final Decision : Disposed of

Judgement

Avneesh Jhingan, J

1. These writ petitions are decided by this order as the facts and issue involved are similar. The facts are being taken from D.B. Civil Writ Petition No.18092-/2017.

2. The issue involved is:- whether recovery of the outstanding dues under the Income Tax Act, 1961 (for short 'the Act') of Public Limited Company can be recovered from the Director by invoking Section 179 of the Act.

3. The relevant facts are that the petitioner was a Non-Executive Director of M/s. Pinky Auto Finance Limited later known as M/s. Golden Future Capital Limited (hereafter 'the Company'). For Assessment Year ('AY') 2007-08 the demand of tax and penalty against the Company was created by Assessing Officer. On failure to recover the demand from the company, notice dated 22.08.2017 under Section 179 of the Act was issued to the petitioner being the Director of the Company. The reply dated 30.08.2017 was filed. The order dated 22.09.2017 under Section 179 of the Act was passed holding the petitioner liable to pay the outstanding demand alongwith interest. Hence, the present writ petition.

4. Learned counsel for the petitioner submits that Section 179 of the Act can only be invoked in case of Private Limited Company.

5. Learned counsel for the respondent defends the impugned order and submits that the petitioner was the Director and is liable to clear the outstanding dues.

6. Before proceeding further, we may quote Section 179 of the Act as under:-

“179. Liability of directors of private company

(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 77-78[, fees] or any other sum payable under the Act.”

7. Section 179 of the Act empowers the Income Tax Authorities to recover dues of a private company from the person who was Director during the relevant previous year. Latter part of Section 179(1) casts a negative onus on the Director to prove that non-recovery was not attributable to gross neglect, misfeasance or breach of duty on part of Director in relation to the affairs of the Company.

8. In response to the show cause notice, it was specifically pleaded that since 1997 the Company was incorporated as Public Limited Company and is registered with the Registrar of Companies, Rajasthan, bearing registration number U65923RJ1997PLC013870.

9. While passing the order under Section 179 of the Act, the fact that Company is a Public Limited Company was not refuted. Similar is position in the reply filed to the writ petition. There is no dispute that Company was not a private company.

10. The Revenue Authorities failed to lay down the factual foundation in the notice and order passed under Section 179 of the Act to dispute the status of the Company being the public limited company.

11. The contention of counsel for the petitioner that no proceedings can be initiated under Section 179 of the Act against the petitioner being a Director of Public Limited Company, deserves acceptance. The Section does not apply to the public limited company.

12. The Supreme Court in *M. Rajamoni Amma Vs. Deputy Commissioner of Income Tax (Assessment)* reported in [(1992) 195 ITR 873 SC] held that:-

"It clearly shows that the company had become a public limited company by virtue of Section 43-A of the Companies Act w.e.f. 1st October, 1975. As already mentioned, the arrears sought to be recovered from the appellants relate to the assessment years 1977-78 to 1982-83. Obviously, the Company being a public limited company, proceedings against the directors for recovery of the tax due from the company cannot be taken, and certainly not proceeded with, under Sec 179 of the Income Tax Act, 1961. We need hardly say Article 265 of the Constitution clearly prohibits any attempt to recover taxes except under the authority of law. It is, therefore, clear that further proceedings against the appellants for recovery of the tax due from the company have to be stayed."

The Gujarat High Court in *Radhey Mohan Sharma Vs. Deputy Commissioner of Income Tax (OSD)* reported in [(2014)2 ITR-OL 568] held that:-

"8. Section 179 of the Act chooses to impose a vicarious liability on the director of a private company making his liability co-extensive with the company in respect of arrears of tax of assessment year when he functions as a director. However, the income-tax authority in relation to the liability of the company shall need to insist upon its recovery and when the company is unable to discharge such liability and the attempts of the tax authorities to realise such tax dues do not materialise, the director needs to be issued the notice of recovery. These provisions are made in respect of private companies and sub-section (2) of section 179 of the Act makes it abundantly clear that in the case of a public company or public limited company, the very provision is not applicable. As noted above, in the absence of any contrary facts which either require this court to pierce the corporate veil or anything to indicate that the company is other than a public company, the invocation of section 179 of the Act itself shall have to be held bad. It would be, of course, the onus of the petitioner to establish that non-recovery of the amount of tax due to the company could not be attributed to any gross negligence, misfeasance or breach of duty on the part of the petitioner in relation to the affairs of the private company, but, the very action against the petitioner under section 179 of the Act, when would not lie, the petition, therefore, deserves to be succeeded."

The Madras High Court in *R.Rajagopalan Vs. Deputy Commissioner of Income Tax* reported in [(2021)18 ITR- OL 728] held that:-

"12. This Court is informed without any disputation or disagreement that there is no other provision under IT Act akin to Section 179 of IT Act i.e., recovery tax arrears due to Company in the hands of Directors qua Public Limited Company.

In the light of the language in which Section 179 of IT Act is couched, it follows as a indisputable sequitur that impugned proceedings are barred and they are liable to be set aside as the same has been made against Directors of a Public Limited Company, when Section 179 of IT Act applies only to Private Limited Companies and there is no other provision qua Public Limited Companies akin to Section 179 of IT Act. "

13. In view of the above, the writ petitions are allowed. The impugned notices and orders are quashed.

14. The Revenue Authorities shall be at liberty to proceed against the Company for recovery of the dues.