
(2012) 09 AHC CK 0066

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition (Tax) No's. 1464 and 1499 of 2005

Jagbir Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-09-2012

Acts Referred:

Central Sales Tax Act, 1956 — Section 7

Citation : (2013) 1 ADJ 794

Hon'ble Judges : Sunil Ambwani, J; Aditya Nath Mittal, J

Bench : Division Bench

Advocate : M. Manglik, Santosh Misra and Kunwar Saksena, for the Appellant;

Final Decision : Dismissed

Judgement

1. In these writ petitions the petitioners have prayed for quashing the recoveries issued by the Assistant Collector, Grade-I, Saraswati Vihar, Delhi, against them on the directions of the Deputy Commissioner (Assessment) Trade Tax-8, Ghaziabad for recovering trade tax dues of Rs. 2,95,67,763/- including interest vide recovery certificate dated 4.4.2000 and Rs. 14,79,90,000/-; and Rs. 1,50,000/- vide recovery notice dated 14.7.2005 annexed to the writ petitions. We have heard Shri Kunwar Saksena, learned counsel appearing for the petitioners. Shri S.P. Kesarwani, Additional Chief Standing Counsel appears for the State respondents.

2. Brief facts giving rise to the writ petitions are that the petitioners were directors in M/s. Maharashtra Steels Limited-a Public Limited Company, South of G.T. Road, Ghaziabad, engaged in manufacture of Iron and Steel. The unit suffered losses on which it was declared as "sick industrial unit" by the Board of Industrial Finance and Reconstructing, under the Sick Industrial Undertakings (Special Provisions) Act, 1985. A revival scheme was prepared in which the industrial unit was proposed to be run on the fresh infusion of finances to be provided by the Industrial Finance Corporation of India (IFCI).

3. Shri I.S. Gambhir, the Director of the company and Shri A.S. Solanki, the Managing Director applied for registration u/s 8-A of U.P. Trade Tax Act, 1948 as well as Section 7 of the Central Sales Tax Act, 1956. In the statement given on oath by the representative of Shri I.S. Gambhir on 20.4.1991, it was stated that the company was under BIFR of which Shri I.S. Gambhir is the new promoter. It was stated in the statement recorded on Registration Form No. 14, that the entire machines are new. An application u/s 4-A was submitted by Shri A.S. Solanki (Managing Director) wherein it was represented/declared/certified that all the plants, machineries, equipments, apparatus and components have not been used or acquired for use in any other factory or workshop in India before installation in the unit.

4. The application for grant of Eligibility Certificate for exemption from Trade Tax, was considered by the Divisional Level Committee, and was rejected by the order dated 18.12.1995 on the ground that the alleged unit was not eligible for exemption, besides the fact that it is lying closed for more than six months with huge arrears of tax, and that the directors are totally non-cooperative. They did not appear in the assessment proceedings inspite of repeated notices issued to the company.

5. The assessment orders for both the U.P. and Central Sales Tax were passed for the assessment years 1991-92 to 1995-96. During the assessments the petitioners did not produce any books of accounts. They simply sent a letter dated 13.2.1996, that the records are with the Excise Department. The assessment orders were framed on 20.2.1996, 26.3.1996, and 22.2.1997, with which the assessments were completed. In the assessments, it was found that the company had utilised 1365 Forms 31, 42 Forms-C in the assessment year 1991-92; 3500 Forms-31, 50 Forms-C and 130 Forms 3-B in the year 1992-93; 1800 Forms 31 and 100 Forms 3-B in the year 1993-94, and 275 Forms-31 in the year 1994-95. An evasion of Rs. 16.2 crores of dues towards Central Excise Department was reported in the year 1994-95.

6. The Assessing Authority received letters dated 3.8.1998, 2.11.1998 and 25.12.1998 sent by the Superintendent of Police, U.P. Vigilance, Meerut requesting the Assessing Authority to provide records relating to the petitioners' company as the company committed theft of electricity of about Rs. 15 crores for which a first information report was lodged by the Executive Engineer, Vidyut Nagriya Khand-I, Ghaziabad in P.S. Kotwali, District Ghaziabad on 28.11.1993. The Executive Engineer, Electricity Department reported theft of Rs. 1,16,73,842 units of electricity between 30.5.1993 to 25.11.1993 (in a short span of less than six months). One Shri Suresh Chand Sharma had filed a PIL No. 79 of 1997 in Supreme Court in respect of large scale electricity theft in which the Court was informed that Shri I.S. Gambhir, the brother-in-law of Shri Lalit Luthra and that the other director Shri Rajesh Luthra were arrested in the matter of electricity theft.

7. The Joint Commissioner (Executive), Trade Tax, Ghaziabad, Zone-B, Ghaziabad

submitted a report to the Additional Commissioner Grade-I, Trade Tax, Ghaziabad that the unit was closed as sick industrial unit in 1986-87. It came into-production by way of revival package sanctioned by BIFR. The unit obtained registration declaring the old machinery to be the new and had made a false representation for eligibility certificate claiming exemption of trade tax u/s 4-A on 7.3.1991. They continued to run the unit by making false declaration, whereas the company was not exempt for any amount of trade tax.

8. In the facts and circumstances of the case, notices were issued to all the directors/persons involved for defrauding the revenue and misusing the corporate personality, on 18.10.2004, to show-cause as to why the directors may not be held personally liable for the dues after lifting the corporate veil of the company.

9. In pursuance to the notices issued by the Trade Tax Department Shri Jagbir Singh-the petitioner in Writ Tax No. 1464 of 2005 through his counsel Shri I.M. Puri, Shri G.L. Tandon and Shri R.C. Singh submitted their replies. All of them stated that Shri I.S. Gambhir is the person liable for all the tax evasion. Shri L.K. Luthra stated that due to indifferent attitude of the Managing Director, working directors and promoters, there was deterioration in the company. He had raised the matter of the bungling of the company to the Secretary, Government of India, Department of Company Affairs and the Chief Vigilance Commissioner, Government of India.

10. The Assessing Authority, in a detailed order dated 30.3.2005 after affording opportunity of hearing to the directors, recorded findings of fact, based on evidence of large scale tax evasion, bungling and fraud. He found sufficient evidence to lift the corporate veil of the company and to hold that the petitioners and certain other persons are personally liable for recovery of tax. Shri G.L. Tandon was the Chairman of the Company. Shri L.K. Luthra-a close relative of Shri I.S. Gambhir was the Managing Director Shri A.S. Solanki also served as Managing Director and that Shri Jagbir Singh was also the director of the company at the relevant time. Shri S.P. Jain did not file any reply but was present at the time of hearing and was shown as Director in 1992-93. Shri R.D. Singh, Deputy Commissioner, Commercial Tax-8, Tirade Tax Ghaziabad, Assessing Officer arrived at the findings after considering the reply submitted by each of the directors, that Shri G.L. Tandon was the Chairman of the company upto December, 1995, he claimed to be non-executive and non-working director nominated by IFCI, appointed in 1991. He attended the Board's meetings and made some improvements upto 1992. His defence, that after Shri L.K. Luthra-a relative of Shri I.S. Gambhir and Shri A.S. Solanki were appointed as Managing Director/working Director, the company started committing defaults in payment of taxes, was not accepted by the Assessing Officer. It was found that he was the Chairman of the company upto December, 1995 and thus the dues upto the period of 1995-96 can be recovered from him.

11. In respect of Shri A.S. Solanki, the Assessing Officer found that he was the

Managing Director of the Company in accordance with the information received by ROC on 9.5.1991 and not just a Director, as shown in the annual report of the company in 1992-93.

12. The company had taken loan from IFCI of Rs. 414 lacs in the year 1991 and thus keeping in view his resignation letter dated 31.8.1992 in accordance with Form 32, the recoveries, of the dues could be made from him for the year 1991-92 and 1992-93. In respect of Shri I.S. Gambhir it was found that he was the Director of the company in 1991. He has resigned on 31.12.1995. He was thus liable for the business and the liability for the period from 4.2.1991 to 13.12.1995. He did not co-operate in the assessment and was found involved in the theft of electricity and evasion of excise duty and thus the entire dues upto 1995-96 could be recovered from him.

13. Shri L.K. Luthra he did not file any reply. He was in the list of Board of Directors dated 9.5.1991, and is shown as Managing Director in the annual report of 1992-93, and it was found that the amount for all the years can be recovered from him.

14. In respect of Shri Jagbir Singh, the Assessing Officer found that he was appointed as the Director in February, 1991 and resigned on 20.2.1992. There was no information of this resignation given to the Trade Tax Department. The Form 32 was produced showing that he resigned on 31.8.1992. The amount due for the year 1992-93, therefore, could be recovered from him. In respect of Shri S.P. Jain, the Assessing Officer observed that he has not filed any written explanation. His name is shown in the list of Directors dated 9.5.1991 and in the annual report of 1992-93. The dues on the company can be recovered from him.

15. In respect of Shri I.M. Puri, who did not appear in person and sent a letter dated 27.10.2004 to the Assessing Officer that Shri I.S. Gambhir was responsible for reviving the company, in his explanation dated 29.10.2004, it was stated that he is the Chartered Accountant and has held responsible posts in the Central Government. He has also been the professional Director in Public Sector Undertakings of the Central Government. On the request of IFCI he agreed to work as non-executive independent part time Director in M/s. Maharashtra Steels Ltd. Shri I.M. Puri informed that under Shri Solanki the company was making some progress but after Shri L.K. Luthra took over charge as Managing Director, the company started committing defaults. Shri Puri informed that since he could not control Shri L.K. Luthra, he sent his resignation on 28.3.1995. Shri G.L. Tandon also resigned in December, 1995. He also informed that the company did not submit any balance sheet or annual report with the Registrar of Companies on which the prosecution was started in the year 1998 in the Court of Special Chief Judicial Magistrate, Meerut. Shri L.K. Luthra's name was not included in the list of accused persons. Shri I.M. Puri stated that he was not prosecuted by the Special Chief Judicial Magistrate, Meerut. He was not the Managing Director or full time director. Since he had resigned, the recovery should not be made from him. The Assessing Officer found that large scale evasion of trade tax,

electricity dues and excise dues were made by the company from 1991-92 to 1994-95 when Shri I.M. Puri was the Director and thus the dues should be recovered from Shri I.M. Puri also.

16. In respect of Shri I.R. Pahwa it was found that he was appointed as outside non-executive director in 1990-91. He used to take part in the meetings, and looked after the company matters. He resigned in January, 1995 and alleged that only the Managing Director/whole time Director/Secretary could be made liable. He was only a part time Director. The Assessing Officer found that Shri I.R. Pahwa never gave any such information to the Trade Tax Department. He was shown as Director in the list of Directors dated 9.5.1991 and was included in the list of Board of Directors in the annual report of the year 2003-04. The report does not mention that he was non-executive or temporary director.

17. The Assessing Officer found that Shri I.S. Gambhir, Shri L.K. Luthra and Shri Rajesh Luthra were responsible for defaults in respect of electricity dues and also to avoid the liability, they had changed their residence.

18. M/s. Maharashtra Steels Limited filed an appeal No. 595 of 2005 (Misc.) against the order dated 30.3.2005 passed by the Assessing Officer, before the Joint Commissioner (Appeals)-IV, Commercial Tax, Ghaziabad. In this appeal filed by Shri I.M. Puri, the Appellate Authority accepted his statement that he was not the working director and was not looking after the day-to-day work. He was nominated by IFCI as a part time director. The appeal was allowed on 7.3.2008.

19. Similarly the appeal filed by Shri G.L. Tandon being Appeal No. 596/2005 was also allowed on the ground that he was a part time nominee director nominated by the IFCI. He was not responsible for day-to-day management of the company. The Appeal No. 601/2005 filed by Shri A.S. Solanki was, however, dismissed on 31.12.2007 on the ground that the appellant was the Managing Director of the company. He resigned from the post of Director on 21.7.1992 and thus the dues of the years 1991-92 and 1992-93 can be recovered from him. After his resignation Shri I.S. Gambhir was looking after the affairs of the company.

20. The petitioners have not challenged the order dated 30.5.2005 passed by the Assessing Officer lifting the corporate veil and holding all the directors to be responsible upto the date they had resigned. The appeals filed by Shri I.M. Puri and Shri G.L. Tandon were allowed. The appeal filed by Shri I.S. Gambhir was dismissed. There is nothing to show that the other directors namely Shri L.K. Luthra, Shri Jagvir Singh, Shri S.P. Jain, Shri R.R. Pahwa and Shri A.S. Solanki filed any appeals against the order dated 30.3.2005. Since the order dated 30.3.2005 has become final against all of them including the petitioners in these writ petitions, which has not been challenged by them, the petitioners have no case to defend themselves against the recoveries of the dues from their personal assets.

21. Shri Kunwar Saksena has relied on the judgments in Rajendra Kumar Agarwal v. STO, 2009 NTN (41) 248 and Arun Kumar Sahai and others v. State of

UP and others, 2011 NTN (46) 275, in submitting that the petitioners were directors for a limited period of time. Their resignations were accepted and Form 32 were produced to show that they were not directors at the time, when the assessments were made and liabilities were ascertained. The respondents have acted illegally and arbitrarily in lifting the corporate veil, without any reasonable basis and have not fixed individual liability for the recoveries.

22. Shri S.P. Kesarwani appearing for the State submits that the doctrine of lifting of corporate veil is firmly established. The corporate veil can be lifted, when it is found that the corporate personality is used as a mask for evasion of tax; it is used to defeat public convenience, and that the transactions are shame and collusive. When a corporate personality is employed to circumvent statutory liability or to evade the existing obligation and is found to defeat justice, convenience and interest of revenue or workman, it can be lifted to find out the real culprits hiding behind it. The dubious methods resorting to artifice or subterfuge to avoid payment of taxes can be uncovered by lifting corporate veil. Even though there are no statutory provisions, where the circumstances exist the corporate veil can be lifted. *Tata Engineering and Locomotive Co. Ltd. Vs. State of Bihar and Others*, ; *The Commissioner of Income Tax, Madras Vs. Sri Meenakshi Mills Ltd., Ors.*, ; *New Horizons Limited and Another Vs. Union of India (UOI) and Others*, ; *Delhi Development Authority Vs. Skipper Construction Company (P) Ltd. and another*, ; *Calcutta Chromotype Ltd. Vs. Collector of Central Excise, Calcutta*, ; *Shubhra Mukherjee and another v. Bharat Cooking Coal Ltd. and another*, (2003) 3 SCC 312; *Kapila Hingorani Vs. State of Bihar*, ; *Vodafone International Holdings B.V. Vs. Union of India (UOI) and Another*, to support the submissions, on the conditions and imperatives for lifting corporate veil.

23. Shri S.P. Kesarwani has also relied upon the judgments of this Court in *Naresh Chandra Gupta v. District Magistrate and others*, 2003 NTN (22) 358 (paras 6 to 20); *Shri Ram Gupta v. Assistant Collector*, 2003 NTN (923) 995; *Shri Ram Shyam Shukla and others v. Assistant Collector, Collection, Trade Tax*, 2004 NTN (25) 768 (paras 5 to 20); *Meekin Transmission Ltd. and Purushottam Sootwala Vs. State of Uttar Pradesh and Others*, , to submit that this Court has applied doctrine wherever it was found.

24. In the present case, we are informed that the assets of the company have been sold for realisation of the dues of IFCI (the secured creditor). The dues of the Trade Tax Department are still to be recovered. The order passed by the Assessing Officer lifting the corporate veil was successfully challenged by only two of the directors namely Shri I.M. Puri and Shri G.L. Tandon. The appeal filed by Shri A.S. Solanki the petitioner in Writ Tax No. 1499 of 2005 was dismissed. Shri Jagbir Singh the petitioner in Writ Tax No. 1464 of 2005 had not challenged the order. Shri A.S. Solanki has also not challenged the order by which the appeal was dismissed. Thus there is no good reason to interfere with the recovery certificates issued in their individual names from their personal assets.

25. In *Shri Ram Shyam Shukla and others v. Assistant Collector, Collector, Trade Tax (supra)* and *M/s. Meekin Transmission Ltd., Kanpur Nagar and another v. State of UP and others (supra)* this Court held that where the circumstances so warrant, in which, the persons are found evading tax under veil of corporate personality; the corporate entity is employed to circumvent statute or to evade the existing obligation to commit illegality or defrauding others; and have resorted to dubious methods to artifice or subterfuge to avoid payment of taxes, the corporate veil can be lifted to recover the dues from the persons responsible for such illegal acts.

26. We may quote with approval the observations of this Court in *Shri Ram Shyam Shukla and others v. Assistant Collector, Collector, Trade Tax (supra)* as follows:

4. We do not agree. The legal principle that a company is a distinct legal entity separate from its directors and shareholders (vide *Solomon v. Soloman & Co. Ltd.*, 1897 A.C. 22 H.L.) was evolved to encourage business and industry since many businessmen feared to start a new business or venture because if the said business/venture failed (due to competition, recession, etc.) even their personal assets could be attached and sold for the recovery in respect of the dues against the company. Hence this principle was created so as to encourage businessmen to take risks and set up industries and businesses and it has played a historical role in helping industrialisation. This principle was not made to help tax evaders. As held by the Supreme Court in *Delhi Development Authority Vs. Skipper Construction Company (P) Ltd. and another*, :

The concept of corporate entity was evolved to encourage and promote trade and commerce, but not to commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the Court would ignore the corporate character and will look at the reality behind the corporate veil.

5. The principle of lifting the veil of corporate personality has been upheld in *Shubhra Mukherjee and another v. Bharat Cooking Coal Ltd. and another*, (2003) 3 SCC 312; *Calcutta Chromotype Ltd. Vs. Collector of Central Excise, Calcutta*, ; *New Horizons Limited and Another Vs. Union of India (UOI) and Others*, ; *The Commissioner of Income Tax, Madras Vs. Sri Meenakshi Mills Ltd., Ors.*, ; *Tata Engineering and Locomotive Co. Ltd. Vs. State of Bihar and Others*, ; *Juggi Lal Kamlapat Vs. Commissioner of Income Tax, U.P.*, .

6. In *State of U.P. and Others Vs. Renusagar Power Co. and Others*, , the Supreme Court observed:

It is hightime to reiterate that in the expanding of horizon of modern jurisprudence, lifting of corporate veil is permissible. Its frontiers are unlimited. It must, however, depend primarily on the realities of the situation. The horizon of the doctrine of lifting of corporate veil is expanding.

7. In Tata Engineering's case (supra) the Supreme Court observed that the doctrine of the lifting of the veil thus marks a change in the attitude that law had originally adopted towards the concept of the separate entity or personality of the corporation. As a result of the impact of the complexity of economic factors, juridical decisions have sometimes recognised exceptions to the rule about the juristic personality of the corporation. It may be that in course of time these exceptions may grow in number and to meet the requirements of different economic problems, the theory about the personality of the corporation may be confined more and more.

8. Thus the Supreme Court itself has stated that with the passage of time the exceptions to the rule of corporate personality can grow in order to meet the new requirements, and these exception have an expanded horizon.

27. In the present case from the material on record, there is no doubt that the petitioners and other directors persuaded the BIFR to allow them to run the sick industrial company with fresh infusion of funds from IFCI with two nominee directors of IFCI. The company started business in 1991. The application for eligibility certificate u/s 4-A was made with false declaration that the plant and machinery is new. The eligibility certificate was not granted. Initially the company was doing well but as soon as Shri I.S. Gambhir and Shri L.K. Luthra took over successively as Managing Directors of the company, they started defrauding in payment of sales tax both State and Central; the excise dues and electricity dues. They incurred liability of several crores of rupees and did not participate in the proceedings of assessment. The date, when the company again stopped production, has not come on record. However, it is clear from the material placed before us, that the company started production with fresh capital given by IFCI, only to defraud the secured creditors to avoid taxes and electricity dues. The directors of the company hiding behind the corporate veil made use of the corporate entity under the umbrella of BIFR to circumvent statutes, commit illegality and evade the liability of payment of taxes, central excise dues and electricity dues. The returns were not filed. The entire amount was utilised for personal gains. The directors used the State resources for enriching themselves. They robbed the coffers of the State while sitting in Delhi. The corporate veil under the patronage of BIFR was used as subterfuge to avoid payment of taxes. In the facts and circumstances we do not find any good ground to interfere with the recoveries from the personal assets of the petitioners. Both the writ petitions are dismissed.