(2008) 07 AHC CK 0007

In the Allahabad High Court

Jai Prakash Agarwal and Shri Vijay Kumar Agarwal — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 24-07-2008

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 30

Citation : (2008) 07 AHC CK 0007

Hon'ble Judges : Rakesh Sharma, J;R.K. Agrawal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.K. Agrawal and Rakesh Sharma, JJ.—Through this writ petition, the petitioners who claim themselves to be Directors of M/s Chhannu Food Product Pvt. Ltd. Situate at B-4 Site 4, Sahibabad, Ghaziabad have assailed the notice (Annexure-1 to the petition) issued by the Assistant Collector, Grade-I, II. Kashmiri Gate, Delhi in furtherance of exparte assessment orders dated 8.3.1999 passed by the Assistant Commissioner (Assessment), Trade Tax, Ghaziabad relating to Central as well as State Trade Tax. The petitioners who were directors of the Company were required to deposit Rs. 3,04,805/- on account of trade tax liabilities for the assessment year 1996-97.

2. As per learned Counsel for the petitioners, they are merely directors of the above said private limited Company and their role is limited to this capacity only. Both the petitioners had not taken any guarantee in respect of payment of trade tax nor were signatories of any security bond in their individual capacity. The Company had already submitted applications u/s 30 of the Trade Tax Act before the assessing authority seeking redressal of their grievance. As per the scheme of the Companies Act, the petitioners have no liability regarding any dues or tax liabilities of the Company in their personal capacity. They were receiving their salary from the company as per memorandum of association of the company. The revenue authorities had wrongly issued recovery certificate it the name of the petitioners and within the name of the Company, therefore, the action is

wholly illegal. There are no dues outstanding against the petitioners in their personal capacity. The assessment order was in fact passed in the name of the Company, not in the name of the petitioners (Directors of the company). Therefore, no recovery can be made from the personal assets of the petitioners.

3. Learned Standing Counsel has resisted the writ petition on various grounds and laid much stress on the fact that the petitioners were Directors of the Company, solely responsible for looking after the affairs of the company and as such ability of payment of tax can be fastened on them. Since the petitioners were receiving the salary from the company, then it was their moral and legal responsibility to discharge their burden of payment of tax also. The concept of corporate personality was evolved to encourage fair trade and business and not for committing illegality or defraud others, hence, the petitioners are personally liable for default and for payment of trade tax.

4. We have heard learned Counsel for the parties and perused the record.

The controversy raised in this writ petition has already been set at rest by several decisions rendered by this Court in the cases of Sri Mahendra Kumar Jaipuria v. Commissioner of Trade Tax and Anr. 2007 U.P.T.C. 150, Sudershan Kumar Gulati v. Dy. Collector (C.), Sales Tax 1994 U.P.T.C. 717 and Sri Raj Nath Gupta v. State of U.P. 1999 U.P.T.C. 1289. In the present case, the petitioners are admittedly Directors of private limited Company who had not taken any guarantee in favour of the company in respect of payment of trade tax nor they had signed any security bond or were parties to some agreement in their individual capacity. They can be treated as employees of the company and have no liability regarding any dues incurred by the Company in their personal capacity as per memorandum of association. Since the assessment order was passed against the aforementioned private limited Company, recovery certificate could not have been issued in the name of the petitioners, individuals.

5. This Court has in the case of Dinesh Kumar Marwan and Anr. v. Commissioner, Trade Tax, U.P. Lucknow W.P. No. 950 of 2005 decided on 22.1.08 has held that for the recovery of the outstanding dues against a company, the Directors cannot be held responsible if they are not in possession of the movable or immovable assets, property of the company. The arrears of trade tax dues against a limited company cannot be recovered from the erstwhile Directors of the company. The cardinal principle of law is that when there is a liability against a Company, no recovery can be made from personal assets of its Director, unless it is specifically provided in the Statute or warranted by law. It is not brought to our notice that there is any specific provision in the U.P. Trade Tax act, where under recover of the liability outstanding against a Company can be made against the personal assets of its Director. Recently, a Division Bench of this Court in Dinesh Kumar Marwan (Supra) has held that non-payment of tax does not amount to tax evasion. The Directors of the Company cannot be saddled with such responsibility in respect of payment of trade tax due against a Company of which they were Directors, beyond their liability limited by shares.

6. In view of the above discussion, the writ petition succeeds and is allowed. The respondents are restrained from realising the trade tax dues of the Company M/s Chhannu Food Product Pvt. Ltd. from the personal assets of the petitioners.

