

(2009) 11 AHC CK 0057
In the Allahabad High Court
Case No : Writ Tax No. 2902 of 2002

Rajendra Kumar Agarwal and Others	Vs	APPELLANT
Trade Tax Officer and Another		RESPONDENT

Date of Decision : 11-11-2009

Acts Referred:

Citation : (2011) 40 VST 417

Hon'ble Judges : Subhash Chandra Nigam, J;Prakash Krishna, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. By means of this writ petition, the Petitioners are seeking a writ of certiorari or any other appropriate writ, order or direction for quashing the recovery proceedings against the personal assets of the Petitioners and further proceedings pursuant thereto, as well as seeking a writ of mandamus commanding Respondents and restraining them from recovery proceedings against the Petitioners.
2. The facts of the case in brief are that the Petitioners were directors in M/s. Piyarey Lal Rajendra Kumar, 45, Fatehganj, Buland Shahar, a company registered under the Companies Act, 1956. They had resigned from the directorship of the company and had sold their shares. Form No. 32 have also been filed by the company in the office of the Registrar of Companies. Certain amount as well as interest thereon was raised as an outstanding demand against the company (both U.P. and Central). The Respondent No. 1-Trade Tax Officer, Sector I, Bulandshahar directed the Petitioner to deposit the aforesaid amount and also issued certificates against the Petitioners for recovery of the said amount. The Petitioners raised objection before the Respondent orally but to no avail. It is alleged that the recovery proceedings against the Petitioners are illegal and without jurisdiction.
3. The stand of the Respondents as disclosed in the counter-affidavit of S.C.

Jaiswal, Assistant Commissioner, Sector 1, Bulandshahar, is that the present recovery proceedings relate to the trade tax dues against the company and the amount of trade tax dues is being sought to be recovered. It has been admitted that the Petitioners were directors of the company at the relevant point of time. The assessment orders under the provisions of the U.P. Trade Tax Act, 1948 as well as under the Central Sales Tax Act, 1956 were passed. The Petitioners did not deposit the tax assessed by the assessing authority and hence the recovery certificate had been issued in accordance with law. It is further alleged that Petitioner No. 4-Chhajju Mal (since deceased) had given his security for the payment of tax up to the extent Rs. 35,000. The amount of personal security of late Chhajju Mal can be recovered from the assets of late Chhajju Mal which has been inherited by his legal heirs and representative.

4. The sole controversy involved in this writ petition is whether the tax dues from the corporate body can be recovered from the assets of the directors of corporate body. Undisputedly, the Petitioners were directors of the company and dues are against the company. The question is whether such dues can be recovered from the personal assets of the directors of the corporate body.

5. The learned Counsel for the Petitioner has placed reliance on the decision reported in [2008] UPTC 600 (Meekin Transmission Ltd., Kanpur Nagar v. State of Uttar Pradesh). The Division Bench of this Court has held that when tax dues are to be recovered from a corporate body, directors of such corporate body, would not automatically be responsible, unless doctrine of lifting of veil was found to be applicable in the case of affairs of that company. A director or shareholder not personally responsible for dues of company except of those cases, where such a provision was made in statute, or otherwise warranted in law. As regards company, there was no fault in making recovery against company. The cardinal principle of law is that where 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, whereunder recovery of the liability outstanding against a company can be made against the personal assets of its Director.

6. The legal position is that where the corporate personality has been obtained by certain individuals as a cloak or a mask to prevent tax liability or to divert the public funds or to defraud public at large or for some illegal purposes, etc., to find out as to who are those beneficiaries who have proceeded to prevent such liability or to achieve an impermissible objective by taking recourse to corporate personality, the veil of the corporate personality shall be lifted so that those persons who are so identified are made responsible. However, this doctrine is not to be applied as a matter of course, in a routine manner and as a day to day affair so as to recover the dues of a company, whenever and for whatever reason they are unrecoverable, from the personal assets of the directors. If such a course is permitted, it would lead to not only disastrous results but would also

destroy completely the concept of juristic personality conferred by various statutes.

7. In order to find out as to who are the persons responsible personally when the veil is lifted it would be wholly irrelevant as to whether such person is a director or a promoter shareholder or otherwise of the company since the purpose of lifting the veil is to find out the persons who are operating behind the corporate personality for his personal gain. Such person may be individual or group of persons belonging to a family or relatives or otherwise a small group collected with a common objective of achieving some illegal, immoral or improper purpose, etc. So long as no investigation is made into various aspects, we are unable to understand as to how and what manner as director of a company can straightaway be proceeded personally for recovering dues of a company unless it is so provided by some provision of the statute. Normally when the veil is lifted it is the promoters or the shareholders who are found to be working behind the veil, responsible, and the directors as such would not be taking to be responsible for meeting the liabilities of the company unless the statute so provides or it is found that the act of the Directors is ultra vires resulting in extinction of assets and funds of company making recovery from the company impossible.

8. The Respondents have not pleaded such doctrine of veil against the Petitioners.

9. The learned Counsel for the Petitioner has placed reliance on the decision in *The Commissioner of Income Tax, Madras Vs. Sri Meenakshi Mills Ltd., Ors.*, (from Madras: ILR [1964] Mad 393), wherein the apex court has held that though company has separate juristic personality, income tax authorities and courts are entitled to lift veil of corporate entity and pay regard to economic realities behind legal facade. In the decision reported in [1987] UPTC 473 (*Satish Chand Singhal, Kanpur v. Assistant Commissioner (Assessment) 1, Sales Tax, Kanpur*) it has been held that in the recovery proceedings against private limited company, the recovery proceedings may continue against assets of company and not against private assets of directors of the company.

10. On the other hand, learned standing counsel for the Respondents has placed his reliance on the decision reported in [2003] 23 NTN 995 (All) (*Sri Ram Gupta v. Assistant Collector*) wherein it has been held that the dues against a company can be recovered from the director of the company. The facts of this case are distinguishable from the case of *Meekin Transmission Ltd., Kanpur Nagar v. State of Uttar Pradesh* [2008] UPTC 600. In this case, the court had come to the conclusion that the assets of the company have been diverted or siphoned off by the Petitioner for own benefit and has left only a shell.

11. In case in hand, it has not been even suggested by learned Counsel for the Respondents that after lifting the veil of the company, the Petitioners could be identified as beneficiaries.

12. In respect to tax dues or other public revenue or in other cases, if one has to discard the corporate personality, then the initial burden would lie upon it to

place on record relevant material and facts to justify invocation of doctrine of lifting of veil and to plead that the corporate shell be not made a ground of defence. A personality conferred by the statute cannot be overlooked or ignored lightly and in a routine manner or on a mere asking. In fact whenever the veil is to be pierced, it would mean that somebody, individual or group of individuals, have obtained the shell of corporate personality as a pretext or mask to cover up a transaction or intention of those individual/individuals is neither legal nor otherwise in public interest. In effect the attempt of those individuals has to be shown akin to fraud or misrepresentation. The legal personality of the corporate body thus can be ignored in such cases since it is well-settled that fraud vitiates everything and, therefore, the benefit of legal personality obtained by someone for purposes other than those which are lawful or even if lawful but not otherwise permissible, the corporate personality being the result of such fraudulent activity would have to be discarded but not otherwise. These are the things based on positive factual material and cannot be presumed in the absence of proper pleadings and material to be placed by the person who is pleading to invoke the doctrine of piercing the veil and to ignore the juristic personality of the corporate body. Once relevant material is made available by the authority or person concerned, thereafter it would be the responsibility of the other side to place material to meet the aforesaid facts but the mere fact that the company has failed to pay the Government dues or public revenue, that by itself would not invite the doctrine of piercing the veil and is not sufficient to ignore the statutory corporate personality conferred upon a company and make its directors or shareholders responsible personally.

13. In the case in hand, such pleading has not been raised from the side of the Respondents.

14. Thus, it is held in the facts and circumstances of the case that the arrears of tax dues against the company cannot be recovered from the personal assets of the Petitioners who were the directors of the company. Hence, the recovery notice against the Petitioner (annexure 1 to the petition) is not sustainable in law and is liable to be quashed.

15. The writ petition, therefore, succeeds and is allowed. The recovery notice issued against the Petitioner (annexure 1 to the petition) is quashed. However, it is made clear that the recovery proceedings against the company would not be affected in any manner by this judgment and may proceed in accordance with law.