(2018) 08 P&H CK 0470

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1666 Of 2018 (O&M)

Seema Dhanda — APPELLANT

Vs

Union Of India And Others — RESPONDENT

Date of Decision : 24-08-2018

Acts Referred:
Income Tax Act, 1961 — Section 144, 179, 221(2)

Citation : (2018) 08 P&H CK 0470

Hon'ble Judges : Ajay Kumar Mittal, J;Avneesh Jhingan, J

Bench : Division Bench

Advocate : Jagmohan Bansal, Rajesh Katoch

Final Decision : Disposed Off

Judgement

1. The present writ petition has been filed seeking quashing of orders dated 28.03.2012 (Annexure P-7) and 24.03.2017 (Annexure P-13) whereby the petitioner has been held liable to pay arrears of Income Tax of a Public Limited Company. Further a prayer has been made for prohibiting the respondents from initiating any coercive steps against the petitioner for recovery.

2. Union of India; Commissioner of Income Tax-III, Ludhiana and Income Tax Officer, Ward No. 7(i), Ludhiana have been arrayed as respondents No.1 to 3 respectively in the writ petition.

3. The petitioner on 09.06.1999 became an Additional Director of Company namely M/s Century Diamond Ltd. (for short 'the Company'). The Company was registered with the Registrar of Companies vide Registration Certificate No. 16-20924 dated 08.01.1998. The petitioner resigned from Directorship of the Company on 01.04.2000. For the assessment year 1998-99, an ex-parte assessment of company under Section 144 of the Income Tax Act, 1961 (for short 'the Act') was framed vide order dated 31.03.2006. The income of the company was assessed at `1,87,94,345/-. On 17.03.2017, the Registrar of Companies deleted the name of the Company from the register of companies.

4. The respondents issued notice dated 29.12.2011 under Section 179 of the Act to the petitioner to show cause as to why the arrears of income tax of the Company be not recovered from the petitioner, being a Director of the Company. The petitioner filed reply on 07.02.2012. The respondents No.1 to 3 vide order dated 28. 03.2012 rejected the contentions raised by the petitioner and it was held that under Section 179 of the Act, the dues can be recovered from the Director of the Company. Thereafter, a show cause notice under Section 221(2) of the Act was issued and penalty of `10,000/- was imposed vide order dated 14.03.2014.

5. On 12.05.2016, the petitioner filed Review Petition before respondent No.2 against order passed by respondent No.3 under Section 144 and Section 179 of the Act. The review was dismissed vide order dated 24.03.2017.

6. The present writ petition has been filed being aggrieved of the recovery proceedings initiated against the petitioner for recovering the Income Tax dues of the Company.

7. Learned counsel for the petitioner contended that the petitioner joined the Company as an Additional Director on 09.06.1999 and resigned on 01.04.2000. She was not even the Director during the relevant assessment year. It was further contended that Section 179 of the Act applies to private companies and not to the public limited companies. In the case in hand, the petitioner was the Director in a public limited company.

8. Learned counsel for the revenue defended the orders and argued that the petitioner in her reply dated 07.02.2012 nowhere asserted that the defaulter company was a public limited company. Even during the assessment proceedings, the Assessing Officer was not informed that the company under assessment was a public limited company.

9. Before proceeding further, we may quote Section 179 of the Act :-

"179.(1) Notwithstanding anything contained in the Companies Act, 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 severfally 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 or any other sum payable under the Act."

10. Section 179 of the Act empowers the Income Tax Authorities to make recovery of dues of private company from a person who was Director during the relevant previous year in respect of outstanding tax liabilities which could not be recovered from the company. The Section does not apply to Public Limited Company.

11. The basic issue to be adjudicated would be:- whether the petitioner was a Director of public limited company or a private company? It is, only thereafter that Section 179 of the Act can be invoked. The respondents proceeded to recover the dues amount from the petitioner without deciding the applicability of Section 179 of the Act in the present case.

12. The orders dated 28.03.2012 (Annexure P-7) and 24. 03.2017 (Annexure P-13) cannot be sustained and same are set aside. However, the respondents would be at liberty to proceed against the petitioner and adjudicate the issue regarding the applicability of provisions of Section 179 of the Act in accordance with law after providing her an opportunity of hearing.

13. The writ petition is, accordingly, disposed of.

