IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14657 of 2017

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Binay Prakash, S/O Late Ramchandra Prasad, Resident of Prakash Kunj, Booty Road, P.S.- Bariatu, P.O.- Bariatu, District- Ranchi-834009, Jharkhand.

.... Petitioner

Versus

1. The State of Bihar, through the Commissioner of Commercial Taxes, Commercial Tax Department, Government of Bihar, Patna.
2. The Deputy Commissioner, Commercial Taxes, Commercial Tax Department, Aurangabad Circle, Aurangabad.
3. The Assistant Commissioner, Commercial Taxes, Aurangabad Circle, Aurangabad.
4. The Commercial Taxes Officer, Aurangabad Circle, Aurangabad.
5. The State Bank of India, having its Main Branch at Aurangabad, District- Aurangabad (Bihar) through its Chief Manager.
6. The Chief Manager, State Bank of India, Main Branch, Aurangabad (BIHAR).
7. The Branch Manager, State Bank of India, Aurangabad Branch, Aurangabad.
8. Assistant General Manager, State Bank of India, Katchari Road, Ranchi Main Branch, Ranchi (Jharkhand).
9. The Branch Manager, State Bank of India, B.B. Ganguli Street, 12 Gangadhar Babu Lane, Kolkata.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Y.V. Giri, Sr. Advocate Mr. Raj Kishore Prasad, Advocate
For the State	:	Mr. Vikash Kumar-SC11
For S.B.I.	:	Mr. Rakesh Kumar Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)
Date: 03-08-2018

The present writ application has been preferred for issuance of writ of certiorari to quash the order passed by the Commercial Taxes Officer (respondent No.4), vide his Memo No. 149 dated 04.03.2017, as contained in Annexure-1 to the writ application, whereby the respondent no. 4 has directed the Chief Manager (respondent no. 6) to pay the government treasury/bank, the amount mentioned in the said letter which is said to be due on account of the amount of arrears of tax imposed under the Bihar Value Added Tax Act, 2005 payable by M/s Domco Smokeless Fuels Pvt. Ltd.(Dealer) bearing Tax Identification No. 10170651082.

2. The controversy in the present case lies in a narrow compass. The solitary question which has arisen for consideration before this court is as to whether the outstanding tax against a private limited company incorporated under the provisions of Companies Act, 1956, may be recovered from one of the directors of a company by withdrawing money from his personal account.

3. The facts as disclosed in the writ application would show that in the year 1998 the petitioner's company was incorporated and its business was manufacturing of special smokeless fuel based on the technology developed by the Central Mines, Planning and Design Institute Limited. The case of the petitioner is that certain promises were made to the industry under the Industrial Incentive Policy issued by the Government of Bihar in the year 1995, the company was granted exemption from payment of sales tax on purchase of raw materials as well as on sale of finished product. An exemption certificate was also issued by the Assistant Commissioner for the period from 05.02.1998 to 04.02.2008. During the existence of the exemption certificate, the Bihar Value Added Tax Act, 2005 came into force and by virtue of the provision made therein the benefit of exemption has been taken away. The petitioner company being aggrieved by the provision taking away the benefit of exemption has challenged the same by filing a writ application being CWJC No. 16701/2007 and the same is pending consideration before this court. During the pendency of the said writ application, the respondent Assistant Commissioner of Commercial Taxes passed an order of assessment for the period 2006-07 and 2007-08 and thereby has raised certain demands of tax against the company which is a dealer within the meaning of the Bihar Value Added Tax Act, 2005. In order to realise the said demand, the respondent Commercial Taxes Officer issued the impugned memo to the Chief Manager, State Bank of India to realise the tax amount from the bank account maintained in the name of the present petitioner who happened to be one of the directors of the company. The amount mentioned in the said letter is Rs. 1,46,80,708.00. The State Bank of India has debited an amount of Rs. 6,80,682.08 from the HUF Account of the petitioner and

Rs. 14,42,856.38 from personal account of the petitioner as well as Rs. 50,000.00 from the Fixed Deposit Account of the petitioner. The respondents have also withdrawn Rs. 25,96,200.00 from the PPF Account of the petitioner. The petitioner has brought on record the statement of account of the State Bank as contained in Annexure-'2' to the writ application.

4. Mr. Y.V. Giri, learned senior counsel representing the petitioner has drawn the attention of this court towards Section 67 of Bihar Value Added Tax Act, 2005 and submits that so far as the liability of a firm and HUF is concerned, the same stand on a different footing than the liability of a company incorporated under the provisions of the Companies Act, 1956.

5. It is submitted that a firm is not a juristic person and therefore every partner of the firm has an unlimited liability to the extent of the outstandings of the firm, whereas in case of a company incorporated under the Companies Act, the company is a juristic person and a share holder of the company has a liability limited to the extent of the share holding and nothing more. It is further submitted that a person acting as director of the company cannot be saddled with the liability of a company, and therefore, the action of the respondents in realizing the money from the personal account and PPF account of the petitioner is wholly illegal, arbitrary and bad in law.

6. Mr. Vikash Kumar, learned counsel representing the respondents has even though attempted to argue on the strength of section 67 read with Section 84 of the Bihar Value Added Tax Act, 2005 to submit that the petitioner may be held liable for the outstandings of the company but ultimately failed to satisfy us with any of the legal provisions under the Act providing for the same. In fact, the whole argument of learned counsel representing the respondents is based on the fallacy of his argument that the Director of a company is to be treated like a partner of a firm or a member of the Hindu undivided family. Such arguments are liable to be rejected at the outset.

7. Section 67 read with Section 84 of the Bihar Value Added Tax Act, 2005 are quoted hereunder for ready reference: -

> "**67. Liability in case of dissolution of firm. etc. –** Where a dealer is a Hindu undivided family, firm or association of persons, and such family, firm or association is partitioned, dissolved or disrupted, as the case may be –
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> (a) the tax, interest and penalty payable under this Act by such family, firm or association of persons for the period up to the date of such partition, dissolution or disruption may be assessed as if no partition, dissolution or disruption had taken place and all the provisions of this Act shall apply accordingly; and

(b) every person who was at the time of such partition, dissolution or disruption a member or partner of a Hindu undivided family, firm or association of persons shall, notwithstanding such partition, dissolution or disruption, be liable severally and jointly for the payment of tax, interest including penalty, if any, payable under this Act, by such family, firm or association of persons, whether dues of tax, interest or penalty is for the period prior to or after such partition, dissolution or disruption.

84. Offences by companies and others. – (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against the punished accordingly.

Provided that, nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation – For the purposes of this Section –

(a) "company" means a company incorporated under the Companies Act, 1956, (1 of 1956) and includes a body corporate, a firm or other association of individuals;

(b) "director" in relation to a firm means a partner in the firm.

(3) Where an offence under this Act has been committed by a Hindu undivided family, the karta thereof shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render the karta liable to any punishment if he proves that the offence was committed without his knowledge of that he had exercised all due diligence to prevent the commission of such offence:

Provided further that, where an offence under this Act has been committed by a Hindu undivided family and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any adult member of the Hindu undivided family, such member shall also be deemed to be guilty f that offence and shall be liable to be proceeded against and no conviction punished accordingly."

8. On a bare perusal of the aforementioned provisions it would appear that those are not applicable in case of a company incorporated under the Companies Act. Those provisions take care of liability in case of dissolution of firm, dissolution or disruption of a Hindu undivided family or association of persons, every person who was a partner of the firm or a member of the HUF and association of persons shall be liable jointly and severally for the payment of tax, interest or penalty. Section '67' nowhere imposes a liability upon a director of a company limited by shares. In law a company is a '*Persona-designata'*, i.e. a person in the eye of law who can sue or be sued in its' own name. This is not the position with a partnership firm, HUF or association of persons. They are always known through their partners and members.

9. So far as the provision as contained in Section 84 is concerned, it is relating to the offences by companies and the explanation (a) and (b) to section 84 only provides that the word "company" includes a firm and director in relation to a firm means a partner in the firm.

10. Explanations have been provided in Section 84 only to cover the offences committed by a firm and the requirement to provide the explanation arose only because a 'company' in it's concept does not include a firm therefore in absence of the explanations the offences committed by the firms could not have been brought within the purview of Section 84 of the Bihar VAT Act.

11. There is no application of section 67 read with Section 84 in the facts of the present case, and therefore, reliance placed by Mr. Vikash Kumar on the said provisions is wholly misconceived and is liable to be rejected. In our considered opinion the outstanding tax against the company have been wrongly recovered from the personal and F.D., HUF or PPF accounts of the petitioner. The Bihar VAT Act 2005 does not create any vicarious liability against the director of a company limited by shares.

12. Finding that the respondents have acted illegally and arbitrarily in the matter of recovery of amount from personal account, Fixed Deposits, HUF Account and PPF account of the petitioner, we quash the impugned order and allow the writ application with a direction to the respondents no. 1 to 4 to refund/restore the entire amount collected pursuant to the impugned action from the State Bank of India through its various branches (respondent no. 5). The respondent no. 1 to 4 shall refund/restore the entire amount within a period of 15 days from the date of receipt/production of a copy of this order.

13. The writ application is allowed to the extent indicated hereinabove.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	06.08.2018
Transmission Date	