IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 592 OF 2018

Basudeo Janklal Bajaj .....Petitioner
V/s.
The Income-Tax Officer-6
(1)(2)and 4 Ors. ....Respondents

ALONGWITH
WRIT PETITION NO. 680 OF 2018

Vinay Govind Saraf .....Petitioner
V/s.
The Income-Tax Officer-6
(1)(2) and 4 Ors. ....Respondents

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Mr. M. Subramanian i/by. Mr. V.S. Hadade, Advocate for the petitioner.

Mr. N.C. Mohanty, Advocate for the respondents.

CORAM :- M.S. SANKLECHA, &

SANDEEP K. SHINDE, JJ.

DATE :- 5TH APRIL, 2018.

P.C. :-

1. These two petitions under Article 226 of the Constitution of India challenge two separate orders dated 28th September, 2017 passed in respect of the two petitioners under Section 179 of the Income-Tax Act, 1961 ("the Act").

2. The impugned orders seek to recover from the petitioners as Directors of a Private Limited Company, the tax dues of the Private Limited Company in respect of the Assessment Year 2008-09 which it failed to honour.

3. It is an agreed position between the parties that the issue arising herein would stand concluded in favour of the petitioners by the decision of this Court in **Madhavi Kerkar V/s. Assistant Commissioner of Income Tax (Writ Petition No. 567 of 2016)** rendered on 5th January, 2018. In the above case, it has been held that the jurisdiction to proceed against the Directors of a delinquent Private Limited Company under Section 179(1) of the Act will only arise when the

Revenue is unable to recover the tax dues from the delinquent Private Limited Company. Further, it has been held that, the show cause notice issued to the Directors of the Private Limited Company must indicate briefly the steps taken to recover the tax dues from the delinquent Private Limited Company and the failure to recover the same.

4. In the above view, the impugned orders dated 28th September, 2017 issued in respect of the two petitioners under Section 179(1) of the Act is quashed and set aside. However, it is clarified that the Revenue is at liberty to issue a appropriate show cause notice in accordance with the decision in *Madhavi Kerkar* (supra) and pass appropriate orders thereon after following the principles of natural justice. It is further clarified that the attachment of the bank accounts of the delinquent Private Limited Company will continue.

5. Mr. Subramanian, Learned Counsel for the petitioners, on instructions, states that the petitioners

will co-operate in the early disposal of the notices issued under Section 179(1) of the Act bearing in mind that the tax dues relate to Assessment Year 2008-09.

6. The petitions are disposed of in the above terms. No order as to costs.

(SANDEEP K. SHINDE, J) **(M.S. SANKLECHA, J)**