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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2427 OF 2017

Chintan Arvind Shah, Mumbai … Petitioner
Versus
Income-tax Officer – 14(3) (1) & Ors. …Respondents

Mr. F.V. Irani, with Mr. Niraj Sheth, i/b Atul Jasani for the Petitioner.
Mr. Suresh Kumar, for the Respondents.

CORAM: M.S.SANKLECHA & RIYAZ I. CHAGLA, JJ.
DATED: 22ND FEBRUARY 2018

PC:-

1. At the request of the learned counsel, this Petition is being finally disposed of at the stage of admission.

2. This Petition under Article 226 challenges the order dated 2nd March 2016 passed by Respondent No.1 – Assessing Officer under Section 179 (1) of the Income Tax Act, 1961 (the Act) and dated 13th June 2017 passed by Respondent No.2 - Principal Commissioner of Income Tax under Section 264 of the Act rejecting the Petitioner's revision application from the order dated 2nd March 2016.

3. The grievance of the Petitioner is that the impugned orders dated 2nd March 2016 and 13 June 2017 of the Respondent No.1

and Respondent No.2 proceed on a fundamental misconception that the Respondent No.1 has complied with condition precedent under Section 179 (1) of the Act i.e. failure to recover the dues from defaulting company before seeking to recover the dues from its Directors. Thus the condition precedent to recover the dues from the Petitioner i.e. a Director of the defaulting company is that the Revenue cannot recover its tax dues from the defaulting company.

4. It is an agreed position between the parties that in view of the decision of this Court in ***Madhavi Kerker v. Assistant Commissioner of Income Tax[1],*** the jurisdiction to proceed against the directors of the Company under Section 179(1) of the Act can only be exercised when the Revenue is unable to recover tax dues from the private limited company. This requirement of the Revenue having failed to recover its dues from the defaulting private limited company before proceeding against its Directors has been held to be a condition precedent for exercise of jurisdiction under Section 179(1) of the Act. Further it is held that the jurisdictional requirement must be intimated to the directors of the delinquent private limited company indicating the tax dues, the steps taken to recover the tax dues from the delinquent company

1 Writ Petition No. 567 of 2016 decided on 5th January 2018.

and its failure. This must be indicated in the show cause notice so as to give an opportunity to the Petitioner to raise objections on the attempts claimed by the Revenue to have been made and its failure. In the present facts it is undisputed position that the show cause notice to the Petitioner did not indicate the steps taken to recover the tax dues form delinquent private limited company and its failure to collect the same.

5. For the reasons indicated in our order passed in ***Madhavi Kerkar (Supra)*** we set aside the impugned order dated 2nd March 2016 and 13th June 2017 passed by the Assessing Officer and Commissioner of Income Tax. However, it is made clear that the attachment of the bank accounts vide order dated 3rd August 2015 of the delinquent private limited company would continue. It is also clarified that the Assessing Officer is at liberty to pass a fresh order after issuing an appropriate notice to the Petitioner as indicated in our order in ***Madhavi Kerkar (Supra).***

6. Writ Petition is allowed of in the above terms. No order as to costs.

(RIYAZ I. CHAGLA J.) **(M.S.SANKLECHA, J.)**