

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.20231 of 2018

and

WMP.Nos.23717 to 23722 of 2018

K.Chandrasekaran

.. Petitioner

Vs.

Tax Recovery Officer,
International Taxation
Room No.404, 4th Floor,
BSNL Building (Tower I)
16, Greams Road,
Chennai-600 006

.. Respondent

Writ petition filed under Article 226 of the Constitution of India praying for issuance of Certiorarified Mandamus to call for the records of the respondent comprised in its order under Section 179 of the Income Tax Act, 1961 purportedly dated 19.07.2018 (bearing No.TRC No.11/2014-15/TRO-INT.TAXN/2018-19; PAN.AAAC19403R) holding the petitioner jointly and severally liable for the income tax arrears of M/s. Infodrive Software Limited along with all proceedings in furtherance thereof, including but not limited to the notices dated 31.07.2018 addressed to the Petitioner's bankers under section 226(3) of the Income Tax Act, 1961 and to quash the same as illegal, unjust and ultra vires the Income Tax Act, 1961, and to consequently direct the respondent to defreeze the petitioner's Bank Accounts, bearing No.781010100000019 with Axis Bank, Saidapet Branch, Chennai, bearing Nos.000101083031 (NRO) and 000101235193 (NRE) with ICICI Bank, Cenotaph Road Branch, Chennai and bearing No.376801000000025 with Bank of Baroda, Adyar Branch, Chennai.

For Petitioner: Mr.Shurith Parthasarathy
for Ms.Deepika sekar

For Respondents: Mrs.Hema Muralikrishnan,
Standing Counsel

O R D E R

The petitioner is aggrieved against the order made under section 179 of the Income Tax Act,1961 dated 19.07.2018.

Consequently, the petitioner seeks for a direction to the respondent to defreeze the petitioner's bank accounts, bearing No.781010100000019 with Axis Bank, Saidapet Branch, Chennai, bearing Nos.000101083031 (NRO) and 000101235193 (NRE) with ICICI Bank, Cenotaph Road Branch, Chennai and bearing No.37680100000025 with Bank of Baroda, Adyar Branch, Chennai.

2. The case of the petitioner is as follows:

The petitioner is a Director of a Company called M/s. Infodrive Software Limited, a Public Limited Company. An order of assessment was passed against the said Company in respect of the assessment years 2010-11 and 2011-12 dated 15.12.2011. The said Company filed an Appeal before the CIT Appeals, challenging the said assessment order. The First Appellate Authority dismissed the Appeal on 01.01.2014. Challenging the same, the said Company filed further appeal before the Income Tax Appellate Tribunal in ITA.Nos.397 and 398/Mds/2014. The Tribunal, by order dated 30.06.2017, set aside the assessment orders and remitted the matter back to the Assessing Officer for deciding certain issues discussed therein and for giving definite findings after allowing the assessee, a reasonable opportunity to state and present its present case before the Assessing Officer. Thereafter, the Assessing Officer has not passed a fresh order of assessment till this date. On the other hand, the present impugned order under section 179 of the said Act is passed calling upon the petitioner to pay the entire arrears of demand within ten days. Before passing the said order, the petitioner was not issued with any show cause notice. Proceedings under Section 179 of the said Act is maintainable only against the Director of a Private Company and not against the Director of a Public Limited Company. Therefore, the impugned proceedings is without jurisdiction.

3. A counter affidavit is filed by raising very many contentions on merits of the demand made against the petitioner by going into the merits of the assessment already made. Apart from saying so, it is stated that the Appellate Tribunal has only restored the issue referred to therein back to the Assessing Officer for examination and not set aside for denovo consideration. Therefore, it is stated that the demand made through the impugned proceedings is maintainable.

4. Learned counsel for the petitioner, after reiterating the above contentions raised by the petitioner, placed his reliance on a decision of the Apex Court reported in 1993 Supp (1) SCC 604 (M.Tsajamoni Amma v. Deputy Commissioner of Income Tax).

5. Per contra, the learned counsel appearing for the respondents, after reiterating the contentions raised in the counter affidavit, submitted that the Company, in which, the

petitioner is the Managing Director is a Shell Company and therefore, they are evading the notices issued by the Assessing Officer. Thus, she submitted that in such scenario, the Assessing Officer has no other go except to issue the impugned proceedings against the petitioner in order to protect the interest of the revenue. She further contended that the Gujarat High Court, in a case reported in (2012)28 taxman.com 111 (Pravinbhai M.Kheni v. Assistant Commissioner of Income-tax, Central Circle-2&2) has considered the issue with regard to the proceedings under section 179 even in respect of a public limited Company and found that the Court can lift the corporate veil in order to do complete justice.

6. Heard both sides.

7. The present impugned order is put to challenge mainly on three grounds. The first ground raised is that the petitioner was not put on notice before passing the impugned order. When such contention is specifically raised by the petitioner, it is the duty of the respondent to place the material and satisfy this Court with regard to service of notice. No material is placed before this Court to substantiate the service of such notice to the petitioner, before passing the impugned order. It is only stated in the counter affidavit that the present impugned order was served on the petitioner. However, when the impugned order referred to the issuance of a show cause notice to the petitioner, proving such service of notice is on the respondent, which in my considered view, they miserably failed. Therefore, solely on the ground of violation of principles of natural justice, the impugned order has to go.

8. Secondly, the petitioner contended that the assessment order itself was set aside by the Tribunal and in the absence of any fresh order of assessment, the question of making a demand does not arise. Though the revenue sought to contend in their counter affidavit that only certain issues were remitted back to the Assessing Officer for examination by not setting aside the assessment order, this Court is not convinced on such contention.

9. A bare perusal of the order passed by the Tribunal would clearly indicate that it has set aside the assessment order itself and remitted the matter back to the file of the Assessing Officer. Therefore, it is not correct to say that the impugned demand is valid even in the absence of any fresh assessment order passed by the Assessing Officer in pursuant to such remand. Therefore, I find force in the submission made by the learned counsel for the petitioner that in the absence of any fresh order of assessment, the impugned demand cannot be sustained. Therefore, on this ground also, this Court is inclined to interfere with the impugned proceedings.

10. Insofar as the third issue, namely, maintainability of the proceedings under Section 179 against the petitioner, a Director in a Public Limited Company, is concerned, this Court is not inclined to go into such issue as this Court is satisfied to set aside the impugned order on the above said other two grounds. Moreover only when an order of assessment is passed, issuance of demand would arise. Only when a demand is made preceded by an assessment, the question of considering the validity of such demand issued under Section 179 of the said Act would arise. As this Court finds that such situation has not arisen in this case, it is not necessary to go into the third issue touching upon the maintainability of demand under section 179 of the said Act and give any finding on the same. However, the said third issue is left open to be agitated by the respective parties in an appropriate proceedings at the appropriate time.

11. Accordingly, this writ petition is allowed and the impugned order is set aside. Consequently, the respondent is directed to defreeze the Bank Accounts. It is made clear that the order passed in this writ petition will not prevent the respondent from initiating the proceedings against the petitioner in the manner known to law. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vsi

To

Tax Recovery Officer,
International Taxation
Room No.404, 4th Floor,
BSNL Building (Tower I)
16, Greams Road,
Chennai-600 006

+1cc to Mr.Arun Karthik Mohan, Advocate SR.NO.58329
+1cc to Mrs.Hema Muralikrishnan, Advocate SR.NO.58518

sm:29.8.2018

W.P.No.20231 of 2018