

RESERVED ON : 15.03.2018

DELIVERED ON : 28.03.2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2018

CORAM

THE HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.34010 of 2014 &

M.P.No.1 of 2014

Mr.Kalanithi Maran ... Petitioner

vs

1 Union of India
Through Secretary
Ministry of Finance
North Block, New Delhi 110 001

2 Assistant Commissioner of Income Tax
Circle 51(1), Aayakar Bhawan
Laxmi Nagar
District Centre Delhi 110 092 ... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the 2nd respondent with respect to the impugned order dated 03.11.2014 in TAN DELR07528D and quash the same.

For Petitioner : Mr.P.S.Raman Senior Counsel
for Ms.M.Sneha

For Respondents : Mr.G.Rajagopalan, A.S.G.
Assisted by
Mrs. Hema Muralikrishnan,
Senior Standing Counsel

ORDER

The petitioner has filed the above writ petition to issue a Writ of Certiorari, to call for the records on the file of the 2nd respondent with respect to the impugned order dated 03.11.2014 and to quash the same.

2. The brief case of the petitioner is as follows:-

(i) According to the petitioner, he is merely a Non-Executive Chairman of the Board of Directors of the Company and not at all in charge or control of the day-to-day affairs and operations of the Company, which is professionally managed by its Managing Director and other Managerial Personnel. The company has its Corporate Head Office at Delhi from where it is managed and controlled. On the other hand, the petitioner is residing and carrying on business at Chennai. The petitioner neither receive any sitting fees for participating in the Board Meetings of the company nor draw any salary from the company as he is not an employee of the company. Therefore, he can never at any probability be considered as the "Principal Officer" of the company and especially so when the Managing Director of the Company, Mr.K.Natrajhen has also been held as the "Principal Officer" of the very same company under section 2(35) of the Act by the very same 2nd respondent by a separate order dated 03.11.2014.

(ii) According to the petitioner, under section 276B of the Income Tax Act, a person, who is in charge of and is responsible to the company for the conduct of the business of the company, can be prosecuted. The test and criterion laid down by section 276B is entirely different and distinct from that laid down by section 2(35) of the Act. Section 2(35) is relevant only for imposing a penalty on a person and is not at all relevant for deciding whether he should be prosecuted for an offence under the Act. However, this factor has not at all been considered and the 2nd respondent has proceeded on the basis that the petitioner having been held to be the "Principal Officer", is, therefore, liable to be prosecuted for the offence under section 276B.

(iii) According to the petitioner, under section 278AA, no person shall be punished for any failure covered by section 276B if there was reasonable cause for such failure. On receipt of the impugned order, when the petitioner enquired, the company informed him that since acute financial and liquidity problems were faced by them, the company found it impossible to pay in time the full amount of tax deducted at source. The company submitted a plan for payment of the amount of tax deductible at source to the Income Tax Authorities, which plan was accepted without objection by the Authorities. This crucial factor by itself establishes that the Income Tax Authorities were fully aware of the acute liquidity and financial problems faced by the company which prevented it from making payment in time of the amount of tax deducted at source.

(iv) In the present case, there is no allegation whatsoever made by the Income Tax Department that any funds of

the company have been diverted or that any money were available to the company for making payment of the tax deducted at source and that the company and its officials nevertheless willfully or contumaciously or dishonestly refrained from making payment of the tax deducted at source though the company was in a position to make the payment. In the absence of any such allegation having been made and proved by the Income Tax Authorities, it cannot be contended by the Income Tax Authorities that there was no reasonable cause for the delay in payment and therefore, the offence under section 276B was committed. The impugned order does not show any application of mind by the 2nd respondent to the crucial factor.

(v) Punishment for the offence under section 278 B is rigorous imprisonment for a term, which shall not be less than three months but which may extend to seven years with fine.

(vi) According to the petitioner, he is the resident of Chennai and Non-Executive Chairman of Board of Directors of Spice Jet Limited, a company incorporated under the Companies Act, 1956 having its corporate office at No.319, Udyog Vihar, Phase-IV, Gurgaon, Haryana. The petitioner is not receiving any remuneration whatsoever from the company. The company is engaged in the business of operation of scheduled low cost air transport services under the brand name "Spice Jet". The petitioner is residing at No.22, Adyar Club Gate Road, R.A.Puram, Chennai - 28 and not a resident of Delhi/NCR where the corporate office of the company is situated and from where the day-to-day operations of the company are carried out. The company is professionally managed entity whose day-to-day operations are managed by a team of experts/trained professionals. In addition to being a Director of the company, the petitioner is also involved in other business activities in Chennai, which include Television, Radio, Newspaper, DTH broadcasting etc. The petitioner is full time Executive Chairman of Sun TV Network Ltd., which is a public limited company, from which he draws remuneration as per the provisions of the Companies Act.

(vii) By letter dated 23.04.2014, the 2nd respondent sought supply of certain information from the company concerning various issues including Tax Deducted at Source ("TDS"). The notice also directed holding of hearing on 07.05.2014 at 11.00 a.m. The company, by way of its letter dated 07.05.2014, supplied most of the information sought by the 2nd respondent and sought an extension of 30 days for production of further documents. On 04.08.2014, the 2nd respondent issued summons to the company under section 131 of the Income Tax Act, directing its Chief Financial Officer to appear before it. The Chief Financial Officer of the company,

viz., Mr.R.Neelakantan appeared before the 2nd respondent and his statement was recorded. In his statement, the Chief Financial Officer has categorically stated that due to huge losses being suffered by the company, the company was facing a financial crunch and was taking longer than usual to deposit TDS. Further, he has stated that while the company is complying with all provisions of law including the Income Tax Act as far as deduction of TDS is concerned, there has been some delay in depositing TDS.

(viii) The company sent a representation dated 12.08.2014 to the 2nd respondent informing about the huge losses suffered by it in the financial year 2013-14. The company also suggested a payment plan on the basis of some promoter capital infusion as well as daily collections to reduce its TDS liability. The 2nd respondent issued another communication dated 12.08.2014 seeking TDS related information/other information from the company concerning for the financial year 2012-13. This information was supplied by the company along with a covering letter dated 27.08.2014.

(ix) The company continued to deposit amounts towards TDS with the 2nd respondent and substantially complied with the proposal made by it with a few minor exceptions. Despite its best efforts to deposit the TDS amounts in spite of severe financial hardship being faced by the company, the 2nd respondent on 01.09.2014, issued a show cause notice to the petitioner under section 2(35) of the Income Tax Act regarding TDS for the financial year 2013-14. In the show cause notice it has been stated that the petitioner has been actively participating in functioning and management of company affairs and directed him to show cause as to why he should not be treated as a Principal Officer within the provisions of section 2(35) of the Income Tax Act. Since the notice dated 01.09.2014 was served on the petitioner only on the evening of 10.09.2014, i.e., the day on which his response to the notice was due, the petitioner sent a letter to the 2nd respondent seeking two weeks time to make a representation in the matter.

(x) At this juncture, it is pertinent to state that the 2nd respondent also issued identical show cause notices to the Managing Director of the company, viz., Mr.K.Natrajhen and to Mr.RakeshKumar, DGM (Finance & Taxation). Just as the show cause notice issued to the petitioner, the show cause notices issued to the Managing Director and DGM (Finance & Taxation) contained identical averments stating that both the recipients were actively participating in the functioning and management of the company affairs and therefore, required to show cause as to why they should not be treated as Non-Executive Principal Officer within the meaning of section 2(35) of the Income Tax Act. It therefore becomes clear that while issuing show cause

notices, there was no application of mind by the 2nd respondent to the fact that the petitioner was not at all involved in the day-to-day affairs of the company and he is residing and carrying on business in Chennai.

(xi) On 23.09.2014, the petitioner sent a reply stating that he is only a Non-Executive Chairman and he is not in charge of the day-to-day affairs of the company. Further, he has stated that the company is professionally run by a team of experts, who managed the affairs of the company from its corporate Head Office located in Delhi/NCR whereas, he is residing and carrying on business at Chennai. The petitioner is no way involved in the day-to-day management of the company and neither hold any Executive nor full time position in the company, therefore, he cannot be held to be the Principal Officer of the company and sought for the withdrawal of the show cause notice.

(xii) The Managing Director of the company Mr.K.Natrajhen also filed a response to the show cause notice dated 15.10.2014, wherein he responded to the show cause notice on merits. The Managing Director of the company is involved in the day-to-day affairs and who is indeed the "Principal Officer" stated that the notice is premature and ought to be withdrawn. The notice also sought for an opportunity to be heard in person. Similarly, a reply to the show cause notice was also submitted by Mr.Rakesh Kumar, DGM (Finance & Taxation) of the company on merits as well.

(xiii) While the petitioner was in the process of preparing and filing reply to the show cause notice, the 2nd respondent issued further communications addressed to the company seeking supply of information regarding TDS payments for the financial years 2012-13, 2013-14 and first quarter of financial year 2014-15. The 2nd respondent addressed another letter dated 02.09.2014 to the company alleging that the company made partial payments against the payment plan submitted by it. The letter directed the company to make good the shortfall for the period August-October 2014 and threatened action in case of the company's failure to pay. The company sent their reply supplying the information sought for by the 2nd respondent on 08.09.2014.

(xiv) Despite the sincere efforts of the company to settle all TDS dues, the 2nd respondent continued to send intimidating letters to the company even upon a single days delay in depositing TDS and also made certain factually incorrect assertions. The company has presented a plan during the month of August and September, 2014 as on 30.09.2014. The company has already paid a sum of Rs.88.71 crores during the month of

October and September 2014. The company also assured the 2nd respondent that it will stick to the payment plan and any minor deviations shall be addressed in seven working days. Despite substantial compliance by the company and also prompt supply of all documents requested by the 2nd respondent, the 2nd respondent continued to write letters to the company without appreciating the fact that the company had been complying with its payment plan.

(xv) By letter dated 01.10.2014, the 2nd respondent threatened coercive action against the company even if it had deposited TDS to the extent of Rs.88.71 crores against an outstanding of Rs.90 crores leaving a shortfall of only Rs.1.29 cores, which too was paid in the 1st week of October, 2014. In furtherance of the show cause notice, the 2nd respondent issued an order dated 03.11.2014 under section 2(35) of the Income Tax Act, which is impugned in this writ petition, holding that the petitioner is the Principal Officer of the Company within the meaning of Section 2(35) of the Income Tax Act. The impugned order merely states, without any basis or materials whatsoever "All major decisions are taken in the company under his consent. In that capacity he is certainly associated with the management and administration of the Company". The impugned order straightaway proceeds to hold that the petitioner is the Principal Officer of the company and accordingly he is liable to be prosecuted under section 276B of the Income Tax Act, 1961 for the Tax Deducted at Source default committed by the company. The impugned order does not anywhere allege that there was dishonesty or contumacious conduct on the part of the company or that there was any diversion or mis-utilization of the funds or that it was possible for the company to pay the TDS amount further or earlier but it dishonestly hope not to do so. The impugned order does not even attempt to dispute the existence of the grave financial and liquidity problems of the company. The 2nd respondent completely disregarded section 278B of the Income Tax Act, which expressly provides that only such person who at the time of the offence as in charge of and was responsible to the company for the conduct of its business shall be held guilty for the offence under section 276B of the Income Tax Act shall be liable to be proceeded against.

(xvi) The 2nd respondent by way of separate order dated 03.11.2014, proceeded to hold the Managing Director of the Company to be the Principal Officer within the meaning of section 2(35) of the Income Tax Act. By letter dated 05.10.2014, the company wrote to the 2nd respondent confirming that it has met its commitment for the months of August and September 2014. It was stated that while the entire liability for the financial year 2013-14 with an exception of Rs.7.06 crores (which too was paid subsequently) has been paid and that in so far as the remaining liability of Rs.80 crores is

concerned, the company proposes to discharge the same by paying an amount of Rs.2 crores per day (excluding Sunday and bank clearing holidays). In its letter, the company showed its bona fides and requested that no coercive steps be taken against the company and its officers. On 19.11.2014, the 2nd respondent issued another letter to the company alleging default in compliance with the schedule submitted by it.

(xvii) The 2nd respondent issued two show cause notices to the petitioner for the financial years 2013-14 and 2014-15 directing the petitioner to show cause as to why prosecution should not be launched against him. Inability to deposit the TDS in time due to financial hardship and lack of financial resources faced by a person cannot be a ground for prosecuting a person under section 276B of the Income Tax Act. The impugned order which holds the petitioner as the "Principal Officer of the company and therefore, liable to be prosecuted for the alleged default of the company under section 276B of the Income Tax Act, is liable to be set aside. In these circumstances, the petitioner has filed the above writ petition.

3. The brief case of the respondents is as follows:-

(i) According to the respondents, the lis in the present case arises out of the failure on the part of M/s. Spice Jet Limited to deposit the tax deducted by it at source from amounts paid/payable to third parties. M/s. Spice Jet Limited is an assessee on the file of the 2nd respondent and its TAN number is also registered with the 2nd respondent only and therefore, the facts which have a bearing with the dispute have arisen in Delhi only and not in the State of Tamil Nadu. The mere fact that the petitioner herein is residing in Chennai does not give rise to a cause of action arising in the state of Tamil Nadu. The place where the petitioner is residing has no bearing with the lis involved, which is the failure to deposit the tax deducted at source.

(ii) According to the respondents, the petitioner has filed a Criminal M.C. Petition No.381 of 2015 before the Delhi High Court against the criminal complaint that was filed pursuant to the order dated 03.11.2014 holding the petitioner as a Principal Officer of M/s. Spice Jet Limited. Hence, with regard to the very same issue i.e., failure to deposit the TDS within the time as stipulated under the provisions of the Income Tax Act, the petitioner is pursuing his remedies before different High Courts. The respondents being situate in Delhi and all the relevant records being available at Delhi and having regard to the fact that the records required in this Writ Petition and the Criminal Quash Petition before the Delhi High Court are the same, on the ground of forum convenience also the above writ petition ought to be dismissed. Therefore, the writ

petition should be dismissed as not maintainable.

(iii) According to the respondents, the petitioner was inducted as Director and Chairman into the Board of Directors of M/s. Spice Jet Limited with effect from 15.11.2010 and the petitioner had expressed his plan of doubling their current fleet size and that he was excited to lead the airline on this growth path. Therefore, it is clear that the petitioner had taken active part in the conduct of the business of M/s. Spice Jet Limited and just because the company has a Managing Director and other Managerial Personnel, it does not mean that the Chairman/Director does not take part in the Management or Administration of the company. The fact that the petitioner resides in Chennai does not mean that he is not involved in the Management or Administration of the company as in today's world, it is not necessary to be physically present in the Corporate Office for the purpose of Administering/Managing a company. Thus, in accordance with Section 2(35) of the Income Tax Act, the 2nd respondent has rightly held that the petitioner should be the Principal officer of M/s. Spice Jet Limited.

(iv) Section 2(35) is for holding a person as a Principal Officer of a company and Section 278B clearly states that where an offence under this Act has been committed by a company and 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. The petitioner, being a Director cum Chairman of M/s. Spice Jet Limited has been rightly held as Principal Officer and if there has been no neglect on his part in discharging his duties as Director cum Chairman, the same has to be proved by him before the Criminal Court. There is no necessity for the Department to prove that any funds of the company have been diverted in order to initiate action under the provisions of the Act. The provisions of Chapter XVII relating to deduction of tax at source are very stringent and mandatory. The amount deducted as tax at source is not money belonging to M/s. Spice Jet Limited, but, the money belonging to third parties and which has not been paid by M/s. Spice Jet Limited to third parties under an implicit understanding that the same will be deposited as TDS with the Department and such third party will be entitled to treat the same as part of his advance tax payments.

The failure on the part of M/s. Spice Jet Limited, to deposit the TDS within the stipulated time has several implications.

(v) The default committed by M/s. Spice Jet Limited, came to the notice of the department in the course of survey

conducted under section 133A of the Act. It is immaterial whether or not the Principal Officer is functioning at the same or different place. The Director/Chairman is covered under section 2(35)(b) of the Income Tax Act. On the basis of survey conducted under Section 133A of the Act, defaults of late payment of TDS and non deduction of TDS was noticed by the tax authorities of the jurisdiction and consequently after issuing a show cause notice under section 201 of the Income Tax Act immediately, at the premises of the company, the company was held as an assessee in default. Accordingly, the Director/Chairman is covered under section 2(35)(b) of the Income Tax Act, since he is connected with the Management and Administration of the company.

(vi) The Income Tax Act does not contain any stipulation of "day-to-day affairs of the company". All that section 2(35) stipulates is "concerned with the Management and Administration of the Company". Therefore, the contention of the petitioner that the petitioner is not a Principal Officer is liable to be rejected.

(vii) The plea that there was a reasonable cause for delay in payment of TDS to the Government account, taken by a deductor company is also not acceptable. Since the deductor has failed to deposit the tax into the Government Account within the prescribed time, it becomes an "assessee in default". Proceedings initiated under section 2(35) relates to proceedings under section 276B and are independent of recovery proceedings.

(viii) Prosecution has been initiated for huge delay which runs into more than 12 months in respect of various payments of the TDS. Payment being made by the deductor company were as per post survey record proceedings and do not relate to proceedings under section 276B. The fact that the petitioner is the promoter of the company and that he infuses capital goes to show that he is engaged in the management, administration and business of the company. Despite several opportunities were given, M/s. Spice Jet Limited did not stick to its payment plan and payments were made only after recovery proceedings initiated. Section 276B does not provide for any bona fides or mala fides. According to the respondents, there is no bar under the Income Tax Act to hold more than one person as Principal Officer. There cannot be any non-willful default in the failure to deposit the TDS on time, as the deductor company has no authority to retain and use the TDS amounts for its other purposes. It is for the petitioner to let in evidence and prove his innocence, if any in the Criminal Court and such factual disputes cannot be decided in a Writ Petition under Article 226 of the Constitution of India. In

these circumstances, the respondents prayed for dismissal of the writ petition.

4. Heard Mr.P.S.Raman, learned Senior Counsel appearing for the petitioner and Mr.G.Rajagopalan, learned Additional Solicitor General appearing for the respondents.

5.1 With regard to the Jurisdiction of this Court, Mr.P.S.Raman, learned Senior Counsel appearing for the petitioner submitted that the impugned order was served on the petitioner at Chennai at his residential address and though the company's registered corporate office is at Delhi and the TAN number is at Delhi assessment, the petitioner is not challenging the assessment order, but is challenging only the impugned order naming him as the Principal Officer. The learned Senior Counsel further submitted that cause of action arose only at Chennai and therefore, this Court has jurisdiction to entertain the writ petition.

5.2 The learned Senior Counsel appearing for the petitioner submitted that the petitioner is the Non-Executive Chairman of the Board of Directors of the Company and the company is professionally run from its corporate Head Office at Delhi by the Managing Director, who is in charge of the day-to-day affairs of the company. Apart from the Managing Director, Chief Financial Officer and Chief Operating Officer are also involved in the day-to-day business activities and dealings of the company. All the day-to-day decisions, workings and administrations are carried from the Corporate Head Office at Delhi by professionals.

5.3 The learned Senior Counsel submitted that the petitioner is living at Chennai and not at all involved in the day-to-day affairs of the company and that the petitioner in fact does not draw salary from the company and hence, he is not the employee of the company.

5.4 The learned Senior Counsel appearing for the petitioner submitted that the 2nd respondent had also issued show cause notice to the Managing Director, viz., Mr.K.Natrajhen. That apart, the 2nd respondent also caused a show cause notice dated 01.09.2014 to the petitioner at Chennai residence and to one Mr.Rakesh Kumar at IGI Airport, Delhi as to why the petitioner and the said Mr.Rakesh Kumar should not be treated as Principal Officers. In these circumstances, the learned Senior Counsel submitted that the petitioner cannot be treated as Principal Officer within the meaning of section 2(35) of the Income Tax Act.

5.5 The learned Senior Counsel appearing for the

petitioner submitted that the conjoint reading of sections 2 (35)(b) and 278B of Income Tax Act clearly emphasis that it shall not render any such person liable to any punishment if he proves that the offence was committed without his knowledge. Further, the Managing Director himself has explicitly stated that he is the person in charge of the day-to-day affairs of the company and that the petitioner is only a Non-Executive Chairman, who is not involved in the day-to-day affairs, management and administration of the company. In these circumstances, the learned Senior Counsel submitted that without any basis, the 2nd respondent had erroneously come to the conclusion that the petitioner is the Principal Officer. In support of his contentions, the learned Senior Counsel relied upon the following judgments: -

(i) 2014(9) Supreme Court Cases 329 [Nawal Kishore Sharma v. Union of India and others] wherein the Hon'ble Supreme court held as follows:-

" 13. In the case of Union of India and others vs. Adani Exports Ltd. and another, (2002) 1 SCC 567, this Court held that in order to confer jurisdiction on a High Court to entertain a writ petition it must disclose that the integral facts pleaded in support of the cause of action do constitute a cause so as to empower the court to decide the dispute and the entire or a part of it arose within its jurisdiction. Each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the Court's territorial jurisdiction unless those facts

are such which have a nexus or relevance with the lis i.e. involved in the case. This Court observed:

"17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that

those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no [pic]bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in para 16 of the petition, in our opinion, falls into the category of bundle of facts which would constitute a cause of action giving rise to a

dispute which could confer territorial jurisdiction on the courts at Ahmedabad."

14. In *Om Prakash Srivastava vs. Union of India and Another* (2006) 6 SCC 207, answering a similar question this Court observed that on a plain reading of Clause(2) of Article 226 it is manifestly clear that the High Court can exercise power to issue direction, order or writs for the enforcement of any of the fundamental rights or for any other purpose if the cause of action in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territory. In para 7 this Court observed:-

"7. The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof."

15. In the case of Rajendran Chingaravelu vs. R.K. Mishra, Additional Commissioner of Income Tax and Others, (2010) 1 SCC 457, this Court while considering the scope of Article 226(2) of the Constitution, particularly the cause of action in maintaining a writ petition, held as under:

"9. The first question that arises for consideration is whether the Andhra Pradesh High Court was justified in holding that as the seizure took place at Chennai (Tamil Nadu), the appellant could not maintain the writ petition before it. The High Court did not examine whether any part of cause of action arose in Andhra Pradesh. Clause (2) of Article 226 makes it clear that the High Court exercising jurisdiction in relation to the territories within which the cause of action arises wholly or in part, will have jurisdiction. This would mean that even if a small fraction of the cause of action (that bundle of facts which gives a petitioner, a right to sue) accrued within the territories of Andhra Pradesh, the High Court of that State will have jurisdiction.

11. Normally, we would have set aside the order and remitted the matter to the High Court for decision on merits. But from the persuasive submissions of the appellant, who appeared in person on various dates of hearing, two things stood out. Firstly, it was clear that the main object of the petition was to ensure that at least in future, passengers like him are not put to unnecessary harassment or undue hardship at the airports. He wants a direction for issuance of clear guidelines and instructions to the inspecting officers, and introduction of definite and efficient verification/investigation procedures. He wants changes in the present protocol where the officers are uncertain of what to do and seek instructions and indefinitely wait for clearances from higher-ups for each and every routine step, resulting in the detention of passengers for hours and hours. In short, he wants the enquiries, verifications and investigations to be efficient, passenger-friendly and courteous. Secondly, he wants

the Department/officers concerned to acknowledge that he was unnecessarily harassed."

16. Regard being had to the discussion made herein above, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction.

17. We have perused the facts pleaded in the writ petition and the documents relied upon by the appellant. Indisputably, the appellant reported sickness on account of various ailments including difficulty in breathing. He was referred to hospital. Consequently, he was signed off for further medical treatment. Finally, the respondent permanently declared the appellant unfit for sea service due to dilated cardiomyopathy (heart muscles disease). As a result, the Shipping Department of the Government of India issued an order on 12.4.2011 cancelling the registration of the appellant as a seaman. A copy of the letter was sent to the appellant at his native place in Bihar where he was staying after he was found medically unfit. It further appears that the appellant sent a representation from his home in the State of Bihar to the respondent claiming disability compensation. The said representation was replied by the respondent, which was addressed to him on his home address in Gaya, Bihar rejecting his claim for disability compensation. It is further evident that when the appellant was signed off and declared medically unfit, he returned back to his home in the District of Gaya, Bihar and, thereafter, he made all claims and filed representation from his home address at Gaya and those letters and representations were entertained by the respondents and replied and a decision on those representations were communicated to him on his home address in Bihar. Admittedly, appellant was suffering from serious

heart muscles disease (Dilated Cardiomyopathy) and breathing problem which forced him to stay in native place, wherefrom he had been making all correspondence with regard to his disability compensation. Prima facie, therefore, considering all the facts together, a part or fraction of cause of action arose within the jurisdiction of the Patna High Court where he received a letter of refusal disentitling him from disability compensation."

(ii) 2003(3) Mh.L.J. [Homi Phiroze Ranina vs State Of Maharashtra] wherein the Bombay High Court held as follows:-

"4. It is the contention of the applicants/accused that they are not the principal officers of the said Company Accused No. 1. They are only the non-executive Directors of the Company Accused No. 2. L.K. Khosla is the Chairman and Managing Director and Accused No. 8 Yogesh Khosla is whole-time Director of the said Company and hence, the liability for deducting income-tax and crediting to the Central Government is that of Accused Nos. 2, 8 and the Company, Accused No. 1. It is also contended that no notice was given by the Commissioner of Income Tax to the applicant/accused prior to his granting sanction to prosecute the accused under section 279(1) of the Act. Principles of natural justice require that the notice ought to have been given to the applicants by the Commissioner before according sanction.

9. It must be fairly stated that at the time of hearing of the said application for discharge, the attention of the court was not drawn to the case of M. A. Unneerikutty (1994(2) Kerala 812), Kerala High Court clearly states that it is necessary that complainant must lead and show some acceptable materials that the partners were in charge of and responsible for the conduct of the business of firm. to make them also vicariously responsible along with it. A mere allegation to that effect will not be sufficient. There should be credible material to show their active involvement in the conduct and management of the business of the firm.

11. Unless the complaint disclosed a prima facie case against the applicants/accused of

their liability and obligation as Principal Officers in the day-to-day affairs of the Company as Directors of the Company under section 278B, the applicants cannot be prosecuted for the offences committed by the Company. In the absence of any material in the complaint itself prima facie disclosing responsibility of the accused for the running of the day-to-day affairs of the Company process could not have been issued against them. The applicants cannot be made to undergo the ordeal of a trial unless it could be prima facie showed that they are legally liable for the failure of the Company in paying the amount deducted to the credit of the Company. Otherwise, it would be a travesty of justice to prosecute them and ask them to prove that the offence is committed without their knowledge. The Supreme Court in the case of Sham Sundar v. State of Haryana AIR 1989 SC 1982 held as follows :

"... It would be a travesty of justice to prosecute all partners and ask them to prove under the proviso to sub-section (1) that the offence was committed without their knowledge. It is significant to note that the obligation for the accused to prove under the proviso that the offence took place without his knowledge or that he exercised all due diligence to prevent such offence arises only when the prosecution establishes that the requisite condition mentioned in sub-section (1) is established. The requisite condition is that the partner was responsible for carrying on the business and was during the relevant time in charge of the business. In the absence of any such proof, no partner could be convicted...." (p. 1984)

(iii) 1994(2) Kerala 812 [M.A. Unneerikutty And Ors. vs Deputy Commissioner Of Income Tax] wherein the High Court of Kerala held as follows:-

"3. The basic facts are not in dispute. The question for consideration in these petitions is whether there is now a case for this court's interference under Section 482 of the Code of Criminal Procedure for the reasons stated in the petitions. It has been alleged that tax was not deducted at source on the interest credited to the accounts of the firm during the relevant period and that the petitioners as partners in charge of and responsible for the conduct of its

business committed offences under Section 276B (ii) read with Section 278B of the Income-tax Act. Under Section 278B of the Act,--

"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 the 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 and punished accordingly. "

Under the proviso to Sub-section (1), no person shall be liable for any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence with respect to commission of the offence. Under Sub-section (2),--

". . . 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."

A director in relation to a firm is also a partner. Under Section 204,--

"For the purposes of Sections 192 to 194, Section 194A, Section 194B, Section 194BB, Section 194C, Section 194D and Sections 195 to 203 and Section 285, the expression 'person responsible' for paying means,--

(iii) in the case of credit or, as the case may be, payment of any other sum chargeable under the provisions of this Act, the payer himself, or, if the payer is a company, the company itself including the principal officer thereof."

Under Section 2(35) of the Act,--

"'principal officer', used with reference to a local authority or a company or any other public body or any association of persons or any body of individuals, means,--

- (a) the secretary, treasurer, manager, or agent of the authority, company, association or body, or,
- (b) any person connected with the management or administration of the local authority, company, association or body upon whom the Income-tax Officer has served a notice of his intention of treating him as the principal officer thereof."

It is evident that the words "any person responsible for paying" mentioned in Section 194A of the Act must be understood in the context of Section 204 of the Act, which makes it clear that the responsibility for paying the tax in a case where the company is a firm is that of the company itself including its principal officer. By virtue of Section 2(35) of the Act, partners do not come within the definition of "principal officer" unless the Income-tax Officer had served notice of his intention to treat them or any one of them as the principal officer of the firm connected with the management or administration. It seems necessary that the complainant must allege and show by some acceptable materials that the partners concerned were in charge of and responsible for the conduct of the business of the firm to make them also vicariously responsible along with it. A mere allegation to that effect will not be sufficient. There should be credible materials to show their active involvement in the conduct and management of the business of the firm. Short of stating that they were in charge of and responsible for the conduct of the business of the firm nothing had been mentioned in the complaints either about their role or as to the extent of their liability, which should not have been left to be inferred. At any rate the allegations seem to be insufficient to make them liable for the impugned act for which perhaps the firm and the principal officer, if any, alone would be liable.

5. In *Municipal Corporation of Delhi v. Purshotam Dass Jhunjunwala*, AIR 1983 SC 158, the facts were slightly different. The Food Inspector, Municipal Corporation of Delhi, purchased samples of milk toffees for analysis and they were found adulterated by the public analyst. They were manufactured by the Hindustan Sugar Mills, Bombay. In the complaint, it was

alleged, that "accused Ram Kishan Bajaj is the chairman, accused R.P. Neyatia is the managing director and accused Nos. 7 to 12 are the directors of the Hindustan Sugar Mills Ltd. and were in charge of and responsible to it for the conduct of its business at the time of Commission of offence". Reliance was placed upon the decision in Municipal Corporation of Delhi v. Ram Kishan Rohtagi, AIR 1983 SC 67. But the Supreme Court observed (at page 159) :

"Unlike the other case, paragraph 5 of the complaint of this case gives complete details of the role played by the respondents and the extent of their liability. It is clearly mentioned that Ram Kishan Bajaj is the chairman and R.P. Neyatia is the managing director and respondents 7 to 11 are the directors of the mill and were in charge of and responsible for the conduct of its business at the time of the commission of the offence whereas in the other case the complaint has merely drawn a presumption without any averment."

The decision of the Madras High Court in Shital N. Shah v. ITO [1991] 188 ITR 376, seems to be in point. The learned judge referred to the above decisions of the Supreme Court and observed (headnote) :

"The words 'any person who is responsible for paying' found in Section 194A of the Income-tax Act, 1961, have to be read in conjunction with Section 204 of the Act which furnishes the meaning of 'person responsible for paying'. This provision makes it abundantly clear that, if the payer is a company, the company itself including the principal officer thereof will be the 'person responsible for paying'. If that be so, it is fairly apparent that the company itself including the principal officer thereof were liable for prosecution for the alleged contravention. Section 2(35) would then step in to find out as to who the principal officer would be. Section 2 (35) makes it clear that the partners of the firm do not fall within that fold unless the Income-tax Officer had served a notice on any of them of his intention of treating them as the principal officer of the firm, connected with the management or

administration thereof. Under Section 278B, the basic requirement is that the prosecution must prove that the persons concerned were in charge of, and were responsible to, the firm for the conduct of the business of the firm. It is only then that they can be vicariously prosecuted along with the firm. The proviso to Section 278B(1) of the Act will come into operation only after the initial onus cast on the prosecution under the main section gets discharged."

I am in respectful agreement with the above observations, which seem to lay down the correct law."

6.1 Countering the submissions made by the learned Senior Counsel appearing for the petitioner, Mr.G.Rajagopalan, learned Additional Solicitor General appearing for the respondents submitted that this Court has no jurisdiction to entertain the writ petition for the reason that the respondents are stationed at Delhi and that mere serving of the impugned order at Chennai would not give cause of action at Chennai. Further, the learned Additional Solicitor General submitted that the registered office of the company viz., M/s.Spice Jet Limited situate at Delhi and therefore, this Court has no jurisdiction to entertain the writ petition.

6.2 The learned Additional Solicitor General submitted that the petitioner being the Chairman and Director of the company, the 2nd respondent has rightly treated the petitioner as Principal Officer. Further, the learned Additional Solicitor General submitted that there can be more than one person as Principal Officer for initiation of criminal proceedings under section 2(35) of the Income Tax Act. The learned Additional Solicitor General further submitted that Section 2(35) of the Act does not use the word day-to-day management/affairs but merely mentions management or administration, therefore, the petitioner was rightly held as Principal Officer by the 2nd respondent. In these circumstances, the learned Additional Solicitor General prayed for dismissal of the writ petition. In support of his contentions, the learned learned Additional Solicitor General relied upon the following judgments:-

(i) 2004(6) Supreme Court Cases 254 [Kusum Ingots & Alloys Ltd. v. Union of India and Another], wherein the Hon'ble Supreme Court held as follows:-

"28. Lt. Col. Khajoor Singh Vs. The Union of India and Another [(1961) 2 SCR 828] whereupon the learned counsel appearing on behalf of the appellant placed strong reliance was rendered at a point of time when clause (2) of Article 226 had not been inserted. In that case the Court held that the jurisdiction of the High Court under Article 226 of the Constitution of India, properly construed, depends not on the residence or location of the person affected by the order but of the person or authority passing the order and the place where the order has effect. In the latter sense, namely, the office of the authority who is to implement the order would attract the territorial jurisdiction of the Court was considered having regard to Section 20(c) of the Code of Civil Procedure as Article 226 of the Constitution thence stood stating :

"...The concept of cause of action cannot in our opinion be introduced in Art. 226, for by doing so we shall be doing away with the express provision contained therein which requires that the person or authority to whom the writ is to be issued should be resident in or located within the territories over which the High Court has jurisdiction. It is true that this may result in some inconvenience to person residing far away from New Delhi who are aggrieved by some order of the Government of India as such, and that may be a reason for making a suitable constitutional amendment in Art. 226. But the argument of inconvenience, in our opinion, cannot affect the plain language of Art. 226, nor can the concept of the place of cause of action be introduced into it for that would do away with the two limitations on the powers of the High Court contained in it."

29. In view of clause 2 of Article 226 of the Constitution of India now if a part of cause of action arises outside the jurisdiction of the High Court, it would have jurisdiction to issue a writ. The decision in Khajoor Singh (supra) has, thus, no application.
Forum Conveniens

30. We must, however, remind ourselves that even if a small part of cause of action arises

within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. (See Bhagar Singh Bagga v. Dewan Jagbir Sawhany, AIR 1941 Cal; Mandal Jalan v. Madanlal, (1945) 49 CWN 357; Bharat Coking Coal Limited v. M/s Jharia Talkies & Cold Storage Pvt. Ltd. (1997) CWN 122; S.S.Jain & Co. & Anr. v. Union of India & Ors. (1994) CHN 445; M/s. New Horizon Ltd. v. Union of India, AIR 1994 Delhi 126) Conclusion

(ii) 2007 160 Taxman 71 (SC) [Madhumilan Syntex Ltd. & Ors vs Union Of India], wherein the Hon'ble Supreme Court held as follows:-

"11. Mr. Ranjit Kumar, Senior Advocate appearing for the appellants raised several contentions. He submitted that the orders passed by the Courts below as well as by the High Court deserve to be set aside. According to him, the present case is neither a case of 'non deduction' of tax nor of 'non payment' of tax. The tax required to be deducted at source had been deducted by the Company and the said amount had also been credited in the account of Central Government. Only thing was that there was some delay on the part of the Company in crediting the amount. In some cases, there was delay of few days only (two days). As such, there was no reason to prosecute the Company and/or its Directors. It also cannot fall within the mischief of the Act so as to give rise to criminal liability. It was also submitted that Company is not a natural person but merely a legal or juristic person and hence it cannot be punished. If it is so, obviously, for such act, Directors or Officers of the Company also cannot be punished. The action of the respondents, therefore, is illegal and not warranted by law. The counsel also submitted that appellant Nos. 2 to 4 cannot be said to be 'principal officers' under the Act and no prosecution can be initiated against them. It was urged that to be a 'principal officer' with reference to a Company, it must be shown that such person is "connected with the management or administration of the Company" and who has been served with a notice

that he would be treated as principal officer of the Company. No such notice had been issued by the respondents. Notice which had been issued in the instant case is to show cause as to why prosecution should not be launched against them as they were to be treated as principal officers under the Act. Such notice cannot be said to be a notice to treat a particular officer as 'principal officer' under the Act. It was also submitted that criminal prosecution is a drastic step and should not be taken lightly particularly when there are several provisions in the Act providing for payment of interest, penalty, etc. Recourse to prosecution should be had as a last resort. According to the appellants, there was non-application of mind on the part of the second respondent- Commissioner of Income Tax in granting sanction under Section 279 of the Act. The second respondent has not considered the relevant facts, reasons and grounds relied upon by the appellants as to why the amount could not be deposited. The circumstances pleaded by the appellants in their reply to the show cause notice clearly disclosed that there was 'reasonable cause' for delay in depositing the amount and it was not a fit case for prosecution of appellants."

(iii) 2014 (43) RZMnn.xom 201 (Karnataka) [M/S. Kingfisher Airlines Ltd vs The Income Tax Department] wherein the Hon'ble Supreme Court held as follows:-

"17. On 02.01.2014 petitioners filed an application under Section 482 Cr.P.C. bringing to the notice of this Court a subsequent event and a document supporting the same. The subsequent event is, treating one Sri. T.R. Venkatadri, Assistant Vice President (Regional Accounts South and Taxation) of petitioner No. 1 company as the Principal Officer under Section 2(35-B) of the I.T. Act. Learned counsel for the petitioners contend that in view of this development proceedings initiated against petitioner No. 2 are liable to be quashed. I decline to accept this contention of the learned counsel for the petitioners. A reading of Section 2(35-B) of the I.T. Act specifies that there is no bar for treating more than one person as the Principal Officer for initiation of criminal proceedings.

The Supreme Court in the case of Madumilan Syntex supra, held as under:

"27. So far as the directors are concerned, it is alleged in the show-cause notice as well as in the complaint that they were "principal officers" of the company. In the show-cause notice, it was asserted that the appellants were considered as principal officers under section 2 (35) of the Act. In the complaint also, it was stated that the other accused were associated with the business of the company and were treated as principal officers under section 2(35) of the Act and hence they could be prosecuted. Dealing with an application for discharge, the trial court observed that accused No.1 was the company whereas the other accused were the directors. Whether they could be said to be principal officers or not would require evidence and it could be considered at the stage of trial and the application was rejected. In revision, the first additional sessions judge took a similar view."

Therefore the subsequent event treating one Sri. T.R.Venkatadri as the Principal Officer of petitioner No.1 company will not result in quashing of the proceedings against petitioner No. 2. It is open for the respondent authorities to proceed against the company, its directors or any other principal officer or officers responsible for default. The trial Court to consider this question in the trial. Accordingly point No. iii is answered in negative and against the petitioners.

(iv) 2016 (73) Taxmann.com 58 (Madras) [Tecpro Systems Limited vs The Union Of India] wherein the Hon'ble Supreme Court held as follows:-

"5. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the writ petition has been filed pursuant to the order dated 20.01.2016 passed by the respondent at New Delhi. Though the prayer sought for is for the issuance of a writ of mandamus, the learned counsel appearing for the respondent submitted that no record is available in Chennai office and all the records

are only in New Delhi office. The learned senior counsel appearing for the petitioner submitted that the petitioner is an assessee only in the New Delhi office and not at Chennai. The petitioner also submitted their Income Tax Returns only at New Delhi office and not at Chennai office. Merely because the petitioner is having an office at Chennai the same will not confer territorial jurisdiction to this Court to entertain the writ petition. That apart, deducting TDS by the petitioner at Chennai will not confer territorial jurisdiction at Chennai. When the petitioner is an assessee in the office of the Income Tax Department at New Delhi, only the Courts at New Delhi shall have jurisdiction. The ratio laid down in the judgment of the Honourable Supreme Court reported in 2002 (1) SCC 567 [Union of India and others v. Adani Exports Ltd. and another] is against the contentions raised by the petitioner in respect of territorial jurisdiction.

6. As per Article 226(2) of the Constitution of India the power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. Similarly under Section 20 of the Civil Procedure Code, a suit can be instituted where the defendants reside or cause of action arises. Under Section 20(b) every suit shall be instituted in a Court within the local limits of whose jurisdiction any of the defendants, where there are more than one, at the time of the commencement of the suit, actually or voluntarily resides, or carries on business or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business or personally work for gain, as aforesaid, acquiesce in such institution. Under Section 20(c), a suit shall be instituted in a Court where the cause of action, wholly or in part, arises. In the case on hand, the respondent at Chennai has not participated in any

of the action of the petitioner. Though the petitioner had deducted TDS, the same has been remitted only to the Income Tax Office at New Delhi. When the respondent has no role to play in the acts of the respondent at Chennai, there is no cause of action arise for filing the writ petition at Chennai. Mr.P.S.Raman, learned senior counsel appearing for the petitioner, fairly submitted that it cannot be said that Delhi High Court shall not have jurisdiction to entertain the writ petition. Since there is no cause of action, either wholly or in part, occurred at Chennai, this Court has no jurisdiction to entertain the writ petition filed by the petitioner.

7. The petitioner having an office at Chennai shall not confer territorial jurisdiction at Chennai. That apart, the learned counsel appearing for the respondent also submitted that since no records are available in Chennai office, they have to get all instructions only from New Delhi office in respect of the relief sought for in the writ petition. Since no part of cause of action has arisen at Chennai, I am of the view that this Court has no territorial jurisdiction to entertain the writ petition. In these circumstances, the judgments relied upon by the learned senior counsel appearing for the petitioner are not applicable to the petitioner's case. Since the writ petition is being decided on the question of territorial jurisdiction, I am not going into the merits of the case. In these circumstances, the writ petition filed by the petitioner is rejected on the ground of territorial jurisdiction. No costs. Consequently, connected miscellaneous petition is closed.

(v) 2016 (72) Taxmann.com 99 (Madras) [Tecpro Systems Limited vs The Union Of India] wherein the Karnataka High Court held as follows:-

" 20. In Kusum Ingots & Alloys Ltd. vs. Union of India and Another reported in (2004) 6 SCC 254, the appellant company was registered under the Companies Act with the Registered office at Mumbai. It obtained a loan from Bhopal branch of State Bank of India. The bank issued notice for repayment. Questioning the vires of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,

2002, a writ petition was filed, which was dismissed on the ground of lack of jurisdiction. At paragraph 18, the Apex Court held as follows:

"18. The facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the court."

However, at paragraph 30, the Apex Court observed as follows:

"30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum convenience."

21. The above judgment has been decided on the principle that parliamentary legislation, which receives the assent of the President and is published in the official gazette unless specifically included, will apply to the entire territory of India. If passing of legislation gives rise to an actual action, a writ petition, questioning the constitutionality thereof can be filed in any High court of the country. It is not so done because the cause of action will arise only when the provisions of the Act or some of them, which were implemented, shall give rise to civil or evil consequences. In such view of the matter, writ petition filed in the High Court of Delhi was held to be maintainable. At the same time, at paragraph No.30 of the Judgment, the Hon'ble Apex Court has also cautioned forum convenience as here under:

"30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to

exercise its discretionary jurisdiction by invoking the doctrine of forum convenience."

22. In Nawal Kishore Sharma vs. Union of India and others reported in (2014) 9 SCC 329, the appellant therein was suffering from serious heart muscle disease and breathing problem, which forced him to go back to his native place in Bihar, wherefrom, he had been making all correspondence with regard to his disability, compensation etc. Earlier he was declared as permanently unfit by authority of the respondent Corporation at Mumbai. Appellant therein has approached Patna High Court under Article 226 of the Constitution of India and claimed various benefits including 100% disability compensation. Maintainability of the writ petition was one of the objections raised by the respondent, on the ground that no cause of action or even a fraction of cause of action arose within the jurisdiction of the Patna High Court. The appellant before the Hon'ble Apex Court contended that he discharged his duty outside the territory of State of Bihar. One of the facts pleaded by the appellant before the Apex Court was that he was a permanent resident of Bihar, asserted his rights in the State of Bihar and all the communications with respect to rejection of his claims were made at his residential address in the State of Bihar. Thus on the above facts and circumstances and taking note of the insertion in clause 1A to Article 226 of the Constitution of India (XV Amendment Act 1963) and subsequently renumbered as Clause 2 by the Constitution (XLII Amendment Act, 1976), the Hon'ble Apex court has observed as hereunder:

On a plain reading of the amended provisions in Clause (2), it is clear that now High Court can issue a writ when the person or the authority against whom the writ is issued is located outside its territorial jurisdiction, if the cause of action wholly or partially arises within the courts territorial jurisdiction. Cause of action for the purpose of Article 226 (2) of the Constitution, for all intent and purpose must be assigned the same meaning as envisaged under Section 20(c) of the Code of Civil Procedure. The expression

cause of action has not been defined either in the Code of Civil Procedure or the Constitution. Cause of action is bundle of facts which is necessary for the plaintiff to prove in the suit before he can succeed.

In Nawal Kishore Sharmas case the Apex Court has taken note of the judgment in Kusum Ingots & Alloys Ltd. vs. Union of India and Another, reported in (2004) 6 SCC 254, wherein at paragraph 10 the Apex Court held as follows:

keeping in view the expressions used in clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter.

29. In the case on hand, though the petitioner has contended that the right under BIFR is likely to be infringed and that there is a threat if the respondent is not restrained by a writ of mandamus sought for, this court is not inclined to accept the said contentions for the reason that what is sought to be achieved indirectly is to nullify the effect of the order dated 20.01.2016 of the Assistant Commissioner of Income Tax, TDS, New Delhi, without there being any challenge to the same. It is well settled that what cannot be done directly, cannot be done indirectly, or permitted to be done. Averments made, are nothing but challenge to the proceedings of the Assistant Commissioner of Income Tax, New Delhi on the grounds of infringement of right or threat thereof. Thus in the normal course, if the appellant had to challenge the orders, the same would have been done, at New Delhi, which the appellant, in a way has also admitted that, if there was any challenge to the orders and prayer made for certiorari, an objection as to maintainability of the writ petition on territorial jurisdiction, can be made. No materials have been placed before this court as to whether order dated 20.01.2016 has been challenged before the competent authority under the Income Tax Act or the court."

7.1 On a careful consideration of the materials available on record, the submissions made by the learned Senior Counsel on either side and also the judgments relied upon by the

respective Senior Counsel, it could be seen that the petitioner was a Non-Executive Chairman of the Board of Directors of the Company. Admittedly, the corporate office of the company is at Delhi. It is not in dispute that the petitioner is residing at Chennai and the impugned order dated 03.11.2014 naming the petitioner as the Principal Officer was served on the petitioner at Chennai at his residential address.

7.2 The learned Additional Solicitor General contended that the writ petition is not maintainable for the reason that the cause of action arose only at Delhi. The petitioner contended that the petitioner was the Non-Executive Chairman of the Board of Directors of M/s. Spice Jet Limited, which has got corporate office at Delhi and the entire management and control of the company is operated at Delhi by the Managing Director and other Managerial Staff. Further, the petitioner contended that the Managing Director is involved in the day-to-day affairs of the company operating from Delhi. It is also brought to the notice of this Court that the petitioner was not drawing salary from the company. The respondent issued a show cause notice dated 01.09.2014 to the petitioner as to why he should not be treated as Principal Officer. Along with the petitioner, the respondent had also caused a similar show cause notice to one Mr. Rakesh Kumar, Deputy General Manager (Finance & Taxation) on 01.09.2014. The petitioner has challenged only the order naming him as Principal Officer, which was served at the residential address of the petitioner.

7.3 It is also pertinent to note that the show cause notice dated 01.09.2014 was served on the petitioner at his residential address at Chennai. When the petitioner had taken a stand that he is not involved in the day-to-day affairs of the company and was also not drawing any salary from the company, it cannot be stated that the petitioner cannot file the writ petition at the place where he received the show cause notice as well as the impugned order.

7.4 As per Article 226(2) of the Constitution of India, the power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

7.5 As already stated, the petitioner is challenging the order treating him as the Principal Officer, which was received by him at Chennai and was brought to his knowledge only at

Chennai. In the judgment reported in 2014(9) Supreme Court Cases 329 [cited supra] the Hon'ble Supreme Court held that the Patna High Court has jurisdiction to entertain the writ petition for the reason that the petitioner had received a letter of refusal dis-entitling him from disability compensation and therefore, a part of cause of action arose within the jurisdiction of the Patna High Court. In the judgments reported in 2016 (72) Taxmann.com 99 (Madras) [cited supra] and 2016 (73) Taxmann.com 58 (Madras) [cited supra], since no part of cause of action had arisen either wholly or partly within the territorial jurisdiction of Chennai, this Court held that the writ petition cannot be entertained before this Court.

7.6 In the case on hand, admittedly the impugned order was served on the petitioner at his residential address at Chennai. Though the authority is at Delhi, it is clear that part of cause of action had arisen at Chennai. As per Article 226(2) of the Constitution of India, the writ petition is maintainable before a High Court within which the cause of action wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. That apart, though the company's registered corporate office is at Delhi and the TAN number is at Delhi assessment, the petitioner in this writ petition has not challenged the assessment order, but, has challenged only the impugned order naming him as the Principal Officer. In these circumstances, I am of the view that this Court has jurisdiction to entertain the writ petition.

8.1. The next issue that arise for consideration is whether the petitioner can be construed as the Principal Officer as held by the 2nd respondent.

8.2 The petitioner contended that he is a Non-Executive Chairman of the Board of Directors of M/s. Spice Jet Limited. The corporate office of the company is at Delhi and that the entire Management and Control of the company is operated from Delhi by the Managing Director and other Managerial Staff. Further, the petitioner contended that he is not involved in the day-to-day affairs of the company operating from Delhi and that he is not drawing any salary from the company and that he is not an employee of the company. The Principal Officer has been specified under Section 2(35) of the Income Tax Act, 1961, which reads as follows:

"Section 2(35) "principal officer", used with reference to a local authority or a company or any other

public body or any association of persons or any body of individuals, means—

(a) the secretary, treasurer, manager or agent of the authority, company, association or body, or

(b) any person connected with the management or administration of the local authority, company, association or body upon whom the 59[Assessing] Officer has served a notice of his intention of treating him as the principal officer thereof ."

8.3 By the impugned order dated 03.11.2014, while naming the petitioner as the Principal officer, the 2nd respondent also held that the petitioner is liable for prosecution under section 276B of the Income Tax Act. Section 278B deals with the offence committed by the companies. Therefore, it would be appropriate to extract Sections 276B and 278B, which reads as follows:-

"276B. If a person fails to pay to the credit of the Central Government,—

(a) the tax deducted at source by him as required by or under the provisions of Chapter XVII-B; or

— (b) the tax payable by him, as required by or under

(i) sub-section (2) of section 115-O; or

(ii) the second proviso to section 194B, he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.

278B. (1) Where an offence under this Act has been committed by a company 58, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the 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 and punished accordingly."

8.4 During the Survey Operations, the Chief Financial Officer of the company, viz., Mr.R.Neelakantan gave a statement, which was recorded on 04.08.2014. In the said survey operations, the Chief Financial Officer has stated that one Mr.Manish Jain, Assistant Manager (Taxation) is responsible for TDS. Thereafter, the 2nd respondent had issued a show cause notice dated 01.09.2014 to the petitioner at the Chennai residence and to one Mr.Rakesh Kumar, DGM (Finance & Taxation)

at IGI Airport, Delhi as to why the petitioner and the said Mr.Rakesh Kumar should not be treated as Principal officers. The petitioner sent his reply on 23.09.2014 wherein he has stated that the Managing Director, Chief Financial Officer and Chief Operating Officer are involved in the day-to-day affairs of the company. On receipt of the said notice, the 2nd respondent had issued a show cause notice to the Managing Director, viz., Mr.K.Natrajhen, as to why he should not be treated as the Principal Officer. In the said show cause notice, the 2nd respondent has also mentioned the reply sent by the petitioner on 23.09.2014 stating that the company is professionally run by the Managing Director, who is in-charge of the day-to-day affairs of the company. In the said notice, the 2nd respondent also informed the Managing Director that prosecution under section 276B of the Income Tax Act will be taken against him.

8.5 For the show cause notice issued to the Managing Director, he sent a reply dated 26.11.2014 specifically stating that the petitioner is only a Non-Executive Director in the company who is based at Chennai and is not involved with the day-to-day management of the company and has not made any visits to the company till date. The Managing Director has also stated that the petitioner is not at all responsible for the administration and the management of the company and that he does not draw any salary or remuneration from the salary and attends the Board Meetings only in the Non-Executive capacity, for which he does not even get any sitting fees. Further, the Managing Director has stated that the order issued against the Chairman holding him to be the Principal Officer within the meanings of section 2(35) of the Income Tax Act may be recalled, since he is not connected with the management and not involved in the decision making day-to-day affairs of the company.

8.6 The company has sent a detailed reply placing reliance on the fact that there was reasonable cause for the delay and that TDS proceedings are pending and sought not to treat Mr.Rakesh Kumar, Deputy General Manager (Finance & Taxation) as the Principal Officer. The respondents accepting the said reply of the company had not treated the said Mr.Rakesh Kumar, Deputy General Manager (Finance & Taxation) who was in charge in the helm of administration and affairs of the company as the Deputy General Manager (Finance & Taxation) as the Principal Officer.

8.7 Under section 2(35)(b) of the Income Tax Act, the Assessing Officer can serve notice only to persons who are connected with the management or administration of the company to treat them as Principal Officer.

8.8 Section 278B of the Income Tax Act clearly states that it shall not render any such person liable to any punishment, if he proves that offence was committed without his knowledge.

8.9 In the case on hand, the petitioner has stated that he was not involved in the day-to-day affairs of the company and that he is only a Non-Executive Chairman and not involved in the management and administration of the company. Whereas, the Managing Director, viz., Mr.K.Natrajhen himself has specifically stated that he is the person in charge of the day-to-day affairs of the company.

8.10 The 2nd respondent, while passing the impugned order naming the petitioner as the Principal Officer, has not given any reason for rejecting the contention of the Managing Director. When the Managing Director himself has stated that he is the person who is in charge of the day-to-day affairs of the management and administration of the company and that the petitioner is not so, the 2nd respondent without any reason has named the petitioner as the Principal Officer. Merely because the petitioner is the Non-Executive Chairman, it cannot be stated that he is in charge of the day-to-day affairs, management and administration of the company. The 2nd respondent should have given the reasons for not accepting the case of the Managing Director as well as the petitioner in their respective reply.

8.11 The conclusion of the 2nd respondent that the petitioner being a Chairman and major decisions are taken in the company under his administration is not supported by any material evidence or any legally sustainable reasons.

9.1 It is pertinent to note that the 2nd respondent has not produced any material to establish that the petitioner was responsible for the day-to-day affairs of the company. In the absence of any material, the 2nd respondent should not have come to the conclusion that the petitioner is the Principal Officer. The reasoning given by the 2nd respondent are without any materials to substantiate the same. Unless the 2nd respondent make out a prima facie case against the petitioner of his liability and obligation as Principal Officer in the day-to-day affairs of the company as Chairman-cum-Director of the company, under section 278B of the Income Tax Act, the petitioner could not be prosecuted for the offence committed by the company. In the absence of any material, the show cause notice itself, prima facie disclosing the responsibility of the petitioner for the running of the day-to-day affairs of the company process, could not have been issued against him. The petitioner cannot be made

to undergo the ordeal of a trial unless it could be prima facie disputed that he was legally liable for the failure of the company in paying the amount deducted to the credit of the company. Otherwise, it would be a travesty of justice to prosecute the petitioner and ask him to prove that the offence is committed without his knowledge. A mere allegation that the petitioner is incharge of the conduct of the company is not sufficient to hold that the petitioner is the Principal Officer. There should be credible material to show his active involvement in the conduct and management and business of the Company.

9.2 As already stated, the Managing Director, viz., Mr.K.Natrajhen, himself has stated that he is responsible for the day-to-day affairs of the company. That apart, a show cause notice was also issued to the Managing Director by the 2nd respondent. The Chief Financial Officer of the company, viz., Mr.R.Neelakantan has also stated that one Mr. Manish Jain, Assistant Manager (Taxation) is responsible for the TDS. Further, to the show cause notice sent to Mr.Rakesh Kumar, Deputy General Manager (Finance & Taxation), the company has sent a detailed reply wherein the company has stated that the said Rakesh Kumar should not be treated as the Principal Officer, which was accepted by the 2nd respondent and the said Rakesh Kumar was not named as the Principal Officer.

9.3 On the contrary, even without any materials and also not considering the stand taken by the Managing Director and also the Chief Financial Officer of the Company, the 2nd respondent arrayed the petitioner as the Principal officer. The 2nd respondent has not given any reason for rejecting the stand of the Managing Director and the Chief Financial Officer of the company.

10.1 It is also pertinent to note that there was a meeting between the company officials and the respondents in order to facilitate to pay the TDS on a payment plan basis and the company has submitted its plan on 12.08.2014 and the said plan was accepted by the 2nd respondent by letter dated 02.09.2014. Thereafter, the company has also made payments towards TDS and it is informed to this court by the learned Senior Counsel appearing for the petitioner that the company had paid the entire arrears of TDS and as on date, there are no TDS arrears payable by the company.

10.2. The criminal proceedings have been initiated against the company in C.C.No.103 of 2014. The petitioner and the Managing Director are facing the trial and they have not filed any petition to quash the criminal proceedings. Only the petitioner has filed a petition to quash the criminal

proceedings before the Delhi High Court and the said quash petition is pending. Since the criminal complaint was registered in Delhi High Court and trial is going to be conducted only in Delhi, a petition to quash the criminal proceedings would arise only before the Delhi High Court. The petitioner has specifically averred even in the quash petition filed before the Delhi High court that he is not involved in the day-to-day affairs, management and administration of the company.

11.1 Since the impugned order was served on the petitioner at Chennai, he has filed the writ petition before this court to quash the impugned order dated 03.11.2014.

11.2 Though the petitioner and his company were holding more than 50% shares, in the absence of any material to establish that the petitioner was in charge of the day-to-day affairs, management, and administration of the company, the 2nd respondent should not have named him as the Principal Officer.

11.3 The main criteria treating a person as the Principal Officer is he should have been in charge of the management, administration and day-to-day affairs of the company. It was also stated by the Managing Director that the petitioner is only a Non-Executive Director in the company, who is based at Chennai and is not involved with the day-to-day management of the company and has not made any visits to the company till date as he does not draw any salary or remuneration from the company and attends the Board Meetings only in the Non-Executive capacity, for which, he does not even get any sitting fees.

11.4 For the reasons stated above, it is clear that the petitioner was not involved in the management, administration and the day-to-day affairs of the company, therefore, the petitioner cannot be treated as Principal Officer.

12. The judgment relied upon by the learned Senior Counsel appearing for the petitioner squarely applies to the facts and circumstances of the present case.

13. Though there is no dispute with regard to the ratio laid down in the judgments relied upon by the learned Additional Solicitor General appearing for the respondents, since the facts and circumstances of the present case differs, the said judgments are not applicable.

14. In these circumstances, the impugned order dated 03.11.2014 is liable to be set aside. Accordingly, the same is set aside. The writ petition is allowed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Rj

To

1 The Secretary
Union of India
Ministry of Finance
North Block, New Delhi 110 001

2 Assistant Commissioner of Income Tax
Circle 51(1), Aayakar Bhawan
Laxmi Nagar
District Centre Delhi 110 092

+1cc to Mr.M.SNEHA, Advocate, S.R.No. 24477

+1cc to Mr.HEMA MURALIKRISHNAN, Advocate, S.R.No. 23815

Order in
W.P.No.34010 of 2014 &
M.P.No.1 of 2014

NRL (CO)
TR(04/04/2018)

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