HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION No.16453 and 16457 of 2018

COMMON ORDER: (Per Hon'ble Sri Justice Sanjay Kumar)

Challenge in these writ petitions is to the action of the income tax authorities in seeking to recover the income tax dues of M/s.Sri Lakshmi Srinivasa Jute Mills Limited from its Directors, the petitioners herein, under Section 179 of the Income-tax Act, 1961 (for short, 'the Act of 1961'). Orders in this regard were passed by the Assistant Commissioner of Income Tax, Circle-4(1), Visakhapatnam, the second respondent, on 28.02.2018 separately against the petitioners.

Sri N.Vijay, learned counsel for the petitioners, would state that in terms of Section 179 of the Act of 1961, it is only when the authority concerned comes to the conclusion that the tax dues of a private company cannot be recovered from it that the said authority can proceed against the Director of the said company for recovery of such tax dues. Learned counsel would point out that in the event the Director of the company, who is sought to be proceeded against, proves that the non recovery of such dues from the company cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company, he would not be liable.

Learned counsel would draw our attention to the individual show-cause notices dated 08.03.2017 issued to the petitioners by the Deputy Commissioner of Income Tax, Circle-4(1), Visakhapatnam, the third respondent, wherein no mention was made as to the reasons for the failure of the Income Tax Department to recover the dues from the company itself. He would further point out that in their response to the said show-cause notices, both the petitioners specifically took the plea that there was no negligence on their part in relation to the affairs of the company and therefore they would not be liable but, in spite of the same, the orders dated 28.02.2018 passed by the second respondent did not record any findings on this aspect. Learned counsel would place reliance on K.V.Reddy v. Assistant Commissioner of Income Tax, Hyderabad[1] and, more particularly, the observations made therein in para 5, which read as under:

> "Therefore before the Assessing Officer proceeds against the Directors personally he has to give a finding that the income-tax due for the previous year cannot be recovered from the Company. In the absence of giving a finding conferring jurisdiction on him to recover the income-tax from the Director personally, the Assessing Officer does not get the jurisdiction to initiate proceedings under Section 179 of the Act. In the absence of such a finding the Assessing Officer does not get jurisdiction to invoke the provisions of Section 179 of the Act."

Sri K.Raji Reddy, learned senior standing counsel for the Revenue, does not dispute the fact that the show-cause notices and the final orders passed against the petitioners fall short of the required standard in terms of the contentions urged by the learned counsel for the petitioners relying on case law.

In that view of the matter, we are of the opinion that the impugned show-cause notices as well as the final orders passed against the petitioners in these cases cannot be sustained.

[1] 1998 (3) ALD 543 (DB)

The writ petitions are accordingly allowed. This order shall however not preclude the authorities from initiating action afresh in accordance with the due procedure, if warranted.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

____
SANJAY KUMAR, J

____
T.AMARNATH GOUD, J

Dt: 24.07.2018.
IBL