HIGH COURT OF CHHATTISGARH, BILASPUR

WPT No. 96 of 2019

1. Akshat Agrawal S/o Gopal Krishna Agrawal Aged About 32 Years Director, M/s R.S. Polyplast Private Limited, Office At 23, Near Purana Dal Mill, Ram Sagar Para, Raipur, District Raipur Chhattisgarh.

2. Gopal Krishna Agrawal S/o Ram Kripal Agrawal Aged About 55 Years Director, M/s. R.S. Polyplast Private Limited, Office At 23, Near Purana Dal Mill, Ram Sagar Para, Raipur, District Raipur Chhattisgarh.

---- Petitioners

Versus

1. Union Of India Through Secretary, Ministry Of Finance, Department Of Revenue, North Block, New Delhi.

2. Income Tax Officer Ward 2 (1), Income Tax Department, Civil Lines, Raipur, District Raipur Chhattisgarh.

3. Commissioner Of Income Tax (Appeals) Office At Raipur, District Raipur Chhattisgarh.

---- Respondents

For petitioners – Shri Keshav Prasad Gupta, Advocate.
For respondent No.1- Shri Krishna Gopal Yadav, Advocate appears on behalf of Shri B. Gopa Kumar, Asst.S.G.
For respondents No.2 and 3- Ms. Naushina Afrin Ali, Advocate appears on behalf of Shri Amit Choudhary, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

24/06/2019

Heard.

1. Instant petition is against the notice issued to the petitioners on 3/04/2019 and the subject is show cause notice for payment of tax due under section 179 of the Income Tax Act, 1961.

2. Learned counsel for the petitioners would submit that the petitioners are the directors of a private limited company namely M/s R.S. Polyplast Private Limited. It is contended that after re -assessment

was made under section 148 of the Income Tax Act a demand was raised of Rs.35,81,200/-. Against that order appeal is pending before the Commissioner (Appeal). It is contended that during such pendency of the appeal, the assessing officer who initially had passed order of recovery has issued notice to the petitioners for recovery of the amount which was found due against the company. It is further contended that the provisions of Section 179 of the Income Tax Act could not be invoked against the petitioners unless the remedy of recovery is exhausted against the company or if the company is under liquidation then only the assessing officer would get jurisdiction to follow the directors of the company. Therefore, learned counsel submits that show cause notice dated 3/04/2019 Annexure P-1 is required to be quashed.

3. Per contra, learned counsel appearing on behalf of respondents No.2 & 3 on advance copy would submit that as per the instruction, after re-assessment of account the demand was raised against the company and for non-payment of same account of the company was attached. It is stated despite such measure no recovery could be made, thereafter to recover the amount the notice to the directors of the company by show cause has been served. It is further contended that since demand was made the company too have an opportunity to file an application before the assessing officer for stay of the recovery by depositing 20% of the disputed amount as per the CBDT circular dated 31 July 2017. Therefore, petition is premature.

4. Perused the show cause notice served to the petitioners as also section 179 of the Income Tax Act. After perusal of the same in the opinion of this court the contention of the petitioners can be very well

appreciated by the assessing officer who has served the show cause notice to the petitioners inasmuch as the factual dispute and factual aspect can only be ascertained during a detail hearing by the assessing officer who has issued the recovery notice. It is a settled proposition that against a show notice writ would not lie unless it is premeditated. At present reading of the show cause notice and the facts and the documents attached with this petition do not show that said notices are premeditated and would not serve the cause if reply is filed. The petitioners shall be at liberty to file reply and convince the officer for stay of the recovery on the ground that the appeal is still pending before the Commissioner or the notice issued to them are not tenable. It is also expected that the department shall also take cognizance of the fact that appeal is pending before the Commissioner. Petition is at this stage is premature. Learned counsel for the petitioners at last made a submission that objection has been made by the petitioners to the subject show cause notice which has been issued to them and that may be directed to be decided by the assessing officer. The prayer made by the petitioners also takes within its fold the issue involved in the case. Considering the fact further it is observed that concerned respondent shall also decide objection if any pending that of the petitioners or is filed afresh with respect to the subject matter in issue about maintainability of the petition.

5. With such observation, the petition stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE

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