IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10351 of 2018
and
W.M.P.No.12315 of 2018

1.Mr.V.Ramakrishnan
2.Mr.D.Dorairaj
3.Mr.Sanjay Balu
4.Mr.V.Ramakrishnan
5.Mr.V.Gopalakrishnan
6.Mr.D.Govindaraj
7.Mr.M.Soundararajan
8.Mr.R.Lakshmi Praveena
9.Mr.N.Devarajan ...Petitioners

Vs

1.The Income Tax Officer,
Office of the Income Tax Officer,
Corporate Ward 3,
Room No.5, Main Building,
63, Race Course Road,
Coimbatore - 641 018.

2.The Official Liquidator,
O/o.The Office Liquidator,
Madras High Court,
II Floor Corporate Bhawan,
No.29, Rajaji Salai,
Chennai -600 001.
(R2 - impleaded as per order dated 08.01.2019
made in W.M.P.No.40318/2018 in
W.P.No.10351 of 2018) ... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, calling for the records of the Respondent dated 28.02.2018 bearing reference no.AACCS9190G/Block Asst.92-93 issued under Section 179 of the Income Tax Act, 1961 with consequent direction to the Respondent in exercise of the jurisdiction against M/s.Ramakrishna Steel Industries Ltd., - a Public Limited Company - which is under liquidation - not to proceed against the petitioners in consideration of their reply dated 29.12.2017 submitted to the respondent as arbitrary, illegal, contrary to law and without jurisdiction under Section 179 of the Income Tax Act, 1961.

For Petitioner	:	Mr.Haja Nazirrudeen Senior counsel For Mr.P.N.Rajan
For Respondent R1	:	Mr.A.P.Srinivas Senior Standing counsel [For Income Tax]
R2	:	Mr.Sridhar Bavisetty Deputy Official Liquidator

O R D E R

The relief sought for in the present writ petition is to call for the records of the Respondent dated 28.02.2018 bearing reference no.AACCS9190G/Block Asst.92-93 issued under Section 179 of the Income Tax Act, 1961 with consequent direction to the Respondent in exercise of the jurisdiction against M/s.Ramakrishna Steel Industries Ltd., - a Public Limited Company - which is under liquidation - not to proceed against the petitioners in consideration of their reply dated 29.12.2017 submitted to the respondent.

2. The learned Senior counsel appearing on behalf of the writ petitioners made a submission that the show cause notice impugned is without jurisdiction and in violation of Section 179 of the Income Tax Act, 1961.

3. The learned Senior counsel solicited the attention of this Court with reference to the ingredients contemplated under Section 179 of the Income Tax Act, wherein an action is permissible only if the company is a Private Limited company and in respect of a Public limited company, Section 179 of the Income Tax Act is not applicable.

4. The learned Senior counsel contended that the petitioners are the Ex-Directors of a Public Limited company and therefore, the actions are beyond the scope of jurisdiction conferred to the respondents under Section 179 of the Income Tax Act.

5. The learned Senior counsel fairly made a submission that these factual aspects are to be established with reference to the documents and evidences available. The petitioners are bound to establish the factual pleadings before the authority competent, who in turn, may be permitted to review the opinion

already confirmed with reference to the Show cause notice issued.

6. In view of the said submission, this Court is of the considered opinion that the matter is to be remanded back for the purpose of fresh adjudication. In this regard, this Court has considered the scope of Section 179 of the Income Tax Act and its application in W.P.Nos.22923 & 22924 of 2018 dated 04.03.2021 and the relevant paragraphs are extracted hereunder:

> "8.He submits that there are several disputed question of fact as to whether the said Gangothari Textiles Limited in respect of which the tax due was a public limited company or a private limited company. It is to be determined by the authority. He further submits that the drift has been to lift the corporate and liability can be fastened on the Director though Section 179 of the Income Tax Act, 1961. He also plalced reliance on the decision of the Hon'ble Gujarat High Court in Ajay Surendea Patel Vs. DC IT [2017] 78 Taxmann.com 399 (Gujarat) referred to supra.
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> > 2.Learned Standing Counsel appearing for the Respondent, placing strong reliance on the Doctrine of Piercing the Corporate Veil recognized by the Hon'ble Supreme Court of India in Commissioner of Income Tax, Madras -vs- Sri Meenakshmi Mills Ltd., (AIR 1967 SC 819) for tax evasion or to circumvent tax obligation which has been quoted with approval by the Constitution Bench of the Hon'ble Supreme Court of India in Life Insurance Corporation of India -vs- Escorts Ltd., [(1986) 1 SCC 264] and followed by the Division Benches of the High Court of Gujarat Pravinbhai M.Kheni -vs- Assistant Commissioner of Income-Tax, Central Circle – 2 (Judgment dated 06.11.2012 in Special Civil Application No.12254 of 2002) and Ajay Surendra Patel -vs- Deputy Commissioner of IncomeTax (Judgment dated 23.02.2017 in Special Civil Application No.6580 of 2016), contends that it would not be alien to apply the principles of Section 179 of the IT Act for recovery of income tax liability owed by a Public Limited Company from its erstwhile Directors also, if the conditions prescribed in that statutory provision is fulfilled.
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> 9.I have considered the arguments advanced by the

learned counsel for the petitioner and the respondent.

10.The impugned orders have been passed under Section 179 of the Income Tax Act, 1961 which specifically applies to liability of directors of private companies. The definitions of private limited company and public limited company Section 3(i)(iii) and (iv) of the Companies Act, 1956 is clear.

11.The definition of company has defined in Companies Act, 1956 has been incorporated in the Income Tax Act, 1961. The Companies Act, 1956 recognizes private limited company and public limited company. There are no evidence on records to conclude that the said assessee in default companies namely M/s.Gangotri Textiles Ltd and NEPC Agro Foods Ltd was a private limited company.

12.There are no records to substantiate the said companies was a private limited company. Therefore, challenge to invocation of Section 179 of the Income Tax Act also appears to correct. Considering the fact that the records are not in produced either by the petitioner nor the respondent, I am of the view that the impugned orders is liable to be quashed. These cases are remitted back to the respondent to pass appropriate orders, after considering the definition of the 'Company' in Section 262(68) and (71) of the Companies Act, 2013 and ..deals of the Companies Act, 1956. The respondent may how issue a proper notice after examining the certificate of incorporation of the respective assessee in default and after examined the articles and Memorandum and Article of association of M/s.Gangotri Textiles Ltd and NEPC Agro Foods Ltd. If there are materials to suggest that the ...company were a private limited company the respondent may pass appropriate order under Section 179 of the Income Tax Act. This exercise shall be carried out by the respondent within a period of three months from the date of receipt of a copy of this order. In case the records from the Registrar of Companies indicates that the assessee in default was a public limited company no further proceedings is to be taken. In the event, there is a prima facie material to conclude that the assessee in default were a private limited company, appropriate notice may be issued to the petitioners.

13.Writ Petitions stand disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petitions are closed."

7. In view of the above facts and circumstances, the Show Cause Notice impugned passed by the 1st respondent in proceedings dated 28.02.2018 bearing reference no.AACCS9190G/Block Asst.92-93 is quashed and the matter is remanded back to the first respondent for fresh consideration. The petitioners are at liberty to submit their documents and evidences to establish, whether they were holding the Post of Directors in a Public Limited Company or a Private Limited company within a period of four weeks from the date of receipt of a copy of this order and on receipt of such documents and evidences, the first respondent is directed to consider the same with reference to the materials available on record and pass appropriate orders on merits and in accordance with law and by affording opportunity to the writ petitioners. Such an exercise is directed to be done by the first respondent within a period of three months thereafter.

8. With these directions, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CONF)

//True Copy//

Sub Assistant Registrar

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To

1.The Income Tax Officer,
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2.The Official Liquidator,
O/o.The Office Liquidator,
Madras High Court,
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Chennai -600 001.

+1cc to Mr.R.Tholgappian, Advocate (SR No.33125)
+1cc to Mr.A.P.Srinivas, Advocate (SR No.33242)

W.P.No.10351 of 2018

UM (CO)
PR (06/08/2021)