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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2021

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.NOS.9772 & 9779 OF 2019

AND

WMP.NOS.10372 & 10379 OF 2019

R.Rajagopalan
Managing Director
M/s.Wellwin Industries Ltd.,
1-F, Tuxdo Apartment,
No.1, Sreeman Srinivasan Road,
Alwarpet, Chennai-600 018.

... Petitioner in WP.9772/2019

Rajagopalan Kalyanaraman
Director,
M/s.Wellwin Industries Ltd.,
No.16, Third Street Gopalapuram,
Chennai-600 086.

... Petitioner in WP.9779/2019

-Vs.-

- 1.The Deputy Commissioner of Income Tax,
Corporate Circle 3(2), Chennai
4th Floor, Wanaparthi Block,
"Ayakar Bhavan", 121 MG Road,
Nungambakkam, Chennai-600 034.
- 2.The Commissioner of Income Tax-3
No.121 MG Road,
Nungambakkam,
Chennai-600 034.
- 3.The Additional Commissioner of Income Tax,
Corporate Range-3,
No.121, MG Road,
Nungambakkam, Chennai-600 034.



4. The Tax Recovery Officer-III,
Commissioner of Income Tax-III,
121, Mahathma Gandhi Salai,
Chennai-600 034.

... Respondent in both WPs.

Prayer in WP.No.9772 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 1st Respondent in his proceedings PAN ABEPR6558D/179(1)/2018-19 dated 14-3-2019 demanding a sum of Rs.1,14,50,020 and to set aside and quash the same.

Prayer in WP.No.9779 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 1st Respondent in his proceedings PAN AACPK6932H/179(1)/2018-19 dated 14-3-2019 demanding a sum of Rs.1,14,50,020 and to set aside and quash the same.

For Petitioner
in both WPs : Mr.S.Sivaraman

For Respondents
in both WPs. : Ms.Hema Muralikrishnan
Senior Standing counsel

COMMON ORDER

Captioned writ petitions and 'Writ Miscellaneous Petitions' ('WMPs') therein are in the regular Board before me today. Read this in conjunction with and in continuation of earlier proceedings made in the previous listing before me on 02.09.2021, which reads as follows:



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'Mr.S.Sivaraman, learned counsel on record for writ petitioner and Ms.Hema Muralikrishnan, learned Senior Standing counsel (Revenue counsel) for respondents are before this virtual Court.

2. Learned Revenue counsel submits that she has got written instructions and requests for a short accommodation to file the same in the form of counter affidavit. Request acceded to. Learned Revenue counsel to share a copy of counter affidavit with learned counsel for writ petitioner before the next listing.

List on 13.09.2021. To be noted, next listing shall be peremptory.

2. To be noted, there were earlier listings before Hon'ble Predecessor Judges, but owing to the trajectory the matter has taken today, it is not necessary to advert to the same.

3. However, advertng to earlier proceedings made by me on 02.09.2021, Ms.Hema Muralikrishnan, learned Senior Standing counsel (Revenue counsel) for all the respondents in both the writ petitions, submits that though time for filing a counter affidavit has been sought, it is now not necessary to file counter affidavit as she has since got further instructions that written instructions from the Department would suffice and she will make submissions on the basis of the same. Therefore, with the consent of learned counsel for writ petitioner and learned Revenue counsel, main writ petitions are taken up.

4. 'WP.No.9772 of 2019' shall be referred to as 'senior WP' and 'WP.No.9779 of 2019' shall be referred to as 'junior WP' for the sake of convenience and clarity.

5. Facts are common in both the captioned main writ petitions and they pertain to Income Tax assessment of a



Company, which goes by the name 'Wellwin Industries Limited' [hereinafter 'said Company' for the sake of brevity]. To be noted, senior WP has been filed by Managing Director of said Company and junior WP has been filed by a Director of said Company. In both the writ petitions, two separate proceedings, both dated 14.03.2019 bearing reference PAN:ABEPR6558D/179(1)/2018-19 (senior WP) and PAN:AACPK6932H/179(1)/2018-19 (junior WP), have been called in question. These two proceedings shall hereinafter be referred to as 'impugned proceedings' in plural and 'impugned proceeding' in singular for the sake of convenience and clarity.

6. Impugned proceedings pertain to recovery of tax arrears of said Company in the hands of Directors under Section 179(1) of 'Income Tax Act, 1961' (hereinafter 'IT Act' for the sake of brevity). For the sake of convenience and clarity, this Court deems it appropriate to extract and reproduce the impugned orders and the same read as follows:



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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
OFFICE OF THE DEPUTY COMMISSIONER OF INCOME TAX
CORPORATE CIRCLE 3(2), CHENNAI
Room No.414, 4th Floor, Wanaparthy Block, 'Aayakar Bhavan',
121, MG Road, Nungambakam, Chennai - 600 034
chennai.dcit.c3.2@incometax.gov.in Tel: 044-28338624, Extn: 8134
PAN: AHEPR6558D / 179(1)/2018-19 Dated: 14.03.2019

PROCEEDINGS OF THE DEPUTY COMMISSIONER OF INCOME TAX, CORPORATE CIRCLE 3(2), CHENNAI - 600 034.

Present : **P. SANKAR PANDI**
Deputy Commissioner of Income-tax,
Corporate Circle (2), Chennai - 600 034.

ORDER:

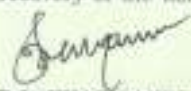
Notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), wherein the company **M/s WELLWIN INDUSTRY LIMITED (PAN: AAACW0868K)** is in arrears of income-tax and the details of which are provided as under:

Sl. No.	AY	Self-Assessment Tax	Penalty	Total
1	2011-12	Rs. 1,14,50,020/-	--	Rs. 1,14,50,020/-

The recovery proceedings initiated against the company neither yielded in the recovering the arrear of taxes due from the defaulting company nor the Directors had been cooperative in remitting the payments.

In such circumstances, since you held the post of Managing Director during the relevant previous year, you are jointly and severally liable for the payment of tax arrears due from the company as per section 179(1) of Income tax Act, 1961, as stated above. You were given opportunity vide this office notice dated 06.03.2019 to prove yourself for the non-payment of arrears of tax due in relation to the affairs of the company.

However, you have failed to prove the reasons for the non-payment of the arrears due by the company **M/s WELLWIN INDUSTRY LIMITED (PAN: AAACW0868K)**, as mentioned above before the under signed within the stipulated time, order u/s 179(1) of the Income-tax Act, 1961, is passed for recovery of the tax arrears due by the company in the hands of Director.


(P.SANKAR PANDI)
Deputy Commissioner of Income tax,
Corporate Circle 3(2), Chennai - 34.

To
✓ **Ms. R. RAJAGOPALAN**
Managing Director,
(M/s WELLWIN INDUSTRY LIMITED)
No. 1, Seeman Srinivasan Road, Alwarpet,
Chennai-600 018.

Copy to:
1. The Pr. Commissioner of Income-tax-3, Chennai.
2. The Adml. Commissioner of Income-tax, Corporate Range-3, Chennai.



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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
OFFICE OF THE DEPUTY COMMISSIONER OF INCOME TAX
CORPORATE CIRCLE 3(2), CHENNAI
Room No.414, 4th Floor, Wanaparthy Block, 'Aayakar Bhavan',
121, MG Road, Nungambakam, Chennai - 600 034
chennai.dci.c3.2@income-tax.gov.in Tel: 044-25338624, Extn: 8134

PAN: AACPK6932H /179(1)/2018/19 Dated: 14.03.2019

PROCEEDINGS OF THE DEPUTY COMMISSIONER OF INCOME TAX, CORPORATE CIRCLE 3(2), CHENNAI - 600 034.

Present **P. SANKAR PANDI**
Deputy Commissioner of Income-tax,
Corporate Circle 3(2), Chennai - 600 034.

ORDER:

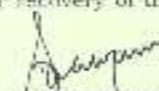
Notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), wherein the company **M/s WELLWIN INDUSTRY LIMITED (PAN: AAACW0868K)** is in arrears of Income-tax and the details of which are provided as under:

Sl. No.	AY	Self-Assessment Tax	Penalty	Total
1	2011-12	Rs 1,14,50,020/-	--	Rs 1,14,50,020/-

The recovery proceedings initiated against the company neither yielded in the recovering the arrear of taxes due from the defaulting company nor the Directors had been cooperative in remitting the payments.

In such circumstances, since you held the post of Director during the relevant previous year, you are jointly and severally liable for the payment of tax arrears due from the company as per section 179(1) of Income tax Act, 1961, as stated above. You were given opportunity vide this office notice dated 06.03.2019 to prove yourself for the non-payment of arrears of tax due in relation to the affairs of the company.

However, you have failed to prove the reasons for the non-payment of the arrears due by the company **M/s WELLWIN INDUSTRY LIMITED (PAN: AAACW0868K)**, as mentioned above before the under signed within the stipulated time. order u/s 179(1) of the Income-tax Act, 1961, is passed for recovery of the tax arrears due by the company in the hands of Director.


(P. SANKAR PANDI)
Deputy Commissioner of Income tax,
Corporate Circle 3(2), Chennai - 34,

To
✓ **RAJAGOPALAN KALYANARAMAN**
Director,
[M/s WELLWIN INDUSTRY LIMITED]
No. 16, Third Street Gopalapuram,
Chennai-600 086

Copy to:
1. The Pr. Commissioner of Income-tax-3, Chennai.
2. The Addl. Commissioner of Income-tax, Corporate Range-3, Chennai.



7. Notwithstanding very many averments and very many grounds raised in the writ affidavit, learned counsel for writ petitioner restricts his submissions to two points and they are as follows:

a) Impugned notices are bad as said Company is a Public Limited Company and Section 179(1) of IT Act is applicable only to Private Limited Companies;

b) There is a compromise decree in a suit in C.S.No.1045 of 2008 filed against said Company by third parties and in this compromise decree, Income Tax Department is a party and it has been paid out certain sums of money.

8. In response to the above, learned Revenue counsel, who has made it clear that it is not necessary to file a counter affidavit and will make submissions on the basis of written instructions (as alluded to supra) made submissions, which are as follows:

a) Said Company is no doubt a Public Limited Company and it has been a Public Limited Company from day one.

b) Though there is a compromise decree in C.S.No.1045 of 2008, Income Tax Department is not a party to the same, as contended by learned counsel for writ petitioner.

9. In reply submissions, learned counsel for writ petitioner reiterated his submissions made in the opening submissions.

10. I now embark upon the exercise of discussing the rival submissions, giving my dispositive reasoning qua conclusion and set out the conclusion.

11. First point is fairly simple and straight forward. Section 179 of IT Act reads as follows:

'179. [(1)] Notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), [where any tax due from a private company in respect of any income of any previous year or from any other company in respect of any income of any previous year during which such other company was a private company] cannot be



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recovered, then, every person who was a director of the private company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

[(2)] Where a private company is converted into a public company and the tax assessed in respect of any income of any previous year during which such company was a private company cannot be recovered, then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax due in respect of any income of such private company assessable for any assessment year commencing before the 1st day of April, 1962.]'

12. This Court is informed without any disputation or disagreement that there is no other provision under IT Act akin to Section 179 of IT Act i.e., recovery tax arrears due to Company in the hands of Directors qua Public Limited Company. In the light of the language in which Section 179 of IT Act is couched, it follows as a indisputable sequitur that impugned proceedings are barred and they are liable to be set aside as the same has been made against Directors of a Public Limited Company, when Section 179 of IT Act applies only to Private Limited Companies and there is no other provision qua Public Limited Companies akin to Section 179 of IT Act.

13. However, as the second point has been raised, I deem it appropriate to examine the same. A careful perusal of the Memorandum of Compromise in CS.No.1045 of 2008 and the Compromise decree (to be noted, only decretal order is placed before me and the fair judgment is not before me) dated 17.09.2008 does not demonstrate that any money has been paid to the Income Tax Department. It is to be noted that it was initially contended by learned counsel for writ petitioner that Income Tax Department was not a party to the suit, but that is not the case. However, learned counsel adverting to Clause 12 of Compromise decree submitted that Clause 12 of Compromise decree talks about vacant land tax building and the payment of the same is only when the Income Tax arrears is cleared. My attention was drawn to Clause 7 of Memorandum of Compromise,



which reads as follows:

'7.The second party shall execute a guarantee to the first party to clear their income tax and sales tax as stated above.'

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14. All this in the realm of extremely circuitous inferential process. To be noted, no document has been placed before this Court as part of the case file to demonstrate any payment having been made to the Income Tax Department under the compromise decree and the decree also does not articulate anything directly in this regard. Therefore, second point urged by learned counsel for writ petitioner becomes a non-starter and that by itself draws the curtains on the second point.

15. However, writ petitioner succeeds on the first point i.e., Section 179(1) of IT Act not being applicable to Public Limited Companies.

16. Before concluding, I deem it appropriate to make it clear that this order will neither impede nor serve as an impetus if there is any other mode for the Revenue to recover tax arrears. Likewise, if there is any mode to recover tax arrears qua a Public Limited Company in the hands of Directors if the Revenue chooses to initiate any such proceedings, it will be open to writ petitioner to raise the issue of payment to Income Tax Department said to have been made pursuant to compromise decree. In other words, this question is left open if there are proceedings in the days to come.

17. With the above observations, both writ petitions are allowed. The sequitur is the impugned proceedings are set aside. There shall be no order as to costs. Consequently, connected WMPs are disposed of as closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar

kmi



To

1. The Deputy Commissioner of Income Tax,
Corporate Circle 3(2), Chennai
4th Floor, Wanaparthi Block,
"Ayakar Bhavan", 121 MG Road,
Nungambakkam, Chennai-600 034.
2. The Commissioner of Income Tax-3
No.121 MG Road,
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3. The Additional Commissioner of Income Tax,
Corporate Range-3,
No.121, MG Road,
Nungambakkam, Chennai-600 034.
4. The Tax Recovery Officer-III,
Commissioner of Income Tax-III,
121, Mahatma Gandhi Salai,
Chennai-600 034.

+1cc to Mr.S.Sivaraman, Advocate, S.R.No.46308

+1cc to Mrs.Hema Muralikrishnan, Advocate, S.R.No.46602

W.P.Nos.9772 & 9779 of 2019
and
WMP.Nos.10372 & 10379 of 2019

PA(CO)
RLP(04/10/2021)