IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.Nos.22923 & 22924 of 2018 and
W.P.Nos.11880 and 11881 of 2018
and
W.M.P.Nos.26819 & 26820 & 26861 & 26862 of 2018 and
W.M.P.Nos.13859 to 13863 of 2018

1.Sri.Manoj Kumar Tibrewala,
(Director of M/s.Gangotri Textiles Ltd)
12, Amarjothi Apartment,
R.S.Puram, Coimbatore 641002.
... Petitioner in W.P.No.22923 of 2018

2.Sri.Mohanlal Tibrewala,
(Director of M/s.Gangotri Textiles Ltd)
12, Amarjothi Apartment, R.S.Puram,
Coimbatore 641 002.
... Petitioner in W.P.No.22924 of 2018

3.Raj Kumar
... Petitioner in W.P.No.11880 of 2018

4.Thirupathi Kumar
... Petitioner in W.P.No.11881 of 2018

Vs.

The Assistant Commissioner of Income Tax,
Corporate Circle - 2,
63, Race Course Road,
Coimbatore - 641 018.
... Respondent in W.P.Nos.22923 & 22924 of 2018

2.The Deputy Commissioner of Income Tax,
Corporate Circle - 1,
No.63, Race Course Road,
Coimbatore - 641 018.

3.The Assistant Commissioner of Income Tax,
Corporate Circle -1,
No.63, Race Course Road,
Coimbatore - 641 018.
... Respondent in W.P.Nos.11880 & 11881 of 2018

PRAYER in W.P.Nos.22923 & 22924 of 2018:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records of the respondent in his impugned order passed against the petitioner under Section 179 of the Income Tax Act 1961 in AAACG8018M/Cor/Circle.2/2018-19 dated 25.06.2018 and quash the same.

PRAYER in W.P.Nos.11880 & 11881 of 2018:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records on the file of the respondent and quash the impugned notice in P.A.No.AAACN1569L/Corp.Cir1/2017-18 under Section 179 of the Act dated 22.08.2017 issued by the first respondent along with consequent impugned order under Section 179 of the Act dated 23.02.2018 issued by the Second respondent and consequently quash the said proceedings.

For Petitioners : M/s.S.Yogalakshmi
(in W.P.Nos.
22923 & 22924 of 2018)

For Petitioners : Mr.Mudit Bohara for
(in W.P.Nos.11880 &
11881 of 2018) Mr.Raghav Rajeev Menon

For Respondents : Mr.A.P.Srinivas
(in all W.Ps) Standing Counsel

C O M M O N O R D E R

By this common order, all these writ petitions are being disposed.

2.The petitioner has challenged these order passed by the Assistant Commissioner of Income Tax, Corporate Circle 1 and 2, Coimbatore under Section 179 of the Income Tax Act, 1961. Details of the impugned order are as under:-

W.P.Nos.	Date	Impugned Order passed by	Defaulting company
22923 of 2018	25.06.2018	The Asst. Commissioner of Income Tax, Corporate Circle - 2, Coimbatore.	M/s.Gangotri Textiles Ltd.
11880-81 of 2018	23.02.2018	The Asst. Commissioner of Income Tax, Corporate Circle-1, Coimbatore.	NEPC Agro Food Ltd.

3.These orders are challenged by the petitioner primarily on the ground that invocation of Section 179 of the Income Tax Act, 1961 was without jurisdiction in as much as the assessee in default in the respective cases of which the petitioner by directors/shareholders were not private limited companies.

4.In this connection, the learned counsel for the petitioner has placed reliance on the decision of the Hon'ble Supreme court in M.Rajamoni Amma Vs. DU.C.I.T 1993 supplement (1) SCC wherein it was held as under:-

> 4.Before us, learned counsel for the appellants relied upon the above communication from the Registrar of Companies but since the genuineness of this letter was doubted we issued notice to the Registrar of Companies, Kerala. It clearly shows that the company had become a public limited company by virtue of Section 43-A of the Companies Act w.e.f October 1, 1975. As already mentioned, the arrears sought to be recovered from the appellants relate to the assessment years 1977-78 to 1982-83. Obviously, the Company being a public limited company, proceedings against the directors for recovery of the tax due from the company cannot be taken, and certainly not proceeded with, under Section 179 of the Income Tax Act, 1961. We need hardly say Article 265 of the Constitution clearly prohibits any attempt to recover taxes except under the authority of law. It is, therefore, clear that further proceedings against the appellants for recovery of the tax due from the company have to be stayed.
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> 5.For the reasons stated above, we allow these appeals, quash the order passed under Section 179 of the Income Tax Act by the Deputy Commissioner and the further orders passed by the Commissioner of Income Tax in revision and under Section 154 of the Act. Further proceedings against the present appellants for recovery of the tax due from the company should not be taken. We, however, should not be understood as having in any way restricted the powers of the department to recover the amounts due from the company by other processes in accordance with law. We also make it clear that any amounts which might have been paid either by the appellants or by the company in the course of the proceedings now under challenge will not be liable to be refunded to the appellants.

5.The learned counsel for the petitioner further submits that the decisions of the Hon'ble Gujarat High Court in Pravinbhai M.Kheni Vs. The Assistant Commissioner of Income Tax & Others [2013] ITR Guj 353 585 is not applicable to the facts in as much as it dealt with a liability of a company and there was a wrong declaration that it was a public limited company.

6.He was further submitted that the opening paragraph of the order in Hon'ble Gujarat High Court in Pravinbhai M.Kheni Vs. The Assistant Commissioner of Income Tax & Others [2013] ITR Guj 353 585 itself makes it clear that the petitioner therein was a director of a private limited company and therefore invocation of Section 179 was attracted.

7.Mr.A.P.Srinivas, learned counsel for the respondent submits that the writ petition was liable to be dismissed. It is submitted that the petitioners have an alternate remedy under Section 264 of the Income Tax Act 1962 by way of revision and therefore liberty may be given to the petitioner to work out the remedy under Section 264 of the Income Tax Act,1962.

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.

> 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 Income-Tax (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.

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.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//
Sub Assistant Registrar

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To
1.The Assistant Commissioner of Income Tax,
Corporate Circle - 2,
63, Race Course Road,
Coimbatore - 641 018.

2.The Deputy Commissioner of Income Tax,
Corporate Circle - 1,
No.63, Race Course Road,
Coimbatore - 641 018.

3.The Assistant Commissioner of Income Tax,
Corporate Circle -1,
No.63, Race Course Road,
Coimbatore - 641 018.

+1cc to Mr.Wall cliffs Law Firm, Advocate SR.No. 14084
+1cc to Mr.A.P.Srinivas, Advocate SR.No. 4288

W.P.Nos.22923 & 22924 of 2018 and
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and
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W.M.P.Nos.13859 to 13863 of 2018

ssd(CO)
A.SK(08.07.2021)