

ORDER SHEET

WPO/320/2018
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SIDDHARTH SETHIA
VS
UNION OF INDIA AND ORS

BEFORE:
The Hon'ble JUSTICE RAI CHATTOPADHYAY
Date: 19th March, 2024.

Mr. Subash Agarwal, Adv.
Mr. Nitish Bhandary, Adv.
...for the petitioner
Mr. Prithu Dudhoria, Adv.
...for the respondents

The Court: The writ petitioner in the capacity of being the Director of the companies namely, Panchratan Enclave Private Limited, Matarani Realestate Private Limited and Vedik Promoters Private Limited had been saddled with the liability of non-payment of income tax. The respondent Authority, in a proceeding under Section 179(1) of the Income Tax Act, 1961, has determined such a liability of him.

The date of order passed by the respondent Authority is October 3, 2017, the tax recovery certificate is issued on October 27, 2017 and the subsequent demand notice is dated November 22/24 of 2017.

The demand notice dated November 22/24, 2017 speaks inter alia that there has been a default in compliance with taxation statute on part of the company namely, M/s. Panchratan Enclave Private Limited, in which writ petitioner has been a director, during the previous year under question,

that is, 2012-13. The Recovery Officer – I, Kolkata has held in the said demand notice that under the circumstances the writ petitioner would be liable to pay outstanding demand of the assessee company M/s. Panchratan Enclave Private Limited, for the assessment year 2012-13, being a director thereof.

The writ petitioner is aggrieved with such an order passed by the respondent Authority on October 3, 2017 as well as demand notice dated November 22/24, 2017.

Mr. Agarwal appearing on behalf of the writ petitioner has stated firstly that the writ petitioner cannot be made liable for the alleged defalcated tax amount and demand for a period, during which he had not been a director of the said company any more. According to him, on this ground, the order of the respondent Authority as mentioned above, would be liable to be set aside being bad in law.

He has further submitted that the writ petitioner has not been afforded an opportunity of hearing which is a mandate under the law, before passing an order under Section 179(1) of the Income Tax Act, 1961 by the respondent Authority. Thus, according to Mr. Agarwal, the writ petitioner has been deprived of his vital most right of audience and natural justice.

In support of the writ petitioner's case Mr. Agarwal has relied on a Division Bench Judgment of the Hon'ble Gujarat High Court in **(2017) 84 taxmann.com 68 (Susan Chacko Perumal vs. Assistant Commissioner of Income-tax)**. He submits by relying on the same that, on the similar set of facts and

circumstances, the Court therein has negated the proceeding and decision of the respondent Authority.

Under the circumstances Mr. Sharma seeks adequate relief for the writ petitioner.

Admittedly in this case, the writ petitioner has been a director of the company named above, during the relevant financial year but only till July 25, 2012. He says that he has resigned from the directorship of the said company on July 25, 2012 and since thereafter he could not be held liable for the acts of the assessee company, any further. During the period of the relevant financial year, according to the writ petitioner, there was neither any business operation conducted by the company nor he has been in the helm of any business operation and financial transaction on behalf of the company. He categorically stated that during the said period no account of the company was opened. Under such circumstances, the writ petitioner challenges the propriety and truthfulness of the business said to have been undertaken by the said company, raising share capital including share premium to the tune of a huge amount of Rs. 66.91 crores. According to the writ petitioner, the liability for any such business cannot be attached with him after he has left office of the director of the company, on July 25, 2012.

Stating all the facts in detail the writ petitioner has written three separate letters for relief, before the respondent Authority but to no avail at all. Thus, he has been aggrieved and come up with this writ petition before this Court.

Mr. Prithu Dudhoria, learned advocate appears for the respondent Authority and files affidavit-in-opposition which is taken on record.

The respondent authority has contested this case by filing its written affidavit-in-opposition. There in, the defence taken on by the said respondents principally would be that since the demand raised was pertaining to the financial year 2011-12, when the petitioner was, admittedly there in the office of the assessee company, as a director, he would be liable for tax default during the said period.

Section 179(1) of the Income Tax Act may be extracted for benefit of discussions :

“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 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.”

The statute would require the director of a company to be liable for payment of unpaid tax, unless he proves that the non-recovery could have been attributed to any gross neglect, misfeasance and breach of duty on his part, in relation to the affairs of the company.

In a proceeding under Section 179(1) therefore the respondent Authority has to mandatorily come to a finding that the person concerned, who has been a director of the company, has been responsible and the non-recovery of tax is was attributable to neglect, misfeasance or breach of duty of such a director.

On perusal of the impugned order, this Court is unable to find any such finding on the part of the respondent Authority while coming to the conclusion that the present writ petitioner being a director of the said company would be liable for non-payment of the amount of tax. A just and proper compliance of the provision under Section 179 (1) of the Income Tax Act, would not only be the authority's finding regarding non-submission of tax and the director being present in the office of a private company, for the alleged period of non-submission. So far as this case is concerned, the petitioner was not even the director of the said assessee company, for the whole of the year, for which defalcation in payment of the income tax has been alleged. Be that as it may, a definite finding of the authority as regards, gross negligence, misfeasance and breach of duty on part of the said director, that is, in this case, the petitioner, is also required to be determined, to fasten the petitioner with any liability as regards the unpaid taxes of the said private company, for the said particular period. The impugned order is not speaking that way. This Court has no hesitation to find that the essential statutory requirement is thus not complied with by the respondent authority, while issuing the order as impugned in this case. On this score, the impugned order, issued by the respondent authority

under Section 179 (1) of the Income Tax Act, is found to have been illegal and not maintainable. This Court is agreeable that the ratio decided by the Hon'ble Division Bench of Gujrat High Court, in the case of ***Susan Chacko Perumal (supra)***, may also be applicable, with respect to the facts of the instant case.

The record would further show that while delivering the said order, the writ petitioner has not been given any notice and opportunity of hearing, before the concerned authority. The Court finds the same to be in gross violation of the statutory provision as well as natural justice to the writ petitioner insofar as the writ petitioner being the person concerned against whom the tax liability is to be rendered, the respondent Authority was required to give opportunity of hearing before passing an order under Section 179(1) of the Income Tax Act on the grounds as mentioned above. The impugned order passed by the respondent Authority under Section 179(1) of the Income Tax Act dated October 3, 2017 appears to be dehors the statutory compliance and itself illegal. Subsequent demand notice would naturally and similarly follow the same road map to be termed as illegal and not maintainable.

On the findings as above, the order dated October 3, 2017, the tax recovery certificate dated October 27, 2017, and the subsequent demand notice dated November 22/24, 2017 are set aside.

The writ petition no. 320 of 2018 is allowed.

The writ petition no. 320 of 2018 is disposed of by directing the respondent Authority, to initiate a fresh proceeding under Section 179 (1) of

the Income Tax Act, 1961, in case of the said assessee company for the said relevant assessment year and dispose of the same, in accordance with law, after affording an opportunity of hearing, to the present writ petitioner. The entire exercise as above, shall be concluded by the respondent authority, within a period of six weeks from the date of service of copy of this order.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance of requisite formalities.

(RAI CHATTOPADHYAY, J.)

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