IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

208-2

CWP-3999-2000 (O&M)
Decided on : 16.10.2024

Ms. Rama Sinha
. . . Petitioner(s)

Versus

Tax Recovery Officer
. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Shantanu Bansal, Advocate and
Mr. Yugansh Goyal, Advocate
for the petitioner(s).

Mr. Vaibhav Gupta, Advocate
for respondent No.1.

****

SANJEEV PRAKASH SHARMA, J. (Oral)

1. The petitioner by way of instant writ petition has prayed for quashing of Annexures P-1, P-5 & P-7 and consequential proceedings for recovery of arrears of tax in the case of M/s Ramsan Ceramics (P) Ltd., from the petitioner.

2. Learned counsel has stated that the entire proceedings stand vitiated, as procedure was required to be followed in terms of Section 179 of the Income Tax Act, 1961 (in short, 'the Act') before making any recovery of arrears of tax from the petitioner. He submits that without giving reasonable and proper opportunity of being heard, the action of recovery of arrears relating to a Company could not have been undertaken against the petitioner, who was one of the Directors of the said Company.

Learned counsel further submits that no order has been passed under Section 179 of the Act. Further proceedings taken by the Tax Recovery Officer in terms of Section 226(3) of the Act, stood vitiated in law.

3. *Per contra*, learned counsel appearing for the Department has invited our attention to the documents (annexures) along with the reply, which reflects that the petitioner was served with a notice on 09.10.1996 by the Department informing about the outstanding dues against the Company and for making good the said dues. A reply was filed by the petitioner to the said letter, wherein, the petitioner has denied any connection with the Company and states that *"neither aware of such a Company nor in any way associated with any such Company"*.

4. Petitioner has also in his reply objected of recovery being made from the petitioner, as an individual, while the claim is against a Limited Company, which is a juristic person. The Tax Recovery Officer, thereafter, has again sent reply to the objections, and has asserted that the petitioner is one of the Directors of the said Company on the basis of information received from the ITO, Parwanoo. The petitioner was given another chance to appear before the Tax Recovery Officer with regard to the objection, which he may possibly take in relation to the recovery proceedings.

5. Another letter was sent on 25.09.1997, granting another opportunity of making payment of the outstanding demand by 07.10.1997, failing which, it was to be presumed that she has nothing further to say and action as per law would be taken against her. Thereafter, the summons were issued under Rule 83 of the Income Tax Certificates Proceedings Rules, 1962 before the Tax Recovery Officer, and then again in the interest of

justice, she was asked to make the payment and attend the office vide Tax Recovery Officer letter dated 03.02.1998, but the petitioner has failed to comply with the orders. She does not bother to appear before the concerned Tax Recovery Officer.

6. The Tax Recovery Officer also passed another order on 08.02.1999 under Rule 83 of the Second Schedule (Part VI) of the Income Tax Act, 1961, but the petitioner has chosen to avoid said summons and filed the present writ petition without bringing on record any of the documents, as have been placed before the respondents in their reply.

7. The petitioner has, thus, played *Hide & Seek* before this Court and tried to mislead the Court. An interim order was passed in her favour, which was later on vacated by the Court vide its order dated 04th September, 2001.

The respective counsels have not been able to assist the Court about the present position as to whether the recovery has been effected or not ? However, we find that the arguments raised by the learned counsel for the petitioner with regard to the provision of Section 179 of the Act is wholly misconceived. Section 179 of the Act, reads as under:-

> "**179. Liability of directors of private company in liquidation.** - [(1)] *[Section 179 renumbered as sub-Section (1) by Act 41 of 1975, Section 50 (w.e.f. 1.10.1975).]* [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] *[Substituted by Act 41 of 1975, Section 50, for certain words (w.e.f.*

1.10.1975).] 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.

(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.] *[Inserted by Act 41 of 1975, Section 50 (w.e.f. 1.10.1975).]*

N.-Special provisions for certain kinds of income*"*

8. From the perusal of the aforesaid provision, it is apparent that the joint and several liability for payment of tax due, as against the company, statutorily lie on the Director of the said Company. The provision is clear and unambiguous, therefore, no further order are required to be passed and the Tax Recovery Officer on receiving information regarding the recovery is to be made from any assessee, can choose and invoke the provisions of Section 179 of the Act and issue summons to the Directors or one of the Director, as the case may be for making recoveries. Once he adopts such a mode, it is for the concerned person to whom the summons have been issued to prove that he or she is not liable to pay and the recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his/her part

in relation to the affairs of the company.

However, we find that instead of taking any steps to prove that the recovery was not attributed to any gross neglect, misfeasance or breach of duty on her part, the petitioner has conveniently chosen to deny her connection with the Company, which is found to be an attempt to avoid the proceedings.

9. In view of above, no relief can be granted to the petitioner and the proceedings undertaken by the Tax Recovery Officer do not warrant any interference from this Court. The writ petition is wholly misconceived and an attempt to avoid the payment of the necessary dues of the Company, of which the petitioner was a Director, the writ petition is dismissed with cost of Rs.50,000/- to be recovered as arrears of revenue.

Pending misc. application(s), if any, also stands disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

October 16, 2024
J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No