

S. Hardip Singh and Another

Vs

Income Tax Officer, Amritsar and Others

Civil Appeal No. 2590 of 1972

(E. S. Venkataramiah, N. L. Untwalial, R. S. Pathak JJ)

26.04.1979

JUDGMENT

UNTWALIA, J. -

1. This is an appeal by certificate from the order of the High Court of Punjab and Haryana dismissing the appellants' writ application in limine. Sandhu Transport Company (Private) Limited is a private limited company. The two appellants were its directors. One of them was a Managing Director. A resolution was passed on November 13, 1961 for a voluntary liquidation of the company at the instance of its creditors. In respect of some years ending with the assessment year 1964-65 a huge amount of income tax to the tune of Rs. 1,34,319 remained due from the company. The Income Tax Officer issued a notice on February 7, 1970 against appellant 2 under Section 179 of the Income Tax Act, 1961, hereinafter called the Act, to show cause why action should not be taken against the directors of the company for realisation of the arrears of income-tax due from the company. A similar notice was issued to appellant 1 on November 11, 1970. Both the appellants filed their show cause before the Income Tax Officer mainly taking the stand that since the company had gone into liquidation before the Act had come into force, action under Section 179 could not be taken against them. Some other points were also taken in the show cause filed by the appellants but it is not necessary to state them as the only point pressed in this Court is in relation to the jurisdiction of the Income Tax Officer under Section 179 of the Act.

2. The Income Tax Officer rejected the appellants' pleas by his order dated December 31, 1970. The appellants went in revisions before the Commissioner of Income Tax. It was rejected on January 31, 1972. Thereafter, when proceedings were taken for realisation of the income-tax arrears aforesaid against the appellants they moved the High Court for the quashing of the proceedings and the orders under Section 179 of the Act. As already stated the High Court rejected their application in limine, but certificate to appeal to this Court was granted only because of the rule of valuation then prevalent.

3. Section 179 of the Act as it stood at the relevant time reads as follows :

Liability of directors of private company in liquidation - Notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) when any private company is wound up after the commencement of this Act, and any tax assessed on the company, whether before or in the course of or after its liquidation, in respect of any income of any previous year 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.

4. The section was amended in 1975 making it more stringent against the directors of a private company, but we are not concerned with the said amendment in this case.

5. There are three stages when a company goes into liquidation, namely : (1) the commencement of the winding up of the company; (2) the continuation of the proceeding or the steps for winding up, and (3) the final winding up and dissolution of the company. If all the three stages were complete before the Act came into force on and April 1, 1962, obviously Section 179 will not be attracted. If all three stages happened after the commencement of the Act, it is manifest that Section 179 would undoubtedly be attracted. But the difficulty presented before us by learned Counsel for the appellants was because of some speciality of the facts of this case, the commencement of the windings up of the company began on the date which was prior to the date of commencement of the Act. As it appears from the orders of the Income Tax Officer and the Commissioner the company had not even till then been finally wound up and dissolved. The proceedings for its winding up were pending. The submission, therefore, is that in such a case Section 179 will not be attracted. We have no difficulty in rejecting this argument. In our opinion the section will be attracted if any one or more of the three events occurred after the commencement of the Act even though the first or the first and second events had happened earlier. The section was meant also to net a case like the instant one where it was resolved that the private company should be sent to liquidation and nobody cared to pay the huge arrears of income-Tax due from it. The Directors were sought to be caught exactly for this purpose. When the company goes into liquidation it becomes difficult for the department to realise its dues from the assets for the company and more so when the company has been finally wound up and dissolve. The directors, therefore, have been made liable to pay such dues. Section 179 is meant to squarely cover such a case also and the appellants cannot escape their liability for the dues. The proceedings were rightly initiated against them for realisation of the dues. The High Court was perfectly justified in dismissing the appellants' writ petition in limine.

6. We find no merit in this appeal and it is accordingly dismissed with costs.

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