

Bombay High Court

M.D. Lotlikar vs R.C. De Souza, Commissioner Of ... on 11 January, 1983

Equivalent citations: (1983) 34 CTR Bom 17, 1984 145 ITR 433 Bom, 1983 13 TAXMAN 303 Bom

Bench: S Bharucha

JUDGMENT

1. The petitioner is a director of a private limited company called Bhimjee & Company Pvt. Ltd. For the years 1964-65 and 1965-66, the company was assessed upon a best judgment basis under the provisions of s. 144 of the I.T. Act, 1961. For the years 1964-65 the tax was determined to be Rs. 2,300 and interest in the sum of Rs. 1,169 was made payable. For the year 1965-66 Rs. 4,200 was determined to be the tax and interest in the sum of Rs. 2,045 was made payable. The company did not pay the tax. On 17th September, 1977, pursuant to a show-cause notice to the company's directors under s. 179 of the Act, the ITO passed an order holding, inter alia, the petitioner jointly and severally liable for the arrears of tax. The petitioner went in revision, which application was turned down on 2nd August, 1978.

2. The petitioner challenges by this petition the application of s. 179 as it reads subsequent to the amendment thereof in 1975, to the tax of the company assessed prior to the said amendment. Prior to 1975 a director of a private limited company was, under s. 179, liable jointly and severally for the payment of his company's tax arrears only if the company had been wound up. After the 1975 amendment, s. 179(1) reads thus :

"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."

3. Mr. Patil, learned counsel for the petitioner, relied upon the judgment of the Division Bench of Kerala High Court in *Ratanlal Murarka v. ITO* [1981] 130 ITR 797. The question there was in respect of a company's tax arrears prior to the introduction of s. 179 in the Act which came into force on 1st April, 1962. The petitioner was sought to be made liable for such arrears under s. 179. He challenged this. The Division Bench observed that the section was prospective and there was nothing in its wording which could attract its provisions to a year previous to the commencement of the Act on April 1, 1962.

4. It was contended by Mr. Naik, learned counsel for the respondents, that the phraseology employed in s. 179 enabled the tax authorities to recover from a director the tax which was determined to be due from his company prior to the coming into force of the amended s. 179.

5. This does not appear to me to be correct. There is nothing in the section as amended which makes its operation retrospective. In the instant case, the tax sought to be collected was much prior to the

coming into force of the amended s. 179. The petitioner's contention that he cannot be saddled with such tax liability under s. 179 is well founded and must be sustained.

6. In the circumstances, the petition is made absolute with costs.

7. The petitioner shall be entitled to withdraw from the court the sum of Rs. 9,780 (with interest accrued thereon) deposited by the petitioner to the credit of this petition on 22nd November, 1978.