Court No. - 39

Case :- WRIT TAX No. - 1499 of 2005
Petitioner :- A.S. Solanki
Respondent :- State of U.P. and Others
Counsel for Petitioner :- M Manglik,Kunwar.Saxena,Rahul Agarwal,Santosh Misra
Counsel for Respondent :- C.S.C.

AND

Case :- WRIT TAX No. - 1464 of 2005
Petitioner :- Jagbir Singh
Respondent :- State of U.P. and Others
Counsel for Petitioner :- M. Manglik,Kunwar Saxena,Rahul Agarwal,Santosh Misra
Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh,J.
Hon'ble Vinod Diwakar,J.

1. Heard Shri Rahul Agarwal, learned counsel for the petitioners and Sri Ankur Agarwal, learned Standing Counsel for the State.

2. Originally the present petition was filed before this Court in the year 2005 seeking the following relief:-

> *"(a) Issue a writ, order or direction in the nature of certiorari quashing the impugned recovery certificates, issued by the respondent no.3 on the direction of respondent no.4 (Annexure-4).*
>
> *(b) Issue a writ, order or direction in the nature of mandamus commanding the respondents and restraining them from recovery of the amount against the company from the personal assets of the petitioner in any manner whatsoever.*
>
> *(c) Issue such other and further writ, order or direction, which this Hon'ble Court may deem fit and proper in the interest of justice."*

3. After exchange of the affidavits, the writ Court proceeded to dismiss the writ petition vide its order dated 20th September, 2012. In doing so, the co-ordinate bench of this Court noted the earlier law on the subject- lifting of corporate veil, to enforce the tax liability of a corporate entity on its directors and other functionaries etc. While dismissing the writ petition, the co-ordinate bench made the following observations:-

"28. In the present case from the material on record, there is no doubt that the petitioners and other directors persuaded the BIFR to allow them to run the sick industrial company with fresh infusion of funds from IFCI with two nominee directors of IFCI. The company started business in 1991. The application for eligibility certificate under Section 4-A was made with false declaration that the plant and machinery is new. The eligibility certificate was not granted. Initially the company was doing well but as soon as Shri I.S. Gambhir and Shri L.K. Luthra took over successively as Managing Directors of the company, they started defrauding in payment of sales tax both State and Central; the excise dues and electricity dues. They incurred liability of several crores of rupees and did not participate in the proceedings of assessment. The date, when the company again stopped production, has not come on record. However, it is clear from the material placed before us, that the company started production with fresh capital given by IFCI, only to defraud the secured creditors to avoid taxes and electricity dues. The directors of the company hiding behind the corporate veil made use of the corporate entity under the umbrella of BIFR to circumvent statutes, commit illegality and evade the liability of payment of taxes, central excise dues and electricity dues. The returns were not filed. The entire amount was utilised for personal gains. The directors used the State resources for enriching themselves. They robbed the coffers of the State while sitting in Delhi. The corporate veil under the patronage of BIFR was used as subterfuge to avoid payment of taxes. In the facts and circumstances we do not find any good ground to interfere with the recoveries from the personal assets of the petitioners."

4. The petitioner carried the matter to the Supreme Court in Civil Appeal No.852 of 2021 (A.S. Solanki Vs. State of U.P. and others). In the connected matter being Writ Tax No.1464 of 2005 (Jagbir Singh Vs. State of U.P. and others) similar facts exist. It met the same fate. That order (of this Court) came to be challenged before the Supreme Court in Civil Appeal No.853 of 2021.

5. Both Civil Appeal Nos.852 of 2021 and 853 of 2021 were disposed of by a three judge bench decision of the Supreme Court on 10th March, 2021.

6. For ready reference, we consider it proper to extract the entire order passed by Supreme Court:-

"Leave granted.

These appeal(s) take exception to the judgment and order dated 20.09.2012 passed by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition (Tax) Nos.1499 of 2005 and 1464 of 2005 respectively, whereby writ petitions filed by the appellant(s) questioning the recovery process/recovery certificate came to be rejected.

In the writ petition(s), although, the primary relief claimed was in respect of recovery Signature Not Verified Digitally signed by NEETU KHAJURIA certificate but, it is urged that the second Date: 2021.03.13 11:03:53 IST Reason: prayer/relief claimed was wide enough to permit the appellant(s) to pursue the argument that no part of financial (tax) liability of the Company can be fastened upon them much less in absence of clear

finding about their acts of commission and omission, in light of exposition of the Division Bench of the same High Court in "Meekin Transmission Ltd. Vs. State of Uttar Pradesh and others" reported in (2008) SCC Online All 161, in particular, paragraph 72 of the reported decision, which reads thus : "

> *72. The legal position as discerned from the above is that in a case where the corporate personality has been obtained by certain individuals as a cloak or a mask to prevent tax liability or to divert the public funds or to defraud public at large or for some illegal purposes etc., to find out as to who are those beneficiaries who have proceeded to prevent such liability or to achieve an impermissible objective by taking recourse to corporate personality, the veil of the corporate personality shall be lifted so that those persons who are so identified are made responsible. However, this doctrine is not to be applied as a matter of course, in a routine manner and as a day to day affair so as to recover the dues of a company, whenever and for whatever reason they are unrecoverable, from the personal assets of the Directors. If such a course is permitted, it would lead to not only disastrous results but would also destroy completely the concept of juristic personality conferred by various statues like the Act in the present case and would make several enactments and their effect to be redundant and illusory.*

Moreover, the shallowness of arguments in favour of making Directors personally responsible can be considered from another angle. In every case the Director may not be a shareholder of the company. He may have been appointed as Director for taking advantage of his expertise in his field of vocation or profession, and for achieving goals for which the company is incorporated. Such Director is paid remuneration, if any, for the services he rendered. Otherwise he is not at all a beneficiary of the business or trade etc., as the case may be, in which the company is engaged. Such benefit would be available only to the shareholders as they would only be entitled to share the profits earned by the company in the form of dividend as decided by the Board of Directors. In such case such Director, though is an agent of the company but he is more in the nature of an officer of the company and not in the capacity of limited ownership by way of shareholding. Such a Director, in our view, unless is guilty of misfeasance, fraud or acting ultra vires, we are not able to understand as to how he can be made responsible personally for the dues of the company even if we apply the doctrine of piercing the veil. If in such a case the veil is to be lifted, the persons behind the veil, at the best, would be the promoters of the company or those who have sought to obtain corporate personality as a sham or bogus transaction. Similarly, in some of the companies the financial institutions, who advances funds as loan etc., nominate their Director/s to keep some kind of monitoring over the functions of the company so that it may not go on liquidation on account of negligent and careless function of the Board of Directors. Such Directors also, in our view, cannot be included in the category of the persons who would be responsible personally for the dues of the company." The High Court has not adverted to this decision nor analysed the contention available to the appellant(s) in light of the settled legal position restated in the earlier judgments of the same Court, referred to in the reported judgment.

Resultantly, we deem it appropriate to relegate the parties before the High Court for reconsideration of the Writ Petition(s) afresh leaving all

contentions available to both sides open to be decided on their own merits in accordance with law. We order accordingly.

We may not be understood as having expressed any opinion either way on the merits of the submissions in the present appeal(s) or the grounds urged in the remanded writ petitions.

The parties to appear before the High Court on 26th March, 2021, on which date the Court may proceed with the matter or to pass appropriate directions as may be permissible in law. Interim protection in terms of order dated 8th July, 2013 to continue till 26th March, 2021.

The appeal and pending applications are disposed of accordingly."

7. In such circumstances, the matter has been placed before us.

8. Pleadings are complete. By means of the first supplementary counter affidavit (inadvertently described as first supplementary rejoinder affidavit), the State has also brought on record the order dated 30th March, 2005 passed by the Deputy Commissioner (Assessment)-VIII, Writ Tax, Ghaziabad, under Section 8 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as the "Act"), seeking to lift the corporate veil of the entity M/s Maharashtra Steel Ltd. a duly incorporated company (hereinafter referred to as the "company"), and to seek recovery of the tax dues outstanding against that company for the Assessment Year 1983-84 (U.P. & Central) to Assessment Year 1995-96 (U.P. & Central) from the personal assets of its directors and erstwhile directors, including Shri A.S. Solanki (petitioner in Writ Tax No.1499 of 2005) and Shri Jagbir Singh (petitioner in Writ Tax No.1464 of 2005). The State has also brought on record the appeal order dated 31.12.2007 passed by the Appellate Authority while dealing with the Appeal No.601 of 2005 (Shri A.S. Solanki Vs. Shri R.D. Singh), arising from the order dated 30.3.2005.

9. Submission of learned counsel for the petitioner is, notwithstanding the above order dated 30th March 2005, as confirmed on 31.12.2007, there is not an iota of allegation or evidence in support of such allegation, against either of the petitioners as may have allowed the tax authorities to lift the corporate veil of the company to seek recovery of its outstanding tax dues from the personal assets of either of the petitioners. Referring to the order dated 30th March, 2005 in extenso, it has been submitted that the company was originally incorporated in the State of Maharashtra, in the year 1971-72.

Later, its registered office was shifted to inside U.P. Accordingly, the company came to be registered with the Registrar of Companies, Kanpur against registration No.3864 dated 21.12.1992. It closed its business operations sometime during the Assessment Year 1986-87. It was registered as a sick company with the Board for Industrial and Financial Reconstruction (BIFR in short), in terms of the provisions of Sick Industrial Companies (Special Provisions) Act, 1985. A revival package was also proposed and approved by the BIFR, with the help of a financial corporation namely, the Industrial and Financial Corporation of India (IFCI). Thereupon, the company sought exemptions under Section 4A of the Act and also sought benefit under Section 4B of the Act. While those proceedings may have remained pending, the company appears to have carried on business claiming such benefit of exemption and concession. However, as a fact that exemption was never granted. Accordingly, assessment order came into existence and consequential recoveries arose against the company, description of which has been given in the order dated 30th March, 2005. That may be extracted as below:-

"क्र० स०	*वर्ष*	*धनराशि*	*वसूली प्रमाण पत्र सं० व दिनांक*
1-	*83-84 के०*	*1,57,702 – 00 (केवल ब्याज)*	*163/26-10-93*
2-	*84 -85 प्रा०*	*(ब्याज शेष)*	*109/2- 5- 94*
3-	*85–86 प्रा०*	*(ब्याज शेष)*	*170/14-12-93*
4-	*86 -87 प्रा०*	*40,237- 00*	*179/13 – 1 – 94*
5-	*91- 92 प्रा०*	*76,03,079 – 00*	*0/ 16 – 5 – 96*
6-	*91 – 92 केन्द्र*	*40,00,000 – 00*	*5/ 16 – 5 -96*
7-	*92 – 93 प्रा०*	*4,86,25,855 – 00*	*7/ 16 – 5- 96*
8-	*92 – 93 के०*	*2,00,00,000 – 00*	*8/ 16- 5- 96*
9-	*93- 94 सित०प्रा०अर्थ०*	*9,000 -00*	*197/20 – 2 – 95*
10-	*93- 94 सित०क० अर्थ०*	*2,000 – 00*	*203/ 20- 2- 95*
11-	*93 – 94 अक्टू०प्रा० अर्थ०*	*20,000 – 00*	*198/20 – 2- 95*
12 -	*93- 94 अक्टू० के०अर्थ०*	*35,000 – 00*	*199/20 – 2- 95*
13-	*93- 94 नव० प्रा० अर्थ०*	*55,000 – 00*	*200 / 20 – 2- 95*
14 -	*93 – 94 नव०के०अर्थ०*	*7,000 – 00*	*201/ 20 – 2- 95*
15 -	*93 – 94 फर०प्रा० अर्थ०*	*1, 000 – 00*	*202 / 20 – 2- 95*
16 –	*93 – 94 धारा - 13 ए (4)*	*29,000 – 00*	*21/ 14 – 7- 97*
17 -	*93 – 94 प्रा०*	*95,38,763 – 00*	*22/ 14 – 7- 97*

18 -	*93 – 94 के०*	*2,00,00,000 – 00*	*23 / 14 –7 – 97*
19 -	*94 – 95 अप्रैल प्राअर्थ०*	*15, 000 – 00*	*51 / 21 – 9 – 95*
20 -	*94 – 95 ….उक्त ... ..*	*1,35,000 – 00*	*107 / 30 – 9- 02*
21 -	*94 – 95 जून प्रा० अर्थ०*	*10,000 – 00*	*52 / 21 – 9 – 95*
22 -	*94 – 95 प्रा०*	*1,57,06,000 – 00*	*16 / 3 – 7 – 98*
23 -	*94 – 95 के०*	*80,00,000 – 00*	*17 / 3 – 7 – 98*
24 –	*95 – 96 प्रा०*	*1,00,00,000 – 00*	*28 / 4 – 8 – 98*
25 -	*95 – 96 के०*	*40,00,000 – 00*	*29 / 4 – 8 – 98*
	योग -	*14,79,89,836 /-”*	

10. Notwithstanding the outstanding recovery of Rs.14,79,89,836/- against the company, Shri Rahul Agarwal would submit that there is neither any allegation made in the entire order dated 30.3.2005 nor any act or omission attributable to the instant petitioners has been alleged as may expose them to the vicarious liability being enforced against them. Thus, it has been submitted, merely because the company may have sought statutory exemptions and benefits that were denied or merely because the company filed returns claiming such exemptions, that it may not have been found legally entitled to, or merely because the directors of the company may not have participated in the assessment proceedings resulting in creation of the outstanding demands against the company, it may never be inferred *ipse-facto*, that the petitioners became liable for the recovery of the tax dues of the company.

11. Again as a fact, it has been submitted, undisputedly, the petitioner A.S. Solanki resigned from the directorship of the company on 20.7.1992, which was accepted and recognized by Registrar of Companies with effect from 31.7.1992. Similarly, the petitioner Jagbir Singh resigned from the directorship of the company on 20.7.1992, which resignation was accepted and acknowledged by the Registrar of Companies on 31.7.1992. While those facts have been taken note, the recovery of the tax dues of the company has been sustained against the present petitioners, up to the date of their respective resignations.

12. Yet, he would submit, the fact of resignation may have no effect on the lifting of corporate veil. Inasmuch as, in absence of any evidence to establish, either that the petitioners had engaged in malfeasance or

misconduct or had committed any act or omission as may indicate that they had operated the company by way of a shell entity for their personal gain, no legal consequence of recovery of the tax dues of the company, may have been enforced against the petitioners.

13. The reason given by the co-ordinate bench of this Court in the earlier leg of litigation is described as based on recital of facts alleged by the State authorities without being tested on the strength of the submissions advanced by the petitioners. Those observations are stated to have been not accepted by the Supreme Court, upon challenge raised by the petitioners. That order has already been quoted above.

14. Last, it has been submitted, there is no allegation or evidence of any financial benefit drawn by either of the petitioners upon the conduct of business by the company for any of the Assessment Years, for which recoveries are being enforced.

15. To bolster his submission, learned counsel for the petitioner has relied on an earlier division bench decision of this Court in ***Meekin Transmission Ltd. and others Vs. State of Uttar Pradesh and others (2013) 58 VST 2001 (All).***

16. Relying on the above decision, he has further submitted, the doubts that had arisen upon the earlier decision of another co-ordinate bench of this Court in ***Naresh Chander Gupta Vs. The District Magistrate and others (2003) 22 NTN 358,*** had been completely clarified in ***Meekin Transmission Ltd. (supra)***. Even the Circular that had been issued by the Commissioner, pursuant to the decision of the division bench in ***Naresh Chander Gupta (supra)*** had been dealt with and it had been made clear that the directors of a corporate body would not automatically become responsible for the tax dues existing against such corporate body, unless in the peculiar facts and circumstances of the case, it is found that they were the persons, owning and running the business behind the corporate shell. Further, heavy reliance has been placed on the statutory scheme of Section 8 of the Act, which does not contemplate or lay down any general rule to allow for such recoveries to arise against the directors or other functionaries of a corporate entity. The

statute is stated to lay down a general rule that the tax dues of a corporate entity be recovered from the assets of that entity. Only by way of exception, if facts are available (to the revenue), and upon their due assertion and proof, the corporate veil may be lifted and recoveries may arise against such persons, who may be found to have operated the corporate shell for his/their personal benefit.

17. On the other hand, learned counsel for the revenue would contend, in absence of any challenge raised to the order dated 30.3.2005 passed by the Deputy Commissioner (Assessment)-VIII Trade Tax, Ghaziabad as confirmed in appeal by the Joint Commissioner (Appeal)-IV Trade Tax, Ghaziabad, it is not open to the petitioners to contend that they are not liable to satisfy the recovery being enforced against them. Thus, he would submit, the petitioners were given due notice and opportunity to resist the recoveries. They failed, both at the stage of the assessing authority as also the first appellate authority. They have not challenged those orders any further. Therefore, the petitioners cannot be heard to resist the recoveries as recovery orders have attained finality.

18. It may be noted further in all fairness, learned Standing Counsel did not choose to contest the position in law- ordinarily, recoveries of a corporate entity may not be made from the personal assets of the directors and/or other functionaries of that corporate body. To that extent, Shri Ankur Agarwal would state, the law does not permit of any doubt, as of now.

19. Having heard learned counsel for the parties and perused the record, objection being raised by learned Standing Counsel may not be accepted for two reasons. In the first place, though at the first stage of these proceedings , it was open to the State to raise such objection, at present the proceeding has arisen upon remand made by the Supreme Court. Yet, even though, we may have permitted the State to raise that objection and not repelled it on technicalities, at the same time, that objection may not be entertained in view of specific observations made by the Supreme Court in its order dated 10th March, 2021, while disposing of Civil Appeal Nos.852 of 2021 and 853 of 2021, both having arisen from the earlier decision of this Court, in Writ

Tax Nos.1464 of 2005 and 1499 of 2005. Perusal of that order (of Supreme Court), does indicate that some objection may have been raised before that Court, by the revenue authorities, as to inadequacy of the proceedings in absence or challenge to the order dated 30.3.2005 passed by the assessing authority as confirmed by the appellate authority vide order dated 31.12.2007. It is in that light, the observation appears to have been made in third paragraph of the order of Supreme Court that the second relief as prayed by the petitioner (in the writ petition) was wide enough to permit the petitioner to pursue the relief that no part of the financial liability of the corporation may be fastened on its directors. Presently, we are ceased with the matter in proceedings, upon the remand. Therefore, the observation of the Supreme Court (as noted above) has a material bearing. A denovo exercise (to that extent), may neither be permitted nor be desirable, at this stage.

20. Second, the objection being raised by the learned Standing Counsel is also not found acceptable for another reason. Even if we accept as correct, the order dated 30.3.2005 passed by the assessing authority as confirmed in appeal vide order dated 31.12.2007, we do not find any recital in either of those orders, recording any finding or containing any allegation of any act or omission performed by either of the petitioners as may have allowed the revenue authorities to reach a conclusion that they were the persons, who had operated the shell of the company, for their personal benefit. The order dated 30.3.2005 only records the fact of the company having become ‘sick’ and having been revived, perhaps at the instance of the petitioners, who were its then directors. At the same time, the order further records that the revival package had been sponsored or financed by any independent entity namely IFCI that too under the aegis of the statutory body i.e. BIFR. Thus, we do not find the corporate veil to have been lifted as may have exposed the petitioners to recovery of the tax dues of the company.

21. Therefore, both generally (by way of a principle of law and also in the present facts), it is impermissible to allow the revenue authorities to rely on any assumption or presumption as to malfeasance or scam or fraud. Neither,

the revival offered by BIFR was challenged nor there is any other material on record to reach such conclusion. Insofar as the conduct of the business upon revival is concerned, merely because statutory exemptions and benefits might have been claimed and those were declined would also not *per se* establish any malfeasance or misconduct or other conduct or omission attributable to the petitioners as may allow the recovery proceedings to be continued against them- for the dues of the company. Such occurrences are common and natural in the facts brought before us.

22. Exemptions are claimed in accordance of perception of the claimant. Those are dealt with and decided by statutory bodies, on their own merits. Rejection of a claim may never be treated to be a fraudulent act, unless necessary facts are asserted and established. At present there is no allegation of any fraudulent claim to exemption made. The order dated 30.3.2005 only records, the claims, thus made by the company were rejected.

23. What then survives for consideration is the fact of resignation by petitioners as directors of the company. Continuance as directors of a corporation may be *prima-facie* evidence as to who was responsible for running with the affairs of the corporation, yet, it may never be relevant or enough to reach a conclusion that therefore such person acted fraudulently or committed malfeasance or misconduct or other act or omission as may expose him/them to the exceptional liability of recovery of dues of the corporation, from their personal assets.

24. The law in that regard stood in doubt upon pronouncement of the judgment in ***Naresh Chander Gupta (supra).*** However, all doubts were dealt with and cleared by the subsequent division bench decision in ***M/s Meekin Transmission Ltd. (supra)***, wherein it was observed as under:-

> *"55. In Naresh Chander Gupta (Supra) the dues of trade tax were sought to be recovered from M/s Shiv Sewa Samiti, a society registered under the Societies Registration Act of which the petitioner, Naresh Chander Gupta was the secretary. Though recovery certificate was issued against the society but it was alleged by the petitioner that the revenue recovering authorities were proceeding against the assets of the petitioner himself. On the pleadings, the Court found that the petitioner has neither shown as to whether there are other office bearers of the society or not and as to who actually is running and controlling the society. Further the Court recorded a finding that the petitioner was really managing the entire society and had*

control over its operations and has created society for evading tax or for other extraneous reasons as is evident from the following:

18. On the facts of the present case we are of the opinion that the petitioner was really managing the entire society and had control over its operations. He has only created the society for the evading tax or for other extraneous reasons.

56. In these circumstances, the Court declined to exercise its discretionary remedy under Article 226 of the Constitution of India. The said judgement also is not an authority to hold that whenever the dues are to be recovered from a corporate body, the Directors etc. would be personally liable.

57. However, learned Standing Counsel sought to draw our attention to para 20 of the judgement which reads as under:

20. The Supreme Court has held in some of the above decisions that in tax matters the veil of corporate personality can be lifted so that the tax dues can be realized. The doctrine of piercing the veil of corporate personality has an expanding horizon. We are therefore expanding this doctrine and declare that ordinarily if there are tax dues against the corporate personality (or societies) they can be realized from the Directors, Secretary of the Society, or others who control the company or the society. This is necessary because in our country what is happening is that tax dues are often evaded by business under the cover of the doctrine of corporate personality. The petitioner society is not a charitable society doing social work but is doing business. Thus the petitioner is not entitled to the protection of the principle laid by the decision in Salomon Vs. Salomon and Co. Ltd. (supra).

We find that in para 19 of the judgement on the basis of the factual finding recorded in the said case the Court declined to exercise its discretionary remedy under Article 226 of the Constitution in favour of the petitioner. The observations made in para 20 of the judgement were thus not on an issue involved as such. The provisions of the Companies Act, the position of Directors qua company was neither in issue nor any argument was raised nor it can be said that such an issue was decided and the provisions of Companies Act having also not been referred to and considered, in our view, the said observations cannot be said to be a binding precedent and are per incurium. With great respect to the Bench we also notice that even the provisions of the Trade Tax Act which provides to what extent recovery can be made from persons, other than dealers who is registered under the Trade Tax Act, have not been noticed and considered. At this stage it would be appropriate to refer Section 8 sub-section 3 of the U.P. Trade Tax Act, 1948 which reads as under:

8(3) Notwithstanding anything contained in any law or contract to the contrary, the assessing authority may, at any time or from time to time, by notice in writing a copy of which shall be forwarded to the dealer at his last address known to the assessing authority, require-

(a) any person from whom any amount is due or may become due to the dealer, or

(b) any person who holders or may subsequently hold money for or on account of the dealer,

to pay to the assessing authority-

(i) forthwith upon the money becoming due or being held, or

(ii) at or within the time specified in the notice not being before the money becomes due or is held.

So much of the money as is sufficient to pay the amount due by the dealer in respect of arrears of tax or other dues under this Act, or the whole of the money when it is equal to or less than that amount.

Explanation-

For the purpose of this sub-section, the amount due to a dealer or money held or on account of a dealer by any person shall be computed after taking into account such claim, if any, as may have fallen due for payment by such dealer to such person and as may be legally subsisting."

58. The Court in para 21 of the judgement in Naresh Chander Gupta (Supra) has rightly observed that the U.P. Trade Tax Act being Special Act so far as recovery of trade tax dues are concerned, and, therefore, would prevail over the general law like Societies Registration Act but thereafter the Court, with respect, has omitted to notice Section 8 sub-section 3 which permits assessing authority to realise the dues of a dealer from some other persons which does not include a person merely for the reasons that he is Director or shareholder or otherwise office bearer of the corporate body. Besides Section 8 sub-section 3, there is no other provision under the U.P. Trade Tax Act which empowers respondents to recover the dues of a dealer from the assets of any other person. In the present case it is not disputed that petitioner no. 1 who was registered under the provisions of U.P. Trade Tax Act, 1948 was a dealer for the purpose of liability of tax and not the petitioner no. 2. Wherever the legislature has intended, has provided statutory provision empowering tax authorities to recover the dues of a corporate body from its Directors, shareholders or others. For illustration, we may refer to Section 179 of the Income Tax Act, 1961 which reads as under:

179. (1) Notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), where by 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.

(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.

59. A perusal of Section 179 shows that it has been given an overriding effect over the various provisions of the Act and makes Director of a Private Company responsible for payment of tax dues outstanding, of the period, he was Director, provided he proves that non recovery is not attributed to any gross neglect, misfeasance or breach of duty on his part. The said provision, therefore, while making Director of the private company responsible for payment of tax dues jointly and severally, makes an exception that in case he proves that the assets of the company are not sufficient to meet tax dues and have reduced for reasons not attributable to him on account of any gross neglect, misfeasance or breach of duty, then such person would not be responsible. The legislature thus has also

recognised even in the said statute the principle that the doctrine of lifting of veil in the matter of tax dues is to be applied to prevent fraud etc. and not where the company has suffered despite its normal bona fide function. The persons responsible for its management are not to be made responsible for normal depreciation of capital or assets merely because the dues are of Tax. Further even the said provision is applicable only to private companies and not to public companies other than those which are converted from private to public.

60. In fact some of the provisions have been made in the Act where the corporate veil has to be ignored. Section 45 provides where the number of members of a company reduce below seven, in the case of a public company, and the company continues to carry on business for more than six months with such reduced member, every person who knows this fact and is a member of the company is severally liable for the debts of the company contracted during that time. Section 147(4) of the Act provides that if an officer of a company signing bill of exchange, hundi, promissory note, cheque, if not mention the name of the company in the prescribe manner, such officer can be held personally liable to the holder of the bill of exchange, hundi etc. unless it is duly paid by the company. Section 542 of the Act provides that if during the course of winding up of a company it appears that any business of the company has been carried on with intent to defraud the creditors of the company or any other person or for any fraudulent purpose, the persons who were knowingly party to such carrying on business, shall be personally responsible without any limitation of liability for all or any of the debts or other liabilities of the company, as the court may direct.

61. We have not been shown that any similar provision exist in U.P. Trade Tax Act empowering recovery of dues of the company from the Directors or shareholders personally. At this stage it would be appropriate to notice another Division Bench decision of this Court in Adesh Kumar Jain and others Vs. U.P. S.E.B. and others, 1998 All.C.J. 266 the Court while rejecting a similar contention that the Director of the company would be personally liable for dues of the company held that though it is true that the Director of a company may be an agent of the company but that would not result in making the assets of the company to be the assets of the Director and vice versa. It further held that in the absence of any statutory provisions, recovery from the personal assets of the Director cannot be made. In para 7 of the judgement, the Court held:

7. Director's liabilities in some of the enactments have already been dealt with in provisions contained in the relevant laws such as Employees State Insurance Scheme, Provisions of Food Prevention Act, Factories Act, Provident Fund Act, Industrial Disputes Act etc. etc. There is no provision in the U.P. Government Electricity Undertaking (Dues Recovery) Act, 1958 or Electric Supply (Consumers) Regulations, 1984 or even in the Indian Electricity Act, 1910 which may make it possible to read that a Director can be taken to be the successor of the Company which had entered into the agreement with the Board as a Consumer taking note of the definition of the word 'Consumer' in any of the three laws referred to above.

62. Where under the agreement or the statutory provisions, only the company is liable to pay the dues, in such cases the Directors would not be personally responsible and the doctrine of lifting the veil cannot be invoked in such case as is evident from following in the judgement of Adesh Kumar Jain (Supra):

.....In the instant case, there is an agreement between the parties and also the statutory provisions under which the only consumer company is liable for payment of the arrears of electricity dues and the Director of the company cannot be made personally liable. Hence the doctrine of lifting the veil can not be invoked in the instant case..…

(Para 23)

63. Therefore, in our view, the judgment of this Court in Naresh Chander Gupta (Supra) cannot be said to be a precedent for holding that whenever the tax dues are to be recovered from a company, its Director would be personally responsible even though there is no such provision in the relevant statute."

25. Then it was observed:-

70. The legal position as discerned from the above is that in a case where the corporate personality has been obtained by certain individuals as a cloak or a mask to prevent tax liability or to divert the public funds or to defraud public at large or for some illegal purposes etc., to find out as to who are those beneficiaries who have proceeded to prevent such liability or to achieve an impermissible objective by taking recourse to corporate personality, the veil of the corporate personality shall be lifted so that those persons who are so identified are made responsible. However, this doctrine is not to be applied as a matter of course, in a routine manner and as a day to day affair so as to recover the dues of a company, whenever and for whatever reason they are unrecoverable, from the personal assets of the Directors. If such a course is permitted, it would lead to not only disastrous results but would also destroy completely the concept of juristic personality conferred by various statutes like the Act in the present case and would make several enactments and their effect to be redundant and illusory. Moreover, the shallowness of arguments in favour of making Directors personally responsible can be considered from another angle. In every case the Director may not be a shareholder of the company. He may have been appointed as Director for taking advantage of his expertise in his field of vocation or profession, and for achieving goals for which the company is incorporated. Such Director is paid remuneration, if any, for the services he rendered. Otherwise he is not at all a beneficiary of the business or trade etc., as the case may be, in which the company is engaged. Such benefit would be available only to the shareholders as they would only be entitled to share the profits earned by the company in the form of dividend as decided by the Board of Directors. In such case such Director, though is an agent of the company but he is more in the nature of an officer of the company and not in the capacity of limited ownership by way of shareholding. Such a Director, in our view, unless is guilty of misfeasance, fraud or acting ultra vires, we are not able to understand as to how he can be made responsible personally for the dues of the company even if we apply the doctrine of piercing the veil. If in such a case the veil is to be lifted, the persons behind the veil, at the best, would be the promoters of the company or those who have sought to obtain corporate personality as a sham or bogus transaction. Similarly, in some of the companies the financial institutions, who advances funds as loan etc., nominate their Director/s to keep some kind of monitoring over the functions of the company so that it may not go on liquidation on account of negligent and careless function of the Board of Directors. Such Directors also, in our view, cannot be included in the category of the persons who would be responsible personally for the dues of the company.

71. In order to find out as to who are the persons responsible personally

when the veil is lifted it would be wholly irrelevant as to whether such person is a Director or a promoter shareholder or otherwise of the company since the purpose of lifting the veil is to find out the person/s who is operating behind the corporate personality for his personal gain. Such person may be individual or group of persons belonging to a family or relatives or otherwise a small group collected with a common objective of achieving some illegal, immoral or improper purpose etc. So long as no investigation is made into various aspects, we are not able to understand as to how and what manner a Director of a company can straightway be proceeded personally for recovering dues of a company unless it is so provided by some provision of the statute.

76. In brief, we can categories the cases in which the corporate personality of the incorporate body can be ignored and it would be better to refer the renowned author Palmer's Company Law 23rd Edition where he has categorised the cases, in which the principle of separate entity of the Company has been discarded by adopting the doctrine of lifting the veil, in 15 categories and some of which are as under:

(1) where companies are in relationship of holding and subsidiary (or sub-subsidiary) companies; (2) where a shareholder has lost the privilege of limited liability and has become directly liable to certain creditors of the company on the ground that, with his knowledge, the company continued to carry on business six months after the number of its members was reduced below the legal minimum; (3) in certain matters pertaining to the law of taxes; death duty and stamps, particularly where the question of the "controlling interest" is in issue; (4) in the law relating to exchange control; (5) in the law relating to trading with the enemy where the test of control is adopted; (6) where a holding company or a subsidiary company were not working in an autonomous manner and thus were treated as forming an economic unit; (7) where the new company was formed by the members of an existing company holding 9/10 shares in the existing company and only with an object of expropriating the shares of minority share holders of the existing company; (8) where the device of incorporation is used for some illegal or improper purpose; (9) where several companies promoted by the same controlling share holders for defeating or misusing the loss pertaining to labour welfare; (10) where the facts or equitable considerations justify an exemption from the strict rule in Salomon Vs. Salomon and Co. Ltd.

77. Another learned author L.C.B. Gower in his "Principles of Modern Company Law" 4th Edition, has also given such illustration where the veil of a corporate body has been pierced and has enumerated the same as fraudulent trading, misdescription of company, and taxation mattes where the statute require etc.

26. As to procedure to be adopted, it was also observed:-

"78. In the nutshell, the doctrine of lifting of veil or piercing the veil is now a well established principle which has been applied from time to time by the Courts in India also. There is no doubt about the proposition that whenever the circumstances so warrant, the corporate veil of the company can be lifted to look into the fact as to whose face is behind the corporate veil who is trying to play fraud or taking advantage of the corporate personality for immoral, illegal or other purpose which are against public policy. Such lifting of veil is also has to implemented whenever a statute so provided. However, it is not a matter of routine affair. It needs a detailed investigation into the facts and affairs of the company to find out as to whether the veil of the corporate personality needs to be lifted in a

particular case. After lifting the veil, in a case where it is so required, it is not always that the Directors would automatically be responsible but again it is a matter of investigation as to who is/are the person/s responsible and liable who had occasioned for application of said doctrine.

27. Specifically as to the burden to prove it was also made plain:-

"79. Whether in respect to tax dues or other public revenue or in other cases, if one has to discard the corporate personality, then the initial burden would lie upon it to place on record relevant material and facts to justify invocation of doctrine of lifting of veil and to plead that the corporate shell be not made a ground of defence. A personality conferred by the statute cannot be overlooked or ignored lightly and in a routine manner or on a mere asking. In fact whenever the veil is to be pierced, it would mean that somebody, individual or group of individuals, have obtained the shell of corporate personality as a pretext or mask to cover up a transaction or intention of those individual/individuals is neither legal nor otherwise in public interest. In effect the attempt of those individuals have to be shown akin to fraud or misrepresentation. The legal personality of the corporate body thus can be ignored in such cases since it is well settled that fraud vitiates everything and, therefore, the benefit of legal personality obtained by someone for purposes other than those which are lawful or even if lawful but not otherwise permissible, the corporate personality being the result of such fraudulent activity would have to be discarded but not otherwise. These are the things based on positive factual material and cannot be presumed in the absence of proper pleadings and material to be placed by the person who is pleading to invoke the doctrine of piercing the veil and to ignore the juristic personality of the corporate body. Once relevant material is made available by the authority or person concerned, thereafter it would be the responsibility of the other side to place material to meet the aforesaid facts but the mere fact that the company has failed to pay the Government dues or pubic revenue, that by itself would not invite the doctrine of piercing the veil and is not sufficient to ignore the statutory corporate personality conferred upon a company and make its Directors or shareholders responsible personally.

80. In the case in hand we do not find that any such attempt has been made by the respondents before issuing the impugned notice dated 23.05.2003 to the petitioner no. 2 requiring him to pay dues of petitioner no. 1 from his personal assets. We are informed by learned Standing Counsel that pursuant to the judgment of this Court in Naresh Chander Gupta (Supra) the Commissioner, Trade Tax has issued a circular directing various authorities to initiate recovery proceedings against the Directors of the companies where the dues have not been recovered from the companies and it is pursuant to such circular the authorities are proceeded accordingly. However, no such circular has been placed before the Court and it is not part of the record. We are not making any observation with respect to the validity of said circular but it is suffice to us to make it clear that even when the tax dues are to be recovered from a corporate body, the Directors of such corporate body would not automatically be responsible unless the doctrine of lifting of veil is found to be applicable in the facts and circumstances of the affairs of that company and thereafter it is further found as to who are the persons who were operating behind the veil. Otherwise, a Director or shareholder cannot be made personally responsible for the dues of a company except of those cases where such a provision is made in the statute or otherwise warranted in law."

28. In absence of any contrary law having arisen since then, we find ourselves in complete agreement with the same. Accordingly, we also find that revenue failed to discharge its burden to prove special facts as may have exposed the petitioners to the impugned recovery proceedings. To that extent the facts found proven in the order dated 30.3.2005 as confirmed in appeal vide order dated 31.12.2007, are wholly extraneous to the issue. That discussion has already been made above. The corporate veil of the company, is found intact.

29. Consequently, while we may not interfere with the order dated 30.3.2005 and the appeal order dated 31.12.2007, we find, the petitioner is entitled to writ of Mandamus to restrain the respondent authorities from recovering the tax dues of the corporation M/s Maharashtra Steel Ltd. For Assessment Years 1985-86 (U.P. & Central) to 1995-96 (U.P. & Central) from the personal assets of the petitioner. Further, revenue authorities would be at liberty to pursue that recovery from the assets of the corporation, in accordance with law.

30. The writ petition is thus allowed.

31. No order as to costs.

Order Date :- 3.7.2023
Anil K. Sharma

(Vinod Diwakar, J.) (S.D. Singh, J.)