

HARDIP SINGH & ANR.

v.

THE INCOME TAX OFFICER, AMRITSAR & ORS.

April 26, 1979

[N. L. UNTWALIA, R. S. PATHAK AND E. S. VENKATARAMIAH, JJ.]

Income Tax Act 1961—S. 179—Scope of—Resolution for winding up of company passed before the coming into force of the Act—I.T.O. issued notices to Managing Director & Director to pay large tax arrears due from the company—Notice if valid.

Section 179 of the Income-tax Act, 1961 (before it was amended in 1975) provided that when any private company is wound up after the commencement of the 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.

The appellants were the managing director and director of a private limited company. On November 13, 1961 a resolution for voluntary liquidation of the private company was passed. In February and November, 1970 the Income Tax Officer issued notices to the appellants calling upon them to pay income tax which remained unpaid from the company to the tune of Rs. 1.34 lakhs.

The contention of the appellants that the company had gone into liquidation before the Act came into force on 1st April, 1962 and, therefore, s. 179 had no application to this case was rejected by the Income-tax Officer. The appellants' revision petition was rejected by the Commissioner; the High Court dismissed their writ petition *in limine*.

Dismissing the appeal,

HELD : The appellants could not escape from their liability to pay the tax dues. Section 179 was meant to cover cases of this nature also. [784A]

There are three stages when a company goes into liquidation, namely : (1) the commencement of the winding up of the company; (2) continuation of the proceedings or the steps for winding up and (3) final winding up and dissolution of the company. Section 179 will be attracted if any one or more of the three stages occurred after the commencement of the Act even though the first or the first and second events had happened earlier. The directors were made liable to pay the tax dues because on its liquidation it becomes difficult for the department to realise the tax dues from the assets of the company.

[783D-E]

In the instant case, although the commencement of the winding up of the company had begun on a date prior to the date of commencement of the Act, at the time when the Income-tax Officer issued notice, proceedings for its winding up were pending.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2390 of 1972.
From the Judgment and Order dated 7-3-72 of the Punjab and

A Haryana High Court in Civil Writ No. 773/72.

Bhagirath Das, B. P. Maheshwari and Suresh Sethi for the Appellants.

P. A. Francis and Miss A. Subhashini for the Respondents.

The Judgment of the Court was delivered by

B UNTWALIA, J. 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 the 13th November, 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 7th of February, 1970 against appellant No. 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 No. 1 on the 11th of November, 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.

F The Income Tax Officer rejected the appellants' pleas by his order dated the 31st December, 1970. The appellants went in revision before the Commissioner of Income Tax. It was rejected on 31st January, 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.

H Section 179 of the Act as it stood at the relevant time read as follows :—

179. *Liability of directors of private company in liquidation*—Notwithstanding anything contained in the Com-

panies 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".

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.

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 from the 1st April, 1962, obviously Section 179 will not be attracted. If all of the 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 winding up of the company began on a 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 of the company and more so when the company has been finally wound up and dissolved. The directors, therefore, have been made liable to

A 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*.

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

P.B.R.

Appeal dismissed.