

## Furnishing particulars of efforts made to recover tax from co. was mandatory while issuing notice to directors

**Summary – The High Court of Bombay in a recent case of Mehul Jadavji Shah, (the Assessee) held that In case of issue of notice under sec. 179(1) giving of particulars of efforts made and failure to recover tax dues from delinquent private limited company is a sine qua non for proceeding further**

### Facts

- The assessee was a former Director of 'S' Ltd. The said Private Limited Company failed to honour its tax obligation for assessment year 2011-12 and thus became a delinquent Private Limited Company.
- The assessee received a show-cause notice under section 179(1) seeking to recover the tax dues of Rs. 4.69 crores of the delinquent Private Limited Company as its Director. The assessee responded to the same and sought details of the notices issued to the delinquent Private Limited Company. However, without responding to the particulars sought, the impugned order was passed under section 179(1) making a demand of Rs. 4.69 crores upon the assessee.
- The assessee filed instant petition contending that the impugned order was without jurisdiction for the reason that the jurisdiction to invoke section 179(1) would only arise when the tax dues of the delinquent Private Limited Company could not be recovered from it.

### Held

- The first objection of revenue is that assessee is not a professional/paid Director of the delinquent Company but is a Director who holds 76 per cent of the shareholding therein.
- Insofar as said submission is concerned, the Act itself makes no distinction/classification between professional/paid Directors and Directors holding a large shareholding stake in the delinquent Private Limited Company. Section 179(1) only gives jurisdiction to the Assessing Officer to proceed against a Director of a delinquent company when the Assessing Officer is unable to recover the dues of the delinquent company from it. It is not, therefore, open for the Assessing Officer to read conditions into section 179(1) and jettison the strict rule of interpretation of fiscal statute which *inter alia* prevents implying and/or reading anything in the statute not expressed therein. Thus, there is no merit in the above distinction.
- So far as the next submission on behalf of the revenue that in the facts of this case, the efforts which were made to recover the tax dues from the delinquent company though not stated in the show-cause notice, are found in the impugned order. Thus, this is sufficient compliance with section 179. It is the assessee's case in the petition that, an amount of Rs. 49.81 crores are loans advanced to companies/associates of its Director, 'P'. The attempts at recovery if made known in the show-cause

notice, would have given an opportunity to the assessee to bring the above facts to the notice of the Assessing Officer who could have recovered from them before proceeding with the notice.

- Therefore, the giving of particulars of efforts made and failure to recover the tax dues for the delinquent Private Limited Company in a notice issued under section 179(1) is a *sine qua non* for proceeding further. This is so as not only the Assessing Officer can assume/acquire jurisdiction only on failure to recover its dues from a private limited company after proper efforts, but it also gives an opportunity to the assessee to point out why the efforts made are inadequate and/or improper.
- Thus, giving of particulars in the impugned order or in the affidavit-in-reply does not meet with the requirement of proper notice to the noticee.
- In view of above, it is clear that before the Assessing Officer assumes jurisdiction under sec. 179(1), efforts to recover the tax dues from the delinquent Private Limited Company should have failed. This effort and failure of recovery of the tax dues must find mention in the show-cause notice howsoever briefly. This would give an opportunity to the noticee to object to the same on facts and if the revenue finds merit in the objection, it can take action to recover it from the delinquent Private Limited Company.
- In this case, admittedly the show-cause notice itself did not indicate any particulars of the failed efforts to recover the tax dues from the delinquent Private Limited Company. Thus, the issue stands covered in favour of the assessee by the order of the Court in *Madhavi Kerkar v. Asstt. CIT* [\[2018\] 90 taxmann.com 55/253 Taxman 288 \(Bom.\)](#) In the above circumstances, the impugned order is quashed and set aside.
- However, it is made clear that the Assessing Officer is at liberty to pass a fresh order after issuing appropriate notice to the assessee which must indicate briefly the steps taken by the department to recover the tax dues from the delinquent private limited company and its failure to recover the same.
- The writ petition is disposed of in above terms.