

U/s 179 assessee director could not be asked to substantiate basic issue as to whether company was a public limited company

Summary – The High Court of Gujarat in a recent case of Paras S. Savla., (the Assessee) held that Where revenue wanted to apply principle of lifting corporate veil in context of liability of director under section 179, it ought to have prima facie sufficient material to confront assessee on issue; assessee could not be asked to substantiate basic issue as to whether company was a public limited company

Facts

- The petitioner-assessee, director of a Public Limited Company faced unpaid tax demand of Rs. 12.32 crore for the block period. Notice was issued under section 158BC.
- On appeal, the Commissioner (Appeals) and the Tribunal dismissed the assessee's appeal.
- When the Tax Recovery Officer issued notice under section 179, in reply the assessee stated that the company was not a private limited company. Notice was issued and called upon the assessee to furnish evidence to substantiate such claim. The Assessing Commissioner passed impugned order ordering recovery along with interest.
- On application to the High Court:

Held

- It is not in dispute that the company is a public limited company. Ordinarily, therefore in terms of Section 179 of the Act, the Director of such a company would not be answerable to unpaid taxes of the company. Section 179 pertains to a Director of a Private Limited Company and permits the revenue to recover unpaid taxes from the Director of such a company, subject to fulfilment of certain conditions. It is true that the Division Bench of this Court in the case of *Pravinbhai M. Kheni v. Asstt. CIT* [\[2013\] 353 ITR 585/213 Taxman 81/\[2012\] 28 taxmann.com 111 \(Guj.\)](#) had recognised limited exceptions under which it may be possible for the revenue to apply section 179 to the Directors of a public limited company by lifting the corporate veil. However, in the judgment itself, certain safeguards have been provided to avoid any possible misuse of such powers.
- In the present case, the respondents have instead of confronting the petitioner with necessary material why the corporate veil should be lifted and section 179 be applied to him, issued the notice dated 18-11-2008 and called upon the petitioner to substantiate the claim that the company is a public limited company. This fact is not even seriously in dispute. The revenue ought not to have questioned such a basic fact. If the revenue wanted to apply the principle of lifting the corporate veil in the context of section 179 of the Act, it ought to have *prima facie* sufficient material to confront the assessee on the issue and should have so confronted the assessee-petitioner calling upon him to

show-cause why such powers should not be invoked. Further as noted, the demand of Rs. 13.45 Crores with interest referred to in the notice has currently come down to Rs. 3.55 Crores.

- Under the circumstances, the impugned order is set aside.