

AO directed to ascertain amount of unpaid tax and interest of defaulting company for recovery under sec. 179

Summary – The High Court of Bombay in a recent case of Nandkishor Kagliwal, (the Assessee) held that Matter remanded to Assessing Officer to determine factual amount due from defaulting company and, consequently, from petitioner, director of defaulting company, after considering subsequent orders reducing tax demand

Facts

- The petitioner was director of the defaulting company against which there was unpaid demand of Rs. 40 lakhs of income-tax and surcharge as well as interest of Rs. 28 lakhs. Thus, proceedings for recovery were commenced by show-cause notice in 2003 under section 179 against the petitioner.
- The notice was confirmed by impugned orders passed by the Assessing Officer and the Commissioner.
- On writ, the petitioner stated that he was desirous of paying of the tax dues of the defaulting company as then due. It was stated that after the impugned orders were passed, the tax arrears of the defaulting company had been reduced to Rs. 15.55 lakhs and an amount of Rs. 10 lakhs had already been paid by the defaulting company to the revenue, thus, leaving a balance amount of Rs. 5.55 lakhs only as tax.
- It was petitioner's further contention that in terms of section 179 he, as a director of the defaulting company, was only required to pay the 'tax due' from the defaulting company to the revenue and not the interest payable on the tax and/or any penalty imposed upon the defaulting company.

Held

- Before the issue of interpretation of the word 'tax due' can be decided, the factual aspect of the amount due on account of tax and interest from the defaulting company has to be ascertained. This is more so in view of the fact that the demand under section 156 along with computation of tax, which is shown is dated 28-12-2004, *i.e.*, much before the petition was filed. However, no reference was made to it in the petition nor any amendments moved to the petition over the last 10 years when the petition was pending. Therefore, it would be appropriate to restore the issue before the Assessing Officer at the stage of the notice dated 29-1-2003 to determine the factual amount due from the defaulting company and consequently the petitioner. Thereafter, the Assessing Officer will rule on the meaning of the words 'tax due' under section 179 keeping in view the decision of this Court in the case of *Dinesh T. Tailor v. Tax Recovery Officer* [\[2010\] 326 ITR 85/192 Taxman 152](#) which was not available at the time when the impugned orders dated 24-3-2003 and 31-7-2003 were passed in the context of the newly added Explanation to section 179. The Assessing Officer would

consider whether the Explanation is prospective or retrospective. Besides, also consider the impact of the Explanation in respect of pending tax dues.

- The petitioner was also directed to pay the admitted tax due of Rs. 5 lakhs on or before 31-12-2016.