

## Sec. 179 tax recovery can be made from director after considering his shareholding and extent of control over Co.

**Summary – The High Court of Punjab & Haryana in a recent case of Kishan Lal, (the Assessee) held that Corporate veil ought to be lifted in case of a Public limited company, in matter of income tax, only after considering extent of shareholding of directors, extent of control exercised by them regarding affairs of company and, extent of their representation on Board of Directors**

### Facts

- The petitioners were directors of a public limited company. The company neither filed its return nor discharged its liability towards self-assessment tax and interest thereon. Notice was issued to the directors under section 179 holding them liable to pay demand of Rs. 23.77 crore. In reply, the directors contended that the company was a public limited company and, therefore, the provision of section 179 would not be applied.
- On writ petition before the High Court:

### Held

- It is permissible to lift corporate veil in matters under the Income-tax Act. Suffice it to state that even assuming that it is permissible to do so, there are several issues which ought to be taken into account before deciding whether or not to lift corporate veil. Neither the show cause notice nor the impugned order refers to certain crucial facts including as to the extent of shareholding of the directors, the extent of control exercised by them regarding the affairs of the company and the extent of their representation on the board of directors. It would also be necessary to consider the Articles of Association of the company and any other agreements that may exist between the shareholders *inter se*. There are several other factors also which must be taken into consideration including as to whether the company was converted into a public limited company for the purpose of avoiding statutory liability benefiting the petitioners alone and/or conferring any other benefits upon the petitioners or any one or more of them alone. Lifting the corporate veil in a case such as this has drastic consequences. The impugned order does not consider the same in any detail.
- The impugned order is, therefore, set aside and the matter is remanded.