Gujarat High Court
Kushal Vinodchandra Mehta vs The Income Tax Officer, Ward ... on 2 May, 2023
Bench: Ashutosh Shastri

C/SCA/12634/2019 ORDER DATED: 02/05/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 12634 of 2019

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KUSHAL VINODCHANDRA MEHTA

Versus

THE INCOME TAX OFFICER, WARD 1(1)(2)

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Appearance:
MR B S SOPARKAR(6851) for the Petitioner(s) No. 1
MR.VARUN K.PATEL(3802) for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE ASHUTOSH SHASTRI

and

HONOURABLE MR. JUSTICE J. C. DOSHI

Date : 02/05/2023

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE ASHUTOSH SHASTRI)

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for quashing and setting aside the impugned notice dated 28.02.2018 issued under Section 179 of the Income Tax Act, 1961 and also order dated 29.03.2018 at Annexure-A to the petition.

2. The background of facts which has given rise the present petition is that the petitioner is an individual and was appointed as a director of Company 'Annapurna Polymers Pvt. Ltd.,' from May, 1989 since inception. Later on petitioner had sold off his C/SCA/12634/2019 ORDER DATED: 02/05/2023 shares on 26.12.2013 and also resigned from the post of director on 02.01.2014. It is the case of the petitioner that this Company named as 'Annapuran Polymers Pvt. Ltd.,' later on went into liquidation and one Shri P.P. Rawat was appointed as Official Liquidator vide Resolution dated 25.03.2014. 2.1. It is further the case of the petitioner that on 28.02.2018 i.e. almost after an unreasonable period, a show cause notice in purported exercise of power under Section 179 of the Income Tax Act came to be issued to the petitioner calling upon the petitioner to show cause as to why order under Section 179 of the Income Tax Act not be made against the petitioner for pending tax dues of 'Annapurna Polymers Pvt. Ltd.,' for the Assessment Year 2011-12 amounting to Rs.1,16,58,350/-. The said notice came to be replied on 12.03.2018 inter alia explaining that the tax dues relate to a disputed issue which is under litigation and the notice does not state any efforts

undertaken to recover money from the Company itself and further non-recovery of said dues are not attributable to any gross neglect, misfeasance or breach of duty by the petitioner in the affairs of the Company and as such, impugned notice is C/SCA/12634/2019 ORDER DATED: 02/05/2023 vague, reflecting no such condition precedent and by not stating any facts, representation is given and by making out such plea, the petition is brought before this Court under Article 226 of the Constitution of India.

3. The co-ordinate Bench of this Court was pleased to issue notice for final disposal vide order dated 23.07.2019 and in the meantime, granted ad-interim relief in terms of paragraph 7(b) and later on upon completion of pleadings, the petition came up for consideration before us.

4. Mr. B.S. Soparkar, learned advocate appearing for the petitioner has vehemently contended that notice itself is vague, without reflecting any condition precedent as mentioned in Section 179 of the Income Tax Act and by issuing such vague notice, the petitioner is deprived of making effective representation and thereby violated a well-recognized principle of natural justice. It has been contended that the basic elements which are mentioned in Section 179 of the Income Tax Act are not reflecting even otherwise on the case on hand, namely, that it does not reflect that any steps or efforts have been made to C/SCA/12634/2019 ORDER DATED: 02/05/2023 recover the money from the Company for the Assessment Year 2011-12 and further non-recovery of such alleged dues are not attributable to any gross neglect, misfeasance or breach of duty by the petitioner in the affairs of the Company and, therefore, when such elements are missing, the notice is unsustainable in the eye of law. It has further been contended that the though the petitioner was one time Director in the Company, somewhere in May, 1989, but then the petitioner had already sold off his shares in December, 2013 and then resigned from the post of Director from 02.01.2014 and the Company went into liquidation and thereafter in charge of the Official Liquidator was appointed on 25.03.2014 one Shri P. P. Rawat and surprisingly at much belated stage after almost a period of four years, this impugned notice is issued by resorting to Section 179 of the Income Tax Act and therefore, not only the notice is not sustainable on account of aforesaid submissions, but is also grossly belated and issued after an unreasonable period which also is one of the circumstances to indicate that after an unreasonable period of time, no powers can be exercised.

C/SCA/12634/2019 ORDER DATED: 02/05/2023 4.1. Learned advocate Mr. Soparkar has further submitted that this notice which was issued was effectively replied at length on 12.03.2018 specifically pointing out not only the circumstances, but legal position as well, still this notice has been adjudicated upon by the authority and an order came to be passed on 29.03.2019 and, therefore, according to learned advocate Mr. Soparkar when the foundation of initiation of steps under Section 179 of the Income Tax Act is not sustainable, further steps pursuant to it also deserves to be quashed as violative of fundamental legal proposition and as such, has also requested that this order which has been passed on 29.03.2019 also deserves to be quashed.

4.2. During the course of submissions, learned advocate Mr. Soparkar has further submitted that even while passing the order, aforesaid circumstances were specifically pointed out that failure to collect the demand is not only the element which can be considered while exercising powers under Section 179 of the Income Tax Act. A bare reading of the said order according to learned advocate

Mr. Soparkar is completely suffering from the non-application of mind, but also laconic in nature and as C/SCA/12634/2019 ORDER DATED: 02/05/2023 such, when the basic elements while exercising jurisdiction under Section 179 of the Income Tax Act are not taken into consideration, the order deserves to be corrected and as such, has requested not only to set aside the impugned notice, but also consequential order passed by the authority. Hence, requested to allow the petition.

4.3. With a view to substantiate his contention, learned advocate Mr. Soparkar has made a reference to the decisions delivered by this Court in the case of Ram Prakash Singeshwar Rungta v. Income Tax Officer reported in [2015] 59 taxmann.com 174 (Gujarat) wherein on consideration of the provisions, the Court was pleased to set aside the action under Section 179 of the Income Tax Act. Yet another decision is also pressed into service in the case of Suresh Narain Bhatnagar v. Income Tax Officer reported in [2014] 43 taxmann.com 420 (Gujarat) wherein also similar proposition with reference to Section 179 of the Income Tax Act has been made and thereby the action under Section 179 of the Income Tax Act came to be set aside. Hence, by referring to all these decisions, learned advocate Mr. Soparkar has submitted C/SCA/12634/2019 ORDER DATED: 02/05/2023 that powers which are exercised are not exercised within four corners of the law.

4..4 Yet another decision which has been tried to be referred to is the decision of the Bombay High Court in the case of Mehul Jadavji Shah v. Deputy Commissioner of Income Tax reported in [2018] 92 taxmann.com 401 (Bombay) and by referring to issue relating to foundation i.e. show cause notice, it has been reiterated that the action even by the Bombay High Court was found to be not sustainable under Section 179 of the Income Tax Act and as such, by referring to this decision, a contention is reiterated that notice issued under Section 179 of the Income Tax Act as well as order based upon it deserves to be set aside.

5. As against this, Mr. Varun K. Patel, learned advocate appearing for the authority has opposed this petition by submitting that notice which has been issued is basically reflecting circumstance as to why petitioner is called upon under Section 179 of the Income Tax Act and as such, in no circumstance, notice can be said to be vague and apart from C/SCA/12634/2019 ORDER DATED: 02/05/2023 that after giving an opportunity, a detailed order is passed under Section 179 of the Income Tax Act and when the authority has taken into consideration the relevant circumstance in consonance with the provisions of law, the conclusion arrived at cannot be said to be either perverse or erroneous in any form and as such, has requested to dismiss the petition. To substantiate his contention, learned advocate Mr. Patel has referred to a decision delivered by Madras High Court in the case of B. Muralidhar v. Deputy Commissioner of Income Tax reported in [2019] 110 taxmann.com 54 (Madras) and by referring to this decision a contention is reiterated that since the petitioner was Director of the Company and in the capacity is jointly and severally responsible for payment of tax determined by the authority and as such, when the tax amount is not available from the Company, it is always open for the authority to invoke jurisdiction under Section 179 of the Income Tax Act and the said fact is not in dispute that at the relevant point of time the petitioner was once upon a time Director of the Company. Hence, the plea taken by the petitioner is not sustainable. Apart from that, it was the duty on the part of the C/SCA/12634/2019 ORDER DATED: 02/05/2023 petitioner to prove and satisfy the criteria/ingredients of Section 179 of the Income Tax Act and as such, even notice if to be treated as silent, then also it was obligation of the petitioner to

prove such circumstance, which according to him are not circumstance relateable under Section 179 of the Income Tax Act.

5.1. Moreover, learned advocate Mr. Patel has submitted that there is an alternative remedy available to the petitioner under Section 264 of the Income Tax Act by way of preferring revision application. Hence, petitioner is not entertainable. No other submissions have been made.

6. In re-joinder to this, learned advocate Mr. Soparkar has not only tried to reiterate the submission, but has also submitted that revision is not at all to be considered as alternative remedy efficacious enough and as such, even if this revision is possible to be preferred, but then same is not efficacious remedy and as such, writ jurisdiction is always possible to be invoked and further has submitted that even with regard to this appeal filed by the Company for Assessment Year C/SCA/12634/2019 ORDER DATED: 02/05/2023 2011-12, came to be allowed vide order dated 07.09.2022 and as such, even on such circumstance also, there is hardly any reason for the authority to initiate any steps against the petitioner.

6.1. In the alternative form of submission, learned advocate Mr. Soparkar has submitted that since basic ingredients which are required to be considered as mentioned in Section 179 of the Income Tax Act have not been dealt with at all, no satisfaction or positive conclusion is reflecting in the order in question and since the notice itself is silent and vague by setting aside the same, at least the matter deserves to be reconsidered in light of the aforementioned background and as such, has requested to pass suitable order in the interest of justice.

7. Having heard the learned advocates appearing for the respective parties and having gone through the material placed before us, on perusal of notice dated 28.02.2018 reflecting on page 48 postulates that a mere reference is made that the petitioner was the Director of the Company during Financial C/SCA/12634/2019 ORDER DATED: 02/05/2023 Year 2010-11 relating to Assessment Year 2011-12 and as such, by virtue of Section 179 (1) of the Income Tax Act, the petitioner is made liable for outstanding dues of the Company which is a private limited, but except this assertion which is reflecting, no such details are reflecting and as to why petitioner is to be held responsible and the ingredients of Section 179 of the Income Tax and calling upon to explain on that count are missing and as such, a bare reading of this notice indicates just merely that it is issued under Section 179 of the Income Tax Act and as such, prima facie look reflected vagueness. As against this, the reply which has been given by the petitioner on 12.03.2018 is explaining the circumstances and justification as to why notice deserves to be recalled. Since non-recovery of the dues is not attributable to the petitioner on account of any gross neglect, misfeasance or breach of duty, nor all these circumstances are reflecting in notice. Further perusal of the order which has been passed on 29.03.2019 has indicated that the primary reason for failure to collect demand is on account of total closure of the business operation, non-existence of office premises and as such, no provision was made by the Company or any of its C/SCA/12634/2019 ORDER DATED: 02/05/2023 director to ensure payments of government dues and tried to justify without examining the ingredients of Section 179 of the Income Tax Act, the reason assigned to the effect that there is total absence of any identifiable assets, immovable assets of the Company which can be attached and recovery made therefrom, nil balance in the bank account and debtors which was attached or any other sources

from which the recovery could be made and that is the reason for the authority to come to a conclusion that Section 179 of the Income Tax Act can be resorted to and, thereby passed the impugned order.

7.1. In light of this, we found that there is no discussion on the elements which are basic in nature for invoking jurisdiction under Section 179 of the Income Tax Act, there is no subjective satisfaction on such and additionally the notice itself is found to be vague and as such, apparently, it appears that the action is not sustainable in view of the settled proposition of law. At this stage we may refer to Section 179 of the Income Tax Act, which reads as under :-

> "Liability of directors of private company in liquidation. - Section 179: (1) Notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), where any tax due C/SCA/12634/2019 ORDER DATED: 02/05/2023 from a private company in respect of any income of any previous year or from any other company in respect of any income of any previous year during which such other company was a private company 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.
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> [(2) Where a private company is converted into a public company and the tax assessed in respect of any income of any previous year during which such company was a private company cannot be recovered, then nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax due in respect of any income of such private company assessable for any assessment year commencing before the 1st day of April, 1962.] [Explanation- For the purposes of this section, the expression '"ax due" includes penalty, interest or any other sum payable under the Act.]"

8. Thus a bare reading of the Section 179 of the Income Tax Act is clearly indicating that it is obligatory on the part of the authority to examine the circumstance which are stated therein before exercising jurisdiction under Section 179 of the Income Tax Act and we are satisfied that there is no subjective satisfaction on this issue and furthermore, it is also not in consonance with the settled proposition of law and since the C/SCA/12634/2019 ORDER DATED: 02/05/2023 authority has not taken into consideration these aspects, and since there appears to be revenue loss at the instance of the Company, by maintaining equities, we may direct the authority to re-consider the decision and initiate fresh step in accordance with law after proper procedure.

9. At this stage, we may refer to a decision delivered by this Court for the purpose of justifying to direct the respondent authority to re-consider the case since the basic criteria having been examined is not taken into consideration. 9.1. In light of the aforesaid and further in light of the propositions which are observed by the Division Bench of this Court in the case of Ram Prakash Singeshwar Rungta (supra) as indicated by the learned counsel appearing for the petitioner, we deem it proper

to quote hereunder :-

> 9.1 Referring to the impugned order, it was submitted that the Assessing Officer has not addressed the issue from the perspective as laid down by this court in the case of Maganbhai Hansrajbhai Patel v. Assistant Commissioner of Income-Tax and another, (2013 ) 353 ITR 567 (Guj.), inasmuch as, there is no finding to the effect that there was any gross negligence, misfeasance or breach of duty on the part of the directors resulting into non-recovery of the tax dues of the private limited company where they were directors. On the contrary, the Assessing Officer has C/SCA/12634/2019 ORDER DATED: 02/05/2023 focused on the point as to whether the tax demand has arisen because of the inaction on the part of the directors.

Referring to the reply to the notice under section 179 of the Act, it was pointed out that in view of the loss sustained by the Company, the petitioners had lost their investments in the form of share capital and unsecured loans given to the Company. It was submitted that, the Assessing Officer, in the order under section 179(1) of the Act has not even referred to the same nor has he given any reasons for rejecting the submissions put forth by the petitioners. It was, accordingly, urged that the impugned order is not in consonance with the provisions of section 179 of the Act and, hence, is not sustainable.

12. Before adverting to the merits of the case, it may be germane to refer to the decision of this court in the case of Maganbhai Hansrajbhai Patel v. Assistant Commissioner of Income-Tax (supra) wherein this court has, inter alia, held that sub-section (1) of section 179 provides for joint and several liability of the directors of a private company wherein the tax due from such company in respect of any income of any previous year cannot be recovered. The first requirement, therefore, to attract such liability of the director of a private limited company is that the tax cannot be recovered from the company itself. Such requirement is held to be a prerequisite and a necessary condition to be fulfilled before action under section 179 of the Act can be taken. The court placed reliance upon its earlier decision in the case of Bhagwandas J. Patel v. Deputy CIT, (1999) 238 ITR 127 (Guj.) wherein the court had, in the context of section 179 of the Act, held that before recovery in respect of dues from a private company can be initiated against the directors, to make them jointly and severally liable for such dues, it is necessary for the revenue to establish that such recovery cannot be made against the company and then alone it can reach the directors who were responsible for the conduct of business during the previous year in relation to which liability exists. On the question as to whether in the facts of the said case, the respondent C/SCA/12634/2019 ORDER DATED: 02/05/2023 Assessing Officer was justified in ordering recovery against the petitioners therein, the court recorded that the authority completely failed to appreciate in proper perspective the requirement of section 179(1) of the Act. The court observed that once it is shown that there is a private company whose tax dues have remained outstanding and the same cannot be recovered, any person who was a director of such a company at the relevant time would be liable to pay such dues. However, such liability can be avoided if it proves that the non- recovery cannot be attributed to the three factors mentioned in the said order. Thus, the responsibility to establish such facts is on the director. However, once the director places before the authority his reasons why it should be held that non-recovery cannot be attributed to any of the above three factors, the authority would have to

examine such grounds and come to a conclusion in this respect. The court observed that the lack of gross- negligence, misfeasance or breach of duty on the part of the directors is to be viewed in the context of non- recovery of the tax dues of the company. In other words, as long as the director establishes that the non-recovery of the tax cannot be attributed to his gross neglect, etc. his liability under section 179(1) of the Act would not arise. Here again the legislature advisedly used the word gross neglect and not a mere neglect on his part. The court observed that the entire focus and discussion of the Assistant Commissioner in the order impugned therein was with respect to the said petitioner's neglect in functioning of the company, when the company was functional. Nothing came to be stated by him regarding the gross-negligence on the part of the petitioner due to which the tax dues from the company could not be recovered. The court held that in the absence of any such consideration, the Assistant Commissioner could not have been ordered recovery of dues of the company from the director.

13. Examining the facts of the present case in the light of the principles propounded in the above decision, a perusal C/SCA/12634/2019 ORDER DATED: 02/05/2023 of the notice under section 179 of the Act reveals that the same is totally silent as regards the satisfaction of the condition precedent for taking action under section 179 of the Act, namely, that the tax dues cannot be recovered from the Company. In the notice under section 179 of the Act also there is no reference to any steps having been taken for recovery of the outstanding amount from the company. Even in the impugned order, except for a statement to the effect that in spite of all efforts, demand could not be recovered from the Company since it has closed down its activities since 1999, nothing has been stated as regards the steps that had been taken for recovery of the outstanding amount from the Company. The affidavit-in-reply filed by the respondent is also totally silent in this regard. Therefore, the necessary prerequisite for resorting to the provisions of section 179 of the Act itself against the directors is not satisfied in the present case."

10. Further in the decision which has been delivered by the Bombay High Court in the case of Mehul Jadavji Shah (supra) the relevant discussion and observation which has been made in paragraphs 7, 8 and 9 we deem it proper to quote hereunder :-

> "7. So far as the second and third 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 or in any event in the affidavit-in-reply dated 14th February, 2018. Thus, is sufficient compliance with Section 179 of the Act. It is the petitioner's case in the petition that, an amount of Rs.

49.81 crores are loans advanced to companies/associates of its Director, Mr. Praful Setna. The attempts at recovery if made known in the show cause notice, would have given an opportunity to the petitioner to bring the above facts to C/SCA/12634/2019 ORDER DATED: 02/05/2023 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) of the Act is a sina-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 is also gives an opportunity to the assessee to point out why the efforts made are inadequate and/or improper. In fact in Madhavi Kerkar (supra), we have observed as under :-

> 7. So far as the second and third 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 or in any event in the affidavit-in-reply dated 14th February, 2018. Thus, is sufficient compliance with Section 179 of the Act. It is the petitioner's case in the petition that, an amount of Rs. 49.81 crores are loans advanced to companies/associates of its Director, Mr. Praful Setna. The attempts at recovery if made known in the show cause notice, would have given an opportunity to the petitioner 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) of the Act is a sina-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 is also gives an opportunity to the assessee to point out why the efforts made are inadequate and/or improper. Infact in Madhavi Kerkar (supra), we have observed as under :-

C/SCA/12634/2019 ORDER DATED: 02/05/2023 "7. Therefore, the Revenue would acquire/get jurisdiction to proceed against the directors of the delinquent Private Limited Company only after it has failed to recover its dues from the Private Limited Company, in which the Petitioner is a director. This is a condition precedent for the Assessing Officer to exercise jurisdiction under Section 179 (1) of the Act against the director of the delinquent company. In our view the jurisdictional requirement cannot be said to be satisfied by a mere statement in the impugned order that the recovery proceedings had been conducted against the defaulting Private Limited Company but it had failed to recover its dues. The above statement should be supported by mentioning briefly the types of efforts made and its results.

8. Therefore appropriately, the notice to show cause issued under Section 179 (1) of the Act to the directors of the delinquent Private Limited Company must indicate albeit, briefly, the steps taken to recover the tax dues and its failure. In cases where the notice does not indicate the same and the Petitioner raises the objection of jurisdiction on the above account, then the Petitioner must be informed of the basis of the Assessing Officer exercising jurisdiction and the notice' directors response, if any, should be considered in the order passed under Section 179 (1) of the Act. In this case the show cause notice dated 16th December 2015 under Section 179 (1) of the Act does not indicate or give any particulars in respect of the steps taken by the Income Tax Department to recover the tax dues of the defaulting Private Limited Company and its failure. The Petitioner in response dated 29th December 2015 to the above notice, questioned the jurisdiction of the Revenue to issue the notice under Section 179 (1) of the Act and sought details of the steps taken by the department to recover tax dues from the C/SCA/12634/2019 ORDER DATED: 02/05/2023 defaulting Private Limited Company. In fact, in its reply dated 29th December 2015, the Petitioner

pointed out that the defaulting Company had assets of over Rs. 100 Crores. Admittedly, in this case no particulars of steps taken to recover the dues from the defaulting Company were communicated to the Petitioner nor indicated in the impugned order. In this case we find that except a statement that recovery proceedings against the defaulting assessee had failed, no particulars of the same are indicated, so as to enable the Petitioner to object to it on facts."

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 notice.

8. In view of the above, it is clear that before the Assessing Officer assumes jurisdiction 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. This before any order under Section 179(1) of the Act is passed adverse to the noticee. In this case, admittedly the show cause notice itself does 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 petitioner by the order of this Court in Madhavi Kerkar (supra). In the above circumstances, the impugned order dated 26th December, 2017 is quashed and set aside.

9. However, it is made clear that the Assessing Officer is at liberty to pass a fresh order after issuing appropriate notice to the petitioner which must indicate briefly the C/SCA/12634/2019 ORDER DATED: 02/05/2023 steps taken by the Department to recover the tax dues from the delinquent private limited company and its failure to recover the same. Needless to state, the Assessing Officer would hear the petitioner on its objection and pass a fresh order in accordance with law. As the demand relates to Assessment Year 2011-12, Mr. Shah, the Learned Counsel appearing for the petitioner, on instructions, states that the petitioner would cooperate with the Assessing Officer in early disposal of notice issued to him under Section 179 of the Act."

11. In view of the aforesaid discussion and in view of the observations which are made, we are quite satisfied that the order which has been passed by the authority is without dealing with the basic elements of Section 179 of the Income Tax Act and the same being suffering from the vice of non-application of mind, we may deem it proper to quash the same, of course with liberty to the respondent authority to pass a fresh order after issuing proper notice to the petitioner which must indicate briefly the steps to be taken by the department to recover the tax dues from the private limited company in default and its failure to recover is possible to be attributed to the petitioner. We may also deem it proper to quote the proposition of law laid down by the Hon'ble Apex Court on the issue of proper notice being noticed while initiating the step. Following are the C/SCA/12634/2019 ORDER DATED: 02/05/2023 observations contained in relevant paragraphs of decisions of Hon'ble Apex Court in the case of Commissioner of Central Excise, Bangalore v. M.s, Brindavan Beverages (P) Ltd., & Ors., reported in 2007 (5) SCC 388 (paragraph 10) as well as in the case of Uma Nath Pandey v. State of U.P. reported in AIR 2009 SC 2374 (paragraph 8), we may deem it proper to quote hereunder the said relevant observations :-

"10. There is no allegation of the respondents being parties to any arrangement. In any event, no material in that regard was placed on record. The show cause notice is the foundation on which the department has to build up its case. If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice. In the instant case, what the appellant has tried to highlight is the alleged connection between the various concerns. That is not sufficient to proceed against the respondents unless it is shown that they were parties to the arrangements, if any. As no sufficient material much less any material has been placed on record to substantiate the stand of the appellant, the conclusions of the Commissioner as affirmed by the CEGAT cannot be faulted."

8. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first C/SCA/12634/2019 ORDER DATED: 02/05/2023 limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. xxx xxx xxx."

12. In light of the aforesaid conjoint effect of the circumstance stated herein above, upon perusal of the decisions which are tried to be relied upon by the revenue would indicate that the same are not possible to be relied upon to dismiss the petition. On the contrary, the decision from which we are preferring to take observations on the related issued is from the decision delivered by the Division Bench of this Court in the case of Ashita Nilesh Patel (supra) which would clinch the issue in our considered opinion. We may quote hereunder the relevant paragraphs, which read as :-

21. There is no escape from the fact that the perusal of the Notice under Section 179 of the Act, 1961, reveals that the same is totally silent as regards the satisfaction of the condition precedent for taking action under Section 179 of the Act, 1961, viz. that the tax dues cannot be recovered from the Company. In the show cause notice, there is no whisper of any steps having been taken against the C/SCA/12634/2019 ORDER DATED: 02/05/2023 Company for recovery of the outstanding amount. Even in the impugned order, no such details or information has been staled.

22. In such circumstances, referred to above, the question is, whether such an order could be said to be sustainable in law. The answer has to be in the negative. At the same time, in the peculiar facts and circumstances of the case and more particularly, when it has been indicated before us by way of an additional affidavit in reply as regards the steps taken against the company for the recovery of the dues, we would like to give one chance to the department to undertake a fresh exercise so far as Section 179 of the Act, 1961, is concerned. If the show cause notice is silent including the impugned order, the void left behind in the two documents cannot be filled by way of an affidavit in reply. Ultimately, it is the subjective satisfaction of the authority concerned that is important and it should be reflected from the order itself based on some cogent materials. However, with a view to protect the interest of both, the writ applicant as well as Revenue, we are inclined to quash the impugned order and give one opportunity to the Revenue to initiate the proceedings afresh by issuance of fresh show cause notice with all necessary details so that the writ applicant can meet with the case of the Revenue. We are inclined to adopt such measure keeping in mind the statement made by the learned counsel Mr.Soparkar that till the fresh proceedings are not completed, his client will not operate bank account.

23. In view of the above, this writ application is partly allowed. The impugned notice as well as the order is hereby quashed and set aside. It shall be open for the respondent to issue fresh show cause notice for the purpose of proceeding against the writ applicant under Section 179 of the Act, 1961. We would like to give a time bound program so that the proceedings may not go on for an indefinite period. We are also issuing such direction C/SCA/12634/2019 ORDER DATED: 02/05/2023 because of the statement being made that the writ applicant will not operate the bank account till the fresh proceedings are initiated and completed. In such circumstances, we grant two months' time from the date of receipt of the writ of this order to the Department to initiate fresh proceedings and pass appropriate orders in accordance with law. Till the final order is passed, the writ applicant shall not operate the bank account concerned."

13. In view of the aforesaid discussion, we hereby allowed the petition by quashing and setting aside the notice dated 28.02.2018 as well as order dated 29.03.2019 passed by the respondent authority and while allowing the petition we reserve liberty for respondent by observing that it shall be open for the respondent to issue fresh notice for the purpose of proceedings against the petitioner under Section 179 of the Income Tax Act and shall pass a fresh order in accordance with law on the subject in question, if it deems fit.

14. Since we have directed the respondent authority to re- consider and pass a fresh order after taking steps as indicated above, we express no opinion on merits and it would be independently open for the authority to pass a fresh order in accordance with law as early as possible and till fresh decision C/SCA/12634/2019 ORDER DATED: 02/05/2023 is taken, if consequent to it, if any step is taken, the same shall continue to operate till the decision is received by the petitioner.

15. With the aforesaid observations, the present petition stands disposed of in the above terms. No order as to costs.

(ASHUTOSH SHASTRI, J) (J. C. DOSHI,J) phalguni