

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 7395/2010**

SANJAY GHAI

..... Petitioner

Through

Dr. Rakesh Gupta, Mr. Ashwani
Taneja, Ms. Rani Kiyala and Ms.
Poonamf Ahuja, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX AND ORS

..... Respondent

Through

Ms. Rashmi Chopra, Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

07.07.2011

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The petitioner, Sanjay Ghai impugns the order dated 14th November, 2007 passed by the Assistant Commissioner of Income Tax, Circle 7(1), New Delhi under Section 179 of the Income Tax Act, 1961 (Act, for short). He has also prayed for quashing of recovery proceedings of outstanding demand and for stay of recovery of demand of Rs. 28,71,84,883/-.

2. Income Tax Department in their counter affidavit have stated that M/s Sarvodhya Realtors (P) Ltd. is liable to pay Rs.28,71,84,883/-

(Rs.23,45,31,280/- for assessment year 1998-1999, Rs.4,47,73,904/- for assessment year 1999-2000 and 78,79,699 for assessment year 2000-2001) and the petitioner is a director of the said company, which is a private limited company. It is stated that notice dated 27th September, 2007 under Section 179 (1) of the Act was served upon the petitioner in his capacity as a director of M/s Sarvodhya Realtors (P) Ltd. at 81-D, Dila Ram Bazar, Rajpur Road, Dehradun. The said notice was received by one Abhay Singh on 11th October, 2007 at the said address as per the information received from the Deputy Commissioner of Income Tax, Circle-1, Dehradun by the Commissioner of Income Tax, Circle 7 (1), the Assessing Officer of Sarvodhya Realtors (P) Ltd. As there was no response or reply by the petitioner, after considering the facts of the case, an order under Section 179 of the Act dated 14th November, 2007 was passed against the petitioner for recovery of the said amount.

3. The case of the petitioner, on the other hand, is that he was not aware of the proceedings under Section 179 of the Act and was never served with the notice dated 27th September, 2007. He submits that he became aware of the said proceedings and the order dated 14th November, 2007, only when he received letter dated 15th March, 2010 from the Additional Commissioner of Income Tax, Circle-1, Dehradun intimating

that refund of Rs.38,92,957/- for A.Y. 1999-2000 and Rs.15,00,276/- for A.Y. 2003-2004 was due, but the said payment cannot be made because of the outstanding recovery in view of the order dated 14th November, 2007 passed under Section 179 of the Act. Thereafter, the petitioner wrote letter dated 23rd March, 2010 to the Additional Commissioner of Income Tax, Circle-1, Dehradun and inspected the records in Delhi and came to know about the said proceedings.

4. In the writ petition, a number of contentions have been raised including whether or not Section 179 of the Act can be invoked and is applicable to the present case, but the main and principal grievance raised by the petitioner is that he was never served with show cause notice, heard and as such there has been violation of the principles of natural justice.

5. We have examined the said contentions. We have also looked at the quantum of demand and the legal issues raised by the petitioner. Keeping in view the aspects and questions raised, we feel that it will be appropriate and proper if the petitioner is given a hearing and a fresh order under Section 179 of the Act is passed. There is a dispute regarding service of notice dated 27th September, 2007. The respondent in the counter affidavit has stated that Abhay Singh had informed that the petitioner was out of station and intimation may be sent to him by writing to him another letter.

However the respondent did not communicate or correspond with the petitioner thereafter. It may be noted that the notice was received by Abhay Singh on 11th October, 2007 at 12.30 pm and hearing was fixed on 15th October, 2007 i.e. just four days later. Thereafter, no communication was made by the respondent to the petitioner fixing the hearing or calling for reply. On 14th November, 2007 order under Section 179 was passed. It is not clear and there is no material/evidence whether the order under Section 179 of the Act dated 14th November, 2007 was ever served on the petitioner. No steps for recovery were undertaken even after passing of the order. Keeping in view the aspects and questions raised, we feel that it will be appropriate and proper if the petitioner is given a hearing and a fresh order under Section 179 of the Act is passed.

6. Accordingly, the impugned order dated 14th November, 2007 is set aside with a direction that the petitioner or his authorized representative will appear before the Deputy Commissioner of Income Tax, Circle 7(1), New Delhi on 29th August, 2011 at 2 p.m. He shall also file his reply to the notice under Section 179 of the Act on the said date. If required and necessary, the Assessing Officer can grant further opportunity of hearing to the petitioner. However, the proceedings under Section 179 of the Act will be disposed of within three months from the first date of hearing. Till

the disposal of the proceedings under Section 179 of the Act, the petitioner shall not deal with, encumber or dispose of his immovable properties, details of which will be furnished and given to the Assessing Officer on the first date. The refunds due to the petitioner will also not be paid till the proceedings under Section 179 of the Act are disposed of and will be subject to the outcome of the said proceedings. The writ is accordingly disposed of. There will be no order as to costs.

SANJIV KHANNA, J.

CHIEF JUSTICE

JULY 07, 2011

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