

# LEGALFOXES LAW TIMES

## CASE COMMENT ON IN RE DINSHAW MANECKJEE PETIT

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A company is an entity that engages in a business. In India, doing business in the form of Company is considered to be one of the best ways of business and every type of company is governed by Companies Act 2013 (previously Companies Act, 1956). The Act defines company<sup>1</sup> as “a company incorporated under the Companies Act 2013 or any previous company law.” Thus, once a company is registered as per the provisions of the Companies Act, it becomes a separate legal entity<sup>2</sup> in the eyes of law. All the shareholders who pool in their capital are called “members” of the company and not its owners. No single member can bring an end to a company, except by way of a legal procedure. Thus, a company has its own existence and identity, distinct from its members. This distinction of entities has given rise to the concept of “Corporate Veil”. In law relating to Companies this legal concept separates the personality of company from its shareholders and in this landmark case<sup>3</sup> the court lifted the concept of corporate veil were a new impetus. Thus, if the situation demands, the corporate veil of the company can be lifted to identify the real actors behind an artificial person.

A company is regarded as a separate legal entity distinct from its members and shareholders as a result of which, the shareholders or directors cannot be held personally liable for any offence or liabilities of the company. A company through incorporation, becomes a separate legal entity distinct from its members and acquires the status of an artificial person clothed with certain rights and obligations. The members, directors, and shareholders enjoy this immunity as a result of the concept of separate legal entity. It is used to cover or conceal or protect. This veil may be lifted in case of fraud, misrepresentation or providing false information. Thus, when this veil is lifted the person behind the veil is held for the fraudulent or ultra vires as per the Companies Act 2013, this concept is known as ‘Lifting of Corporate Veil’.

1.The companies Act 2013,2(20), Acts of Parliament (India)

2.Solomon v Solomon, AIR1897AC 22

3.In Re Dinshaw Maneckjee Petit, AIR 1927 Bom 371

Sir Dinshaw Petit was assessed for super-tax on an aggregate income of Rs. 11,35,302 arising in the previous year. In the year 1921 the assessee formed four private companies to avoid income-tax which he called family companies<sup>4</sup> for convenience of reference, although in fact no other member of his family took any direct benefit thereunder. The names of these four companies were Petit Limited; The Bombay Investment Company Limited; The Miscellaneous Investment Limited, and the Safe Securities Limited. Each of these companies took over a particular block of investments belonging to the assessee. The companies made investments and whenever interest and dividend income were received by the companies, he applied to the companies for loans, which were immediately granted, and he never repaid.

Here Petitioners contention was that by applying the doctrine of corporate veil it distinguishes the separate actions of an organisation from its shareholders .Thus even though Dinshaw was the only share holder he is not liable to repay the loan due to the evident applicability or exclusion to take loans or converting the incomes or additionally start four companies to avoid the taxation thus he is immune by considering the separate legal entity manner.

From respondents' side, the concept of corporate entity was evolved to encourage and promote trade and commerce but not to irregularities or defraud people. The corporate veil indisputably can be pierced when the corporate personality is found to be opposed to justice, convenience and interest of the revenue or workman or against public interest. In this case the assesses wanted to avoid income tax solely for this purpose he formed four companies, in all of which he was the majority holder. Here the companies were not doing any business and also there was only one share holder. Thus, it is very clear that the companies were only for the purpose to evade or avoid taxation. Thus, any immunity is not available to Dinshaw.

4.The companies Act,2013,2(77), Act of Parliament (India)

Doctrine of corporate veil is not the exclusion from any fraud or other illegal acts but it provides an idea that the shareholders are not liable to everything beyond their knowledge or awareness thus the court states the apply of lifting of corporate veil. Here the petitioner was always trying to get unwanted benefit from the government to evade the taxation and also, he was not ready to conduct or expand the same. The court remarked that the company was recognized under the legislature, and hence could not be regarded as simulacrum or sham just because it was a One Person Company.

The judgement given in this case was the exact opposite of *Solomon v Solomon*<sup>5</sup> Unlike this case there was a genuine and prosperous business, a boot and shoe manufacturer. The business was transferred to the limited company, and there was no question but that thenceforth the limited company carried on that business. Additionally, the concept of a separate legal entity does not give the privilege to treat every alleged transaction as a real transaction.

The company formed by Sir Dinshaw did not carry on any business; it was formed merely to evade taxes by handing over the dividend and interest income of the assessee as pretended loans. Under these circumstances, it cannot be regarded as a separate entity. The judges came to the conclusion that there was there in law evidence on which the Commissioner might reasonably find as a fact (1) that there was no genuine transfer or declaration of trust in favour of the family company, and (2) that the alleged loans were not genuine loans. The Judges accordingly hold that the loans in question were not genuine loans but were merely withdrawals of income disguised as loans. The court further cited the *Inland Revenue Commissioners v. Sansom*,<sup>6</sup> where the alleged loans had undoubtedly been paid by Mr. Sansom to the family company and it was not a mere criterion to avoid taxes. The court intended to state that just by virtue of giving or taking loans within the family companies would not amount to it being a sham company but here the company formed by Sir Dinshaw did not carry on any business; so it were merely to evade taxes by handing over the dividend and interest income of the assessee as pretended loans. Under these circumstances, it cannot be regarded that the company was separate legal entity from the assessee.

5.id.at 1

6.The commissioners of Inland Revenue v John Sansom, AIR 1919 8 TC 20

In the case of CIT v Sri Meenakshi Mills Ltd,<sup>7</sup> where the corporate veil had been used as a means of tax evasion, the court upheld the piercing of veil to look at the real transaction. Thus, the court made it clear that this veil is not impenetrable. If the situation demands, the corporate veil of the company can be lifted to identify the real crisis. In Life Insurance Corporation of India v Escorts Ltd,<sup>8</sup> the court said that lifting of corporate veil must necessarily depend on relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of public interest, the effect on parties who may be affected etc. The circumstances in which corporate veil can be pierced can be divided in two, the statutory provisions and Judicial decisions and interpretations.

The company was formed by the assessee purely and simply as a means of avoiding super tax and the company was nothing more than the assessee himself. It did no business but was created simply as a legal entity to ostensibly receive the dividends and interests and to hand them over to the assessee as pretended loan. Thus, this is a landmark case law where the corporate veil was lifted to make the actual person behind the companies liable for super tax on an aggregated income.

7. The commissioner of Income Tax v Sri Meenakshi Mills Ltd & Ors, AIR 1967 SCR (1) 934

8. Life Insurance Corporation of India v Escorts Ltd & Ors, AIR 1985 SCR (3) 643.

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