

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI**  
**BENCH - II**  
**Appeal No.1033/252/ND/2018**

**IN THE MATTER OF:**

**INCOME TAX OFFICE WARD 23(4)  
C.R.BUILDING NEW DELHI**

**...Appellant**

**VERSUS**

**1. THE REGISTRAR OF COMPANIES,  
4<sup>th</sup> Floor, IFCI Towers,  
Nehru Place, New Delhi - 110019.**

**...Respondent 1**

**2. SKYMAX MERCANTILE PVT. LTD.,  
Plot No.10, Ishwar Colony Extension  
Phase-III, Main Bawana Road,  
New Delhi-110039**

**Also At:  
487/36, First Floor, National Market,  
Peeragari, New Delhi-110087**

**...Respondent 2**

**3. KISHAN KUMAR SHARMA,  
R-11/2, Raj Nagar,  
Ghaziabad-201002 U.P**

**...Respondent 3**

**4. ANSHU SHARMA,  
F-119, Gali No.40,  
Sadh Nagar Part-2,  
New Delhi-110045**

**...Respondent 4**

**5. ANSHU SHARMA,  
SE Block, House No.575,**



**Shastri Nagar,  
Behind Cap Petrol Pump,  
Ghaziabad-201001 U.P**

**...Respondent 5**

**Order Delivered on:30.09.2019**

**CORAM:**

**DR. P.S.N. PRASAD, MEMBER(JUDICIAL)**

**DR. V. K. SUBBURAJ, MEMBER (TECHNICAL)**

PRESENT- Ms. Lakshmi Gurung, Standing Counsel for IT Dept.  
Mr. M. Yadhubhushan Rao, ARoC



**ORDER**

**Per Dr. V. K. Subburaj (Member Technical)**

1. This appeal has been filed by Income Tax Authority invoking the provisions of Section 252 of the Companies Act, 2013 for restoration of the name of the Respondent No. 2 company, viz M/S Skymax Mercantile Pvt Ltd, in the Register of Companies maintained by the Registrar of Companies ("RoC"), Respondent no.1.
2. Service of notice was duly effected on the Respondents. Other than the RoC, none appeared on behalf of the other Respondents to oppose the prayer made by the Appellant. The RoC submitted that they have no objections to the prayer of the Appellant being granted by this Tribunal.
3. Vide proceedings initiated by the Ministry of Corporate Affairs, through the office of the RoC several names of companies were struck off for want of statutory filings. RespondentNo.2 company, which had also not filed any returns or financial statements was duly struck off from the register of companies.
4. Invoking the provision of section 252 of the Act, the Income Tax Dept. prays for its restoration in order to carry out proceedings initiated against Respondent 2. As per averments in the appeal the data available with the Income Tax Department through NMS Por-



tal in the ITD System shows that the respondent company has credit receipts of Rs. 68,56,304/- in his HDFC Bank Account and the Respondent company has deposited cash amounting to Rs. 32,62,000/- during the F.Y. 2010-11, relevant A.Y. 2011-12. It is further averred that from the Non-Filers Monitoring System (NMS) it is observed that the respondent company has not filed its return of income (ITR) for the relevant year.

5. The Appellant states that as Respondent assessee has not filed its ITR, no assessment could be made. As the aforesaid income was not disclosed the same was not brought to tax in the total income of the respondent assessee for the relevant A.Y. 2011-12. Apparent, amount of at least Rs. 32,62,000/- has not been brought under tax which has escaped assessment within the meaning of section 147/148 of the I.T.Act, thereby rendering the company liable for consequences under Income Tax Act, 1961. Thus, according to the Appellant there appears tax evasion which requires action in accordance with law entitling the Revenue to initiate proceedings against the company.
6. As per the Appellant, it has issued dated 29.03.2018 notice under section 148 of the IT Act to the respondent company and the case of the respondent company has been re-opened under section 147 of the IT Act for taxing the aforesaid transactions in the hands of

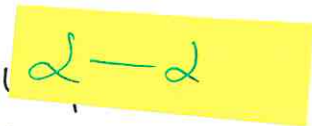


the company. The said proceedings for assessment of income of the respondent company for A.Y. 2011-12 are pending and getting time barred by limitation on 31.12.2018.

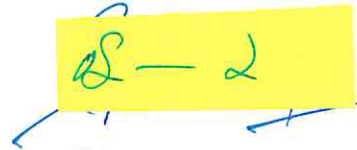
7. As per the appeal, the Appellant has come to know that the said respondent company has been "struck off" by ROC vide STK-7 dated 08.08.2018 (Company's name appearing at SL NO.20030) seriously affecting the assessment and recovery proceedings. It is submitted by the Appellant that for framing assessment and for recovery of the taxes from the respondent company, it is just that the name of the respondent company be restored to the register of companies as if the name of the company had not been struck off from the register of companies.
8. The Income Tax Department is an aggrieved party within the meaning of section 252(1) of the Companies Act, 2013 and great prejudice will be caused to Revenue if the name of the respondent company is not restored back.
9. In view of the grounds raised by the Appellant which remain un rebutted, their prayer merits consideration. The appeal is therefore allowed. The RoC is therefore directed to restore the name of Respondent 2 in its register and also proceed to take such other and further penal action against the respondents in accordance with the statutory provisions.



10. We, however, make it clear that this Bench has only directed restoration of the name of the appellant company in the Register of Companies maintained by the Roc on the basis of averments made in the petition and have in no way endorsed or adjudicated about the Applicant's entitlement to recover any amount as tax etc. which shall be adjudicated by the Department subject to the laws of limitation governing such recoveries. Charges involved in seeking restoration of the company's name with the office of the ROC shall be borne by the applicant. Petition is disposed of in terms of the above. Compliance be made with the ROC within 30 days.



**(DR. V.K. SUBBURAJ)**  
**Member (Technical)**



**(DR. P.S.N. PRASAD)**  
**Member (Judicial)**

Deepak