

IN THE NATIONAL COMPANY LAW TRIBUNAL BENCH-V NEW DELHI
Appeal No.309/252/ND/2020

Item: 212 of 27.10.2020

IN THE MATTER OF:

Deputy Commissioner of Income Tax,
Central Circle-2, SCO 1-6, 2nd Floor, Room No. 11,
Opp: B.V.M School, Kitchlu Nagar, Ludhiana

....Appellant

Vs.

Registrar of Companies,
4th Floor, IFCI Tower, Nehru Place, New Delhi-110019

.... Respondent No. 1

Disha Commercials Pvt. Ltd.,

1304, Padma Tower-1, Rajendra Place, New Delhi-110008

.... Respondent No. 2

Sunil Kumar Jain

E-235, 1st Floor, Greater Kailash-1, New Delhi-110048

.... Respondent No. 3

Order Delivered on: 03.11.2020

CORAM:

ABNI RANJAN KUMAR SINHA, Member (J)

K.K. VOHRA, Member (T)

PRESENT:

For Appellant/IT : Adv. Ankit Singh alongwith Ms. Lakshmi Gurung

For Respondent : Adv. Sweety Khattar, ARoC

ORDER

Per K.K. Vohra Member (T)

1. This Appeal has been filed by Income Tax (IT) Dept. invoking the provisions of Section 252 of the Companies Act, 2013 (the Act) for restoration of the name of the Respondent No. 2 Company (the Company), Disha Commercials Pvt. Ltd. in the Register of Companies (Register) maintained by the Registrar of Companies (RoC), Respondent No. 1.
2. Service was duly effected on the RoC. Service was also effected upon the Respondent Nos. 2 and 3 through email and speed post. During the hearing, the Ld. Counsel for the Appellant (IT Dept.) and Ld. ARoC appeared. None





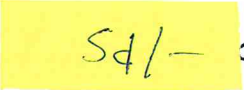
appeared on behalf of Respondent Nos. 2 and 3 (R2 & R3) to oppose the prayer made by the appellant.

3. It is pertinent to mention here that at the time of virtual hearing on 27.10.2020, the appellant submitted that service of notice could not be made upon Respondent No. 4 (R4). It is also requested that since notices have been served upon R2 & R3, service of notice upon R4 is not necessary, since R4 is not a necessary and proper party to the matter and hence its name may be deleted from cause title of parties in present memo of appeal. The prayer of appellant was allowed vide order dated 27.10.2020 and name of R4 was accordingly ordered to be deleted from the memo of parties.
4. Invoking the provision of Section 252 of the Act, the IT Dept. prayed for the restoration of the name of the Company to the Register maintained by the RoC in order to effectively carry out tax proceedings initiated against the Company. As per averments, the Respondent Company was incorporated on 23.03.1990. As per the data available with the IT Dept., it is submitted that in order to render the Assessment Order for AY 2012-13 passed on 30.12.2019 (after "strike off") valid in the eyes of law, the Respondent Company's name be restored to the Register of Companies as if the name of the Company was never struck off.
5. The name of the Company was "struck off" by RoC on 19.05.2017. From the sequence of events, it is absolutely clear that the respondent company applied for getting its name "struck off" on 14.12.2016 after receiving notice dated 31.03.2016 under section 148 of IT Act for reassessment proceedings for AY 2009-10 and notice dated 06.06.2016 for scrutiny of Income Tax Return for AY 2015-16. The factum of assessment order passed on 30.12.2016 and resulting tax demand was also not conveyed to the Registrar.
6. It is submitted by the IT Dept. that for framing the assessment order, for recovering the tax dues and for any further consequential proceedings against the Company under the IT Act, it is just and equitable and in public interest that the name of the Respondent Company be restored to the Register as if the name of the Company had not been struck off from the Register. In view of the grounds raised by the Appellant, being an aggrieved person, the prayer can be entertained u/s 252(1) read with Section 252(3) of the Act.
7. We have gone through the averments made in the memo of appeal filed by the Appellant (IT Dept.) and the submissions made by the Ld. Counsels appearing for the IT Dept. as well as ARoC. We observe that an assessment



order for the AY 2012-13 has already been passed on 30.12.2019. Additionally, there are assessment proceedings pending against the company for the other assessment years. Accordingly, the appeal is **allowed** and we hereby set aside the order dated 19.05.2017 of RoC by which the name of the Company was struck off.

8. The RoC is directed to restore the name of the Company in their Register and also proceed to take such other and further penal action against the Respondent Nos. 2 to 3 in accordance with the statutory provisions, if required.
9. We, however, make it clear that this Bench has only directed restoration of the name of the Company in the Register maintained by the RoC on the basis of averments made in the Appeal and in no way endorses IT Dept.'s entitlement to recover which shall be adjudicated by the IT Dept. subject to the laws of limitation and other laws governing such recoveries. Compliance be made with the RoC within 30 days.


(K.K. VOHRA)
MEMBER (T)


(ABNI RANJAN KUMAR SINHA)
MEMBER (J)