

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III (SPECIAL BENCH)
Appeal No. 996/252/ND/2019**

Under Section 252 of the Companies Act, 2013.

IN THE MATTER OF:

Assistant Commissioner of Income Tax, Circle 18(1),

Room No. 225D, 2nd Floor,

Central Revenue Building, I.P. Estate,

New Delhi - 110002

..... Appellant

VERSUS

REGISTRAR OF COMPANIES, DELHI & Ors.

1. REGISTRAR OF COMPANIES,

NCT of Delhi & Haryana

4th Floor, IFCI Tower, Nehru Place, New Delhi-110019.

..... Respondent No. 1

2. M/s. Nazar Tradings Private Limited

Having Its Registered Office at:

B-4/71A, Lawrence Road, New Delhi-110035.

..... Respondent No. 2

3. Mr. Manoj Kumar

Director of M/s. Nazar Tradings Private Limited

25/32, Top Floor, East Patel Nagar, New Delhi-110008.

..... Respondent No. 3

4. Mr. Vijay Kumar

Director of M/s. Nazar Tradings Private Limited

B-4/71A, Lawrence Road, New Delhi-110035.

..... Respondent No. 4

Order Pronounced On: 04.07.2024

Appeal No. 996/252/ND/2019

Date of Order: 04.07.2024

CORAM:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Appellant : Mr. Puneet Rai Senior Standing Counsel along
with Mr. Nikhil Jain, Advs.

For the ARoC : Ms. Mitika Raja, ARoC on behalf of RoC

For the Respondents : *ex-parte* vide order dated 11.02.2021

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. **996/252/ND/2019** is an Appeal filed by **Assistant Commissioner of Income Tax, Circle 18(1)**, the Appellant, before this Tribunal under Section 252 of the Companies Act, 2013, for seeking the following relief:

“a) Allow the appellant to carry out the assessment proceedings as per the provisions of the Income Tax Act, during the pendency of the instant appeal;

b) Pass any other or further orders/directions as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

2. **Facts of the Case:**

- a) The Respondent No. 2 Company namely M/s. Nazar Tradings Private Limited was incorporated on 08.01.1992, as a Private Company Limited by Shares (Non-govt. Company) having CIN: U74899DL1992PTC046707, under the erstwhile Companies Act, 1956 with the Registrar of Companies, NCT of Delhi and Haryana. The Authorised Share Capital of the Respondent No. 2 Company was Rs.15,00,000/- (Rupees Fifteen Lakh Only) and the Paid-up Share Capital of the Respondent No. 2 Company was

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Rs.10,82,000/- (Rupees Ten Lakh Eighty Two Thousand Only). The Registered Office Address of the Respondent No. 2 Company was B-4/71A, Lawrence Road, New Delhi-110035. Therefore, this Bench has jurisdiction to deal with this Appeal. A copy of the Company Details/Master Data of the Respondent Company is filed along with the Appeal.

- b) The Directors of the Respondent No. 2 Company, Mr. Manoj Kumar (DIN:00988908) and Mr. Vijay Kumar (DIN: 01196956) have been arrayed as Respondent No. 3 and Respondent No. 4 respectively.
- c) The Income of Respondent No. 2 for A.Y. 2013-2014 has escaped assessment thereby rendering the company liable to consequences under the Income Tax Act, 1961. Thus, prima facie, there appears tax evasion which requires action in accordance with the law entitling the Revenue to initiate proceedings against the company.
- d) The Assessment for the A.Ys. 2003-2004 to 2009-2010 is pending before the Appellant. The Respondent Company has conceded before the Hon'ble High Court of Delhi in ITA No. 1037-41 and 1043 of 2017, to allow the appeal of the Income Tax Department to complete the Assessment for A.Ys. 2003-2004 to 2009-2010.
- e) However, on perusal of MCA Website, the Revenue Authority has come to know that the said Respondent Company has been "struck off by ROC, under Section 560(5) of the Companies Act, 1956 vide Gazette Notification dated 08.11.2014. It is respectfully submitted that as per the provisions of Section 250 of the Companies Act, 2013, despite the "Strike Off" of the Respondent Company under Section 248 of the Companies Act, 2013, the company does not stand dissolved for the purpose of discharge of obligations of the company including the obligation to file return and get assessment.

- f) It is submitted that in order to render the assessment order valid in the eyes of law and to enable the Appellant to take steps for recovery of taxes and for any further consequential proceedings, that the Respondent Company's name be restored to the Register of Companies as if the name of the Company was never struck off. The restoration of the name of the Company to the Register of Companies would be just and equitable and in the public interest.
3. It is noted that on 11.02.2021, no one appeared on behalf of Respondent Nos. 2 to 4, despite due service of notice and paper publication on 04.02.2020, the Respondent Nos. 2 to 4 were set ex parte.

4. **Analysis and Findings**

- a. Considering the facts and circumstances of the case before us and the averments as made by the Appellant, this Tribunal is of the earnest view that fairness and justice go hand in hand and so this Tribunal must weigh the requirement of being just from the lens of fairness and justice based on the reasons put forth by the Appellant in the instant appeal. It is to be borne in mind that the presence of the word '**or otherwise**' signifies that even if the Company was not carrying on any business or was not in operation at the time of striking off, it is still open to the Tribunal to order restoration if it appears to it to be 'otherwise' 'just'. Further, it is pertinent to mention that the term '**Creditor**' in **Section 252** of the Companies Act, 2013 ought to be construed widely so as to include a 'creditor' whose debt was contingent or prospective.
- b) At this juncture, it is relevant to refer to the Hon'ble Delhi High Court's judgement in "**Sidhant Garg and Anr. Vs. 'Registrar of Companies and Ors.'**" reported in (2012) 171 Comp. Cas. 326, wherein the Hon'ble High Court held that, "*the word "just" would*

mean that it is fair and prudent from a commercial point of view to restoring the Company and that the Court has to examine the concept of 'justness' not exclusively from the perspective of a creditor or a member or a debtor but from the perspective of the society as a whole."

- c) We are of the considered view that the Appellant has succeeded in substantiating that the demand of Rs. 1,41,03,682/- is pending for the AY 2007-2008 and the demand of Rs. 21,69,402/- is pending for the AY 2008-2009 and the demand of Rs. 60,08,584/- is pending for the AY 2009-2010, against the Respondent No. 2 Company as assessed by the Appellant. Accordingly, the Appellant succeeds in representing that the Appellant is the creditor of the Respondent No. 2 Company who is aggrieved against the striking of Respondent No. 2 Company's name vide Registrar of Companies vide Gazette Notification dated 08.11.2014 and established before this Tribunal that there is a cogent and convincing reason as to why the name of the Respondent No. 2 Company be restored in the register of companies maintained by the Registrar of Companies. Even otherwise, collection of due taxes is a duty cast upon the Revenue authorities in the public interest only, which shall be adversely affected if the Respondent No. 2 Company name is not restored to the Register of Companies maintained by the Registrar of Companies.

5. **Order**

- i.** In light of the above facts and circumstances, the Appeal bearing **996/252/ND/2019** filed by **Assistant Commissioner of Income Tax, Circle 18(1)**, the Appellant before this Tribunal under Section 252 of the Companies Act, 2013 **stands allowed**.
- ii.** In the interest of Revenue and the Public, we are of the considered view that it is just and equitable to restore the name of the Respondent No. 2 Company i.e. M/s. Nazar Tradings Private

Limited having CIN: U74899DL1992PTC046707 in the Register of Companies maintained by the Registrar of Companies, NCT of Delhi and Haryana to enable the Appellant to recover the outstanding demand of the tax liability of the Respondent No. 2 Company.

- iii.** The Registrar of Companies, NCT of Delhi & Haryana is therefore directed to restore the name of the Respondent No. 2 Company in their Register and also proceed to take such other and further penal action against the Respondent in accordance with the statutory provisions. As a consequence, the name of the Respondent Company shall stand restored to the Register of the Registrar of Companies, as if the name of the company had not been struck off in accordance with Section 248(1) of the Companies Act, 2013.
- iv.** We make it clear that this Tribunal has only directed restoration of the name of the Respondent No. 2 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 Appellant's entitlement to recover any amount as tax, etc. which shall be adjudicated by the Department and the Appellant authorities, subject to the laws of limitation governing such recoveries.
- v.** However, Charges, if any involved in seeking restoration of the company's name with the office of the ROC shall be borne by the Appellant itself.
- vi.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

No order as to costs.

Sd/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**