

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT-VI

Appeal No.73/252/ND/2020

IN THE MATTER OF:

Income Tax Officer, Ward 22(4)

New Delhi.

.... Petitioner

VERSUS

- i. The Registrar of Companies
- ii. (For Revival of Savi Jewels Pvt. Ltd.)
117-A, First Floor
Ring Road Mall
Plot No.21, Mangalam Place
Sector-3, Rohini
Delhi-110085.
- iii. Savita Garg
H.No.63, Pocket- D11
Sector-VIII, Rohini
Delhi-110085.
- iv. Ramesh Kumar Garg
H.No. 63, Pocket-D11
Sector-VIII, Rohini
Delhi-110085.

..... Respondents

Coram:

(Dr.)P.S.N PRASAD, HON'BLE MEMBER (J)

DR. V.K. SUBBURAJ, HON'BLE MEMBER (T)

For the Petitioner: Ms. Lakshmi Gurung, Senior Standing Counsel, Income Tax Department and Ms. Easha Kadian, St. Counsel.

For the ROC: Mr. M. Yadubhushan Rao, AROC.

Judgment delivered on: 18.12.2020

ORDER

P.S.N PRASAD, HON'BLE MEMBER (Judicial)

1. This petition 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 (Savi Jewels Pvt. Ltd), in the Register of Companies maintained by the ROC, respondent no.1.
2. Service was duly effected on the respondent company and its Directors. Respondent No. 1 The AORC 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

 2

companies were struck off for want of statutory filings. Respondent No.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 them. It is submitted by the department that the department has received information that the Respondent Company has made cash transactions between the period 09.11.2016 to 30.12.2016 total cash deposits to the tune of Rs.12,00,000/- in its Account No. 02722320001810 with HDFC Bank.
5. Further the department of Income Tax Department has submitted that a notice dated 12.03.2018 under Section 142(1) of the Income Tax Act was issue to the Respondent Company calling the Respondent Company to prepare a true and correct return of its income in respect of A.Y. 2017-18.
6. The department of Income Tax has further submitted that the Respondent Company filed its Income Tax Return for the A.Y. 2017-18 under Section 139 (4) on 29.03.2018 declaring an income of Rs.



97,880/- and the said return was rejected as defective as the Respondent did not file the ITR under Section 142 (1) as was directed.\

7. Further the Appellant has issued a notice dated 12.03.2018 under Section 142(1) of the IT Act for calling the Respondent Company to prepare a true and correct return of its income in respect of A.Y. 2017-18.
8. The Respondent Company filed its Income Tax Return for the A.Y. 2017-18 under Section 139(4) on 29.03.2018 declaring an income of Rs. 97,880/- and the said return was rejected as defective as the Respondent did not file the ITR under Section 142(1) as was directed.
9. It is further submitted by the department that after following due process, the Appellant has passed the Assessment Order on 11.12.2019 under Section 144 of the I.T. Act against the Respondent Company for the A.Y. 2017-18. This resulted in raising of income tax demand of Rs. 1,97,22,430/- against the Respondent Company.
10. Further the department has submitted that separate penalty notices dated 11.12.2019 under Section 271A, 271A(1)(d), 271AAC (1) and 271F of the I.T. Act, have been issued to the Respondent Company. However, no reply has been filed by the Respondent Company.



11.It is pertinent to mention here that as per the order dated 14.12.2020 all the respondents except appellant and AROC have been proceeded exparte.

12.On further enquiry the Ld. Assessing officer came to know that the name of the Respondent Company has been “Struck Off” by the Registrar of Companies.

13.Ld. Counsel for the Income Tax submits that the aforesaid fact necessitate restoration of the name of the Respondent Company in the Register of Companies to proceed further in accordance with law. In view of the grounds raised by the applicant, being an aggrieved person, the prayer can be entertained u/s 252(3) of the Code. In view of the grounds raised by the Appellant which remain unrebutted, their prayer merits consideration.

14.The petition is therefore allowed. The ROC is directed to restore the name of the Respondent Company in their Register and also consider to proceed to take such other and further penal action against the respondents in accordance with the statutory provisions.

15.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 off in terms of the above. Compliance be made with the ROC within 30 days.

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DR. V.K. SUBBURAJ,

MEMBER (T)

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Shri.P.S.N PRASAD,

MEMBER (J)