

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, COURT – III
(SPECIAL BENCH)

Company Appeal No.268/252/ND/2023

IN THE MATTER OF:

INCOME TAX OFFICER, WARD 23(1), NEW DELHI

Having his office at
Room No 234, C. R. Building,
I. P. Estate, New Delhi - 110002

...Appellant

VERSUS

1. REGISTRAR OF COMPANIES

NCT of Delhi and Haryana
Office at: 4th Floor, IFCI Tower,
61, Nehru Place,
New Delhi – 110019

...Respondent No. 1

2. M/s. SHARMA TEXTILE PVT. LTD

1077, 2nd Floor, Shop No. 2,
Gandhi Gali, Fatehpuri,
New Delhi-110006

...Respondent No. 2

3. SUMAN, DIRECTOR

1077, 2nd Floor, Shop No. 2,
Gandhi Gali, Fatehpuri,
New Delhi-110006

...Respondent No. 3

4. ANIL SAINI, DIRECTOR

1077, 2nd Floor, Shop No. 2,
Gandhi Gali, Fatehpuri,
New Delhi-110006

...Respondent No. 4

CORAM:

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

APPEARANCES:

For the Applicant : Mr. Puneet Rai, SSC, Mr. Ashvini Kr,

Mr. Rishabh Nangia, JSCs, Adv Nikhil Jain

ORDER

PER: RAHUL BHATNAGAR, MEMBER, (TECHNICAL)

1. This appeal has been filed by Income Tax Authority, invoking the provisions of Section 252 (1) read with section 252(3) of the Companies Act, 2013, for restoration of the name of the Respondent No. 2 Company, M/s. Sharma Textile 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, except the ROC none appeared on behalf of the other Respondents. Therefore, Respondent No 2-4 were set ex-parte on 06.05.2024.
3. The Respondent No. 2, M/ s. Sharma Textile Private Limited is an unlisted private limited company incorporated on 30.05.2011 under the Companies Act 1956.
4. The Assessee Company (Respondent No. 2) and its Directors (Respondent No. 3 and 4) have failed to carry out their obligations and violated provisions of the Income Tax Act 1961 therefore, proceedings were initiated against the Assessee Company. Hence, notice under section 148 of Income Tax Act, 1961 was issued against the Assessee on 30.03.2021 for the Assessment Year 2013-14.

5. That Appellant passed the Assessment order under Section 147 read with Section 144 of the Income Tax Act, 1961 and found out that income of Respondent no. 2 chargeable to tax has escaped assessment for AY 2013-14.
6. As per the Demand Notice dated 29.03.2022 for the year 2013-14, there is an outstanding demand of Rs. 1,58,88,090/- (Rupees One Crore Fifty-Eight Lakhs Eighty-Eight Thousand Ninety Only) against the Respondent Company.
7. As per the grievance of the Income Tax Department, the name of the Respondent Company had been struck off by the ROC thus, seriously affecting the recovery of Respondent Company's tax liabilities. Therefore, for recovering the tax dues and for any further consequential proceedings against the company under the Income Tax Act,1961, it is just and equitable and in public interest that the name of the Respondent Company be restored in the Register of Companies, as if the name of the company had not been struck off from the Register of Companies.
8. Ld. Counsel for the Income Tax submitted that the aforesaid facts 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 Appellant, being an aggrieved person, their prayer can be entertained u/s 252 of the Companies Act, 2013.
9. The Respondents despite notice and paper publication have not appeared before us and in view of the grounds raised by the Appellant, which remain unrebutted, the prayer of the Appellant 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 further 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 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 Appellate Authorities, 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 Appellant. The appeal is disposed of in terms of the above. Compliance be made with the RoC within 30 days.

Sd/-

**(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)**

Sd/-

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