

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH - VI
Appeal No.1055/252/ND/2018

IN THE MATTER OF:

**DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE 3(2), NEW DELHI
C.R. BUILDING,
NEW DELHI-110002**

...Appellant

VERSUS

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

...Respondent 1

**2. AYATNA REALTY PVT. LTD.,
Shop No.6, DDA Market,
Near Nagarjuna Apartment,
Mayur Kunj, Mayur Vihar,
Phase-I, New Delhi-110096**

...Respondent 2

**3. MAINWATI DEVI,
B-23, Sector-44,
Noida-201301, U.P**

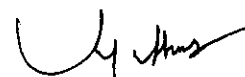
...Respondent 3

**4. CHARU GUPTA,
House No.707, Shiv Nagar,
Jalesar Road, Firozabad,
U.P-283203**

...Respondent 4

**5. SONIYA GUPTA,
82, Chandrika Bhawan,
Near Bus Stand, Subhash Park,
Ferozabad, U.P.-283203**

...Respondent 5



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. Yadhubhushana Rao for ROC

Ms. Babita Kataria, Advocate for Appellant

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 ("the Act") for restoration of the name of the Respondent No. 2 Company, viz M/S Ayatna Realty Pvt Ltd, in the Register of Companies maintained by the Registrar of Companies ("RoC"), Respondent no.1.
2. Service was duly effected on the Respondents. The RoC submitted that they have no objections to the prayer of the Appellant being granted by this Tribunal. Respondent no.3 has responded to the counsel for Income Tax saying that she was not concerned in any way with the company and she was appointed as director just for the sake of completion of quorum and was treated as a sleeping director. All other respondents were proceeded ex-parte.



3. Vide proceedings initiated by the Ministry of Corporate Affairs, through the office of the RoC, names of several companies were struck off for want of statutory filings. Respondent No. 2, 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 restoration of Respondent No. 2 in order to carry out proceedings initiated against Respondent 2. As per averments, the following information regarding financial activities by Respondent No. 2 has been obtained for F.Y. 2010-11 (relevant A.Y. 2011-12):

S.NO.	F.Y.	Information Code	Information description	(Rs.)	TDS deducted
1.	2010-11	TDS-194H	Commission on Brokerage received	69,34,260/-	6,93,434/-

5. Similarly, for the F.Y. 2011-12 (relevant A.Y. 2012-13) Respondent No. 2 has entered into the following transactions:

S.NO.	F.Y.	Information Code	Information description	(Rs.)	TDS deducted
1.	2011-12	TDS-194H	Commission on Broker-	20,87,050/-	2,08,708/-



			age received		
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6. As per the ITD system Respondents No. 2 has not filed its return of income (ITRs) for A.Y. 2011-12 and 2012-13 and has not disclosed the above transactions. Since the company has not filed its return the only logical conclusion is that the company has earned taxable income which has not been disclosed and has escaped assessment thereby rendering the company liable for consequences under Income Tax Act, 1961 ("I.T. Act"). Prima facie, there appears tax evasion which requires action in accordance with law entitling the Revenue to initiate proceedings against the company.
7. In view of the above facts, Appellant has reason to believe that the income of Rs.69,34,260/- of Respondent No. 2 for the A.Y. 2011-12 and Rs.20,87,050/- for A.Y. 2012-13 respectively has escaped assessment by virtue of failure on the part of the company to disclose fully and truly all material facts necessary for assessment of its income in terms of clause (a) of Explanation 2 to Section 147 of the I.T. Act. Therefore, notice dated 31.03.2018 under Section 148 of the I.T. Act for A.Y. 2011-12 and 2012-13 have been issued to Respondent No. 2.
8. The company's case is pending assessments under Section 147 of the I.T. Act. For framing assessment and for recovery of the taxes

from the respondent company, it is just and equitable that the name of Respondent No. 2 be restored to the register of companies as if the name of the company had not been struck off from the register of companies.

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.

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(DR. V.K. SUBBURAJ)

Member (Technical)

Deepak

-sd-

(DR. P.S.N.PRASAD)

Member (Judicial)