

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH - VI
Appeal No.1154/252/ND/2018

IN THE MATTER OF:

**ASST. COMMISSIONER OF INCOME TAX CIRCLE 1(1)
CENTRAL REVENUE BUILDING
NEW DELHI**

...Appellant

VERSUS

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

...Respondent 1

**2. M/S ANCINDYA NETWORKS PVT. LTD.,
B-1/3, 3rd Floor, Paschim Vihar
New Delhi-110063**

...Respondent 2

**3. INDER PREET SINGH,
F. NO.11A, BG-6, Paschim Vihar,
Delhi-110063**

...Respondent 3

**4. AMAN PREET SINGH
BG-6/11A, BG-6, Paschim Vihar,
New Delhi-110063**

...Respondent 4



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. Yadubhushana Rao, AROC

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 for restoration of the name of the Respondent No. 2 company, viz M/S Abcindya Network 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. Other than the RoC, none appeared on behalf of the other Respondents to oppose the prayer made by the Appellant. The RoC 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 companies were struck off for want of statutory filings. Respondent No.2 company,

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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 Respondent 2. As per averments in the appeal information is obtained through NMS/ITD/information from AIR/CIB Statements that the respondent company has made cash deposits to the tune of Rs. 9,48,000/- in its Bank Account with HDFC Bank during the F.Y. 2010-11 as given below:

Date of deposit	Amount (Rs.)
04.11.2010	3,40,000/-
02.12.2010	3,40,000/-
03.03.2011	2,68,000/-
Total	9,48,000/-

5. The Appellant also avers that the respondent company has also earned interest amounting to Rs. 1,58,133/- from the HDFC Bank on which TDS has been deducted by the bank.



6. As per the Appellant, it is observed from the non-filers monitoring system (NMS) that the respondent company has not filed its return of income (ITR) for A.Y. 2011-12. As per the provisions of Section 139 of the I.T. Act, every company's is mandatorily required to file its return of income within the prescribed time in the prescribed time in the prescribed manner. Thus, the Appellant contends that the company has violated the provisions of the Income Tax Act by not filing the ITR.
7. In view of the above facts, the appellant states that it has reasons to believe that income amounting to Rs. 11,06,133/- as escaped assessment within the meaning of Section 148 of the I.T.Act and has not been brought under tax for the A.Y. 2011-12, thereby rendering the company liable for consequences under Income Tax Act, 1961 and entitling the Revenue to initiate proceedings against the company.
8. The appellant has issued notice dated 28.03.2018 under section 148 of the I.T.Act for A.Y. 2011-12 to the respondent company. The case of the respondent company has been re-opened under section 147 of the I.T.Act for assessing the aforesaid transactions in the hands of the company.
9. As per the Appellant said proceedings for assessment of income of the respondent company for A.Y. 2011-12 initiated by issue of no-



tice dated 28.03.2018 are pending and getting time barred by limitation on 31.12.2018 as per the provisions of section 153(2) of Income Tax Act, 1961 (effective from 01.06.2016).

10. The Appellant has submitted that for framing assessment, for recovery of the taxes from the respondent company and for any further consequential proceedings, it is just and equitable and in public interest, that the name of the respondent company be restored to the register of companies as if the name of the company had not been struck off from the register of companies.

11. The Income Tax Department is an aggrieved party within the meaning of section 252(1) read with section 252(3) of the Companies Act, 2013 if the name of the respondent company is not restored back, great prejudice will be caused to Revenue and public at large.


12. 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.


13. We, however, make it clear that this Bench has only directed restoration of the name of the appellant company in the Register of

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


(DR. V.K. SUBBURAJ)
Member (Technical)


(DR. P.S.N. PRASAD)
Member (Judicial)

Deepak