IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
Appeal No.97/252/ND/2022
(In the Matter of Section 252(1) and/or of the Companies Act, 2013)

IN THE MATTER OF:

INCOME TAX OFFICER

....APPELLANT

Versus.

M/S. WHIZ KID PROMOTERS PVT. LTD. & ORS.

....RESPONDENTS

MEMO OF PARTIES

INCOME TAX OFFICER
OFFICE AT: ROOM NO. 228,
2ND FLOOR, C.R. BUILDING, I.P. ESTATE,
NEW DELHI - 110002

...APPELLANT

VERSUS

1. M/S WHIZ KID PROMOTERS PRIVATE LIMITED,
55T, SECTOR-8, JASOLA VIHAR NEW DELHI-110003

2. MR. JAG MOHAN,
H.NO. 202 BLOCK NO. 172, JORBAGH, NEW DELHI-110003

3. **MR. JAI SHANKER SRIVASTAVA,**
H.NO. 202 BLOCK NO. 172, JORBAGH, NEW DELHI-110003

4. **REGISTRAR OF COMPANIES**
NCT OF DELHI & HARYANA 4TH FLOOR, IFCI TOWER,61,NEHRU PLACE, NEW DELHI-110019

...RESPONDENTS

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Order Pronounced On: 27/09/2022

Coram:

SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

ORDER

PER: SHRI DHARMINDER SINGH, MEMBER- JUDICIAL

This appeal is filed by and through the Income Tax Officer, Ward 24(1), New Delhi, New Delhi (for brevity the 'appellant'), under Section 252(1) r/w Section 252(3) of the Companies Act, 2013 (for brevity 'the Act') read with Rule 7 & 9 of Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 against the order dated 30.06.2017 of the Registrar of Companies, the respondent herein, by which the company M/s. Whiz Kid Promoters Private Limited was struck off from the Registrar of Companies and the said appeal is filed with the following prayers:-

- To pass an order restoring the name of the Assesse Company in the register of the Registrar of Companies;
- To quash the order/notification of the Ld. ROC by which the name of the Assesse Company was removed from the Register of the Companies.

2. The respondent No.1, M/s. Whiz Kid Promoters Private Limited is a company incorporated on 09.02.2007 under the provision of Companies Act 1956, as a Private Limited Company with the ROC-Delhi, having its registered office at H. No. 202 Block No. 172, Jorbagh, New Delhi-110003, bearing CIN U45209DL2007PTC159105. The Authorized share capital of the Company is Rs.100000/- and paid up share capital of the Company is Rs. 100000/-.

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3. The directors of the company, being Mr. Jag Mohan and Mr. Jia Shanker Srivastava, have been arrayed as Respondent No. 2 and Respondent No. 3 respectively.

4. It is submitted by the appellant that search and seizure action under Section 132(1) of the Act was carried out on 14.10.2020, wherein it was discovered that Mr. Manoj Kumar Singh employed M/s. Whiz Kid Promoters Pvt. Ltd. for holding immovable properties for his own benefit and companies as benamidar or merely as name-lenders and Later, during the search and seizure certain documents were found which are listed below:-

- Sale Deeds,
- Agreement to Sell,
- Possession Certificate,
- Khasra & Khatauni,
- General Power of Attorney and other related documents.

5. The averments made by the Applicant in his Appeal are as below:-

4.2. That, during the post search analyses of seized/impounded materials, three Agreements to sell, General Power of Attorney and Possession letters pertaining to properties purchased in the name of three companies namely M/s. Gruosi Tradelink Private Limited i.e. Respondent No. 1, M/s. Kimbereley Trading Private Limited And M/s. Amarillo Trading Private Limited were found. Copies of the Agreement

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to sell, General Power of Attorney and Possession Letters in relation to Respondent No. 1 company is annexed herewith and marked as **Annexure A1 (colly)**.

4.3. That, in the above said deal, Sh. Manoj Kumar Singh or his key employees namely Sh. Devesh Singh, Sh. Bipender Kumar Sahi and Sh. Vijay Kumar Singh and others, either acted as the authorized representative or has taken the possession of the land/property involved. Further, the Respondent No. 1 was a mere name-holder which was holding these properties for the benefit of Sh. Manoj Kumar Singh.

4.4. That, the following properties were purchased in the name of the assessee is summarized hereunder:

S.No.	Particulars of the Beneficial Owner (such as name, address, Pan/ Aadhar)	Particulars of the Benamidars (such as name, address, Pan/Aadhar)	Particulars of the benami property/transaction, including description of the property	Approximate fair market value of the benami property/transaction
1.	Sh. Manoj Kumar Singh E-337, East of Kailash, New Delhi – 110065 AAXPS2824H	M/s. Whiz Kid Promoters Private Limited 55T, Sector-8, Jasola Vihar,New Delhi – 110003 IN	4 Bigha and 13 Biswa Mustatil No. 11. Killa No. 5(4-6). 6/1 (0-6). 26(0-1). Village Devli. Tehsil Mehrauli. New Delhi	Rs. 22,63,23,000/-
2.	Sh. Manoj Kumar Singh E-337, East of Kailash, New Delhi – 110065 AAXPS2824H	M/s. Whiz Kid Promoters Private Limited 55T, Sector-8, Jasola Vihar,New Delhi – 110003 IN	2420 square yards House No. F-211. Out of land measuring 2 Bigha 8 Biswa comprised in Mustatil No. 13. Kila No. 1 min East (0-4) and Kila No.2(4-12) situated in revenue estate of village Devli. Tehsil Mehrauli Delhi Now Known as Lane No. W-	

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			5/20, Western Avenue Sainik Farms, New Delhi	
3.	Sh. Manoj Kumar Singh E-337, East of Kailash, New Delhi – 110065 AAXPS2824H	M/s. Whiz Kid Promoters Private Limited 55T, Sector-8, Jasola Vihar,New Delhi – 110003 IN	4 Bigha and 9 Biswa, Khasra Number 652 Village Neb Sarai, Tehsil Hauz Khas, New Delhi	Rs. 6,80,10,000/-
4.	Sh. Manoj Kumar Singh E-337, East of Kailash, New Delhi – 110065 AAXPS2824H	M/s. Whiz Kid Promoters Private Limited 55T, Sector-8, Jasola Vihar,New Delhi – 110003 IN	Agricultural Land measuring 73 Bighas 15 Biswa Village Issapur, Tehsil Najafgarh, New Delhi	Rs. 21,00,00,000/-
5.	Sh. Manoj Kumar Singh E-337, East of Kailash, New Delhi – 110065 AAXPS2824H	M/s. Whiz Kid Promoters Private Limited 55T, Sector-8, Jasola Vihar,New Delhi – 110003 IN	1 Bigha (1008sq. yards approx.) comprising in Khasra No. 504/973/505 situated at Village Khirkee, Mehrauli, New Delhi (Known as 45 Sainik Farms, New Delhi)	Rs. 5,13,90,000/-
6.	Sh. Manoj Kumar Singh E-337, East of Kailash, New Delhi – 110065 AAXPS2824H	M/s. Whiz Kid Promoters Private Limited 55T, Sector-8, Jasola Vihar,New Delhi – 110003 IN	18 Bighas 8 Biswa froming part of Khasra No. 18/7/2(2-10), 8(4-16), 9(4-16), 14/1(2-0), 10min (3-17), 19/6(0-6) situated in the village Bakkargarh, Tehsil Najafgarh, New Delhi	Rs. 7,00,00,000/-
7.	Sh. Manoj Kumar Singh E-337, East of Kailash, New Delhi – 110065 AAXPS2824H	M/s. Whiz Kid Promoters Private Limited 55T, Sector-8, Jasola Vihar,New Delhi – 110003 IN	13 Min. 18 Min and 19 Min situated in the revenue estate of village Deoli, Tehsil Mehrauli, New Delhi	Rs. 2,27,10,000/-
8.	Sh. Manoj Kumar Singh E-337, East of	M/s. Whiz Kid Promoters Private Limited	1800 sq. Yards out of 2 Bighas and 16 Biswas. Carved out of Khasra No.	Rs. 4,00,10,000/-

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	Kailash, New Delhi - 110065 AAXPS2824H	55T, Sector-8, Jasola Vihar,New Delhi - 110003 IN	605(0-8). 606/1 (1-4) and 606/2 (1-4, situated in Village Neb Sarai, Tehsil Mehrauli, New Delhi.	
9.	Sh. Manoj Kumar Singh E-337, East of Kailash, New Delhi - 110065 AAXPS2824H	M/s. Whiz Kid Promoters Private Limited 55T, Sector-8, Jasola Vihar,New Delhi - 110003 IN	1225 Sq. Yards in Sainik Farms, New Delhi being part of Khasra No. 655, Situated in the revenue estate of village Neb Sarai, Tehsil Hauz Khas, New Delhi	Rs. 45,10,000/-
10.	Sh. Manoj Kumar Singh E-337, East of Kailash, New Delhi - 110065 AAXPS2824H	M/s. Whiz Kid Promoters Private Limited 55T, Sector-8, Jasola Vihar,New Delhi - 110003 IN	Property No. 202, Jor Bagh, New Delhi	Rs. 5,40,00,000/-

6. The Principal Commissioner of Income Tax -6 after noting the observations of the Ld. Assessing officer gave its approval for reopening the case of the Assesse as proceedings under the Benami Act are to be initiated against the assessee.

7. On perusal of the MCA website, the appellant has come to know that the the name of the respondent company was struck off in terms of provision of Section 248(1) of the Companies Act, 2013 read with Rule 7 and Rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 by the ROC vide form no. STK-7 dated 30.06.2017.

8. It is submitted by the appellant that the name of the respondent company had been struck off by the ROC without enquiry and the same was not intimated to the Assessing Officer or the concerned Commissioner of Income

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Tax. The same could not be allowed to be invoked resulting in escapement of tax liability or any other liability on the company which seeks to get its name removed from the register of the Ld. ROC.

9. The appellant submitted that the Income Tax department being aggrieved has filed this appeal under the Section 252 of the Companies Act 2013 against removal of the name of the company from the Register by the Registrar of the Company as for reopening of the assessment proceedings, the company has to be in existence.

10. It is further submitted that since the respondent company has become non-existent entity, the respondent company and its directors are trying to escape the assessment proceedings and the liability that will arise out of the said proceedings.

11. The appellant has further submitted that it appears that proceedings with respect to the benami transactions are yet to be initiated against the Respondent 1. Denial to restore the name of the respondent company in the Register of the ROC will not only condone the wrong doing of the respondent company but it will also encourage of escapement of tax liabilities by such subterfuge which will be prejudicial to the interest of Revenue in the long run. The service of notice to respondents has been made through publication in newspaper, but none have appeared.

12. Considering the facts and circumstances and the averments made, this appeal is allowed. The Registrar of companies is therefore directed to restore the name of the Respondent 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.

13. The appeal is disposed of accordingly.

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Let the copy of the order be served to the parties.

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(DR. BINOD KUMAR SINHA)
MEMBER (T)

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(DHARMINDER SINGH)
MEMBER (J)

Appeal No. 97/252/(ND)2022
Order Pronounced On: 27/09/2022