IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT IV
Appeal No.16/252/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.

THE REGISTRAR OF COMPANIES AND Ors.
(M/S. DASHING FURNITURE PVT. LTD.)

....RESPONDENTS

MEMO OF PARTIES

INCOME TAX OFFICER
OFFICE AT: ROOM NO. 225D,
2ND FLOOR, C.R. BUILDING, I.P. ESTATE,
NEW DELHI - 110002

...APPELLANT

VERSUS

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

2. M/S DASHING FURNITURE PRIVATE LIMITED,
SHOP NO. 5 SCS 1, DDA MARKET, POCKET H 32, SECTOR 03,
ROHINI, NEW DELHI- 110085

3. MR. ANISH GOYAL,
SHOP NO. 5 SCS 1, DDA MARKET, POCKET H 32, SECTOR 03,
ROHINI, NEW DELHI- 110085

-Sd- -Sd-

4. **MR. ANAND JINDAL,**
SHOP NO. 5 SCS 1, DDA MARKET, POCKET H 32, SECTOR 03, ROHINI, NEW DELHI- 110085

...RESPONDENTS

Order Pronounced On: 27/09/2022

Coram:

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

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

ORDER

PER: DR. BINOD KUMAR SINHA, MEMBER- TECHNICAL

This appeal is filed by and through the Income Tax Officer, Ward 7(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 by Registrar of Companies, the respondent herein 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.2, M/s. Dashing Furniture Private Limited is a company incorporated on 26.06.2009 under the provision of Companies Act 1956, as a Private Limited Company with the ROC-Delhi, having its registered office at Shop No. 5 CSC-1, DDA Market, Pocket-H-32, Sector-03, Rohini, North Delhi-110085, bearing CIN U20290DL2009PTC191608. The Authorized share capital of the Company is Rs.10,00,000/- and paid up share capital of the Company is Rs.6,50,000/-.

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3. The directors of the company, being Mr. Anish Goyal and Mr. Anand Jindal, have been arrayed as Respondent No. 3 and Respondent No. 4 respectively.
4. It is submitted by the appellants that ITD System reflects that a payment of Rs.7,81,597/- had been received by the respondent company for the financial year 2011-12, as payment as per TDS under Section 194J of the Income Tax Act reflected in the 26 AS system. Further, the respondent company had not filed its return of income for AY 2012-13 and the reasons for issue of Notice u/s 148 of escapement of income from tax for the assessment year 2013-14, were recorded by the Assessing officer which has been annexed herein.

5. The Principal Commissioner of Income Tax -6 after noting the observations of the Ld. Assessing officer gave his approval for reopening the case of the Company as there is escapement of income from assessment. Thereafter, notice under Section 148 of the IT Act dated 08.06.2021 was issued. The said notice was never replied to by the directors nor by any other representative of the company.

6. On perusal of the MCA website, the appellant has come to know that 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.

7. 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 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.

8. The appellant submitted that the Income Tax department being aggrieved under Section 252 of the Companies Act 2013 by the removal of the name of the company from the register by the Registrar of the Companies as for reopening of the assessment proceedings, the company has to be in existence.

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9. 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.

10. The appellant has further submitted that it appears that there is tax liability evasion which has escaped assessment within the meaning of Section 147 & 148 of the Income Tax Act for income against the credit for amount of Rs. 7,81,597/-. 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.

11. 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.

12. The appeal is disposed of accordingly.
Let the copy of the order be served to the parties.

-Sd-

(DR. BINOD KUMAR SINHA)
MEMBER (T)

-Sd-

(DHARMINDER SINGH)
MEMBER (J)

Appeal No. 16/252/(ND)2022
Order Pronounced On: 27/09/2022