IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

BENCH – VI

Appeal No. 33/252/ND/2022

IN THE MATTER OF:-

INCOME TAX OFFICER, WARD 22(3), New Delhi

...Appellant

VERSUS

1. **REGISRAR OF COMPANIES**
   NCT OF DELHI & HARYANA
   4TH FLOOR, IFCI TOWER, NEHRU PLACE
   NEW DELHI – 110019

   ... Respondent 1

2. **M/S SATHI BUILDWELL PVT. LTD.**
   II FLOOR, KHANEJA COMPLEX,
   SHAKARPUR, DELHI – 110092

   ... Respondent 2

3. **POLO MANDAL**
   DIRECTOR OF M/S SATHI BUILDWELL PVT. LTD.
   II FLOOR, KHANEJA COMPLEX,
   SHAKARPUR, DELHI – 110092

   ... Respondent 3

4. **SHUSHIL KUMAR TIWARI**
   DIRECTOR OF M/S SATHI BUILDWELL PVT. LTD.
   II FLOOR, KHANEJA COMPLEX,
   SHAKARPUR, DELHI – 110092

   ... Respondent 4

Order Delivered on: 29.09.2022

CORAM:
SHRI. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)
SHRI. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

PRESENT-
For the Appellant: Adv. Puneet Rai, Sr. Standing Counsel

For the RoC: Ms. Sweety Khattar, ARoC

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ORDER

Per SHRI.RAHUL BHATNAGAR, 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 Respondent No. 2 Company, M/s Sathi Buildwell 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 ARoC, none appeared on behalf of the other Respondents to oppose the prayer made by the Appellant on any of the dates of hearing. Therefore, they were declared ex-parte vide order dated 29.08.2022. The ARoC submitted that they have no objection 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. The name of Respondent No. 2 Company 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 it. As per the averment made in the appeal and the information collected and received by the Income Tax Department, it is observed that Respondent Company (Respondent No.

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2) had transactions during AY 2015-16 and AY 2016-27, which have escaped assessment.

5. As per the Appellant, prima facie, there appears tax evasion. This requires action in accordance with law enabling the Income Tax Department to initiate proceedings against the company. The Assessee Company (Respondent No. 2) and its directors (Respondent No. 3 & 4) have failed to carry out their obligations and violated provisions of Income Tax Act, 1962; hence, proceedings were initiated against the Assessee Company.

6. The Appellant contends that on 31.03.2021, it issued notices bearing no. ITBA/AST/S/148/2020-21/1032082399(1) and ITBA/AST/S/148/2021-21/10320882390(1) under section 148 of Income Tax Act, 1961 against the Assessee for Assessment Years 2015-16 and 2016-17, respectively.

7. It was further contended by the Appellant that vide Form STK-7 at Serial No. 18608 dated 08.08.2018, the Appellant learnt from the MCA portal that the name of Respondent No.2 has been struck off by RoC.

8. The grievance of the Income Tax Department is that the name of the Respondent company had been struck off by the RoC, thus, seriously affecting the recovery of respondent company's tax dues.

9. It was submitted that despite the name of Respondent No. 2 being struck off under Section 248 of the Companies Act, 2013, as per Section 250 of Companies Act, 2013, the company does not stand dissolved for

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the purpose of discharge of obligations of the Company, including obligation to file return and comply with statutory notices and proceedings under the Income Tax Act, 1961. Therefore, it would be just and equitable and in public interest to restore the name of the Respondent Company to the Register of Companies.

10. Ld. Counsel for the Income Tax Department submits that in view of the afore-mentioned facts, great prejudice will be caused to revenue collection and the public interest if the name of the Respondent is not restored back.

11. The Respondents, other than RoC, were set ex-parte. The grounds raised by the Appellant have remained unrebutted. Their prayer merits consideration since recovery of tax dues from the Company by the Income Tax Department by following statutory provisions of Tax Laws requires reinstatement of the Company (Respondent No. 2) on the Register of Companies maintained by the RoC. The appeal is, therefore, allowed. The RoC is directed to restore the name of Respondent 2 in its Register and also proceed to take such other and further action against the respondents in accordance with the statutory provisions.

12. We, however, make it clear that this Bench has only directed restoration of the name of the appellant 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 the Applicant's entitlement to recover any amount as tax etc., which shall be adjudicated by the Department and the appellant authorities, subject

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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. The appeal is disposed off in terms of the above. Compliance be made with the ROC within 30 days.

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(Rahul Bhatnagar)
Member (Technical)

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(P.S.N. Prasad)
Member (Judicial)