

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V
(Special Bench)

Item No.-03
Appeal No.-66/252/ND/2022

IN THE MATTER OF:

Income Tax Officer

....Applicant

Vs.

ROC(M/s. Pratyakshya Share Brokers Pvt. Ltd.)

.....Respondent

SECTION

U/s 252

Order delivered on 23.05.2023

CORAM:

**SHRI P.S.N PRASAD,
HON'BLE MEMBER (JUDICIAL)**

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

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. Appeal No.-
66/252/ND/2022 **allowed.**

Sd/-
(DR. BINOD KUMAR SINHA)
MEMBER (T)

Sd/-
(P.S.N PRASAD)
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V
Appeal No. 66/252/ND/2022

IN THE MATTER OF:

INCOME TAX OFFICER, WARD 20(1), NEW DELHI
C. R. BUILDING, I. P. ESTATE,
NEW DELHI- 110002

...APPELLANT

VERSUS

1. REGISTRAR OF COMPANIES, DELHI

4TH FLOOR, IFCI TOWER,

61, NEHRU PLACE, NEW DELHI - 110019

...RESPONDENT NO. 1

2. M/S PRATYAKSHYA SHARE BROKERS PVT. LTD.

301, THIRD FLOOR, GALI NO. 39, DHAKA CHAMBER,

NAIWALA, KAROL BAGH, NEW DELHI-110005

...RESPONDENT NO. 2

3. MANISH MADAN, DIRECTOR

301, THIRD FLOOR, GALI NO. 39, DHAKA CHAMBER,

NAIWALA, KAROL BAGH, NEW DELHI-110005

...RESPONDENT NO. 3

4. PARVEEN NASSA, DIRECTOR

301, THIRD FLOOR, GALI NO. 39, DHAKA CHAMBER,

NAIWALA, KAROL BAGH, NEW DELHI-110005

...RESPONDENT NO. 4

Order Delivered on: 23.05.2023

CORAM:

SHRI P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

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

PRESENT:

For the Appellant : Mr. Puneet Rai, Sr St Counsel, Ms. Madhavi
Shukla Jr St Counsel, Adv Nikhil Jain

For the RoC :

ORDER

AS PER: SHRI P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

1. This appeal has been filed by Income Tax Authority invoking the provisions of Section 252(1) of the Companies Act, 2013 for restoration of the name of the Respondent No. 2 Company, M/s Pratyakshya Share Brokers Pvt. Ltd., in the Register of Companies maintained by the RoC, Respondent No. 1.
2. Service was duly affected via speed post and publication in newspapers dt. 16.01.2023 on the Respondent Company. The proof of service via publication was filed vide an Affidavit of Service dt. 16.01.2023.
3. The name of the Respondent Company appeared in Serial No. 7 of the newspaper publication and the next date of hearing i.e. 19.01.2023 was mentioned in the public notice. Other than the RoC, none appeared on behalf of the Respondent Nos. 2 to 5 to oppose the prayer made by the Appellant. RoC has submitted that they have no objection in hearing dated 02.11.2022.
4. 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 filing Statutory Returns.
5. Respondent No. 2 Company, which had not filed any Return or Financial Statement, was duly struck off from the Register of Companies vide STK-7 dt. 08.08.2018.
6. Invoking the provision of Section 252(1) of the Companies Act, the Income Tax Dept. prayed for its restoration in order to carry out proceedings initiated against them. As per the averments, the Appellant was in possession of information that there are many transactions by which income of the Respondent Company has escaped assessment for AY 2016-17 thereby rendering the Respondent Company liable for consequences under Income Tax Act, 1961. Hence, proceedings were initiated against the

Respondent Company and notice dt. 31.03.2021 u/s 148 of the I.T. Act was issued for A.Y. 2016-17.

7. The copy of Assessment Order dt. 30.03.2022 along with Demand Notice for A.Y. 2016-17 reflecting the total outstanding demand of Rs.4,05,98,560/-. It is submitted that penalty proceedings under Section 271A, Section 271(l)(c) and Section 271F of the Income Tax Act, 1961 were initiated against the Respondent Company.

8. The grievance of the Income Tax Dept. is that the name of the Respondent Company had been struck off by the RoC seriously affecting the assessment proceedings. The provisions of the Companies Act, 2013 cannot be employed in a manner which creates immunity for the Assessee from discharging its tax liability. It is therefore necessary that in order to take steps for recovery of taxes and for any further consequential proceedings, that the Respondent Company's name be restored to the Register of Companies as if the name of the Company was never struck off. The restoration of the name of the Respondent Company to the Register of Companies would be just and equitable and in public interest.

9. Ld. Counsel for the Income Tax Submits that the aforesaid facts necessitate restoration of the name of the Respondent Company in the Register of Companies to proceed further in accordance with law. In view of the grounds raised by the Appellant, being an aggrieved person, the prayer can be entertained u/s 252 of the Companies Act.

10. The Appeal is, therefore, **ALLOWED**. The RoC 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 respondents in accordance with the statutory provisions.

11. We however make it clear that this Bench has only directed restoration of the name of the Respondent Company in the Register of Companies maintained by the RoC on the basis of averments made in the appeal and in no way endorse or have adjudicated about their entitlement

to recover which shall be adjudicated by the department subject to the laws of limitation governing such recoveries. Charges involved in seeking restoration of the Respondent Company's name with the office of the RoC shall be borne by the Appellant. Compliance be made with the RoC within 30 days.

Sd/-

**(DR. BINOD KUMAR SINHA)
MEMBER (T)**

Sd/-

**(P.S.N PRASAD)
MEMBER (J)**