

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 221

Company Appeal-96/ND/2023

IN THE MATTER OF:

**Dy. Commissioner of Income Tax,
Central Circle 32**

...

Appellant

Versus

ROC, M/s Sparsh Vayapar Pvt. Ltd.

...

Respondent

Under Section: 252 (1)

Order delivered on 02.02.2024

CORAM:

**SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)**

**SH. SUBRATA KUMAR DASH
HON'BLE MEMBER (T)**

PRESENT:

For the Appellant :

For the Respondent : Adv Sudarshan Ranjan, Adv Ashutosh Gupta,
Adv Gaurav Rana, Counsel for the Respondent
Nos. 3 and 4

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

The Respondent No. 2 viz., M/s Sparsh Vayapar Pvt. Ltd. was incorporated in terms of the provisions of Companies Act 1956, vide CIN NO. U51909DL 2004PTC268086. The Deputy Commissioner of Income Tax- Central Circle 32, New Delhi, issued notice to the Respondent No. 2 under Section 153A of Income Tax Act 1961 for the assessment year 2014-2015 to 2019-2020. Subsequently it also issued notice to Respondent No. 2 in terms of the provisions of Section 142(1) of Income Tax Act 1961 for the same period. In the year 2022 i.e. on 19.05.2022 the Respondent No. 2 gave its response to the notice by stating that it had already been struck off from the record of the Registry of Corporate Affairs.

The appellant has preferred the present appeal on the ground inter alia that the dues of the Income Tax Department recoverable from the CD. It is also the

plea raised in the appeal that the Respondent No. 2 has cash balance in his account. The averments made in this regard in para 9 of the appeal reads thus:-

9. "That the procedure laid down under Section 252 of the Companies Act, 2013 for getting the name of the company removed from the register of the Ld. ROC cannot be allowed to be invoked so as to result in escapement of tax liability or any other liability."

The salient plea espoused on behalf of the appellant is that the Respondent No. 2 is mandatorily required to discharge its liabilities and obligation in terms of the provisions of Section 250 of the Companies Act. The appeal also contained the reference to the provisions of Section 252 of the Act i.e. the procedure regarding restoration of the name of company in the Register of Companies. According to the appellant, it is only in the guise of the fact that Respondent No. 2 is not existent that it could evade to pay the penalty imposed upon it.

The Ld. Counsel appearing for the Respondent Nos. 3 & 4 submitted that the said Respondents have no objection to the prayer made in the appeal. As can be seen from the Performa for recording of satisfaction about the books of accounts or documents, seized or acquisition or any information containing the Performa, referred to in Section 153A of Income Tax Act, during the course of search conducted by the Income Tax Department and the statement recorded under Section 132(4) of the Income Tax Act 1962, it could be revealed that the Respondent No. 2 had entered into sale/purchase transaction and had received the cash amount of Rs. 3.37 crores in 2017 and Rs. 4.57 crores in the year 2018. Coloumn 5 & 6 of the Annexure A3 reads thus:-

5.	PAN of other person	AAIC85566Q
6.	Identification of the seized asset/papers/material which in the opinion of AO of the searched person (SN No. 2) belong to the other person (S No. 4)	<p>During the course of search at 56-A(38), Hari Nager Ashram, Mathura Road, New Delhi which belongs to the Kuldeep Bishnoi group, a diary wherein certain hand written transaction related to sale of plot of land was found and seized as Annexure-1 of Party No T-3.</p> <p>During the course of statement recorded u/s 132(4) of the Income Tax Act, 1961, Sh. Sukumar Poria (Personal Assistant of Kuldeep Bishnoi) was asked to furnish the details of all the properties sold or purchased by any of the family members of Sh. Kuldeep Bishnoi or any firm/company controlled by them. He was asked to furnish the details of cash and non-cash (cheque) amounts involved in these transactions.</p> <p>With regard to a property held by M/s Sparsh Vyapar Pvt. Ltd., during the search proceedings, various evidences were received which show that the sale transaction of the above property was carried out in parts, and involved cash components. The property was sold to Ms. Nishi Mehra, W/o Sh. Kishan Mehra, R/o 5, Flag Staff Road, Civil Lines,</p>

The notice issued to the Respondent No. 2 under Section 153C of Income Tax Act is placed on record at Annexure-A4 of the appeal.

From the aforementioned, it is clear that the Respondent No.2 had the cash proceed of the property disposed of by it and also has the liability towards the Income Tax Department. It is stare decisis that a company having properties in its possession and is liable towards creditor may be restored to the Register of Companies. It is also not debatable that the dues of Income Tax Department against the company striked off from the Register of Company fall in the category of debt. The notice of striking off and dissolution of the Respondent No. 2 (Form No. STK-7) dated 08.08.2018 is on record at page-104 of the Register of Companies.

The transaction entered into by the Respondent No. 2 and its liability to pay the penalty to Income Tax Department are sufficient ground to restore the name of Respondent No. 2 in the record of MCA. In view of the aforementioned that no objection expressed by the Ld. Counsel for the Respondent Nos. 3 & 4, the **appeal is allowed**. The Respondent No. 1 is directed to restore the name of the Respondent No. 2 in the Register of Companies within 30 days from the date of receipt of copy of this order. No cost.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)