

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

Item No. 222
Appeal-123/252/ND/2023

IN THE MATTER OF:

Income Tax Officer, Ward 20(3), New Delhi ... Applicant/Petitioner

Versus

RoC & Ors. {M/s Swoon Clothing Pvt. Ltd.} ... Respondent

Under Section: 252 (3) Comp. Act

Order delivered on 12.04.2024

CORAM:

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

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

PRESENT:

For the Applicant/IT Dept. : Sr. Standing Counsel, Puneet Rai, Jr. Standing Counsel, Rishabh Nangia, Jr. Standing Counsel, Ashvini Kumar, Adv. Nikhil Jain

For the Respondent :

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

The prayer made in the captioned Appeal reads thus:

“(a) To pass an order restoring the name of the Respondent/Company in the Register of the Registrar of Companies;

(b) To Quash the order/notification of the Ld. ROC which removed the name of the Respondent Company from the Register of Companies;

(c) To grant an ad-interim stay on the operation of the impugned order/notification of the ROC;

(d) Any other relief which this Hon'ble Tribunal may deem fit and proper is awarded in favor of the appellant in the facts and circumstances of the case.”

2. As has been espoused in the Appeal, the Respondent No. 2 i.e. M/S Swoon Clothing Pvt. Ltd. has undisclosed income which is taxable and the said Respondent is liable for action in terms of the provisions of Income Tax Act, 1961. Para 5 to 8 of the Appeal reads thus:

5. That a showcause notice under Section 148A(b) of the Act was issued to the Assessee Company on 07.03.2023 for assessment year 2019-20 after obtaining the prior approval from the competent authority to submit the reply within a week. True copy of Notice dated 07.03.2023 issued under clause (b) of Section 148A of the income Tax Act 1961 is marked and annexed as **ANNEXURE A-2**.
6. That during the year under consideration, Assessee Company has indulged into bogus sale. As per information received and collected by the Department during the course of search proceeding in the case of M/s KK Spun India Ltd., it was found that Shri Aditya Jain being an accommodation entry operator has provided accommodation entries to M/s KK Spun Group. Shri Aditya Jain, has admitted in his statement that loan arranged by him for M/s KK Spun India Pvt. Ltd. from 23 entities including M/s Big Marketing which were dummy entities, accounts of whom were used to provide entries to M/s KK Spun India Pvt. Ltd. The assessee company has made bogus sale to M/s Big Marketing of Rs.2,82,97,200/- during F.Y. 2018-19.
- i. Undisclosed income of Rs.2,82,97,200/- chargeable to tax has escaped assessment.

7. That due to non-compliance of notice under Section 148A(b) on merits of the case by the Assessee company and also in light of information/material available with the department, the Appellant passed order under clause (d) of Section 148A of the income Tax Act 1961 on 28.03.2023. It is submitted that proceedings were initiated against the Assessee Company and a notice under section 148 of Income Tax Act, 1961 was issued against the Assessee on 28.03.2023 for the Assessment Year 2019-20.

True copy of the Order dated 28.03.2023 passed under clause (d) of Section 148A and Notice dated 28.03.2023 issued under Section 148 of the Income Tax Act, 1961 are attached herein and marked as **ANNEXURE A-3 Colly.**

8. That in absence of any reply by the Assessee Company, the Appellant Revenue further investigated and came to know from the MCA portal that the said Respondent Company has been struck off by the ROC, vide Form STK-7 dated 20.04.2022 (Company's name appearing at Serial. No. 2995).

True copy of Notice of Striking off by the office of Registrar of Company available on website of Ministry of Corporate Affairs, (Form STK-7) dated 20.04.2022 is attached herewith and marked as **ANNEXURE A-4.**

3. It is the plea espoused on behalf of the Appellant that in terms of the provisions of Section 250 of the Companies Act, 2013, despite being struck off from the Register of Companies, the Company is liable to discharge the obligation to file Income Tax Return (ITR) and comply with Statutory notices and proceedings of the Income Tax Act.

4. The Appeal has espoused that the restoration of the name of the Company of the Respondent No.2 to the Register of Companies would be just and equitable and in public interest. It is also the case of the Appellant that in terms of the provisions of Section 252(1) of the Income Tax Act, the Appellant falls in category of Creditor and has locus to file the present appeal.

5. No one appeared on behalf of the Respondents, despite service of notice by way of substituted modes, viz. by way of publication. The order dated 12.01.2024 reads thus:

As prayed by Ld. Proxy Counsel appearing for the appellant, the notice is directed to be served upon the Respondents by substituted modes i.e. by way of publication in two national newspapers, one in Hindi and another one in English. Let the proof of service/report be filed within 4 weeks from today.
List on 12.04.2024.

6. Since certain income of the Respondent No. 2 escaped the assessment by Jurisdictional Assessment Officer and the Appellant could not take steps to recover the revenue chargeable from Respondent No. 2, we find it just and proper to allow the present appeal. Ordered accordingly.

7. The Appellant shall serve the copy of this order upon the Registrar of Companies within one week. The RoC shall restore Respondent No. 2 in Register of Companies within 30 days, from the date of receipt of copy of this order.

Sd/-

**(SUBRATA KUMAR DASH)
MEMBER (T)**

Sd/-

**(ASHOK KUMAR BHARDWAJ)
MEMBER (J)**