

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, BENCH - II
Appeal- 231/252/ND/2022

IN THE MATTER OF:

INCOME TAX OFFICER, WARD 22(3)
NEW DELHI

...Appellant

VERSUS

1. THE REGISTRAR OF COMPANIES, DELHI

Having his office at:
4th Floor, IFCI Tower, 61
Nehru Place, New Delhi – 110019.

...Respondent no. 1

2. M/S SARTHAK COMPUTERS PVT. LTD.,
B-3, B- East Vinod Nagar,
New Delhi – 110091.

...Respondent no. 2

3. NARESH GOYAL, DIRECTOR
B-3, B- East Vinod Nagar,
New Delhi – 110091.

...Respondent no. 3

4. SURESH KUMAR, DIRECTOR
B-3, B- East Vinod Nagar,
New Delhi – 110091.

...Respondent no. 4

Order Delivered on: 20.01.2023

CORAM:

SH. ASHOK KUMAR BHARDWAJ,
HON'BLE MEMBER(JUDICIAL)

SHRI ATUL CHATURVEDI,
HON'BLE MEMBER (TECHNICAL)

PRESENT- Mr. Puneet Rai, Sr. Standing Counsel along with Ms. Adeeba Mujahid, Jr. Standing Counsel for Income Tax.

ORDER

Per Sh. Ashok Kumar Bhardwaj (Member Judicial)

The plea espoused in the present company appeal No. 231/252/ND/ 2022 is to quash the order/ notification issued by the Registrar of Companies, removing the name of respondent company namely M/s Sarthak Computers Pvt. Ltd. (respondent no.2, herein) from the register of the companies, having the respondent no.3 (Naresh Goyal) and respondent no. 4 (Suresh Kumar) as its Directors, on the ground interalia;

- (i) The income of the respondent no.2 chargeable the tax could escape assessment and the notice under Section 148 of the Income Tax Act 1961 was issued to it qua the assessment years 2013-14 and 2014-15 on 18.7.2022 and 22.7.2022 respectively.
- (ii) In terms of the provision section 248 of the Companies Act the assets of the company need to be made available for payment or discharge of all its liabilities and obligations even after the removal of its name from the register of companies. In the wake the striking of respondent no.1 from the register of the companies shall not absolved it from its liabilities and obligations.
- (iii) Once the company made certain transactions during the years 2012-13 and 2013-14, its income for the period need to be taken into account for the purpose of its liability to pay income tax.

2. In view of the contended Section 252(1) and 252(3) the appellant herein can challenge the order passed by the RoC, striking the name of respondent no.2 company from the register of the companies. In terms of the provision of section 252(1) the challenge can be espoused within three years from the date of the order, i.e; the period of limitation prescribed in 252(3) for the purpose of restoration of name of the company.

3. Since the assessee is liable to pay advance tax and TDS is deducted on the income accrued to it, the liability of the company towards such amount survive in terms of the provisions of Income Tax Act, resultantly the obligation of company accrue even before the assessment order is passed. The assessment order only quantifies the liability and the obligation of the assessee who pay the tax which arise during the relevant financial years i.e; 2012-13 and 2013-14, in the present case when the transactions were made by the respondent no.2. In the guise of the fact that the respondent no.2 is non-existent entity the assessee as also the respondent nos. 3 & 4 as the directors of respondent no.2 company are trying to escape the payment and liability. In the guise that its name got struck off from the registrar of companies, the respondent no. 2 cannot escape from its answerability/ liability towards the law.

4. As can be seen from the notice dated 31.12.2019 the respondent no.2 i.e; M/s Sarthak Computers Pvt. Ltd. (CIN No.U72900DL1994PTC061161) was struck of from the register of the companies with immediate effect and was dissolved, the order/ reference raised as STK-7 as under:-

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FORM No. STK - 7

NOTICE OF STRIKING OFF AND DISSOLUTION

[Pursuant to sub-section (5) of section 248 of the Companies Act, 2013 and rule 9 of the Companies
(Removal of Names of Companies from the Register of Companies) Rules, 2016]

GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS
Office of the Registrar Of Companies

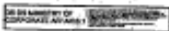
4th Floor, IFCI Tower 61, New Delhi, Delhi, India, 110019

Dated : 31.12.2019

Reference:

In the matter of Companies Act, 2013 and of M/s SARTHAK COMPUTERS PRIVATE LIMITED , CIN U72900DL1994PTC061161 .

This is with respect to this Office's Notice No. ROCDelhi/248(2)/029274/2018 dated 12.11.2018 application (Form STK 2) dated 21.06.2018 vide SRN G90062348 and notice in form STK 5 issued on dated NA . Notice is hereby published that pursuant to sub-section (5) of Section 248 of the Companies Act, 2013 the name of M/s SARTHAK COMPUTERS PRIVATE LIMITED has this day of December been struck off the register of companies and the said Company is dissolved.


Registrar of Companies
AKSHAYA KUMAR SAHOO
Registrar of Companies/Additional Registrar of Companies/Joint Registrar of
Companies/Deputy Registrar of Companies/Assistant Registrar of Companies

Mailing Address of the company as per record available in Registrar of Companies office:
M/s SARTHAK COMPUTERS PRIVATE LIMITED
B-3-B, EAST VINOD NAGAR, East Delhi, Delhi, India, 110091

5. The factual position and the stand espoused by the appellant in the appeal is that the respondent no.2, M/s Sarthak Computers Pvt. Ltd. is an unlisted private company incorporated on 31.08.1994 under the Companies Act 1956 and at the time of company being struck off, its registered office was at B-3, B-East Vinod Nagar, New Delhi- 110091. Thus, the Income Tax Officer of Ward- 22(3), New Delhi is jurisdictional officer qua the same. Notice could be issued to respondent no.2 under section 148 of the Income Tax Act qua the assessment year 2013-14 and 2014-15 on 19.04.2001 and 14.02.2002 respectively.

6. The notice was quashed by Hon'ble Delhi High Court in WP(C) 14394/2021 & CM APPL. 47157/2021 M/S SARTHAK COMPUTERS PVT. LTD versus INCOME TAX OFFICER WARD 22(3) DELHI AND ANR. The relevant excerpt of the judgment passed Hon'ble High Court reads as :-

“Admittedly, the first question has been answered by this Court in favour of the petitioners/assesses in the case of Mon Mohan Kohli vs. Assistant Commissioner of Income Tax & Anr., W.R(C) No.6176/2021 dated 15th December, 2021. The conclusion reached by this Court in the said case is reproduced hereinbelow;-

CONCLUSION

97. This Court is of the view that as the Legislature has introduced the new provisions, Sections 147 to 151 of the Income Tax Act, 1961 by way of the Finance Act, 2021 with effect from 1st April, 2021 and as the said Section 147 is not even mentioned in the impugned Explanations, the reassessment notices relating to any Assessment Year issued under Section 148 after 31st March, 2021 had to comply with the substituted Sections.

98. It is clarified that the power of reassessment that existed prior to 31st March, 2021 continued to exist till the extended period i.e. till 30th June, 2021; however, the Finance Act, 2021 has merely changed the procedure to be followed prior to issuance of notice with effect from 1st April, 2021.

99. This Court is of the opinion that Section 3(1) of Relaxation Act empowers the Government/Executive to extend only the time limits and it does not delegate the power to legislate provisions

to be followed for initiation of proceedings. In fact, the Relaxation Act does not give power Government to extend the erstwhile Sections 147 to 151 beyond 31 March, 2021 and/or defer the operation of substituted provisions enacted by the Finance Act, 2021. Consequently, the impugned Explanations in the Notifications dated 31st March, 2021 and 27th April, 2021 are not conditional legislation and are beyond the power delegated to the Government as well as ultra vires the parent statute i.e. the Relaxation Act. Accordingly, this Court is respectfully not in agreement with the view of the Chhattisgarh High Court in Palak Khatuja (supra), but with the views of the Allahabad High Court and Rajasthan High Court in Ashok Kumar Agarwal (supra) and Bpip Infra Private Limited (supra) respectively.

100. The submission of the Revenue that Section 6 of the General Clauses Act saves notices issued under Section 148 post 31 March, 2021 is untenable in law, as in the present case, the repeal is followed by a fresh legislation on the same subject and the new Act manifests an intention to destroy the old procedure. Consequently, if the Legislature has permitted reassessment to be made in a particular manner, it can only be in this manner, or not at all.

101. The argument of the respondents that the substitution made by the Finance Act, 2021 is not applicable to past Assessment Years, as it is substantial in nature is contradicted by Respondents' own Circular 549 of 1989 and its own submission

that from 1st July, 2021, the substitution made by the Finance Act, 2021 will be applicable.

102. Revenue cannot rely on Covid-19 for contending that the new provisions Sections 147 to 151 of the Income Tax Act, 1961 should not operate during the period 1st April, 2021 to 30th June, 2021 as Parliament was fully aware of Covid-19 Pandemic when it passed the Finance Act, 2021. Also, the arguments of the respondents qua non-obstante clause in Section 3(1) of the Relaxation Act, legal fiction ' and 'stop the clock provision ' are contrary to facts and untenable in law.

103. Consequently, this Court is of the view that the Executive/Respondents/Revenue cannot use the administrative power to issue Notifications under Section 3(1) of the Relaxation Act, 2020 to undermine the expression of Parliamentary supremacy in the form of an Act of Parliament, namely, the Finance Act, 2021, This Court is also of the opinion that the Executive/Respondents/Revenue cannot frustrate the purpose of substituted statutory provisions, like Sections 147 to 151 of Income Tax Act, 1961 in the present instance, by emptying it of content or impeding or postponing their effectual operation."

Keeping in view the aforesaid conclusion, Explanations A(a)(ii)/A(b) to the Notifications dated 31st March, 2021 and 27th April, 2021 are declared to be ultra vires the Relaxation Act, 2020 and are therefore bad in law and null and void. Consequently, the present writ petitions are allowed and the

impugned reassessment notices issued under Section 148 of the Income Tax Act, 1961 are quashed.”

7. Nevertheless, in Union of India vs. Ashish Aggarwal in Civil Appeal No. 3005/2022, the Hon’ble Supreme Court viewed that the notices issued under section 148 of the IT Act (unamended) could be procedural thus, under section 148(A) of the Finance Act, 2021, subject to compliance of the procedural requirements and the defences, which may be available to the assessee under the substituted provisions of section 147 to 151 of the IT Act the action initiated by the authorities might resume. Relevant extract of the judgment reads as:-

“Therefore, we propose to modify the judgments and orders passed by the respective High Courts as under: -

- (i) *The respective impugned section 148 notices issued to the respective assessees shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021 and treated to be show-cause notices in terms of section 148A(b). The respective assessing officers shall within thirty days from today provide to the asssees the information and material relied upon by the Revenue so that the assessees can reply to the notices within two weeks thereafter;*
- (ii) *The requirement of conducting any enquiry with the prior approval of the specified authority under section 148A(a) be dispensed with as a one-time measure vis-a-vis those notices which have been issued under Section 148 Of the unamended Act from 01.04.2021 till date, including those which have been quashed by the High Courts;*

- (iii) *The assessing officers shall thereafter pass an order in terms of section 148A(d) after following the due procedure as required under section 148A(b) in respect of each of the concerned assesses*
- (iv) *All the defences which may be available to the assessee under section 149 and/or which may be available under the Finance Act, 2021 and in law and whatever rights are available to the Assessing Officer under the Finance Act, 2021 are kept open and/or shall continue to be available and*
- (v) *The present order shall substitute/modify respective judgments and Orders passed by the respective High Courts giving the similar notices issued under unamended Section 148 Of the IT Act irrespective of whether they have been assailed before this Court or not.”*

8. In view of the order passed by the Hon’ble Supreme Court, the appellant issued fresh notice to the respondent no.1 under section 148 (A)(B). The copy of the notice is placed on the record as Annexure A6.

9. Nevertheless, before issuance of notice dated 22.7.2022, the company was found struck off from the register of companies. The learned counsel for the RoC did not oppose the appellant. Normally if the grounds espoused by the RoC for striking off the companies name are found unsubstantial, the company may be restored to its original position and should be restore to the register of the companies.

10. Thus, in view of the statement made by learned counsel for RoC, the view as above can be taken in the appeal nevertheless since there was no representation before this Tribunal on behalf of respondents 2 to 4, in the interest of justice, a fresh notices need to

be issued to unserved respondents. The appellant is directed to serve notice to unserved respondents 2 to 4 by all modes i.e; speed post, courier, registered post and an email. The proof of service of notice may be filed within a week. Let the matter be listed on 13.03.2023.

Sd/-
(Atul Chaturvedi)
Member (Technical)

Sd/-
(Ashok Kumar Bhardwaj)
Member (Judicial)