

(2025) 01 NCLT CK 0006

National Company Law Tribunal, New Delhi Bench

Case No: Appeal No. 2/252/ND/2024

Income Tax Officer, Ward 21(1),
New Delhi

APPELLANT

Vs

Registrar Of Companies, Delhi &
Ors.

RESPONDENT

Date of Decision: Jan. 20, 2025

Acts Referred:

- Companies Act 2013 - Section 252, 250, 248
- Income Tax Act 1961 - Section 148, 147

Hon'ble Judges: Atul Chaturvedi, Member (T); Bachu Venkat Balram Das, Member (J)

Bench: Division Bench

Advocate: Puneet Rai, Nikhil Jain

Final Decision: Allowed

Judgement

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. 2/252/ND/2024 is an Appeal filed by INCOME TAX OFFICER, WARD 21(1) New Delhi, the Appellant, before this Tribunal under Section 252(1)

and/or Section 252(3) of the Companies Act, 2013, for seeking the following relief:

“(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.â€

2. Facts of the Case:

a) The Respondent No. 2 Company namely M/s. Raj Rani Securities Pvt. Ltd. was incorporated on 05.08.2002 as an unlisted Private

Company Limited by Shares (Non-govt Company) having CIN: U67120DL2002PTC116429, under the erstwhile Companies Act, 1956 with

the Registrar of Companies Delhi. The Authorised Share Capital of the Respondent No. 2 Company was Rs. 1,00,00,000/- and the Paid-up

Share Capital of the Respondent No. 2 Company was Rs. 1,00,00,000/-. The Registered Office Address of the Respondent No. 2 Company

was 121A Pocket-D, Ashok Vihar, New Delhi-110052. Therefore, this Bench has jurisdiction to deal with this Appeal. A copy of the

Company Details/Master Data of the Respondent Company is filed along with the Appeal.

b) The Directors of the Respondent No. 2 Company Ms. Megha Jalan (DIN: 01063278) and Ms. Meena Jalan (DIN: 03433790) have been

arrayed as Respondent No. 3 and Respondent No. 4 respectively.

c) It is submitted that Notice dated 17.05.2021 under Section 148 of the Income Tax Act, 1961 was sent to M/s Raj Rani Securities Pvt. Ltd

by the Appellant which reads as â€œWhereas I have reasons to believe that your Income chargeable to Tax for the Assessment Year

2015-16 has escaped Assessment within the meaning of section 147 of the Income Tax Act, 1961. I, therefore, propose to assess/ re-

assess the income/ loss for the said Assessment Year and I hereby require you to deliver to me within 30 days from the service of this

notice, a return in the prescribed form for the said Assessment Year.â€

d) It is submitted that the Show cause notice under Section 148A(b) of the Income Tax Act 1961 (â€œActâ€) was issued to the Assessee

Company on 20.05.2022 after obtaining the prior approval from the competent authority to submit the reply on or before 03.06.2022. It is

submitted by the Appellants that in compliance with the Judgement of Honâ€™ble Supreme Court in the case of Union of India & Ors. Vs

Ashish Agarwal (2022 SCC Online SC 543), the show cause notice was issued to Respondent No.2, relevant portion of which reads as

follows:

“In this case, information has been received from ACIT, Circle-56(1), Delhi and insight portal. The Assessee M/s Raj Rani

Securities (P) Ltd. has been found to be a beneficiary involved in trading of penny stock of M/s Negotium International Trade Ltd.

(formerly Mahadushi International). As per the enquiry report of the penny stock, it is noted that the assessee M/s RajRani

Securities (P) Ltd. had transacted Rs.1,31,40,050/- in penny stock of M/s Negotium International Trade Ltd. (formerly Mahadushi

International). It has also purchase penny stock of Rs.26,28,500/-through Gracious software Ltd.”

e) Due to non-compliance of notice under Section 148A(b) on the part of the Assessee company and also in light of information/material

available with the Department, the Appellant passed the order dated 24.07.2022 under clause (d) of Section 148A of the Income Tax Act

1961 and proceedings were initiated against the Assessee Company and notice under Section 148 of Income Tax Act, 1961 was issued

against the Assessee on 28.07.2022 for the Assessment Year 2015-2016.

f) It is submitted that the Appellant Revenue Authority came to know from the MCA portal that the said Respondent Company has been

struck off by ROC, vide Form STK7 dated 29.10.2019 (Company’s name appearing at Serial. No.5524).

g) It is submitted that as per provisions of Section 250 of Companies Act 2013, despite “Strike Off” of the Respondent Company under

Section 248 of the Companies Act 2013, the company does not stand dissolved for 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. The restoration of the

name of the company to the Registrar of Companies would be just and equitable and in public interest.

h) The Income Tax Department is an aggrieved party within the meaning of Section 252(1) and also a creditor under Section 252(3) of the

Companies Act 2013 and great prejudice will be caused to Revenue and public at large, if the name of the Respondent is not restored back.

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 by any stretch of imagination be allowed to be invoked resulting in escapement of tax liability or any other liability on the

company which seeks to get its name removed from the register of the Ld. ROC.

i) It has been further submitted by the Appellant that in the present case, the company in the Assessment year 2013-14 made certain

transactions on which the income has escaped assessment and the company shall remain liable for the acts done by the company.

3. It is noted that on 07.10.2024, no one appeared on behalf of Respondent Nos. 2, 3 and 4, despite due service of notice and paper publication.

Therefore, Respondents No. 2, 3 and 4 were set ex-parte.

4. Analysis and Findings

a. Considering the facts and circumstances of the case before us and the averments as made by the Appellant, this Tribunal is of the earnest

view that fairness and justice go hand in hand and so this Tribunal must weigh the requirement of being just from the lens of fairness and

justice based on the reasons put forth by the Appellant in the instant appeal. It is to be borne in mind that the presence of the word "or

otherwise" signifies that even if the Company was not carrying on any business or was not in operation at the time of striking off, it is still

open to the Tribunal to order restoration, if it appears to it to be "otherwise" "just". Further, it is pertinent to mention that the term

"Creditor" in Section 252 of the Companies Act, 2013 ought to be construed widely so as to include a "creditor" whose debt was

contingent or prospective.

b. At this juncture, it is relevant to refer to the Hon'ble Delhi High Court's judgement in "Sidhant Garg and Anr. Vs. Registrar

of Companies and Ors." reported in (2012) 171 Comp. Cas. 326, wherein the Hon'ble High Court held that, "the word 'just' would mean that it is fair and prudent from a commercial point of view to restoring the Company and that the Court has to examine the

concept of "justness" not exclusively from the perspective of a creditor or a member or a debtor but from the perspective of the society as a whole.

c. As per the factual matrix appraised by the Appellant the Income chargeable to tax for Assessment Year 2015-2016 of Respondent No.2

i.e. M/s Raj Rani Securities Pvt. Ltd. has escaped assessment which is shown by the Appellant through Notice dated 17.05.2021 under

Section 148 and Show Cause Notice dated 20.05.2022 under section 148A(b) of Income Tax Act, 1961.

d. Learned Counsel for the Appellant requested time to file Assessment Order and Demand Notice. On 15.07.2024 this Tribunal passed the

following order:

"The Appellant has filed proof and affidavit of service in compliance with the order dated 26.02.2024. Learned Counsel

appearing for the Appellant seeks further time to file Assessment Order and Demand Notice. One week time granted."

e. On 16.12.2024 this Tribunal passed the following order:

"The Appellant has brought on record a copy of the Assessment order and Demand notice as directed vide order dated

07.10.2024. We have heard the submissions made by Ld. Counsel appearing for the Appellant. Order reserved."

In compliance of the abovementioned orders the Appellant brought on record the Assessment order dated 24.12.2019 and Demand Notice

dated 24.12.2019 for Assessment Year 2012-13.

f. We are of the considered view that the Appellant has succeeded in substantiating that demand of Rs. 1,66,27,310/- is pending for the

Assessment Year 2012-2013, against the Respondent No. 2 Company as assessed by the Appellant based on the demand notice dated

24.12.2019.

g. Accordingly, the Appellant succeeds in representing that the Appellant is the creditor of the Respondent No. 2 Company who is aggrieved

against the striking of Respondent No. 2 Company's name vide Registrar of Companies vide Form STK7 dated 29.10.2019

(Company's name appearing at Serial. No. 5524) and established before this Tribunal that there is a cogent and convincing reason as to

why the name of the Respondent No. 2 Company be restored in the register of companies maintained by the Registrar of Companies. Even

otherwise, collection of due taxes is a duty cast upon the Revenue authorities in the public interest only, which shall be adversely affected if

the Respondent No. 2 Company name is not restored to the Register of Companies maintained by the Registrar of Companies.

5. Order

i. In light of the above facts and circumstances, the Appeal bearing 2/252/ND/2022 filed by INCOME TAX OFFICER, CIRCLE 21(1), the

Appellant before this Tribunal under Section 252 of the Companies Act, 2013 stands allowed.

ii. In the interest of Revenue and the Public, we are of the considered view that it is just and equitable to restore the name of the Respondent

No. 2 Company i.e. M/s. Raj Rani Securities Pvt. Ltd. having CIN: U67120DL2002PTC116429 in the Register of Companies maintained by

the Registrar of Companies, Delhi to enable the Appellant to recover the outstanding demand of the tax liability of the Respondent No. 2

Company.

iii. The Registrar of Companies Delhi is therefore directed to restore the name of the Respondent No. 2 Company in their Register and also

proceed to take such other and further penal action against the Respondent in accordance with the statutory provisions. As a consequence,

the name of the Respondent Company shall stand restored to the Register of the Registrar of Companies, as if the name of the company had

not been struck off in accordance with Section 248(1) of the Companies Act, 2013.

iv. We make it clear that this Tribunal has only directed restoration of the name of the Respondent No. 2 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 about the

Appellant's entitlement to recover any amount as tax, etc. which shall be adjudicated by the Department and the Appellant authorities,

subject to the laws of limitation governing such recoveries.

v. However, Charges, if any involved in seeking restoration of the company's name with the office of the ROC shall be borne by the

Appellant itself.

No order as to costs.

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