

In the National Company Law Tribunal
New Delhi, Court- IV

Appeal No. 952/252/ND/2019

(In the Matter of Section 252(1) & 252(3) of the Companies Act, 2013)

IN THE MATTER OF:

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE- 5(1), NEW DELHI

....APPELLANT

VERSUS

REGISTRAR OF COMPANIES AND OTHERS
(M/S BRAINBIRD TOURISM PRIVATE LIMITED)

....RESPONDENTS

Order Pronounced On: 16.07.2021

CORAM :

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

SHRI K. K. VOHRA,
MEMBER (TECHNICAL)

For the Appellant : Ms. Lakshmi Gurung, Sr. St. Counsel

For the ROC : Ms. Sweety Kumar, AROC

Appeal No. 952/252/ND/2019

Assistant Commissioner of Income Tax, Circle- 5(1), New Delhi

Vs. ROC (M/s Brainbird Tourism Pvt. Ltd.)

MEMO OF PARTIES

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE- 5(1), NEW DELHI
ROOM NO. 225D,
2ND FLOOR, C.R. BUILDING, I.P. ESTATE,
NEW DELHI – 110002.

...APPELLANT

VERSUS

REGISTRAR OF COMPANIES

NCT OF DELHI & HARYANA,
4TH FLOOR, IFCI TOWER,
61, NEHRU PLACE,
NEW DELHI- 110019.

...RESPONDENT NO. 1

M/S BRAINBIRD TOURISM PRIVATE LIMITED

SHOP NO. 1, WEDDING SOUK MALL,
LSC SHARDA NIKETAN, PITAMPURA,
NEW DELHI- 110034.

ALSO AT:

5C/13, NEW ROHTAK ROAD,
NEW DELHI- 110005.

...RESPONDENT NO. 2

MR. ASHISH

3634, GALI NO. 5,
NARANG COLONY, TRI NAGAR,
NEW DELHI- 110035.

...RESPONDENT NO. 3

MR. ARUN GUPTA

28, F-BLOCK, POCKET- 19,
SECTOR- 15, ROHINI,
NEW DELHI- 110085.

...RESPONDENT NO. 4

ORDER

PER – SHRI K. K. VOHRA, MEMBER (JUDICIAL)

1. This appeal is filed by Income Tax Department through Assistant Commissioner of Income Tax, Circle- 5(1), New Delhi, having office at Room No. 225D, C.R. Building, I.P. Estate, New Delhi- 110002 (for brevity the ‘appellant’), under Section 252(1) r/w Section 252(3) of the Companies Act, 2013 (for brevity ‘the Act’) read with Rule 7 & 9 of Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 by Registrar of Companies, the respondent herein.

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- 2.** The respondent no. 2, M/s Brainbird Tourism Private Limited, is the stuck of company having its registered office at Shop No. 1, Wedding Souk Mall LSC Sharda Niketan Pitampura, North-West, New Delhi- 110034, bearing CIN U63040 DL2012 PTC244150, Mr. Ashish and Mr. Arun Gupta are respondents no. 3 and 4 who are directors of the company.
- 3.** It is submitted that as per the information with Revenue through NMS/ITD Software, information from AIR/CIB Statements and Individual Transaction Statements (ITS) and 26AS, I-taxnet data and ITBA-AIMS statement, it is observed that substantial cash deposits to the tune of Rs. 14,75,000/- was made in the Respondent Company's Bank Account No. 7011785490 with Kotak Mahindra Bank during the period of demonetization in A.Y. 2017-18. As per the Appellant, the respondent no. 2 did not file its ITR and did not disclose fully and truly all material facts necessary for assessment, the Appellant has reason to believe that an estimated amount of at least Rs. 14,75,000/- has escaped the assessment.
- 4.** The appellant has further submitted that it appears that there is tax evasion which has escaped assessment within the meaning of Section 147 & 148 of the Income Tax Act, for income against the credit for amount of Rs. 14,75,000/-. Denial to restore the name of the respondent-company in the Register of the ROC, will be prejudicial to the interest of the revenue in the long run.
- 5.** After approval from the Assistant Commissioner of Income Tax- 5, notice under Section 148 of the IT Act, dated 23.10.2018 was issued. The said notice was

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never replied to, by the Directors nor by any other representative of the company.

- 6.** On perusal of the MCA website, the Appellant has come to know that the name of the respondent company was struck off in terms of provision of Section 248(1) of the Companies Act, 2013, read with Rule 7 and Rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 vide notice by the ROC.
- 7.** The Respondent herein had issued Public Notice bearing No. ROC/DELHI/248/STK-5/2018/2912 dated 18.06.2018. Consequently, Appellant's name was struck off vide Notice bearing No. ROC/DELHI/248(5)/STK-7/4865 dated on 08.08.2018 (Company's name appearing at Sl. No. 3725) whereby name of 24280 Companies have been struck off w.e.f. 08.08.2018 from the Registrar of Companies.
- 8.** The respondents were served with appeal and service affidavit is filed. The respondents no. 2 to 4 are served through publication in one English and one vernacular newspaper vide publication dated 30.01.2020. None appears for respondents no. 2 to 4. Matter to proceed ex-parte, against respondents no. 2 to 4 vide order dated 03.03.2021.
- 9.** The appellant submitted that the Income Tax Department being aggrieved person and also creditor under Section 252(1) and 252(3) of the Companies Act, 2013 by the removal of the name of the Company from the register by the

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Registrar of the Company as for the reopening of assessment proceedings the Company has to be in existence.

- 10.** In above circumstances, this Appeal is allowed. The Registrar of Companies 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 Respondent in accordance with the statutory provisions. The name of the respondent-company shall then, as a consequence, 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.
- 11.** We, however, make it clear that this Bench has only directed restoration of the name of the appellant 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 Applicant's entitlement to recover any amount as tax etc. which shall be adjudicated by the Department subject to the laws of limitation governing such recoveries. Charges involved in seeking restoration of the company's name with the office of the ROC shall be borne by the applicant. Petition is disposed of in terms of the above. Compliance be made with the ROC within 30 days.
- 12.** Let the copy of the order be served to the parties.

Sd/-
K. K. VOHRA
MEMBER (T)

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