

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**PRINCIPAL BENCH**

**Appeal No.274/2017**

**IN THE MATTER OF:**

Pr. Commissioner of Income Tax, Delhi-8 ..... Applicant/petitioner  
(M/s. Nevasa Apparels Private Limited)

Vs.

Registrar of Companies ..... Respondent

**Order under Section 252 of the Companies Act**

**Order delivered on 22.12.2017**

**Coram:**

**CHIEF JUSTICE (Retd.) M.M. KUMAR**  
**Hon'ble President**

**Ms. Deepa Krishan**  
**Hon'ble Member (T)**

For the Applicant/petitioner: Mr. Zoheb Hussain, Senior Standing Counsel for  
Income Tax Department  
For the Respondent: Ms. Aparna Mudiam, AROC  
Mr. Manish Raj, Company Prosecutor

**ORDER**

Notice of the appeal.

Mr. Manish Raj, learned company prosecutor accepts notice.

A complete copy of the paper book has already been handed over to learned company prosecutor.

Learned counsel for the petitioner-revenue has argued that the respondent company namely M/s. Nevasa Apparels Private Limited was struck off by notification issued by the Registrar of Companies dated 25.01.2017 (Annexure A/3) on the basis of an application filed by the Director of the company under the fast track exist scheme. In the affidavit a specific statement on oath

has been made in para 8 to the effect that on the date of filing the affidavit (on 02.04.2016) the company did not have any dues of Income tax/Sales tax/Central Excise/Banks and Financial Institutions or any other Central or State Government Departments/Authorities or any Local authorities. It was also deposed in para 9 that no litigation was pending against or involving the company namely M/s. Nevasa Apparels Private Limited. However, in respect of assessment year 2010-11 the proceedings under Section 148 of Income Tax Act have been initiated by issuing notice on 15.03.2017 and the Principal Commissioner of Income Tax, Delhi-appellant found that the company has already been struck off. Consequently, the present appeal has been filed.

When the matter came up for consideration in the forenoon session we have asked the learned company prosecutor to seek instructions with regard to issuance of notice to the Income Tax Department. Accordingly, in the post lunch session the notices issued to the Income Tax Department has been produced before us. The necessity of production of the notice has arisen as learned counsel for the petitioner-revenue has pressed for interim stay because if the company is allowed to remain struck off from the register of the Registrar of Companies then the revenue is likely to

suffer huge pecuniary loss as in the proceedings under Section 148 of Income Tax Act the assessment is required to be framed. The notice which has been issued by the Registrar of Companies makes interesting reading and the same reads as under:-

“No. ROC/JUNE/2016/560/IT Dept/7906 to 7909 Dated 01.08.16

To,

1. The Chief Commissioner of Income Tax

Central Revenue Building,

IP State

New Delhi – 110002.

2. The Chief Commissioner of Income Tax

Sector 2 Panchkula,

Haryan -134115

3. ccit.delhi@incometax.gov.in

4. ccit.panchkula@incometax.gov.in

**Sub: No Objection Certificate or Objection if any in case of Companies which are under the process of strike off**

Sir,

I am directed to forward herewith a list of 489 Companies (out of which 441 companies are registered in Delhi and remaining 48 companies are registered in Haryana) which are “under the process

strike off" and notice under Section 560(3)/560(5) for these companies have already issued.

You are therefore requested to provide No Objection Certificate (NOC) or Objection, if any, having within a period 30 days failing which process as laid down in the act will adhere and name of these companies will be sent for publication in the official Gazette of India after the expiry of said time period."

A perusal of the aforesaid notice would show that notice has been sent to the Chief Commissioner of Income Tax, Central Revenue Building, New Delhi and the Chief Commissioner of Income Tax, Sector-2, Panchkula, Haryana for obtaining no objection certificate or objection if any in case of companies which are under the process of strike off. A list of 489 companies has been attached with the notice. Apart from the fact that a large number of companies were struck off by one notification, the notices issued to the petitioner-revenue cannot be regarded as notice as there is neither any PAN number nor any detail of the Jurisdictional Assessing Officer. All these details are required to be divulged if any lawful notice is to be served on the revenue. Therefore, no step could have been taken by the revenue by sending reply to Registrar of Companies that proceedings under Section 148 of Income Tax Act could be initiated within six years

of the last date of the assessment year. It has been pointed out that prima-facie there is likely a demand of more than Rs. 1/- lac.

Keeping in view that there is a prima-facie case as no notice in the eyes of law was given to the Income Tax Department and to protect the interest of the revenue-petitioner we have reached the conclusion that there is prima-facie illegality in the order dated 25.01.2017 striking off the company- M/s. Nevasa Apparels Private Limited. Therefore, we direct that the company would be deemed to be restored to its original number and the petitioner-revenue will be entitled to raise the demand under Section 148 of Income Tax Act by serving notice in accordance with law to company- M/s. Nevasa Apparels Private Limited and its director.

The Registrar of Companies shall update his website by showing the company- M/s. Nevasa Apparels Private Limited is in operation. It stands restore on the register of the Registrar of Companies.

The reply may be filed by Registrar of Companies within four weeks with a copy in advance to the learned counsel for the petitioner-revenue. The Registrar of Companies shall keep its original record ready for perusal of the Tribunal on the adjourned date.

Rejoinder, if any, be filed within two weeks thereafter with a copy in advance to the other side.

Notices to Respondent Nos. 2 & 3 may be issued by dasti process.

A copy of the order be given dasti under the signatures of the Bench officer.

List for further consideration on 19.02.2018.

Sd-

**(CHIEF JUSTICE M.M. KUMAR)  
PRESIDENT**

Sd-

**(DEEPA KRISHAN)  
MEMBER(TECHNICAL)**

**22.12.2017  
VINEET**