

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CP No. 131 of 2012

Date of decision:11.03.2016

The Deputy Commissioner of Income Tax

.....Petitioner

versus

Registrar of Companies and others

.....Respondents

Coram: Hon'ble Mr.Justice Rakesh Kumar Jain

Present: Mr. Rajesh Katoch, Advocate
for the petitioner.

Rakesh Kumar Jain, J.(Oral)

This petition is filed by the Income Tax department under Section 560(6) of the Companies Act, (for short, 'the Act 1956') for restoration of the name of the Company(respondent No. 2) to the Register of the Registrar of Companies(respondent No. 1).

The case set up by the petitioner is that respondent No. 2 was engaged in the business of finance and sale/purchase of land and was assessed to income tax upto the assessment year 1988-1989. Thereafter, respondent No. 2 stopped filing its returns. A huge demand of tax penalty and interest under the Income Tax Act, 1961(for short, 'the Act, 1961') for different assessment years i.e. from 1975-1976 to 1987-1988 was raised by the Assessing Officer against respondent No. 2 to the tune of ₹ 1,62,57,268/-.

The Tax Recovery Officer of the Income Tax Department, Ludhiana started the recovery proceedings under Section 222 of the Act, 1961 and under the provisions of Second

Schedule of the Act, 1961. It is also alleged that there are three appeals pending in this Court bearing RSA No. 4574 of 2011, RSA No. 4578 of 2011 and RSA No. 4579 of 2011 filed on 23.09.2011 by the Tax Recovery Officer-I, Ludhiana. These appeals have arisen from the suits filed by the vendees from respondent No. 2 who entered in the agreement with them for sale of the property without disclosing that the said immovable property was attached by the Tax Recovery Officer of the Income Tax Department for recovery of the tax arrears.

Respondent No.2 was sought to be served in the second appeals pending in this Court and the petitioner came to know that service cannot be effected upon respondent No. 2 because its name has been struck off from the Register of Registrar of Companies on 18.10.2011 in terms of Section 560(5) of the Act, 1956. It is further alleged that the petitioner did not receive any notice of striking off the name of respondent No. 2 from the Register of Registrar of the Companies under Section 560(3) of the Act, 1956 because all the letters issued to the petitioner by respondent No. 1 were delivered back with remarks of "incomplete address". The petitioner has further submitted that the petitioner falls within the definition of Creditors under Section 560(6) of the Act, 1956 of the defaulter company i.e. respondent No. 2 and has thus, filed this application for restoring the name of respondent No.2 in the Register of Registrar of Companies not only for the purpose of recovery of the arrears of tax etc. but also pursuing aforesaid three Regular Second appeals pending in this Court.

Notice in the petition was issued to both the respondents. On 14.09.2015 in CA No. 685 of 2015 this Court had passed the following orders:-

“Learned counsel for the applicant-petitioner submitted that as the name of respondent NO. 2-company was struck off from the list by the Registrar of Companies, its name may be deleted from the memo of partis as it is no more existing.

Ordered accordingly.

The Registry is directed to carry out necessary correction in the memo of parties.”

Counsel for the petitioner has submitted that respondent No. 1 had already filed its reply in which it is averred in paragraph No. 11 that it has no objection if the name of respondent No. 2 Company is restored to the Register of Registrar of Companies. However, it has referred to Rule 94 of the Companies(Court) Rule 1959 to contend that necessary orders may be passed by this Court by imposing some cost upon the petitioner and be awarded to the Registrar of Companies.

I have heard learned counsel for the petitioner and perused the available record.

Section 560(6) of the Act, 1956 enables the petitioner-creditor to file an application for restoration of the name of the company which has been struck off from the Register of Registrar of Companies if the dues of the said creditors has not been paid.

Keeping in view the facts and circumstances of the case and the averments made in Paragraph 11 of the reply filed by

respondent No. 1, the present petition is hereby allowed. Name of respondent No. 2 is ordered to be registered in the Register of Registrar of Companies.

11th March, 2016
Shivan Kaushik

[Rakesh Kumar Jain]
Judge