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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 1564/2023

VIVEK TANDON (ERSTWHILE DIRECTOR OF JAY CEE INFRASTRUCTURE LTD.) ..... Petitioner

Through: Mr. Amol Sinha and Mr. Rahul Kolhar, Advs.

Versus

INCOME TAX OFFICER, WARD 13(3) DELHI & ANR. ..... Respondents

Through: Mr. Abhishek Maratha, SSC along with Mr. Parth Semwal, JSC and Ms. Nupur Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **09.04.2024**

1. The writ petitioner has impugned the initiation of proceedings under Section 148 of the Income Tax Act, 1961 [**'Act'**] on the ground that proceedings has been initiated against the company which had been struck off from the Register of the Company under Section 560(5) of the Companies Act, 1956.

2. We note that while dealing with the right of the respondents to continue proceedings in respect of companies which may have come to be struck off from the Register, the Supreme Court in **Commissioner of Income Tax, Jaipur vs. Gopal Shri Scrips Private Limited** [(2020) 7 SCC 654] had held as follows: -

> "**8.** Mere perusal of the impugned order quoted supra would go to show that the High Court dismissed the appeal on the ground that it

has rendered infructuous because it was brought to its notice that the name of the company the respondent assessee has been struck off from the Register of the Company under Section 560(5) of the Companies Act, 1956.

9. In other words, the High Court was of the view that since the respondent Company stands dissolved as a result of the order passed by the Registrar of the Companies under Section 560(5) of the Companies Act, the appeal filed against such Company which stands dissolved does not survive for its consideration on merits.

10. In our view, the High Court was wrong in dismissing the appeal as having rendered infructuous. The High Court failed to notice Section 506(5) proviso (a) of the Companies Act and further failed to notice Chapter XV of the Income Tax Act which deals with "liability in special cases" and its clause (L) which deals with "discontinuance of business or dissolution". The aforementioned two provisions, namely, one under the Companies Act and the other under the Income Tax Act specifically deal with the cases of the Companies, whose name has been struck off under Section 506 (5) of the Companies Act. These provisions provide as to how and in what manner the liability against such Company arising under the Companies Act and under the Income Tax Act is required to be dealt with. Since the High Court did not decide the appeal keeping in view the aforementioned two relevant provisions, the impugned order is not legally sustainable and has to be set aside."

3. In view of the aforesaid conclusions, we find ourselves unable to sustain the challenge as raised.

4. The writ petition consequently fails and shall stand dismissed. This order, however, shall be without prejudice to the rights and contention of respective parties on merits which are kept reserved.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 09, 2024
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