

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 184 of 2018

IN THE MATTER OF:

R. Murali

Shareholder of SKM Shares Private Ltd.
No.8/31, Ganapathy Colony,
3rd Street, Teynampet, Chennai – 600018.

...Appellant

Vs

Registrar of Companies,

Tamil Nadu, Chennai,
Block No. 6, B Wing, 2nd Floor,
Shastri Bhawan, 26, Haddows Road,
Chennai – 600034.

....Respondent

Present:

For Appellant: Mr. Goutham Shivshankar, Advocate.

ORDER

21.06.2018. Heard learned counsel for the Appellant. Delay in filing is condoned.

2. The concerned company SKM Shares Pvt. Ltd. has been struck off by Registrar of Companies (RoC) on 08.11.2017. The company did not respond when Public Notice Form-STK-5 dated 10.07.2018 was issued. Subsequently, the Registrar of Companies struck off the company by issuing order in Form-STK-7 on 08.11.2017. The report of RoC shows that since 1997 till the time of striking off, balance sheets and Annual Returns had not been filed by the company. The learned counsel for the Appellant states that the Income Tax Return of the year 2014-15 has been wrongly appreciated by the learned NCLT, as if the company is not running any business. The company's Statement of Income shows that there were revenue entries as well as entries of expenses and the company was functioning. He submits that the Appellant had also filed similar returns of income tax for the year 2015-16 and 2016-17. He states the Statements of Income showed business of the company.

3. I have gone through the impugned order. The impugned order reads as under:

“ORDER

*Representative for the Applicant present. The Company has been incorporated during 1997. From 1997 till date no balance sheets and annual returns have been filed. Counsel for the RoC has filed the objections, confirming the same, due to which the name of the Company has been struck off under section 248(5) of the Companies Act, 2013. Heard the representative for the Applicant, Counsel for RoC and perused the Application along with the record placed on file. It appears that the Company is not carrying on any business. It is shell Company. An acknowledgement of income tax return for the year 2014-15 is placed on file, which shows the payment of tax as ‘Nil’. This is evidencing that the Company is not running any business. The Application is devoid of merits and same stands **dismissed.**”*

4. In the Income Tax Return of 2014-15 against the column of Gross Total Income entry shows ‘Zero’. The current year loss is shown as Rs.288548/-. In 2015-16 return (pg.103) and the 2016-17 return (pg.136) also the position remains the same. The revenue entries and expenditure entries have however been shown in Statement of Income.

5. Report of RoC mentions in para 8, as under:

“8. In view of the foregoing it is humbly submitted that if the Hon’ble Tribunal may considers application on merits then may be pleased to direct the shareholder of the subject company to

give an undertaking stating that the Accounts of the company was not used as means to transact tainted money during the period of demonetisation and to file all pending financial statements and Annual Returns and pass such other order including awarding of costs to the respondent as the Hon'ble Tribunal may deems fit proper in the circumstance matter.”

6. The learned counsel for the Appellant is relying on this para. The Appellant is ready to give the undertaking.

7. I find that the fears expressed by the RoC with regard to demonetisation and use of tainted money are based on the developments that was experienced by the government at the time of demonetisation. Looking to the income tax returns referred to and the fact that when notice was given the Appellant did not responded, there appears no justification to interfere with the impugned order. With no balance sheets and Annual Returns filed by the company for almost 20 years and recent Income Tax Returns stating “Gross Total Income” as ‘0’ i.e. Zero, and none of the old Income Tax Returns with filing stamps/proof of earlier years shown to NCLT, the Appellant could hardly have been heard by NCLT to say that it is in “business”. In the facts and circumstances, I do not find reason to interfere with the impugned order as referred to above.

8. As there is not substance in the appeal, the appeal is rejected at the stage of admission. No orders as to costs.

(Justice A.I.S. Cheema)
Member (Judicial)
(Vacation Sitting)

am/nn