

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, BENCH - VI
Appeal No. 217/252/ND/2023

IN THE MATTER OF:

Assistant Commissioner of Income Tax, Circle 22(2),

New Delhi

Having his office at

C. R. Building, I.P. Estate,

New Delhi - 110002

...APPELLANT

Versus

1. REGISTRAR OF COMPANIES, DELHI

Having its office at:

4th Floor, IFCI Tower, 61, Nehru Place, New Delhi - 110019

...RESPONDENT NO. 1

2. M/s SACHVIR EXIM PRIVATE LIMITED.

[PAN : AAVCS2359C]

House No. 2151/11 Plot No.4

Kh. No. 106/1 Front portion

3rd floor, New Patel Nagar, New Delhi

Also at:

Plot No. 113 (Parking) Block-C,

Shakti Nagar Extension, Phase-3 New Delhi-110052

...RESPONDENT NO.2

3. Aditya Pupreja, Director

[DIN : 0007172292]

House No. 2151/11 Plot N o.4

Kh. No. 106/1 Front portion

3rd floor New Patel Nagar

New Delhi

Also at,

Plot Not. 113 (Parking) Block-C

Shakti Nagar Extension

Phase - 3 New Delhi-110052

...RESPONDENT No.3

4. Aman, Director

[DIN : 0007202973]

House No. 2151/11 Plot No. 4

Kh. No. 106/1 Front portion

3rd floor New Patel Nagar

New Delhi

Also at,

Plot No. 113 (Parking) Block-C

Shakti Nagar Extension

Phase - 3 New Delhi-110052

...RESPONDENT NO.4

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER TECHNICAL)

APPEARANCES

**For the IT Department/Appellant: Adv. Puneet Rai, Sr. Standing
Counsel along with Adv. Nikhil Jain
For the RoC: Mr. Aakash Sharma, Advocate**

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

ORDER DELIVERED ON: 11.07.2024

1. This Application has been filed by the Assistant Commissioner of Income Tax, Circle 22(2), New Delhi (Appellant) invoking the provisions of Section 252 (3) of the Companies Act, 2013 for restoration of the name of the respondent Company (M/s Sachvir Exim Private Limited), in the Register maintained by the Registrar of Companies (RoC), NCT of Delhi. The authorized capital of the respondent company is Rs.1,00,000/- and its paid-up share capital is Rs.1,00,000/-.
2. Notice was issued to the Respondents vide order dated 24.08.2023 of this Tribunal. Despite service of notice, respondents other than RoC had not appeared hence they were set ex-parte vide order dated 07.12.2023 of this Tribunal.
3. Ld. Counsel representing the RoC appeared before this Tribunal on 04.07.2024 and submitted that as a general practise, they do not oppose the appeal filed by the Income Tax Department.
4. As per the averments of Income-tax Department, M/s Sachvir Exim Private Limited, was incorporated on 27.10.2014 as an unlisted private limited company and had its Registered office situated within Delhi and hence is within the jurisdiction of this Tribunal and RoC, NCT of Delhi. The struck-off company is having CIN No:_U52100DL2014PTC272662 and PAN: AAVCS2359C.

5. That Show Cause Notice (SCN) u/s 148A(b) of the Income Tax Act, 1961 was issued to the respondent company on 22.03.2023 after obtaining prior approval from the competent authority to submit return of Income for Assessment Year 2016-17.
6. That for the relevant assessment year AY 2016-17, an income of Rs. 7,22,06,902/- chargeable to tax had escaped assessment. This income relates to certain foreign remittances made by the respondent company without deducting TDS on the same. It is submitted order u/s 201(1) & 201(1A) of the IT Act, 1961 was also passed on 10.3.2023 for the assessment year in question wherein it was held that tax needs to be deducted on the foreign remittances made at 40%. It is further submitted that for the relevant assessment year no return of income has been filed by the respondent company.
7. From perusal of the record, it is also established that the name of the Company was struck-off by RoC by issuing Public ROC/DELHI/248(1)/STK-7/6217 dated 29.10.2019 at Serial No. 5964 of the impugned order.
8. Apparently, there are outstanding tax dues against the Respondent no.2 Company which were much prior to the striking off the name by RoC. Accordingly, Revenue Department have to take coercive steps against the Respondent Company and its Directors which may include criminal proceedings. Hence, it is required that the company's name must be restored as assessment proceedings against a dead company may not be sustainable in the eyes of law.
9. Further, in order to render Assessment Order valid in the eyes of Law and to enable the Appellant to take steps for recovery of taxes and for any further consequential proceedings, the respondent no.2 company's name be restored to the Register of Companies as if the name of the company was never struck off.
10. Also, that in the guise of the fact that the Respondent company is a non-existent entity, the Respondent company and its directors are trying to escape

the demands and the prosecution proceedings and the liability that will arise out of the said proceedings.

11. In sequel of the above said discussion, we are of the view that the appellant herein succeeded in showing that there exist prima facie outstanding tax liabilities on the part of Respondent No.2 company i.e., M/s. Sachvir Exim Private Limited, and that it got struck-off from the register of the Registrar of the Companies.
12. We are in agreement with the submission of the Appellant that the Income Tax Department is aggrieved person under Section 252(1) and also creditor u/s 252(3) of the Companies Act, 2013. That for the purpose of reopening of assessment proceedings and to be able to recover its dues by the Income Tax Department, the Company has to be in existence.
13. As per Section 252(3) of the Companies Act, 2013, this Tribunal finds that “it is just and equitable” to restore the name of the Company to its original in the Register of RoC.
14. In above circumstances, this Application 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 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.
15. We, however, make it clear that this Tribunal has only directed restoration of the name of the respondent-company in the Register of Companies maintained by the RoC on the basis of averments made in the appeal and in no way endorsed or have adjudicated about their entitlement to recover which shall be adjudicated by the Income Tax Department subject to the Law of limitation

governing such recoveries. Charges involved in seeking restoration of the respondent company's name with the office of the ROC shall be borne by the applicant. Compliance be made with the RoC within 30 days.

16. The direction for freezing the Bank Account(s) of the respondent company, if on this ground, shall consequently be also set aside immediately to enable the company to carry out its business operation. Compliance of this Order for restoration shall be made by the respondent company with all its consequential effects within one week of compliance by the Appellant.
17. The Appeal is **allowed** and accordingly disposed off. Let copy of the order be served to the parties.

-SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

-SD/-

(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)