

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V
Appeal No. 159/252/ND/2020

IN THE MATTER OF:

INCOME TAX OFFICER, WARD 12 (1)
HAVING HIS OFFICE AT: ROOM NO. 143, 1ST FLOOR,
CENTRAL REVENUE BUILDING, I.P. ESTATE
NEW DELHI

...APPELLANT

VERSUS

- 1. REGISTRAR OF COMPANIES,**
NCT OF DELHI & HARYANA
HAVING HIS OFFICE AT: 4TH FLOOR, IFCI TOWER,
61, NEHRU PLACE
NEW DELHI-110019
- 2. M/S ICON SATELLITE LTD. (PREVIOUSLY KNOWN AS MEDIA**
SATELLITE & TELECOM LTD.)
 - a. 1201 B, 12TH FLOOR HEMKUNT CHAMBER, 89 NEHRU PLACE,**
NEW DELHI- 110019
 - b. B-86/ 1, MEDIA HOUSE, OKHLA INDUSTRIAL AREA, PHASE-II,**
NEW DELHI-110020
- 3. MR. PREM ADIP RISHI**
EX- DIRECTOR OF MJ S ICON SATELLITE LTD. (PREVIOUSLY
KNOWN AS MEDIA SATELLITE & TELECOM LTD.)
F-79/18 W1 LANE, SAINIK FARM, KHANPUR PUSHPA,
BHAWAN SOUTH DELHI- 110062
- 4. MR. RAJESH GALHOTRA**
EX- DIRECTOR OF MJ S ICON SATELLITE LTD. (PREVIOUSLY
KNOWN AS MEDIA SATELLITE & TELECOM LTD.)
A-17, SECTOR -14, GAUTAM BUDDHA NAGAR,
NOIDA- 201301.



5. MR. DHIRAJ SURI

**EX - DIRECTOR OF M/ S ICON SATELLITE LTD. (PREVIOUSLY
KNOWN AS MEDIA SATELLITE & TELECOM LTD.)**

**M-5, 2ND FLOOR, LAJPAT NAGAR 2 LAJPAT NAGAR,
S.O SOUTH DELHI- 110024**

...RESPONDENTS

Order Reserved on: 27.07.2021

Order Delivered on: 09.08.2021

CORAM:

MR. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)

MR. K. K. VOHRA, HON'BLE MEMBER (TECHNICAL)

PRESENT- Mr. Zoheb Hossain & Parth Semwal, Sr. & Jr. Standing Counsel from Ranjan Doshi for Income Tax Deptt.

ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

1. This appeal has been filed by Income Tax Authority invoking the provisions of Section 252 of the Companies Act, 2013 for restoration of the name of the Respondent No. 2 Company, M/s Icon Satellite Limited (Previously known as Media Satellite & Telecom Ltd.), in the Register of Companies maintained by the RoC, Respondent No. 1.

2. Service was duly effected via publication in New Delhi Edition of English Newspaper namely the Financial Express and Hindi Newspaper namely, Jansatta, dt. 13.03.2021 on the Respondent Company and its Directors. The proof of service via publication was filed vide an Affidavit of Compliance dt. 28.04.2021.

3. The name of the Respondent Company appeared in Serial No. 27 of the newspaper publication and the next date of hearing i.e. 29.04.2021 was mentioned in the public notice. Other than the RoC, none appeared on



behalf of the Respondent Nos. 2 to 5 to oppose the prayer made by the appellant. Hence vide order dt. 07/07/2021 all the respondents except ROC was proceeded exparte. Respondent No. 1 the RoC specifically submits that they have no objections to the prayer of the appellant being granted by this bench.

4. Vide Proceedings initiated by the Ministry of Corporate Affairs, through the office of the RoC, names of several companies were struck off for want of filing Statutory Returns.

5. Respondent No. 2 Company, which had not filed Return or Financial Statement for the Assessment Year 2012-13, was duly struck off from the Register of Companies vide STK-7 dt. 09.08.2018.

6. Invoking the provision of section 252 of the Act, the Income Tax Dept. prayed for its restoration in order to carry out proceedings initiated against them. As per averments, based upon NMS Data showing cash transactions of above Rs. 10,00,000/- in a month entered into by the Respondent No. 2, the AO proceeded to obtain the bank statements of Respondent No. 2 with Punjab National Bank, Account No. 0176002100027570 and the Corporation Bank, Gurgaon Account No. CBCA/01/007099 for the relevant period. It was found that the total deposits including those made in cash as well as cheque deposits in both the accounts amounted to Rs. 639,36,33,154/- (sum total of Rs. 638,28,33,154/- and 1,08,00,000/-) during the Financial Year (F.Y.) 2011-12 pertaining to Assessment Year (A.Y.) 2012-13. It was also observed that there were corresponding withdrawals from the two bank accounts to the tune of Rs. 638,37,12,950/- and 1,00,00,187/- respectively. This demonstrated that the Respondent No. 2 had engaged in business activities during the relevant period but has failed to file its return of income. From perusal of the ITRs of the Respondent Company for the A.Y. 2012-13, the Respondent Company has received funds to the tune of Rs. 20,19,91,000/-. Taking Into account the percentage of net profit vis-à-vis the turnover in the preceding year i.e. AY 2011-12 (0.04% arrived at with turnover of Rs. 284,22,60,821 as against

profit of Rs. 10,38,834/-), the total profit for the AY 2012-13 is estimated at 0.04% of the total turnover, amounting to a profit of Rs. 25,57,453/-, which has escaped assessment that needs to be treated as the income of the assessee for the A.Y. 2012-13. As per the IT System, the Respondent Company has filed its ITR for A.Y. 2007-08 to 2011-12 on 29.03.2013 declaring total income of Rs. 7,80,890/. In view of the above facts, the Assessing Officer has reason to believe that an income of at least Rs. 25,57,453/- has escaped assessment within the meaning of Section 144/147 of the Income Tax Act due to the failure on the part of the Respondent Company in not filing its ITR for the A.Y. 2012-13, and consequently the said income has not been brought under tax for the A.Y. 2012-13, thereby rendering the company liable for consequences under Income Tax Act, 1961 and entitling the Revenue to initiate proceedings against the company. A Notice dated 30.03.2019 under section 148 of the I.T. Act for A.Y. 2012-13 has been issued to the Respondent Company.

7. Further, vide an affidavit dt. 27.07.2021, copy of Assessment Order for A.Y. 2012-13 along with Demand Notice dt. 05.12.2019 was filed, which has resulted into creation of demand of Rs. 25,57,450/- upon the Respondent Company. Furthermore, Penalty Proceedings under section 271(1) (c) of the Income Tax Act was initiated for which notice u/s 274 was issued separately.

8. The grievance of the Income Tax Dept is that the name of the respondent company had been struck off by the ROC seriously affecting the assessment and penalty proceedings. It is submitted that the company by getting its name struck off from the register of the Ld. ROC, in the guise of a non-existent entity, is trying to escape assessment proceeding and liability which may accrue from such proceedings. It is submitted that the assessment proceedings against a dead company may not hold good in the eyes of law. Therefore, for any assessment proceedings to commence and continue, the name of the Assessee has to be restored in the register of the ROC.



9. Ld. Counsel for the Income Tax Submits that the aforesaid facts necessitate restoration of the name of the Respondent Company in the Register of Companies to proceed further in accordance with law. In view of the grounds raised by the applicant, being an aggrieved person, the prayer can be entertained u/s 252(3) of the Code.

10. Considering the submissions and averments made in the Memo of Appeal, we are of considered view that Appeal is liable to be allowed. Accordingly, **we hereby allow the appeal.** The RoC is therefore, directed to restore the name of the Respondent Company in their Register and also proceed to take such other and further penal action against the respondents in accordance with the statutory provisions.

11. We however make it clear that this Bench has only directed restoration of the name of the appellant company in the Register of Companies maintained by the ROC on the basis of averments made in the appeal and in no way endorse or have adjudicated about their entitlement to recover which shall be adjudicated by the department subject to the laws of limitation governing such recoveries. Charges involved in seeking restoration of the company's name with the office of the RoC shall be borne by the applicant. **Compliance be made with the RoC within 30 days from the the date of order.**

Sd/-

K. K. VOHRA
Member (T)

Sd/-

ABNI RANJAN KUMAR SINHA
Member (J)