

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 223
Appeal-127/252/ND/2023

IN THE MATTER OF:

Income Tax Officer, Ward 20(3), New Delhi ... Applicant/Petitioner

Versus

RoC & Ors. {M/s RPCC Consultancy ... Respondent
Services Pvt. Ltd.}

Under Section: 252 (3) Comp. Act.

Order delivered on 12.04.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH
HON'BLE MEMBER (T)

PRESENT:

For the Applicant/IT Dept. : Sr. Standing Counsel, Puneet Rai, Jr. Standing Counsel, Rishabh Nangia, Jr. Standing Counsel, Ashvini Kumar, Adv. Nikhil Jain

For the Respondent :

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

There is no appearance on behalf Respondents despite service of notice by way of publication. The order dated 12.01.2024 reads thus:

As prayed by Ld. Proxy Counsel appearing for the appellant, the notice is directed to be served upon the Respondents by substituted modes i.e. by way of publication in two national newspapers, one in Hindi and another one in English. Let the proof of service/report be filed within 4 weeks from today.

List on 12.04.2024.

2. The prayer made in the appeal reads thus:

- (a) To pass an order restoring the name of the Respondent Company in the Register of the Registrar of Companies;
- (b) To Quash the order/notification of the Ld. ROC which removed the name of the Respondent Company from the Register of Companies;
- (c) To grant an ad-interim stay on the operation of the impugned order/notification of the ROC;
- (d) Any other relief which this Hon'ble Tribunal may deem fit and proper is awarded in favor of the appellant in the facts and circumstances of the case.

3. It is the case of the Appellant, that despite being struck off from the Register of Companies, the income of the Respondent No. 2 is assessable for the purpose of Income Tax. It is the case of the Appellant that the income of the Respondent No. 2 for the assessment years 2019 to 2020 viz. Rs. 21,60,000/- is chargeable to tax and escaped assessment. The further plea raised in the appeal is that as per provisions of Section 250 of Companies Act, 2013 despite being struck off, from the Registrar of the Companies, the Respondent No. 2 is not treated as dissolved for the purpose of discharging the obligation of the Company including that of filing the ITR. The contents of para 5 to 10 of the Appeal reads thus:

5. That show cause notice under clause (b) to section 148 A of the Act was issued to the respondent company on 27.02.2023 after obtaining prior approval from the competent authority to submit return of income for AY 2019-20.

True copy of notice under clause (b) to section 148A of the IT Act, 1961 dated 27.2.2023 is marked and annexed as **ANNEXURE A2**.

6. That notice under Section 148 of the Act alongwith order under clause (d) of section 148A of the Act was issued to the Assessee Company on 22.3.2023 for AY 2019-20, after obtaining the prior approval from the competent authority to submit the reply.

True copy of Notice under Section 148 of the Income Tax Act 1961 alongwith order under clause (d) of section 148A of the Act dated 22.3.2023 is marked and annexed as **ANNEXURE A3 (COLLY)**.

7. That for the relevant assessment year AY 2019-20, an income of Rs. 21,60,000/- chargeable to tax had escaped assessment. This income relates to consultancy fee received by the respondent company from one M/s Bio Rad Laboratories Ltd. That for the relevant assessment year the respondent company had also failed to furnish return of income hence the said income has escaped assessment.

8. That the Appellant Revenue came to know from the MCA portal that the said Respondent Company has been struck off by ROC, vide Form STK7 dated 20.4.2022 (Company's name appearing at Serial. No. 7618).

True copy of Notice of Striking off by the office of Registrar of Company available on website of Ministry of Corporate Affairs, (Form STK7) dated 20.4.2022 is attached herewith and marked as **ANNEXURE A-4**.

9. It is respectfully submitted that as per provisions of Section 250 of Companies Act 2013, despite "Strike Off" of the Respondent Company under Section 248 of the Companies Act 2013, the company does not stand dissolved for the purpose of discharge of obligations of the company including obligation to file return and comply with statutory notices and proceedings under the Income Tax Act 1961. The restoration of the name of the company to the Registrar of Companies would be just and equitable and in public interest.

10. The Income Tax Department is an aggrieved party within the meaning of Section 252(1) and also a creditor under Section 252(3) of the Companies Act 2013 and great prejudice will be caused to Revenue and public at large, if the name of the Respondent is not restored back.

4. In terms of the provisions of Section 252(1) of the Companies Act, 2013, the Creditor qua the Company can prefer an appeal for recalling the order passed by RoC striking of its name from Register of companies. Once the Company has liability to pay income tax and its income has escaped the assessment, we find it just and proper to direct restoration of its name to the Register of Companies. Ordered accordingly.

5. The Appellant shall serve copy of this order upon the RoC, within one week. The name of the Respondent No. 2, shall be restored to the Register of Companies, within 30 days.

Sd/-

**(SUBRATA KUMAR DASH)
MEMBER (T)**

Sd/-

**(ASHOK KUMAR BHARDWAJ)
MEMBER (J)**