

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

Item No. 201
Company Appeal-230/252/ND/2023

IN THE MATTER OF:

Income Tax Officer ward 17(1) ... Applicant/Petitioner

Versus

RoC (Million Miles Real Estate Pvt Ltd.) ... Respondent

Under Section: 252 (1)

Order delivered on 19.04.2024

CORAM:

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

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

PRESENT:

For the Applicant :

For the IT Deptt. : Mr. Parth Semwal and Mr. Abhishek Maratha,
Standing Counsels for IT Deptt

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

The prayer made in the present Appeal preferred by Income Tax Officer Ward No. 17(1) 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.

2. As has been espoused in the petition, despite service of notice upon them, no one had appeared on behalf of Respondent Nos. 3 and 4. Though,

on 05.01.2024, it was stated on behalf of Respondent Nos. 2 and 5 that the said Respondents had filed their reply, but the reply was not found in the Case Information System of this Tribunal. In the wake, on 05.01.2024, we passed the following order.

Ld. ARoC submitted that the RoC has no objection to the prayer made in the appeal. The reply stated to have been filed on behalf of the Respondent Nos. 2 & 5 is not available on record. The assessment order for the relevant assessment/financial years has not been filed by the Appellant. Ld. Counsel for the Appellant shall ensure that the relevant assessment order is placed on record within 2 weeks. In the meantime, Ld. Counsel for the Respondent Nos. 2 & 5 shall also ensure that the reply stated to have been filed on behalf of the said Respondents is uploaded on the DMS/e-portal of this Tribunal. There is no appearance on behalf of the Respondent Nos. 3 & 4, the proceedings qua them are set ex-parte.

List on 19.04.2024.

3. Today there is no appearance on behalf of any of the Respondents. Ld. Counsel appearing for the Appellant submitted that he has not received the copy of any reply from Respondent Nos. 2 and 3. In the wake, we proceed to decide the Appeal on the basis of the documents available on record.

4. As has been espoused in the Appeal, the Income of the Respondent No. 2 to the extent of Rs. 22,96,000/- for the assessment year 2017-18 had escaped assessment, in terms of the applicable provisions of Income Tax Act, 1961, thus the proceedings were initiated against the said Respondent under the relevant provisions of Income Tax Act, 1961. Nevertheless, Respondent No. 2 did not participate in the assessment proceedings. Thus, on 20.03.2019 an order under Section 279(1) could be passed for initiation of proceedings under Section 276CC of Income Tax Act, 1961 for the aforementioned assessment year (2017-18).

5. On further inquiry, the Appellant could find that the Respondent No. 2 was not in existence in the Register of Companies maintained by Registrar of Companies and could be struck off by the RoC from the said Register vide notification dated 08.08.2018.

6. It is the case of the Appellant that the RoC never informed the Appellant about the aforementioned notice/order and though the assessment, re-assessment, other proceedings are permissible against that company, but in the wake of the Company being non-existent in the Register of Companies maintained by RoC, the proceeding may not be sustainable in the eyes of law. The averments made in the para 4 to 11 of the Appeal reads thus:

4. That Four directors of the Respondent Company being Mr. Gaurav Gaur, Mr. Manoj Sehgal and Mr. Ujjwal Jain are also arrayed as the Respondents in the present appeal.

[True copy of the Company Master Data available on the website of Ministry of Corporate Affairs, Government of India for the Respondent Company is annexed herewith and marked as ANNEXURE - A1]

[Copy of the Signatory Details of the company available on the website of the Ministry of Corporate Affairs, Government of India for the Respondent Company is annexed herewith and marked as ANNEXURE - A2]

5. That income of respondent Company has escaped assessment of its income amounting to RS.22,96,000/- for the assessment year 2017-18, therefore assessment proceedings were initiated by the Income Tax Officer Ward-17(1) New Delhi, against the respondent company for such assessment year by issuing notices. But the respondent Company has miserably failed to participate in the said proceedings, therefore, an order u/s 279(1) has been passed by the Income Tax Officer Ward-17(1) New Delhi, for initiating proceedings 276CC of the Income Tax Act, 1961 for assessment year 2017-18 on dated 20.03.2019, against the respondent company.

[True Copy of the order dated 20.03.2019 issued in pursuance of action taken u/s 276CC is attached herewith and marked as ANNEXURE - A3]

6. That on further enquiry, it was found that the respondent company is not in existence and its name has been struck off by the Ld. ROC from the Register of Companies which is published in Gazette Notification of India dated 08.08.2018 at serial no 12872.

[True Copy of Striking off, Notice issued by the office of Registrar of Company available on the website of Ministry of Corporate Affairs. (Form STK-7) dated 08.08.2018 is attached herewith and marked as ANNEXURE -4]

7. The Appellant submits that the appellant was not intimated about the proposed action of removal or striking off the name of the company and the appellant's objections were not sought in relation to this matter in accordance with the Companies Act, 2013.

8. That the procedure laid down under Section 252 of the Companies Act, 2013 for getting the name of the company removed from the register of the Ld. ROC cannot be allowed to be invoked so as to result in escapement of tax liability or any other liability.

9. That the respondent company is mandatorily required to discharge its liabilities and obligations. In this regard, reference be made to Section 250 of the Companies Act, 2013 which is reproduced below:

"250. Effect of company notified as dissolved

Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company."


10. That the procedure laid down under Section 252 of the Companies Act, 2013 and Section 560 of the Companies Act, 1956 for getting the name of the company removed from the register of the Ld. ROC cannot by any stretch of imagination allowed to be invoked resulting in escapement of tax liability or any other statutory liability on the company which seeks to get its name removed from the register of the Ld. ROC. It is submitted that the Ministry of Corporate Affairs, Government of India has introduced schemes to facilitate and enforce these Sections namely Fast Track Exit Mode, 2011 and Easy Exit Scheme, 2011 which specifically disallow the benefit of Section 560 of the Companies Act to the companies which have liabilities towards income tax department or any other department of the central government or state government.

11. That neither assessment /re-assessment proceedings nor any other proceedings under the Income Tax Act, 1961 can be conducted or initiated against a dead company and said proceedings shall not be sustainable in the eyes of law. It is therefore submitted that to conclude/initiate assessment/re-assessment proceedings and any other proceedings under the Income Tax Act, 1961, existence of said company is required, and hence name of the company (i.e., Million Miles Real Estate Pvt. Ltd.) may be restored in the register of the Ld. ROC.

7. The salient plea espoused by the Appellant inter alia is that in terms of the provisions of Section 252 of the Companies Act, 2013, the Appellant being aggrieved party is entitled to prefer the present appeal and if its name is not restored in the Register of Companies, the steps taken by the Appellant, in terms of the provisions of Income Tax Act, 1961 would be defeated.

8. The Sanction/Authorization under Section 279(1) of the Income Tax Act, 1961 has been placed on record as Annexure A-3 to the Appeal. The Sanction Letter dated 20.03.2019 (ibid) reads thus:

ANNEXURE - A3



Office of the
Pr. Commissioner of Income Tax -6,
Room No. 418, 4th Floor, C.R. Building,
I.P. Estate, New Delhi-110002 E Mail: delhi.cit6@incometax.gov.in

F. No Pr.CIT-06/Del/Prosecution/18-19/ 1773 Dated:

Name and address of the assessee	M/s Million Miles Real Estates India Ltd, 1168, Near Tika Ram Halwai, Kashmere Gate, Bada Bazar, Delhi 110006
PAN	AAJCM0775G
Assessment Year	2017-18
Date of order	20.03.2019

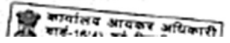
SANCTION / AUTHORIZATION u/s 279(1) OF THE INCOME TAX ACT, 1961

On perusal of the records, it is seen that the company M/s Million Miles Real Estates India Ltd. (PAN: AAJCM0775G) has deposited Rs. 22,96,000/- in cash in its Account No. 6403050654 with Indian Bank, Ashok Vihar Branch, Delhi during demonetization period of the but it has not filed its Return of Income till date whereas due date for filling of return as per section 139(1) of the Income Tax Act, 1961 for A.Y. 2017-18 was 07.11.2017. The assessee company was therefore liable to file the Income Tax Return for A.Y. 2017-18 by 07.11.2017.

2. From the facts of the case mentioned above, it is clear that the company has willfully failed to furnish its return of income for the A.Y. 2017-18 in due time. According to the provisions of the section 139(1) of the Income Tax Act, 1961 every company is required to file its return of income on or before the specified date. Since, the assessee has not filed return of income despite having substantial taxable income of Rs. 22,96,000/- so there is default of Section 276CC of the Income Tax Act, 1961.

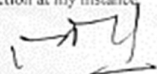
3. In view of these facts, an opportunity of being heard to show cause as to why prosecution u/s 276CC of the Income Tax Act, 1961 should not be launched, was granted by issue of show cause notices to the company and its four directors namely **Sh. Gaurav Gaur, Sh. Manoj Sehgal, Sh. Pushap Mohan Sharma, Sh. Ujjwal Jain** on 31.01.2019 fixing the case for 08.02.2019.

4. On the given date, neither anybody attended the proceedings nor any application for adjournment filed. In view of non compliance from assessee as well director, it can be concluded that they don't have any conclusive reply with documentary evidences for prosecution show notice issued u/s 276CC of the IT Act, 1961.



5. As per provisions of section 139(1) of the Income Tax Act, 1961, filing of return by a company before the due date is mandatory. Further, if the assessee willfully fails to furnish the return of income in due time as per the provisions of section 139(1) or 139(4) of the Income Tax Act, 1961, the Income Tax Department can initiate prosecution proceedings u/s 276CC.

6. I, **Mukesh Mittal, Pr. Commissioner of Income Tax -06, New Delhi**, in exercise of powers conferred upon me u/s 279(1) of the Income Tax Act, 1961 do hereby sanction prosecution of the assessee company u/s 276CC of the Income Tax Act, 1961 and authorize **Sh. S. P. Meena, Income Tax Officer, Ward-16(4), New Delhi** to institute criminal complaint under the above referred section for the AY 2017-18 against the assessee i.e. M/s Million Miles Real Estates India Ltd. Through its four directors **Sh. Gaurav Gaur, Sh. Manoj Sehgal, Sh. Pushap Mohan Sharma, Sh. Ujjwal Jain** in the court of competent jurisdiction at my instance.



(Mukesh Mittal)
Pr. Commissioner of Income Tax
Delhi-06, New Delhi

9. As can be seen from the provisions of Section 250 of the Companies Act, 2013, where a company stands dissolved under Section 248, though its Certificate of Incorporation stands cancelled from the date of order of its name

being struck off from the Register of Companies, but for the purpose of discharging its liabilities, the Certificate would be treated as subsisting. The Section 252 of the Company Act, 2013 (ibid) reads thus:

“250. Effect of Company Notified as Dissolved

Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.”

10. As can be seen from provision of 252(1) of the Companies of Act, 2013 any person aggrieved by order of the Registrar notifying the Company as dissolved under Section 248 may file an Appeal before this Tribunal within the period of three years from the date of the order passed by RoC striking of the name of the Companies from the Register of Companies.

11. Though the present Appeal has not been preferred within three years from the date of the order based by the RoC striking of its name from the list of the companies. Nevertheless, as the Respondent No. 2 could escape the assessment and its liability to pay the Income Tax, we deem just and proper to pass an order under Section 252(3) of the Companies Act, 2013, directing the restoration its name to the Register of Companies within 30 days from the date of receipt of copy of this order. The appellant shall serve a copy of this order upon the RoC within one week. **The Appeal stands allowed.**

**Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)**

**Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)**