

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

**Item No. 204**  
**Appeal-290/252/ND/2023**

**IN THE MATTER OF:**  
**Income Tax Officer**

... **Applicant/Petitioner**

**Versus**

**Registrar of Companies (Parameshwari Das  
and Sons Builders Pvt. Ltd.) & Ors.**

... **Respondent**

**Under Section: 252 (1) Comp. Act**

**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** : Adv Puneet Rai, Sr. St Counsel along with Adv  
Nikhil Jain

**For the Liquidator** :

**Hearing Through: VC and Physical (Hybrid) Mode**

**ORDER**

There is no appearance on behalf of the Respondents, despite service of notice by substituted mode i.e. publication in two National Newspapers, one in vernacular and another one in English, in circulation in the locality/state where the registered office of the companies is located.

2. The Ld. Counsel appearing for the Applicant could draw our attention to the assessment order passed on 30.03.2023, in terms of which an amount of Rs. 6,92,92,741/- is found as payable by the Respondent No. 2. The relevant excerpt of the assessment order reads thus:

38.	FOR DEFAULT IN PAYMENT OF ADVANCE PAYMENT ( SECTION 234 B)	2,04,77,640
39.	FOR DEFERMENT OF ADVANCE TAX (SECTION 234C)	0
40.	INTEREST U/S 234D	0
41.	FEE FOR DEFAULT IN FURNISHING RETURN OF INCOME (SECTION 234F)	10,000
42.	TOTAL INTEREST AND FEE PAYABLE 42=(37+38+39+40+41)	3,51,63,282
43.	AGGREGATE INCOMETAX LIABILITY 43=(36+42)	7,10,16,257
	<b>PRE-PAID TAXES</b>	
44.	TDS	17,23,516
45.	TCS	0
46.	ADVANCE TAX	0
47.	SELF ASSESSMENT TAX	0
48.	REGULAR TAX PAID	0
49.	TOTAL TAXES PAID 49=(44+45+46+47+48)	17,23,516
	<b>TAX PAYABLE/REFUND</b>	
50.	AMOUNT PAYABLE /REFUND AMOUNT 50=(43-49)	6,92,92,741
51.	INTEREST U/S 244A ON CURRENT AMOUNT	0
52.	INTEREST U/S 244A(1A)	0
53.	TOTAL AMOUNT PAYABLE/REFUND AMOUNT 53= (50+51+52)	6,92,92,741
54.	REFUND ALREADY ISSUED (incl. interest u/s 244A and interest u/s 244A(1A) if any)	0
55.	BALANCE AMOUNT PAYABLE/REFUNDABLE (incl. provisional interest u/s 244A till current order and interest u/s 244A(1A) - if any) 55 = (53-54)	6,92,92,741
56.	INTEREST U/S 220(2) CHARGED (In Rs.)	0
57.	AMOUNT PAYABLE/REFUNDABLE 57=(55+56)	6,92,92,741
58.	DEMAND IDENTIFICATION NO AGAINST ORIGINAL DEMAND	2022201837001793450C
59.	DEMAND IDENTIFICATION NO AGAINST INTEREST U/S 220(2)	NA

3. In the wake of the aforementioned assessment order, the Income Tax Department (Office of the Income Tax Officer) Ward No. 19(3) Delhi could send demand notice under Section 156 of Income Tax Act, 1961 to the Respondent No. 2. The copy of the notice has been placed at page 38 of the Appeal, which reads thus:



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE INCOME TAX OFFICER  
WARD 19(3), DELHI

To, PARAMESHWARI DAS AND SONS BUILDERS PRIVATE LIMITED SOM DUTT CHAMBER-II, 145, BIKAJI KAMA PLACE NEW DELHI 110066, Delhi India	
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PAN: AADCP5941K	Date: 30/03/2023	Status: COMPANY	DIN & Notice No: ITBA/AST/S/156/2022- 23/1051702402(1)
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**Subject: Notice of demand under section 156 of the Income-Tax Act, 1961**

1. This is to give you notice that for the assessment year 2018-19 a sum of Rs. 6,92,92,740, details of which are given on the reverse, has been determined to be payable by you.
2. The amount should be paid to the Manager, authorised bank/State Bank of India within 30 days of the service of this notice. A challan is enclosed for the purpose of Payment.
3. If you do not pay the amount within the period specified above, you shall be liable to pay simple interest at one per cent for every month or part of a month from the date commencing after the end of the period aforesaid in accordance with section 220(2).
4. If you do not pay the amount of the tax within the period specified above, penalty (which may be as much as the amount of tax in arrear) may be imposed upon you after giving you a reasonable opportunity of being heard in accordance with section 221.
5. If you do not pay the amount within the period specified above, proceedings for the recovery thereof will be taken in accordance with sections 222 to 227, 229 and 232 of the Income-tax Act, 1961.
6. If you intend to appeal against the assessment, you may present an appeal under Part A of Chapter XX of the Income-tax Act, 1961, to the CIT (A), Delhi- 7 within thirty days of the receipt of this notice, in Form No. 35, duly stamped and verified as laid down in that form.

MD SULAIMAN AKHTER  
WARD 19(3), DELHI

(In case the document is digitally signed please  
refer Digital Signature at the bottom of the page)

4. Indubitably, the name of the Respondent No. 2 could be struck off from the Register of Companies in terms of the Form No. STK-7 dated 20.04.2022.

5. It is the case of the Appellant that as per the provisions of Section 250 of Companies Act, 2013 on being struck off from the Register of Companies, the Company cannot be treated as dissolved for the purpose of discharging its obligations and liability, but still in the guise of removal of name of the Company from the Register of Companies maintained by RoC, the Company

and its Directors try to escape the liability to pay the Income Tax. Para 11 (A to E) of the Appeal reads thus:

**11. GROUNDS**

A. Because a total demand of Rs. 6,92,92,740/- is pending against the Assessee Company for A.Y 2018-19. Therefore, Income Tax Department is an aggrieved party and a creditor under Section 252(1) and 252(3) of the Companies Act, 2013 respectively.

B. Because in the guise of the fact that the Assessee is a non-existent entity, the Assessee and its directors are trying to escape the demands and the prosecution proceedings and the liability that has arose and will arise out of the above said proceedings.



C. Because Section 252(1) of the Companies Act provides the opportunity to file an appeal before this Hon'ble Tribunal for restoration of name of the company to any person who is aggrieved by the order of the Registrar within three years from the date of the order. Thus, this provision gives a right to the Appellant to file an appeal before this Hon'ble Tribunal as an aggrieved person and appeal can be filed within 3 years from the date of the order.

D. Because Section 252(3) of the Companies Act provides the opportunity to file an appeal before this Hon'ble Tribunal for restoration of name of the company, to any company or member or creditor or workman thereof feels aggrieved by the name struck off of the company by the order of the Registrar within twenty years from the date of the order. This provision gives a right to the Appellant as a creditor and appeal can be filed within 20 years from the date of the order. It is further submitted that liability to pay Income Tax arises at the stage of accrual of income / earning of income, i.e. much prior to the date of time of Income Tax Return and/or date of assessment. It is for this reason that the assessee is liable to pay Advance Tax and TDS is deducted at the stage of the transaction itself. Thus, the obligation to pay Income Tax on the company survives in terms of Section 248 & 250 of the Companies Act, 2013. Therefore, the Appellant becomes a creditor even before the date of assessment order. The assessment order only quantifies the liability, however the obligation to pay tax by the company arose in Financial Year 2017-18, i.e. when the transactions were made by the company, which is well before the date of name strike off.

E. Because it is well settled that what you cannot do directly, you cannot do indirectly. The Assessee, by having its name struck off from the Register of Companies, has indirectly sought to evade the tax liabilities. Denial to restore the name of the Assessee in the Register of the ROC will indirectly not only condone the wrong doing of the Assessee but it will also encourage escapement of tax liabilities by such subterfuge which will be prejudicial to the interests of the Revenue in the long run.

6. In terms of the provisions of Section 252(1) of the Companies Act, 2013, the Appellant is entitled to prefer the present Appeal. There being the outstanding demand qua the Respondent No. 2, the Appellant also has locus to prefer the present appeal, also in terms of provisions of 252 (3) of the Companies Act, 2013 (ibid).

7. It is stare decisis that the outstanding tax liability of a Company justify restoration of its name in the Register of Companies, maintained by RoC. In the wake, the Appeal is allowed, and the name of the Respondent No. 2 is directed to be restored 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)**