

IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, BENGALURU
(Through web-based Video-Conferencing Platform)

ITEM No.26
C.P.No.135/BB/2023

IN THE MATTER OF:

Income Tax Department ... Petitioner
Vs.
ROC, Karnataka & Samping Developers Pvt. Ltd. ... Respondents

Order under Section 252 of Companies Act, 2013

Order delivered on: 05.02.2024

CORAM:

JUSTICE (RETD.) T. KRISHNAVALLI
HON'BLE MEMBER (JUDICIAL)

SH. MANOJ KUMAR DUBEY
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner : Mr. Ganesh R. Ghale

ORDER

1. The instant Petition has been filed by the Income Tax Department *vide* Diary No.01691 dated 08.11.2023 *inter alia* seeks a direction to the Respondent No.1 i.e. the Registrar of Companies, Karnataka to restore the Respondent No.2 Company, namely, M/s. Samping Developers Private Limited ('Company') in the Register of Companies.
2. Brief facts of the case are that the R-2 Company has been Struck-off by the ROC on 10.12.2019 for not fulfilling its statutory obligations under the provisions of the Companies Act, 1956. Further, on verification by the Petitioner it has been revealed that the Company has not filed its return of income for the Assessment Year 2016-17 despite of the R-2 Company having made transactions for Rs.16,15,00,000/- for the Assessment Year 2016-17. The struck-off Company has committed violations of provisions of the Income Tax Act, 1961, by not fulfilling its statutory duty of filing Return of Income. Further, the revenue is not in a position to conclude the assessment proceedings initiated u/s 148 of the Income Tax Act, 1961 for the Assessment Year 2016-17 since the R-2 Company has been struck-off from the Register of Companies maintained by the ROC. It is stated that the same is contemplated for the aforesaid Company, for which the restoration is necessary due to a few judicial decisions holding that no assessment can be completed in respect of struck-off Companies. Therefore, to protect the interest of the revenue, it is requested to get the R-2 Company restored under the provisions of Section 252

of the Companies Act, 2013. In view of the above, Ld. Counsel for the Petitioner seeks a direction to the R-1 to restore the name of the R-2 Company since the Petitioner has initiated Assessment proceedings against the R-2 and it is getting barred by limitation on 31.03.2024 for passing the order of Assessment.

3. Heard Shri Ganesh R. Ghale, Ld. Counsel for the Petitioner and have perused the records.
4. It is a matter of record that the ROC has struck-off the name of the R-2 Company mentioned above as per its order dated 10.12.2019 bearing Notice No.STK-7/Notice/U/S 248(5)-CA 2013. Further, it is an established legal principle that no Income Tax Assessment can be carried out in respect of a struck-off Company, thereby causing loss of legitimate revenue. Moreover, there is a limitation of 31.03.2024 for completion of the Assessment proceedings initiated against the R-2 Company, as prayed in the interim relief. Considering the above, in public interest and in the interest of Government Revenue, we direct that R-2 would be deemed to be restored to its original number, as an interim relief, so as to enable the Petitioner herein to proceed further to complete the Assessment proceedings already initiated in accordance with Law.
5. The ROC shall update its website by showing the R-2 Company is in operation and thus it stands restored on the Register maintained by the ROC until further orders. However, this is an interim order, till the final order in the instant case is passed u/s 252 of the Companies Act, 2013. List the case on **28.03.2024**.

-Sd-
(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

-Sd-
(T. KRISHNAVALLI)
MEMBER (JUDICIAL)

Bhavya