

(2023) 02 NCLT CK 0065

National Company Law Tribunal, Kolkata Bench

Case No: Appeal No.10/ KB/2021

Income Tax Officer

APPELLANT

Vs

Registrar Of
Companies West
BengalRESPONDENT

Date of Decision: Feb. 28, 2023**Acts Referred:**

Companies Act, 2013 " Section 248, 252(1)#Income Tax Act, 1961 " Section 143(3), 144, 147, 153A, 153C

Citation: (2023) 02 NCLT CK 0065**Hon'ble Judges:** Bidisha Banerjee, Member (J); Balraj Joshi, Member (T)**Bench:** Division Bench**Advocate:** Sailendra Kumar Tiwari**Final Decision:** Disposed Of

Judgement

Bidisha Banerjee, Member (Judicial)

1. This is an appeal preferred by Income Tax Officer, Ward 2(1), Kolkata under Sec.252 (1) of the Companies Act, 2013 for restoration of the name

of the company M/S. PAWANSHIV IMPEX PRIVATE L IMITED in the register of Registrar of Companies, West Bengal. The name of the

respondent company had been struck off on 09.06.2017.

2. Ld. Counsel for the appellant appears. No one from the Office of the ROC, West Bengal appears.

3. Court Notice was issued to the respondent and to the company. Affidavit of service proving service of notice is filed. We are satisfied with proper

delivery of notice. However, there is no representation by any of the directors of the struck off company.

4. The appellant contends that the name of the Respondent company had been struck off by the ROC, W.B., in compliance of the provisions under

Sec.248(1) of the Companies Act, 2013 thereby the name of the respondent company had been removed from the Register of Companies and the said

company was dissolved.

5. The appellant further contends that the proceedings under the Income Tax Act, 1961 are pending for Assessment Year 2012-13 against the

Company and during the pendency of proceedings, the name of the respondent company had been struck off. Aggrieved by the order of striking off

the name of the company, this application was filed by the Income Tax Officer praying for restoration of the respondent company to the register of

Registrar of Companies and further to rectify the Master Data by modifying the status from 'struck off to 'active'.

6. It is submitted that as per paragraph 2 of CBDT letter F.No. 225/423/2017-1TA.II dated 29/12/2017, appeal for restoration of name of the struck

off company shall be made by the Income Tax department if;

i. The proceedings under section 143(3)/144/147/153A/153C set aside cases were already in progress/pending or

ii. Contemplated in future against the company,

iii. Departmental appeals initiated were pending

iv. Penalty proceedings already initiated were pending;

v. Prosecution proceedings were initiated launched.

7. It is submitted that the respondent company has not paid income tax dues for Assessment Year 2012-13 amounting to Rs.26,89,58,280/- vide order

under section 144 of the Income Tax Act, 1961 dated 12.03.2015 and the recovery proceedings are pending against the respondent company and that

the respondent company has committed serious violation of provisions of Income Tax Act rendering the entity liable to consequences as per the

Income Tax Act. The restoration of the Company to take the pending proceedings to a logical conclusion.

8. Notices were issued to the respondents. ROC, W.B. has filed his report submitting that it has no objection (save and except on the limitation point

as the date of STK-7 is published on 30.06.2017) to the application being allowed.

9. Upon hearing the arguments advanced on the side of the appellant and the Ld. ROC, West Bengal and also in terms of the CBDT circular (supra),

we are satisfied that the name of the respondent company is required to be restored to the Register of Companies since proceedings under the Income

Tax Act, 1961 are said to be pending for Assessment Years 2012-13 against the Company. In these circumstances, if name of the company is not

restored it would cause great prejudice to the appellant and loss to the Revenue to the exchequer.

10. In the result, the appeal is allowed by restoring the name of the company in the register of Registrar of Companies, West Bengal with a direction

to modify the status of the company from "'struck off'" to 'active' within 30 days from the date of receipt of this order.

11. Appeal No. 10/KB/2021 is allowed and disposed of.

12. There shall be no order as to costs.

13. certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.