

Income Tax Officer, Ward 8(1) New Delhi Vs ROC (Emkor Solution Ltd)

Court: National Company Law Tribunal, New Delhi Court V

Date of Decision: July 28, 2023

Acts Referred: Companies Act, 2013 " Section 248(1), 252, 252(1), 252(3)
Income Tax Act, 1961 " Section 144, 148, 156

Hon'ble Judges: Mahendra Khandelwal, Member (J); Rahul Bhatnagar, Member (T)

Bench: Division Bench

Advocate: Puneet Rai, Nikhil Jain, Shankari Mishra, Niharika Tanwar

Final Decision: Disposed Of

Judgement

Mahendra Khandelwal, Hon'ble Member (Judicial)

1. This Appeal has been filed by the Income Tax Authority invoking the provisions of Section 252(1) of the Companies Act, 2013 (the Act) for

restoration of the name of the Respondent No. 2 Company in the Register maintained by the Registrar of Companies (RoC), NCT of Delhi &

Haryana.

2. As per the averments, M/s. Emkor Solutions Ltd., was incorporated on 11.01.2012 as a private limited company and has its registered office at

511/2/1, Rajokri, New Delhi 110038, having CIN No. U74140DL2012PLC229812.

3. The Income Tax Department has a system of collecting information from various sources. As per the said information the Respondent Company

No.2 and its Directors violated provisions of Income-tax Act, 1961, hence proceedings were initiated against the Respondent Company No. 2 under

section 148 of Income Tax Act, 1961 and Notice was issued against the Respondent Company No. 2 and an assessment order dated 15.12.2017 was

passed for A.Y. 2015-16 u/sec.144 of the Income-tax Act, 1961 computing a total demand of Rs. 2,19,47,440/- by way of demand notice u/sec.156 of

the Income-tax Act, 1961. The demand is pending against the respondent-company no. 2 for A.Y. 2015-16.

4. The Appellant Revenue came to know from MCA portal that ROC struck-off the name of the company without following the mandatory

provisions, which resulted into revenue loss to Income-tax Department. Hence, the appellant filed the present appeal to restore the company to its

original number.

5. From perusal of the record, it is also established that the name of the Company is struck-off by RoC by issuing Notice No. ROC-DEL/248/STK-

5/2018/2912 issued on 18.06.2018 followed by Notification no.ROC/DELHI/248(5)/STK-7/4865 dated 08.08.2018 at Sr. No.6245.

6. Apparently, there are outstanding tax dues against the Respondent no.2 Company which were much prior to the striking off the name from RoC.

Accordingly, Revenue Department have to take coercive steps against the Respondent Company and its Directors which may include criminal

proceedings. Hence, it is required that the company's name be restored as assessment proceedings against a dead company may not be

sustainable in the eyes of law.

7. From the perusal of the record, it is also found that RoC struck-off the name of Company without making any due enquiry and even the appellant

i.e., Assessing Officer of the Income Tax Department was also not intimated in the due course, which resulted in evasion of the tax liability causing

loss of revenue.

8. In the present matter, Respondents No.2 to 5 failed to appear before this Tribunal, despite the fact that they were duly served and were proceeded

ex-parte. Hence, the evidence placed on record by the appellant herein remains un-rebutted. Even otherwise, the appellant herein duly established on

the record that there was evasion of taxes by the Respondents No. 2 to 5. Denial to restore the name of the respondent no.2 company in the Register

of the ROC will not only condone the wrong doing of the respondent no. 2 company, but it will also encourage escapement of tax liabilities, which will

be prejudicial to the interest of the revenue in the long run. The respondent company by having its name struck off from Register of RoC has indirectly

sought to evade tax liabilities.

9. Further, in order to render Assessment Order valid in the eyes of Law and to enable the Appellant to take steps for recovery of taxes and for any

further consequential proceedings, the respondent no. 2 company's name be restored to the Register of Companies as if the name of the company

was never struck off. Because in the guise of the fact that the Respondent No. 2 is a non-existent entity, the Respondent No. 2 and its directors are

trying to escape the demands and the prosecution proceedings and the liability that will arise out of the said proceedings.

10. In sequel of the above said discussion, we are of the firm view that the appellant herein succeeded in proving that there was tax evasion on the

part of Respondents No. 2 company i.e. M/s. Emkor Solutions Limited and hence, got struck-off from the register of the Registrar of the Companies

without following the due procedure established. Accordingly, the Public Notice of RoC striking off name of the respondent-company no. 2 is declared

illegal and stands set-aside.

11. We are in agreement that the submission of the Appellant that the Income Tax Department being aggrieved person and also creditor under Section

252(1) and 252(3) of the Companies Act, 2013 by the removal of the name of the Company from the register by the Registrar of the Company as for

the reopening of assessment proceedings the Company has to be in existence for the department to be able to recover its dues.

12. In the facts and circumstances of the case, we are of the view that "it is just that name of the Respondent Company be restored to the

Register of Companies". Therefore, in view of the same, the present Appeal is allowed. The Registrar of Companies is, therefore, directed to restore

the name of the respondent-company in their Register and also proceed to take such other and further penal action against the Respondent in

accordance with the statutory provisions. The name of the Respondent-Company No. 2 shall, then as a consequence, stand restored to the Register of

the Registrar of Companies, as if the name of the Company had not been struck off in accordance with Section 248(1) of the Companies Act, 2013.

13. We, however, make it clear that this Bench has only directed restoration of the name of the respondent-company no. 2 in the Register of

Companies maintained by the RoC on the basis of averments made in the appeal and in no way endorse or have adjudicated about their entitlement to

recover which shall be adjudicated by the department subject to the Law of limitation governing such recoveries. Charges involved in seeking

restoration of the respondent-company's name with the office of the ROC shall be borne by the applicant. Compliance be made with the RoC

within 30 days.

14. The direction for freezing the Bank Account(s) of the respondent -company, if on this ground, shall consequently be also set aside immediately to

enable the company to carry out its business operation. Compliance of this Order for restoration shall be made by the respondent-company with all its

consequential effects within one week of compliance by the Appellant.

15. The Appeal is allowed and disposed of.