
(2024) 05 NCLT CK 0028

National Company Law Tribunal, New Delhi Court III

Case No: Appeal No. 77/252/ND/2022

Income Tax Officer, Ward 8(1)

APPELLANT

Vs

Registrar Of Companies, Delhi &
Ors

RESPONDENT

Date of Decision: May 28, 2024

Acts Referred:

- Companies Act, 2013 - Section 248(1), 252
- Income Tax Act, 1961 - Section 142(1), 148

Hon'ble Judges: Bachu Venkat Balaram Das, Member (J); Rahul Bhatnagar, Member (T)

Bench: Division Bench

Advocate: Puneet Rai, Nikhil Jain, Ashvini Kumar, Rishabh Nangia

Final Decision: Disposed Of

Judgement

Rahul Bhatnagar, Member (Technical)

1. 77/252/ND/2022 is an Appeal filed by INCOME TAX OFFICER, WARD 8(1), NEW DELHI, the Appellant, before this Tribunal under Section

252 of the Companies Act, 2013, for seeking the following relief:

(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 Honâ€™ble Tribunal may deem fit and proper is awarded in favor of the appellant in the facts and circumstances of the case.â€™

2. Facts of the Case:

a) The Respondent No. 2 Company namely M/s. Easy Money Transfer Private Limited was incorporated on 10.10.2011, as a Private Company Limited by Shares (Non-govt. Company) having CIN:U67190DL2011PTC225999, under the erstwhile Companies Act, 1956 with the Registrar of Companies, NCT of Delhi and Haryana. The

Authorised Share Capital of the Respondent No. 2 Company was Rs.1,00,000/- (Rupees One Lakh Only) and the Paid-up Share Capital of the Respondent No. 2

Company was Rs.1,00,000/- (Rupees One Lakh Only). The Registered Office Address of the Respondent No. 2 Company was H. No. 99, Near Holi Chowk, Rajokari

Village, New Delhi-110038. Therefore, this Bench has jurisdiction to deal with this Appeal. A copy of the Company Details/Master Data of the Respondent Company is filed along with the Appeal.

b) The Directors of the Respondent No. 2 Company were Mr. Naresh Kumar Yadav (DIN:03582941) and Ms. Raesa (DIN: 05182229) have been arrayed as Respondent No. 3 and Respondent No. 4 respectively.

c) The Income of Respondent No. 2 for A.Y. 2013-2014 has escaped assessment thereby rendering the company liable to consequences under the Income Tax Act, 1961. Thus, prima facie, there appears tax evasion which requires action in accordance with the law entitling the Revenue to initiate proceedings against the company.

d) The Assessee Company (Respondent No. 2) and its Directors (Respondent No. 3 and 4) have failed to carry out their obligations and violated provisions of the Income Tax Act 1961. Hence, proceedings were initiated against the Assessee Company. Thereafter notice bearing no. ITBA/AST/S/148/2020-21/1031837527(1) under

Section 148 of the Income Tax Act, 1961 was issued against the Assessee on 27.03.2021 for the Assessment Year 2013-2014 respectively.

e) Notice under Section 142(1) of the Income Tax Act 1961 was issued to the Assessee to furnish accounts and documents on 23.11.2021 and again on 18.02.2022 for

AY 2013-2014 however no compliance was made by the Assessee to either notice. The total demand of Rs. 31,87,205/- is pending against the Assessee.

f) The Appellant came to know from the MCA portal that the Respondent Company has been struck off by ROC, vide Form STK-7 dated 08.08.2018 (Companyâ€™s

name appearing at Serial.No. 6014). It is submitted that for framing assessment, for recovery of the taxes from the Respondent Company and for any further consequential proceedings against the company under the I.T. Act, it is just and equitable and in public interest that the name of the Respondent Company be restored to the register of companies as if the name of the company had not been struck off from the register of companies.

3. It is noted that on 09.10.2023, no one appeared on behalf of Respondent Nos. 2 to 4, despite due service of notice and paper publication, the Respondent Nos. 2 to 4 were set ex parte.

4. Analysis and Findings

a. Considering the facts and circumstances of the case before us and the averments as made by the Appellant, this Tribunal is of the earnest view that fairness and justice go hand in hand and so this Tribunal must weigh the requirement of being just from the lens of fairness and justice based on the reasons put forth by the Appellant in the instant appeal. It is to be borne in mind that the presence of the word "or otherwise" signifies that even if the Company was not carrying on any business or was not in operation at the time of striking off, it is still open to the Tribunal to order restoration if it appears to it to be "otherwise" "just".

Further, it is pertinent to mention that the term "Creditor" in Section 252 of the Companies Act, 2013 ought to be construed widely so as to include a "creditor" whose debt was contingent or prospective.

b) At this juncture, it is relevant to refer to the Hon'ble Delhi High Court's judgement in "Sidhant Garg and Anr. Vs. Registrar of Companies and Ors." reported in (2012) 171 Comp. Cas. 326, wherein the Hon'ble High Court held that, "the word 'just' would mean that it is fair and prudent from a commercial point of view to restoring the Company and that the Court has to examine the concept of 'justness' not exclusively from the perspective of a creditor or a member or a debtor but from the perspective of the society as a whole."

c) We are of the considered view that the Appellant has succeeded in substantiating that demand of Rs. 31,87,205/- is pending for the AY 2013-2014, against the Respondent No. 2 Company as assessed by the Appellant. Accordingly, the Appellant succeeds in representing that the Appellant is the creditor of the Respondent

No. 2 Company who is aggrieved against the striking of Respondent No. 2 Company's name vide Registrar of Companies vide Form STK-7 dated 08.08.2018 (Company's name appearing at Serial. No. 6014) and established before this Tribunal that there is a cogent and convincing reason as to why the name of the Respondent No. 2 Company be restored in the register of companies maintained by the Registrar of Companies. Even otherwise, collection of due taxes is a duty cast upon the Revenue authorities in the public interest only, which shall be adversely affected if the Respondent No. 2 Company name is not restored to the Register of Companies maintained by the Registrar of Companies.

5. Order

i. In light of the above facts and circumstances, the Appeal bearing 77/252/ND/2022 filed by INCOME TAX OFFICER, WARD 8(1), NEW DELHI, the Appellant before this Tribunal under Section 252 of the Companies Act, 2013 stands allowed.

ii. In the interest of Revenue and the Public, we are of the considered view that it is just and equitable to restore the name of the Respondent No. 2 Company i.e. M/s.

Easy Money Transfer Private Limited having CIN:U67190DL2011PTC225999 in the Register of Companies maintained by the Registrar of Companies, NCT of Delhi and Haryana to enable the Appellant to recover the outstanding demand of the tax liability of the Respondent No. 2 Company.

iii. The Registrar of Companies, NCT of Delhi & Haryana is therefore directed to restore the name of the Respondent No. 2 Company in their Register and also proceed to take such other and further penal action against the Respondent in accordance with the statutory provisions. As a consequence, the name of the Respondent Company shall 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.

iv. We make it clear that this Tribunal has only directed restoration of the name of the Respondent No. 2 Company in the Register of Companies, maintained by the RoC, on the basis of averments made in the petition and have in no way endorsed or adjudicated about the Appellant's entitlement to recover any amount as tax, etc. which shall be adjudicated by the Department and the Appellant authorities, subject to the laws of limitation governing such recoveries.

v. However, Charges, if any involved in seeking restoration of the company's name with the office of the ROC shall be borne by the Appellant itself.

vi. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

No order as to costs.