

IN THE HIGH COURT OF DELHI AT NEW DELHI
MANMOHAN; J., MANMEET PRITAM SINGH ARORA; J.
W.P.(C) 7122/2019 & CM APPL.29656/2019; 17 November, 2022
RAVINDER KUMAR AGGARWAL versus INCOME TAX OFFICER

Petitioner Through: Mr. Yogesh Kumar Jagia, Advocate.

Respondent Through: Mr. Zoheb Hossain, Advocate with Mr. Vipul Agrawal and Mr. Parth Semwal, Advocates.

J U D G M E N T

MANMEET PRITAM SINGH ARORA. J:

1. The Petitioner herein is the director of RKA International Pvt. Ltd., a company incorporated under the provisions of the Companies Act, 1956 ('the Company'). The Company was struck off by the Registrar of Companies, Delhi and Haryana ('ROC'), from its register of companies, under Section 248 of the Companies Act, 2013 ('Companies Act') on 30th June, 2017, in pursuance of the proceedings initiated by Ministry of Corporate Affairs through the office of ROC, due to the defaults of the Company.
2. The present petition has been filed by the Petitioner seeking quashing of the notice dated 28th March, 2019 (impugned notice), issued under Section 148 of the Income Tax Act, 1961 ('the Act') for Assessment Year ('AY') 2012-13 on the ground that the said notice is null and void, as it has been issued in the name of the struck off company.
3. The Respondent has filed its counter affidavit, placing on record the order dated 25th September, 2019, passed by the National Company Law Tribunal, New Delhi ('NCLT'), allowing the petition filed by the Income Tax Department ('the Department') under Section 252 of the Companies Act, 2013, for restoration of the name of the Company in the register of companies, maintained by the ROC Delhi. Learned Counsel for the Respondent states that since the Company now stands restored, the present writ petition which is premised on the sole ground that the impugned notice was issued in the name of a struck off Company, does not survive any more and the entire petition has become infructuous.
4. He further, on merits, states that though the Company was struck off with effect from 7th June, 2017, the said Company was active during AY 2012-13 and it failed to file its income tax return ('ITR') for the said assessment year and therefore, it is a fit case for issuance of notice under Section 148 of the Act. He states that as per the reasons recorded before issuance of the impugned notice, an amount of Rs.10,09,00,000/- has escaped assessment for AY 2012-13. He states that Company is also liable to pay a tax demand of Rs.3,11,14,000/- for the AY 2011-12.
5. In reply, the learned counsel for the Petitioner states that the order of the NCLT, restoring name of the Company in the register of companies on 25th September, 2019 is to no effect because as on 28th March, 2019, when the impugned notice was issued, the Company was admittedly struck off and the subsequent order restoring the Company would not cure the defect of issuance of impugned notice in the name of non-existent Company, on the date of issue.

6. In rejoinder, learned counsel for the Respondent states that the Income Tax Department had filed an appeal for the restoration of the Company on 14th September, 2018 i.e., prior to issuance of impugned notice for the concerned assessment year. He states that the restoration relates back to the date of striking off and the impugned notice does not suffer from any infirmity.

7. The learned counsel for the petitioner and respondent both have relied upon the judgment of the Supreme Court in **Commissioner of Income Tax, Jaipur v. Gopal Shri Scrips Private Limited, (2020) 7 SCC 654** in support of their submissions.

8. We have heard the learned counsel for the parties.

9. The petitioner herein is the promoter and director of the Company and he has filed the present petition in his individual capacity, impugning the notice issued under Section 148 of the Act, in the name of the company. The Petitioner admits the Company stands restored by the order dated 25th September, 2019, passed by the NCLT. The defaulting Company has neither challenged the impugned Notice dated 28th March, 2019, nor the order dated 25th September, 2019, passed by the NCLT, which has therefore, attained finality in law. In our view, in these facts alone, the Petitioner herein has no locus standi to maintain the proceedings and even in alternative the present petition has become infructuous.

10. With respect to the Petitioner's contention that, since the impugned notice was issued on 28th March, 2019 i.e., at a point in time, when the Company was struck off from the ROC, the subsequent order dated 25th September, 2019, passed by the NCLT restoring the Company, will not have the effect of curing the defect issuance of notice to the non-existent entity; we are of the opinion that the said submission of the learned counsel for the Petitioner is fallacious and is in teeth of Section 252(3) of the Companies Act, 2013 which reads as under:-

“(3) If a company, or any member or creditor or workmen thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies”.

(Emphasis Supplied)

11. The said provision expressly states that the Tribunal's order directing restoration of a company will have the effect of placing the company in the same position as if the name of the company has not been struck off from the register of companies. In other words, with the restoration order dated 25th September, 2019 passed by the NCLT, even on the date of the issuance of the impugned notice, the Company is deemed to be in existence. The relevant extract of the NCLT order directing the ROC to restore the name of Company in the register of companies is as under:

“12. The petition is therefore allowed. The RoC is therefore directed to restore the name of the Respondent Company in the Register and also proceed to take such other and further penal action against the respondents in accordance with the statutory provisions.”

12. In this regard, it would also be relevant to refer to Section 250 of the Companies Act, 2013, which reads as under: -

“250. Effect of company notified as dissolved.-Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.”

(Emphasis Supplied)

13. Section 250 of Companies Act of 2013 is a new provision and it declares that even where a Company is dissolved in consequence to it being struck off under Section 248, it shall be deemed to continue to be in existence for the purpose of discharging its liabilities. The said section recognizes the continuing liability of a struck off company, which is in addition to Section 248(7) of the Companies Act, 2013, which reads as under:

“248. Power of Registrar to remove name of company from register of companies. – (1) XXX XXX XXX

(7) The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every members of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved.”

14. With respect to the liability of a struck off company, it would also be instructive to refer to repealed Section 560 of the Companies Act, 1956, which corresponds to Section 248 of the Companies Act, 2013. The Sub-Section (5) of Section 560 reads as under: -

“(5) At the expiry of the time mentioned in the notice referred to in sub-section (3) or (4), the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Official Gazette; and on the publication in the Official Gazette of this notice, the company shall stand dissolved:

Provided that-

*(a) the liability, if any, of every director, ¹[***] manager or other officer who was exercising any power of management, and of every member of the company, shall continue and may be enforced as if the company had not been dissolved; and*

(b) nothing in this sub-section shall affect the power of the Court to wind up a company the name of which has been struck off the register.”

15. Clause (a) of the Proviso to Sub-Section (5) of Section 560 came up for consideration before the Supreme Court in *Gopal Shri Scrips* (Supra), where in similar circumstances a company had been struck off and, on that basis, the High Court had dismissed the appeal filed by the Income Tax Department on the ground that the appeal is not maintainable since the Company stands dissolved. The Supreme Court reversed the order of the High Court and observed as under: -

“10*. In our view, the High Court was wrong in dismissing the appeal as having rendered infructuous. The High Court failed to notice Section 506(5) proviso (a) of the Companies Act and further failed to notice Chapter XV of the Income Tax Act which deals with “liability in special cases” and its Clause (L) which deals with “discontinuance of business or dissolution”. The aforementioned two provisions, namely, one under the Companies Act and the other under the Income Tax Act specifically deal with the cases of the companies, whose name has been struck off under Section 506(5) of the Companies Act. These provisions provide as to how and in what manner the liability against such company arising under the Companies Act and under the Income

Tax Act is required to be dealt with. Since the High Court did not decide the appeal keeping in view the aforementioned two relevant provisions, the impugned order is not legally sustainable and has to be set aside.”

16. It is pertinent to observe that in the judgment of **Gopal Shri Scrips** (Supra), there was no order restoring the Company and it remained to be non-existent, being struck off. Despite the said fact, the Supreme Court, after referring to proviso (a) to Sub-section (5) of Section 560 of the Companies Act, 1956 and Chapter XV of the Act of 1961, held that the High Court was wrong in dismissing the appeal filed against such a struck off Company and remanded the matter to decide the appeal on merits.

17. In the present proceedings, the Company has admittedly been restored and as it has been observed above that statutorily upon restoration, the Company under Section 252(3) of the Companies Act, 2013, is deemed to not have been struck off from the register of companies at all. Accordingly, the impugned notice dated 28th March, 2019, is valid and not *non-est* on the grounds urged in the present petition.

18. The learned counsel for the Petitioner has also sought to place reliance on the following cases:

(a) Andhra Pradesh High Court in **Shrikishen Dhoot & Others V. S. D. Kamlapurkur and others**, 1964 SCC OnLine AP 145,

(b) Supreme Court in **Commissioner of Wealth Tax, Meerut v. Sharvan Kumar Swarup & Sons**, (1994) 6 SCC 623,

(c) Supreme Court in **First Additional Income Tax Officer, Kozhikode (Kerala) v. Mrs. Suseela Sadanandan and Another**, (1965) 57 ITR 168.

18.1. However, the said decisions are distinguishable in facts inasmuch as, in **Shrikishen Dhoot & Others** (Supra) the Andhra Pradesh High Court has held that a suit is not maintainable against a company which was struck off from the register of companies. However, the Court in the said case has clarified that the existing liability of any director or member prior to the dissolution of the company will continue in spite of the dissolution.

18.2. In **Sharvan Kumar Swarup** (Supra), the Supreme Court with reference to Rule 1-BB of the Wealth Tax Rules, 1957, has held that the said Rule does not affect or alter the substantive rights and it is merely a procedural provision and therefore, not attracted to all proceedings pending at its enactment.

18.3. In **Mrs. Suseela Sadanandan** (Supra), the Supreme Court, was considering the issue of continuation of proceedings against the legal representative of one deceased Mr. S. P. Sadanandan. The Supreme Court, however, in this case remanded the matter back to High Court to determine who was the Legal Representative of the estate of deceased Assessee.

18.4. We fail to consider how the aforesaid judgment are applicable to the facts of present case.

19. Before parting, we may also note that the Petitioner herein was a Respondent in the appeal filed by the Income Tax department before the NCLT, for restoration of the Company. A perusal of the order dated 25th September, 2019 passed by the NCLT goes on to show that the Petitioner herein objected to the said appeal filed by the Department and opposed the restoration of the Company. The NCLT however, rejected the submissions of the Petitioner herein and held as under:-

“8. Upon notice being issued, respondents 3 and 4 appeared and filed their reply impugning the demand stating that the assessment order was against a dead company and therefore the appellant is merely seeking to legalise its act which is contrary to the provisions of law. The assessments made against a struck off company are nonest. The respondent have raised other points also challenging the notice and impugning it in Writ Petition (Civil) 7122/2019 filed before the Hon'ble High Court of Delhi. The Hon'ble High Court of Delhi has taken note of the fact that the name of the company has been struck off, and directed the appellant to continue the assessment proceedings, but not pass the final order until further directions. The respondent's have further submitted that they have accounted for all funds received by them.

9. Keeping in view the submission made, the appellant has justified the grounds on which it seeks restoration of the name of the company so as to proceed further. It is equally expedient for the respondent company to seek its restoration as they wish to contest the claim made by the appellant before any judicial forum.”

20. It would be relevant to note that the Company was initially struck off by the Ministry of Corporate Affairs due to its default in filing its statutory return with the ROC and the Company was, therefore, struck off due to its own defaults. The NCLT upon realizing that the detriment caused to the interest of the Income Tax department due to the striking off, restored the Company to enable the Department to recover its dues. However, the conduct of the Petitioner in persisting with the present petition even after the Company has been restored and also his action in opposing the appeal before the NCLT for restoration evidences that the petitioner is abusing the process of law to obstruct the assessment proceedings. The resort to present petition by the Petitioner herein is therefore, not bona fide and is being done to avoid legal processes. We, accordingly, dismiss the present petition with costs and vacate the stay/interim order.

21. The petitioner is directed to deposit the cost of Rs.50,000/- with the Delhi High Court Legal Services Committee. The petitioner shall file the proof of deposit with the Registry of this Court, within two weeks.