

Notice issued in name of struck off Co. is valid if NCLT restored its name after issue of notice: HC

Facts of the case: Ravinder Kumar Aggarwal v. ITO - [2023] (Delhi)

Petitioner was a promoter and director of a private limited company. Said company was struck off by the Registrar of Companies (ROC), Delhi in 2017 due to the defaults in filing the statutory return with ROC.

The Assessing Officer (AO) observed that the company had not filed its return of income for the Assessment Year (AY) 2012-13 despite having a huge amount of income. Thus, AO issued notice for reassessment under section 148.

Subsequently, AO obtained an affidavit from the National Company Law Tribunal (NCLT), wherein the petition for restoration of the name of the company in the Register of Companies was allowed as per section 252 of the Companies Act, 2013.

Since the notice was issued in the name of the struck-off company and subsequent order for restoring the company was obtained after issuing such notice, the petitioner filed a writ petition with the Delhi High Court for quashing the impugned order.

Decision of the case:

- The Delhi High Court emphasized section 252 of the Companies Act, 2013 which states that the company can be restored by the NCLT on application by a person feeling aggrieved by the order of striking off the company's name. The restoration will be given effect as if the name was never struck off. Therefore, even on the date of issuing notice, although not restored, the company will be deemed to be in existence.
- In the instant case, ROC struck off the company's name as it defaulted in its statutory filings but was restored by NCLT upon realizing that it was prejudicial to the interest of the Income-tax Department. Since the name was restored to enable the Income-tax department to recover its dues, notice under section 148 issued in name of the company before its restoration was valid and justified.