

TOP PRIORITY

F.No. 225/423/2017/ITA.II
Government of India
Ministry of Finance
Department of Revenue (CBDT)

North Block, New Delhi, the 18th of April, 2018

To

All Principal Chief-Commissioners of Income-tax/Principal Directors-General of Income-tax

Sir/Madam,

Subject: Filing of references for restoration of struck-off/de-registered companies under Companies Act, 2013-regd.-

Vide communication dated 29th December, 2017 in file of even no. (copy enclosed for reference), Board had issued necessary directions regarding filing of references for restoration of struck-off/de-registered companies under Companies Act, 2013. The field authorities were required to take immediate action in this matter, however, it has been found that till now action has been taken in a very few cases.

2. Upon consideration of the matter, the Board desires that exercise of filing references in situations stated in para 2 of Board's letter dated 29th December, 2017 including instances of pendency of outstanding tax-liability in cases of struck-off/de-registered companies should be completed by all charges by **31st May, 2018**. The concerned Pr. CCIT would thereafter furnish a report to Member (A&J), CBDT containing compilation of cases in his jurisdiction where reference applications have been filed by the Income-tax Department (ITD) before the National Company Law Tribunal (NCLT). This would be in addition to the preliminary report sought by Member (A&J) in this regard vide letter in F.No. 278/M-52/2003-ITJ(Pt.) dated 4th April, 2018.

3. Regarding the mechanism for filing references by the ITD for restoration of name of the struck-off/de-registered companies, Ministry of Corporate Affairs (MCA) has intimated that in view of Section 252(3) of the Companies Act, 2013, being an aggrieved creditor for its pending Income-tax proceedings, ITD may file such an application before the NCLT Bench having territorial jurisdiction over a particular case. In view of this intimation by the MCA, the concerned field authorities should file appeals before the NCLT as stated in para 5 of Board's letter dated 29th December, 2017.

4. The MCA has also informed that they have issued suitable directions to All Regional Directors/All Registrar of Companies to extend co-operation to ITD while filing applications for restoration off name of struck-off/de-registered companies before the jurisdictional NCLT Bench. They have further informed that directions have been issued to All Regional Directors/All Registrar of Companies not to oppose applications filed by ITD before the NCLT for restoration of struck-off/de-registered companies while filing their response/reply/submission on behalf of the MCA.

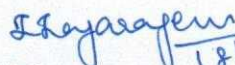
5. The Departmental Standing Counsels representing the case of ITD should be suitably briefed about the stand of MCA mentioned in paras 3 and 4 above.

6. While undertaking the exercise of striking-off/de-registering companies, Registrar of Companies (RoC) issues a 'Public Notice' about the proposed action of removal or striking-off/de-registration the names of such companies and seeks objections, if any, to be furnished within thirty days of the notice. In the past, instances were noticed that action on these 'Public Notices' which were issued by the Regional RoCs was not taken in a timely manner. Therefore, to ensure that a timely response is available from the side of the ITD in these cases, it has been decided to designate nodal authorities in the ITD (as per enclosure) for this purpose. The designated nodal authorities besides coordinating response for cases falling in their jurisdiction shall also ensure that where a particular case pertains to another Pr. CCIT jurisdiction, the information would be passed to it in a timely manner.

7. The MCA is also being requested to intimate the Regional RoCs to ensure service of 'Public Notice' regarding proposal of striking-off/de-registration of companies under section 248(1) of the Companies Act, 2013 upon designated nodal authorities in the ITD. The statement of objection under section 248(1) of the Companies Act, 2013 is required to be furnished by the jurisdictional Income-tax authorities on the basis of parameters indicated in para 2 of Board's letter dated 29th December, 2017 including pendency of out-standing tax-arrears, if any.

8. The list of cases requiring filing of applications may be identified by the concerned Pr. CIT/CIT on the basis of information, already available with the ITD & also in public domain. Further, to facilitate the process of identification of companies already struck-off/de-registered, the MCA is being also requested to furnish by 30th April, 2018 a list of all cases struck-off/deregistered by the RoC during the Financial-Year 2017-2018. The list would be furnished by the concerned regional RoCs for cases in their jurisdiction to the designated nodal authorities in the ITD as mentioned in para 6 above. It is reiterated that based upon parameters indicated, all applications are required to be filed before the NCLT Benches by 31st May, 2018.

Enclosure(s): as above


(Rajarajeswari R.)
Under-Secretary (ITA.II), CBDT

Copy to:-

- i. Chairman, CBDT & All Members, CBDT
- ii. All Joint Secretaries/CsIT, CBDT
- iii. Addl.CIT (Database Cell) for uploading on departmental website

Annexure

Designated Nodal Officers for receipt of public notice under section 248(1) of Companies Act, 2013

| Regional ROC | States and Area covered | Designated Nodal Officer of Income Tax Department |
|---------------------|--|--|
| Hyderabad | Andhra Pradesh, Telangana | Pr. CCIT, (AP & Telangana) <u>Address:</u> 10th Floor, C-Block, I.T. Towers, 10- 2-3, A.C. Guards, Hyderabad-500004 <u>Phone:</u> 040- 23237946 <u>E-mail:</u> Hyderabad.pccit@incometax.gov.in |
| Patna | Bihar | Pr. CCIT (Bihar & Jharkhand) <u>Address:</u> Central Revenue Building, Birchand Patel Path, Patna-800 001 <u>Phone:</u> 0612- 2504447 <u>E-mail:</u> patna.pccit@incometax.gov.in |
| Ranchi | Jharkhand | Pr. CCIT (Bihar & Jharkhand) <u>Address:</u> Central Revenue Building, Birchand Patel Path, Patna-800 001 <u>Phone:</u> 0612- 2504447 <u>E-mail:</u> patna.pccit@incometax.gov.in |
| Shillong | Assam, Meghalaya, Manipura, Tripura, Mizoram, Nagaland, Arunachal Pradesh | Pr. CCIT, NER <u>Address:</u> 1st Floor, Aayakar Bhawan, Christian Basti, G. S. Road, Guwahati-781 005 <u>Phone:</u> 0361- 2345106 <u>E-mail:</u> ccit.guwahati@incometax.gov.in |
| Bilaspur | Chhattisgarh | Pr. CCIT, MP & Chhattisgarh <u>Address:</u> Aayakar Bhawan, 48 Arera Hills, Hoshangabad Road, Bhopal-462 001 <u>Phone:</u> 0755- 2554597 <u>E-mail:</u> ccit.bhopal@incometaxindia.gov.in |
| Delhi | Delhi, Haryana | Pr. CCIT, Delhi <u>Address:</u> C. R. Building, I. P. Estate New Delhi-110002 <u>Phone:</u> 011- 23379713 <u>E-mail:</u> delhi.pccit1.incometax.gov.in |
| Goa | Goa, Daman & Diu | Pr. CCIT (Karnataka & Goa) <u>Address:</u> Central Revenue Building, No.-1 Queen's Road, Bengaluru - 560 001 <u>Phone:</u> 080- 22869239 <u>E-mail:</u> ccit.bangalore@incometax.gov.in |
| Jammu | Jammu & Kashmir | Pr. CCIT, NWR <u>Address:</u> Aayakar Bhawan, Sector-17-E, Chandigarh <u>Phone:</u> 0172- 2701645 <u>E-mail:</u> ccit.chandigarh@incometax.gov.in |

| | | |
|-------------------|---|---|
| Kochi | Kerala | Pr.CCIT, Kerala <u>Address:</u> Central Revenue Building, 2nd Floor, I S Press Road, Kochi - 682 018 <u>Phone:</u> 0484- 2390176, <u>E-mail:</u> pranab.kumar.das@incometax.gov.in |
| Mumbai | Maharashtra - Mumbai Area | Pr.CCIT, Mumbai <u>Address:</u> 3rd Floor, Aayakar Bhawan, Maharishi Karve Road, Mumbai - 400 020 <u>Phone:</u> 022- 22017654 <u>E-mail:</u> ccit.mumbai@incometax.gov.in |
| Pune | Maharashtra - Pune Area | Pr. CCIT, Pune <u>Address:</u> Aayakar Bhawan 12, Sadhu Vaswani Chowk Pune - 411 001 <u>Phone:</u> 020- 26125898 <u>E-mail:</u> punecit1@gmail.com |
| Puducherry | Puducherry | Pr. CCIT Tamil Nadu & Puducherry <u>Address:</u> 121, Mahatma Gandhi Road, Nungambakkam, Chennai - 600 034 <u>Phone:</u> 044- 28338301 <u>E-mail:</u> chennai.pccit@incometax.gov.in |
| Ahmedabad | Gujarat | Pr.CCIT, Gujarat <u>Address:</u> P.B. No. 211, Aayakar Bhawan, Ashram Road, Ahmedabad - 380 009 <u>Phone:</u> 079- 27546340 <u>E-mail:</u> ccit.ahmedabad@incometax.gov.in |
| Bangalore | Karnataka | Pr.CCIT (Karnataka & Goa) <u>Address:</u> Central Revenue Building, No.-1 Queen's Road, Bengaluru - 560 001 <u>Phone:</u> 080- 22869239 <u>E-mail:</u> ccit.bangalore@incometax.gov.in |
| Gwalior | Madhya Pradesh | Pr. CCIT, MP & Chhattisgarh <u>Address:</u> Aayakar Bhawan, 48 Arera Hills, Hoshangabad Road, Bhopal-462 001 <u>Phone:</u> 0755- 2554597 <u>E-mail:</u> ccit.bhopal@incometaxindia.gov.in |
| Cuttack | Orissa | Pr. CCIT, Odisha <u>Address:</u> Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751 007 <u>Phone:</u> 0674- 2589925/ 2589633 <u>E-mail:</u> bkmishra01@yahoo.co.in |
| Chandigarh | Punjab, Chandigarh, Himachal Pradesh | Pr. CCIT, NWR <u>Address:</u> Aayakar Bhawan, Sector-17-E, Chandigarh <u>Phone:</u> 0172- 2701645 <u>E-mail:</u> ccit.chandigarh@incometax.gov.in |

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|-------------------|--|--|
| Chennai | Tamil Nadu - Chennai and Surrounding Districts | Pr. CCIT, Tamil Nadu & Puducherry <u>Address:</u> 121, Mahatma Gandhi Road, Nungambakkam, Chennai - 600 034 <u>Phone:</u> 044- 28338301 <u>E-mail:</u> chennai.pccit@incometax.gov.in |
| Coimbatore | Tamil Nadu - Coimbatore and Surrounding Districts | Pr. CCIT Tamil Nadu & Puducherry <u>Address:</u> 121, Mahatma Gandhi Road, Nungambakkam, Chennai - 600 034 <u>Phone:</u> 044- 28338301 <u>E-mail:</u> chennai.pccit@incometax.gov.in |
| Kolkata | West Bengal | Pr. CCIT (West Bengal & Sikkim) <u>Address:</u> Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700069 <u>Phone:</u> 033- 22136148 <u>E-mail:</u> Anil.Kumar.Singh@incometax.gov.in |
| Jaipur | Rajasthan | Pr. CCIT, Rajasthan <u>Address:</u> New Central Revenue Building, Statue Circle Bhagwan Dass Road, Jaipur <u>Phone:</u> 0141- 2385022 <u>E-mail:</u> jaipur_ccit@incometax.gov.in |
| Kanpur | Uttar Pradesh, Uttarakhand | Pr. CCIT (UP West & Uttarakhand) <u>Address:</u> 16/69, Aayakar Bhawan, Civil Lines, Kanpur-208001 <u>Phone:</u> 0512- 2304475 <u>E-mail:</u> ccitkanpur@rediffmail.com |

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TOP PRIORITY

F.No. 225/423/2017-ITA.II
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

North Block, New Delhi, the 29th of December, 2017

To

All Principal Chief-Commissioners of Income-tax/Principal Directors-General of Income-tax

Sir/Madam,

Subject: Filing of references for restoration of 'struck off' companies under Companies Act, 2013-regd.-

During this financial year, a large number of companies have been 'struck off' from the register of companies under section 248(5) of the Companies Act, 2013. As per section 248 of the Companies Act, 2013, the 'strike off' of a company from the register of companies does not apply as far as payment/discharge of liabilities or obligations of the company is concerned. Therefore, right of the revenue to recover arrear demand is not affected in any manner whatsoever in case of 'struck off' companies. However, pursuant to being 'struck off' from the register, these companies have ceased to exist leading to uncertainty regarding various other proceedings which were already underway under the Income-tax Act, 1961 in case of these companies.

2. On consideration of the matter, Board has decided that request/appeal for restoration of name of the 'struck off' company with retrospective date from the date of being 'struck off' shall be made by the Income-tax department in following situations:

- i. where proceedings under section 143(3)/144/147/153A/153C/set-aside cases were already in progress; or
- ii. where proceedings under section 143(3)/144/147/153A/153C are contemplated in near future; or
- iii. where Departmental Appeals were pending; or
- iv. where Penalty proceedings already initiated were pending; or
- v. where Prosecution proceedings were initiated /launched.

3. While filing a request/appeal, it should be duly emphasized that restoration is being requested to protect the legitimate interests of revenue. It may also be emphasized that the concerned company had apparently committed serious violations of provisions of Income-tax Act rendering the entity liable to consequences as per the Income-tax Act and restoration of the company in the register of companies would enable the Income-tax Department to take the pending proceedings to a logical conclusion. In the request/appeal, it may also be emphasized that since some of the pending proceedings are of time-barring nature, the matter may be taken up most urgently. The Department should request revival of the 'struck off' company from the date of 'strike off'.

In this regard, in course of sixth meeting of the Task Force on Shell Companies set up by the PMO on 30th November, 2017, a suggestion was made by DGCoA that IT Department may approach the Registrar of Companies (RoC) for taking up the matter of revival of these companies before the National Company Law Tribunal (NCLT). It was also suggested that protection of interest of revenue would be a strong ground in favour of such a restoration. Accordingly, it has been decided that Assessing Officers on a case to case basis shall immediately make a reference to the respective regional RoCs for revival of 'struck off' companies in situations mentioned in para 2 above. A format of letter is enclosed as Annexure for this purpose.

5. As an alternative, jurisdictional income-tax authorities on a case to case basis shall also file an appeal before the NCLT for revival of 'struck off' company immediately. The legal provisions for restoration/revival of 'struck off' company are given in section(s) 248 to 252 of the Companies Act, 2013 read with Rule 87A of the NCLT (Amendment) Rules, 2017 and the Companies (Removal of Name of Companies from the Register of Companies) Rules, 2016. The Department should request revival of the 'struck off' company from the date of 'strike off'.

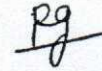
Enclosure: as above



(Rohit Garg)
Director (ITA.II), CBDT

Copy to:-

1. PS to Secretary (Revenue)
- ✓ 2. Chairman, CBDT & All Members, CBDT
- ✓ 3. All Joint Secretaries/CsIT, CBDT
- ✓ 4. Joint Secretary, Min. of Corporate Affairs
- ✓ 5. JCIT (Database Cell) for uploading on departmental website



(Rohit Garg)
Director-ITA.II, CBDT

OK

Issued

(Rohit Garg)

29/12/2017

Annexure

To
RoC

Subject: Request for revival of companies 'struck off' by the MCA where income-tax proceedings are pending/contemplated-regd.-

Kind reference is invited to the above.

2. Some of the companies 'struck off' by the MCA recently are assessed with the undersigned. Certain income-tax proceedings are/were pending in the case of these companies as per the details below:

| S.No. | Name of Company/Companies | PAN No. | CIN | Proceedings pending/contemplated u/s | Assessment Year |
|-------|---------------------------|---------|-----|--|-----------------|
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3. In view of the fact that the above mentioned companies have been 'struck off', the fate of pending proceedings in these cases have become uncertain. Whereas interest of revenue is involved in above mentioned pending proceedings, it is requested that RoC may take up the issue of revival of these companies from the date of 'striking off' before the NCLT u/s 252 of the Companies Act.

4. Kindly treat this as most urgent.

Yours faithfully,

(Assessing Officer)