

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'.

4. 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 'stuck 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

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



(Rohit Garg)
Director-ITA.II, CBDT

Annexure

To
RoC

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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

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)