

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai**

Before Shri G.S. Pannu, Accountant Member

ITA No.3767/Mum/2017
(Assessment Year: 2009-10)

M/s. Aquamech Engineering
Corporation
186/187, Central Facility
Building 2, APMC Market
Sector No. 19, VASHI
Navi Mumbai 400703

Vs.

Income Tax Officer-28(1)(1)
[formerly Ward15(3)(4)]
Tower No.6, Vashi Railway
Station Complex, Vashi
Navi Mumbai 400703

PAN – AACCM6461E

Appellant

Respondent

Assessee by: Shri V.C. Shah
Revenue by: Ms. N. Hemalatha

Date of Hearing: 09.08.2017
Date of Pronouncement: 22.09.2017

ORDER

Per G.S. Pannu, AM

This appeal by the assessee has been filed against the order of the CIT(A)-26, Mumbai dated 07.03.2017 for A.Y. 2009-10.

2. Although in this appeal the assessee has raised multiple grounds of appeal but the preliminary grievance that the CIT(A) has unjustly dismissed the appeal of the assessee in limine on account of it being filed belatedly.

3. In this context the relevant facts are that the assessee is a partnership firm engaged in the business of supplying water treatment plants and distribution systems. For the assessment year under consideration it filed the return of income declaring total income of ₹1,76,260/- which was subject to scrutiny assessment whereby the income has been assessed at ₹12,22,113/- after making an addition of

₹10,45,853/- on account of unproved purchases. The assessee carried the matter in appeal before the CIT(A) who found that there was a delay of 50 days in filing the appeal. The CIT(A) considered the plea of the assessee seeking condonation of delay but found that the reasons cited by the assessee did not constitute sufficient cause for not presenting the appeal within the specified period and, therefore, he did not condone the delay in terms of section 249(3) of the Act and accordingly dismissed the appeal.

4. Before me the learned A.R. of the assessee pointed out that it was duly explained to the CIT(A) that there was a communication gap between the firm of Chartered Accountants and the assessee firm and therefore the appeal could not be filed within the prescribed period. The learned A.R. explained that the assessee is a small partnership firm comprising of two brothers who are partners and are qualified engineers and they do not have any background regarding the income tax matters. It has been pointed out that the assessee firm has never preferred any appeal before any income tax authorities in its existence of more than 20 years excepting for the assessment year under consideration and the subsequent assessment year 2010-11 and, therefore, due to unintended communication gap the appeal could not be filed in time. It was therefore contended that considering the entirety of the facts and background of the case the CIT(A) ought to have condoned the delay in filing of the appeal instead of dismissing the appeal in limine.

5. On the other hand, the learned D.R. appeared for the Revenue has supported the reasoning taken by the CIT(A) which I have already noted in the earlier paragraph which is not being repeated. I have carefully considered the rival contentions with regard to the circumstances explained by the assessee before the CIT(A) for seeking condonation of delay in filing the appeal. Notably there was a delay of 50 days in filing of the appeal before the CIT(A). It is quite well settled that while dealing with the issue of condonation of delay in filing of appeals, an inherently liberal approach is required to be adopted so as to further the cause of justice and

that the party seeking to pursue the appeal is not non-suited on mere technicalities. In the present case in which the delay is not of an enormous period, the assessee explained to the CIT(A) that the Chartered Accountant firm perhaps did not act upon the mail sent by the assessee and it was only when the assessee approached them on a later date, it was realised that the assessment order has been passed and served upon the assessee. On the strength of the same it was contended that there was an inadvertent communication gap which has resulted in the delay in filing of the appeal. Having perused the material on record I find that there is nothing to suggest that there is malafide on the part of the assessee in delaying the filing of appeal and rather the bonafides of the explanation filed by the assessee have not been disputed at any stage. In fact the Hon'ble Allahabad High Court in the case of U.P. States Road Transport Corporation vs. Kedar Singh, AIR 1991 All 317 condoned the delay where the delay was on account of mere mistake by the counsel or his office. Considering the entirety of the circumstances and the background of the assessee and its conduct over the years vis-a-vis the Tax Department, that has been pleaded before the CIT(A), in my view the CIT(A) ought to have condoned the delay in filing of the appeal. I hereby do so and since the order of the CIT(A) is silent on the merits of the issue raised by the assessee before him, I deem it fit and proper to restore the matter to the file of the CIT(A). The CIT(A) shall adjudicate the grounds raised by the assessee before him on merits and as per law. Needless to mention that the CIT(A) shall allow the assessee sufficient opportunity of hearing before passing fresh order as per merits.

6. In the result, the appeal filed by the assessee is allowed as above.

Order pronounced in the open court on 22nd September, 2017.

Sd/-
(G.S. Pannu)
Accountant Member

Mumbai, Dated: 22nd September, 2017

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -26, Mumbai*
4. *The CIT – 28, Mumbai*
5. *The DR, “SMC” Bench, ITAT, Mumbai*

By Order

//True Copy//

*Assistant Registrar
ITAT, Mumbai Benches, Mumbai*

n.p.