

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 5116/Mum/2019 (Assessment Year 2009-10)

Rajaram Murari Pednekar Apple Engineering Off. Unit No. 8, Daulat Udyog Bhavan, Wadavli Village, Opp. Borla Society Chembur, Mumbai-400 074. PAN : AAJPP2070N (Appellant)	Vs.	ITO, Ward-27(3)(1) Tower No. 6 Vashi Railway Station Building 4 th Floor Vashi, Navi Mumbai-400 703. (Respondent)
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Assessee by	None
Department by	Ms. Smita Verma
Date of Hearing	25.02.2021
Date of Pronouncement	18.05.2021

ORDER

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned CIT(A) dated 20.5.2019 and pertains to assessment year 2009-10.

2. The grounds of appeal read as under :-

1. On the facts & in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals)-25, erred in confirming the additions made by The Income Tax Officer Ward 27(3)-1 without appreciating the merits of the case.

2. On the facts & in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals)-25, erred in refusing to condone delay in filing first appeal.

3. On the facts & in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals)-25, erred in dismissing appeal merely on technical grounds without going into the merits of the case.

4. The assessee reserves right to add, alter or amend the Grounds of Appeal on or before the date of hearing.

3. Brief facts of the case are that the assessee is engaged in the business of electrical and civil works. Pursuant to information from sales tax department

regarding bogus purchases, assessment was reopened. The Assessing Officer made 100% addition of alleged bogus purchases amounting to Rs. 10,63,173/- primarily on account of non-production of alleged suppliers.

4. Upon assessee's appeal learned CIT(A) dismissed the appeal as time barred not condoning the delay of 290 days.

5. Against this order assessee is in appeal before the ITAT.

6. We have heard learned Departmental Representative and perused the records. We find that in this case learned CIT(A) has not condoned the delay of 290 days in filing the appeal by not accepting the plea that the delay was primarily attributable to the consultant by observing that no confirmation or affidavit from the said consultant has been filed. Learned CIT(A) has also referred to a host of case laws on the issue of non-condonation of delay, without analyzing how they applied to the facts of the present case.

7. In our considered opinion on the facts and circumstances of the case the small delay of 290 days deserved to be condoned, in the substantial interest of justice. Accordingly, we restore the merits of appeal to the file of learned CIT(A). Learned CIT(A) shall pass a speaking order on the merits of the case after giving the assessee proper opportunity of being heard.

8. In the result, appeal is allowed for statistical purposes.

Pronounced in the open court on 18.5.2021.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 18/05/2021

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT

5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai