

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.127/M/2019  
Assessment Year: 2015-16**

M/s. Aquarius Maritime Pvt. Ltd., 501-502, 5 <sup>th</sup> Floor, C-Wing, Godrej Coliseum, Everard Nagar, Off Eastern Express Highway, Sion (East), Mumbai- 400 022 <b>PAN: AACCA2707P</b>	Vs.	DCIT - 6(1)(1), Mumbai
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri M. Subramanian, A.R.  
Revenue by : Shri Mehul Jain, D.R.

Date of Hearing : 27.01.2022  
Date of Pronouncement : 22.03.2022

**O R D E R**

**Per Kuldip Singh, Judicial Member:**

Applicant by moving an application sought to condone the delay of 33 days in filing this appeal on the ground that since one of the two directors of the company namely Ms. Christaline Glenn remained sick during the relevant period, which fact is supported with an affidavit filed by one of the directors of the company, the

appeal could not be filed. Since it is a sufficient cause delay of 33 days in filing this appeal is hereby condoned and appeal is ordered to be registered.

2. The appellant, M/s. Aquarius Maritime Pvt. Ltd. (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 11.09.2018 passed by Ld. Commissioner of Income Tax (Appeals)-12, Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2015-16 on the grounds inter alia that :-

***“1. Condonation in delay in Filing of the Appeal.***

***2. The Honorable Commissioner of Income Tax (Appeals) - 12, has erred in upholding the disallowance of "horses written off" of Rs.1,33,333/- made by the Assessing Officer.***

***3. The Honorable Deputy Commissioner of Income Tax has issued a notice under section 274 read with Section 271 (1) (c) of the Income Tax Act, 1961 to show cause why an order imposing penalty should not be made under Section 271 (1) (c).***

***Your appellants are in the process of filing a requisite reply to the Assessing Officer contending that the penalty need not be levied. If the Assessing Officer does not impose the penalty, this ground of appeal would be withdrawn.***

***4. Your Appellants crave leave to add, alter or amend or withdraw any or all grounds of appeal and to submit such statements, documents and papers as may be considered necessary either at or before hearing of the appeal.”***

3. Briefly stated facts necessary for adjudication of the controversy at hand are : the assessee company is into the business of freight forwarders, freight brokers & shipping agents and breeding of race horses. During the scrutiny proceedings the Assessing Officer (AO) noticed that an amount of Rs.1,33,333/- has been claimed as capital expenditures on account of horses written off and the same was claimed in the profit & loss account under the head "Establishment expenses". Declining the contentions raised by the assessee that the amount in question being horses written off is not allowable AO proceeded to hold the same as capital expenses treated as such by the assessee himself in its audit report form No.3CD, disallowed the same under section 74A(3) of the Income Tax Act (for short 'the Act') and made the addition thereof to the total income of the assessee and thereby framed the assessment at the total income of Rs.4,89,94,120/- under section 143(3) of the Act.

4. The assessee carried the matter before the Ld. CIT(A) by way of filing the appeal who has confirmed the disallowance by dismissing the same. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

5. The assessee by moving an application under Rule 29 of the Income Tax Appellate Tribunal Rules, 1963 (for short 'the Rules) sought to lead additional evidence in the form of copy of Amended Memorandum of Association, copy of Notice of Extra-Ordinary General Meeting to Amend the Memorandum of Association, copy of Minutes of the Extra-Ordinary General Meeting and copy of application submitted for Registration of Resolutions & Agreements along with Special Resolution on the ground that the same could not be placed before the Ld. Lower Authorities and the same are directly connected and relevant to the issue in controversy.

6. Since the evidence sought to be led by the assessee is necessary to decide the issue if the "activity of breeding and maintaining the race horse is the main object of the company or the object is incidental or ancillary to the attainment of main object or the other objects of the assessee company stated in the "Memorandum of Association", the same is allowed as these documents are necessary to decide the issue in controversy.

7. Undisputedly, the assessee company claimed to be into the business of freight forwarders, freight brokers & shipping agents

and breeding of race horses and during the assessment proceedings it has claimed an amount of Rs.1,33,333/- being the horses written off by reporting the same as capital expenditure but at the same time claimed in the profit & loss account under the head "Established expenses". The AO as well as Ld. CIT(A) have disallowed the same on the ground that any expenditure of capital nature cannot be claimed as deduction under section 57(iii) of the Act even if the same was incurred for the purpose of earning the relevant income.

8. Perusal of the impugned order passed by the Ld. CIT(A) shows that the assessee's contention that it is engaged in the business of breeding and maintaining of race horses apart from the business of freight forwarding and clearing and that the expenditure towards horses written off is eligible for deduction as revenue expenditure under section 36(1)(vi) of the Act has not been accepted because the assessee has failed to substantiate if activity of breeding and maintaining race horse was the main object of the assessee company or incidental or ancillary to the attainment of the main object of the assessee company stated in the Memorandum of Association. For ready perusal relevant extract of impugned order passed by the Ld. CIT(A) is as under:

***“11. On the other hand, it is noticed that the activity of breeding and maintaining race horses is not covered by the scope of either the main object of the company or the objects incidental or ancillary to the attainment of the main objects or the other objects of the company stated in the MOA. Thus, it is seen that the contention of the appellant that it is engaged in the business of breeding & maintaining race horses also apart from the business of freight clearing & forwarding is not substantiated by the object clauses in the MOA and therefore, the said contention cannot be considered to be acceptable. In view of this, it cannot be considered that the activity of breeding & maintaining race horses carried on by the appellant constitutes business activity of the appellant company.”***

9. When we examine the aforesaid findings in the light of the facts and circumstances of the case and additional evidence sought to be led by the assessee otherwise necessary to decide this issue, additional evidence now allowed to be led by the assessee was not there before the AO as well as the Ld. CIT(A). Moreover, the AO has also not made any enquiry “if the horses written off” were dead or got incapacitated due to sickness or old age at the time of claiming such deduction rather the AO as well as the Ld. CIT(A) have decided the issue on technical ground without conducting factual enquiry in this case.

10. So we are of the considered view that to decide the issue once for all the case is required to be remitted back to the AO to decide afresh after entertaining additional evidence brought on

record by the assessee and after providing opportunity of being heard to the assessee. Consequently, appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open court on 22.03.2022.**

**Sd/-  
(M. BALAGANESH)  
ACCOUNTANT MEMBER**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated:22.03.2022.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.