

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH "B" KOLKATA**

**BEFORE SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER  
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA Nos. 410 & 411/KOL/2023  
Assessment Year: 2012-13 & 2013-14**

M/s. Aqua Food Concepts Ltd. 8/1D, Gurudas Dutta Garden Lane, Ultadanga, Kolkata- 700067 <b>PAN: AAHCA 2009 H</b> (Appellant)	Vs.	DCIT/ACIT, CC-2(1), Kolkata (Respondent)
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**Present for:**

Appellant by : Smt. Saswati Mitra Dutta, Advocate  
Respondent by : Shri Abhijit Kundu, CIT, DR

Date of Hearing : 12.06.2023  
Date of Pronouncement : 13.06.2023

**ORDER**

**PER BENCH:**

The captioned appeals are filed by the assessee against the orders of ld. CIT(A), NFAC both dated 18.11.2022 in respect of assessment year 2012-13 and 2013-14 respectively.

2. The issue raised in both the appeals by the assessee is against the ex-parte order passed u/s 144 by the AO which was affirmed by ld. CIT(A).

3. At the outset, we notice that there is a delay of 99 days in filing the appeal. The assessee has moved a condonation petition dated 27.04.2023 in which the delay in filing the appeal has been explained with reasons. We observe that in para 3 of the condonation petition, the assessee has stated that Mrs. Alka Agarwal was suffering from severe ailments and has to be treated for a long period. It is also stated in the said

petition other two directors were not aware with the taxation matters. Besides, there is no qualified staff available and therefore the appeal was filed late by 99 days. The ld. AR prayed before the bench that 99 days delay in filing the appeal may kindly be condoned in the interest of justice as the assessee cannot be denied the right to be heard before disposing of the appeal. The ld. DR, on the other hand, submitted that the assessee has not explained the delay with cogent reasons and therefore, the appeal of the assessee may be dismissed as time barred. Having considered the rival submissions and perusing the material on record, we observe that delay of 99 days is primarily on the ground of the illness of the director of the assessee company who was looking after and managing the affairs of the company. We note that Mrs. Alka Agarwal who looks after affairs of the company was suffering from serious ailments following which the appeal could not be got prepared and could not be filed within the time. Considering these facts and circumstances, we are inclined to condone the delay of 99 days as we find that there exist sufficient time good reasons for the delay and the assessee is not benefited in any manner with late filing of appeal.

4. At the outset, the ld. AR submitted that both the authorities below have passed the orders ex-parte without deciding the issue on merits. The ld. AR, therefore, prayed that both the appeals may be restored to the file of the ld. CIT(A) so that it could be decided on merits after reasonable opportunity to assessee. The ld. DR, on the other hand, supported the

orders passed by the authorities below by submitting that the assessee has not furnished any documents or made personal presence before the AO.

5. After hearing rival contentions and perusing the material available on record, we find that undisputedly both the authorities below have passed the orders ex-parte. Considering these facts and circumstances, we observe that the ends of justice would be met if the assessee is given one more opportunity to present its case before the AO as the order passed by the AO is an ex-parte u/s 144 of the Act. Accordingly, we restore to the file of the AO to decide the issue after affording a reasonable opportunity of hearing to the assessee. Needless to mention that the assessee will co-operate in the assessment proceedings by furnishing all the documents which may be required by the AO during the assessment proceedings and also which the assessee may furnish in support of its case on merits.

6 . In the result, both the appeals of the assessee are allowed for statistical purposes.

**Order pronounced in the open court on 13.06.2023**

**Sd/-**

**(RAJESH KUMAR)  
ACCOUNTANT MEMBER**

**Sd/-**

**(SONJOY SARMA)  
JUDICIAL MEMBER**

Kolkata, Dated:13.06.2023  
Biswajit

Copy to:

1. The Appellant: M/s. Aqua Food Concepts Ltd.
2. The Respondent: DCIT/ACIT, CC-2(1), Kolkata.
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata