IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2016

CORAM

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.15971 of 2016 and
W.M.P.No.13824 of 2016

Wayne Burt Petro Chemicals (P) Ltd.,
rep by its Director,
formerly known as M/s.Bailey Hydropower (P) Ltd.,
A-10, SIPCOT Industrial Part,
Irungattukottai,
Sriperumbudur-602 105. ... Petitioner

Vs.

1.Income Tax Appellate Tribunal
rep by its Assistant Registrar,
A3, 2nd Floor, Rajaji Bhavan,
Besant Nagar, Chennai - 600 090.

2.The Assistant Commissioner of Income Tax,
Company Circle - I(2),
Chennai - 600 034. ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the impugned proceedings of the 1st respondent in ITA No.2605/Mds/2014 and to quash the order dated 09.03.2016 passed therein and further direct the 1st respondent to condone the delay of 201 days in filing the appeals and hear the appeals filed by the petitioner herein for assessment year 2009-10 on merits.

For Petitioner : Mrs.Pushya Sitaraman, Senior Counsel
Ms.J.Sree Vidya

For Respondents: Mrs.Hema Muralikrishnan (R2)
R1 - Tribunal

O R D E R

The petitioner has filed the above Writ Petition to issue a writ of certiorarified mandamus to call for the records on the file of the 1st respondent dated 09.03.2016 and to quash the same and to further direct the 1st respondent to condone the delay of

201 days in filing the appeals and hear the appeals filed by the petitioner herein for assessment year 2009-10 on merits.

2.By the impugned order dated 09.03.2016, the petitioner's application to condone the delay of 201 days in filing the appeal was dismissed. In the impugned order, the 1st respondent has stated that in the petition for condonation of the delay, name of the Director has not been mentioned and even in the appeal memorandum, Form-36 B filed before the 1st respondent, name of the Director has not been mentioned.

3.On a perusal of the materials available on record, it could be seen that the name of the Director has been mentioned and he had affixed signatures in the papers. That apart, when the petitioner had complied with the provisions of the Act, the 1st respondent should not have rejected the petition and refused to condone the delay on this ground. Instead, the 1st respondent could have condoned the delay and decided the appeal on merits. Since the petitioner had complied with the provisions of the Act in a proper manner, I am of the considered view that the impugned order is liable to be set aside.

4.Mrs.Hema Muralikrishna, learned counsel taking notice for the 2nd respondent submitted that in the interest of justice, the petitioner can be given an opportunity to prosecute the matter in accordance with law.

5.For the reasons stated above, the impugned order dated 09.03.2016 passed by the 1st respondent is set aside and the delay of 201 days in filing the appeal is condoned and the 1st respondent is directed to entertain the appeal and decide the same, on merits and in accordance with law.

6.With these observations, the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.Income Tax Appellate Tribunal
rep by its Assistant Registrar,
A3, 2nd Floor, Rajaji Bhavan,
Besant Nagar, Chennai – 600 090.

2.The Assistant Commissioner of Income Tax,
Company Circle - I(2),
Chennai - 600 034.

+1cc to Mr.J.Sree Vidya, Advocate, S.R.No.26680
+1cc to Mr.T.Ravikumar, Advocate, S.R.No.26217

W.P.No.15971 of 2016 and
W.M.P.No.13824 of 2016

ev(CO)
srg(12/05/2016)