

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH: BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND  
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.1674/Bang/2019
Assessment Year: 2015-16

M/s. ARA Dairy Farm Pvt. Ltd. No.34, PID No.96-36-84 (Door No.609) RAjarajeshwari Block, Behind Akshaya Residency, Bangalore-560 024. <b>PAN NO : AAMCA 6517 H</b>	<b>Vs.</b>	DCIT, Circle - 1(1)(1) Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri. Rajeev C Nulvi, Advocate
<b>Respondent by</b>	:	Shri. Kannan Narayanan, D.R.

<b>Date of Hearing</b>	:	26.11.2020
<b>Date of Pronouncement</b>	:	02.12.2020

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal is by the assessee directed against the order of CIT(A) dated 19.03.2019.

2. The assessee raised the ground with regard to dismissing the appeal by CIT(A) without condoning the delay and not deciding the appeal on merit. In this case, the assessee filed the appeal before CIT(A) on 09.02.2018 for the Assessment Year 2015-16. There was a delay of 28 days in filing the appeal before CIT(A). The assessee explained the delay before CIT(A) on the reason

that there was misunderstanding between Executive Director Mr. L. Ravi and Mrs. B. K. Sujatha and the former Managing Director Mr. Melqus Selvaraj Armstrong and Mr. Melqus Selvaraj Armstrong had resigned from the company on 01.01.2018, the process of handing over charges to Mr. L. Ravi and Mrs. B. K. Sujatha Ravi and to collect all the documents and information from Mr. Melqus Selvaraj Armstrong took time which lead to delay of 28 days in filing the appeal.

3. It is also submitted before CIT(A) that Mr. L. Ravi and Mrs. B. K. Sujatha resigned from the Director post of the company and their resignation was accepted and Form No.DIR12 was filed with the ROC relieving them from the post of Directors from 04.02.2019. After resigning from the company, Mr. L. Ravi and Mrs. B. K. Sujatha had not handed over any document of the company to the continuing Directors of the company as they both had cheated the company by drawing Rs.25,00,000/- from the company's account on 19.02.2019. It is further submitted that the CIT(A)-1 dismissed the appeal by not condoning the 28 days delay by passing order under section 250 of the Act, on 19.03.2019. It is stated that due to the management turmoil and mistrust and miscommunication between the Directors, the passing of the order by the CIT(A) was not brought to the notice of the present Directors. The order passed by CIT(A) was served to Ex-Director Mr. Melqus Selvaraj Armstrong's email ID, as in the Income Tax Database, the company's email ID was of the then Director Mr. Melqus Selvaraj. The same was brought to the notice of the present directors only on 12.07.2019 when Mr. Aldrin John Amal personally visited the Department. Only after that, the present Directors updated the new email ID, phone No. and address details of the company on 14.07.2019. It was further submitted that soon after knowing about the order passed by CIT(A) on 14.07.2018, the

assessee approached CA Channappa R. Nulvi, to file the appeal on 22.07.2019 and hence there was a delay of 54 days in filing the appeal.

4. However, CIT(A) observed that there was no reasonable cause in filing appeal before him. Accordingly, he unadmitted the appeal and dismissed it. Again, the assessee filed the appeal before this Tribunal on 23.07.2019. There is once again delay of 66 days in filing the appeal before this Tribunal. The assessee explained the delay by way of affidavit dated 22.07.2019 stating that the delay was due to the dispute among the Director and explained the same reason and prayed that the appeal may be admitted by the Tribunal and delay before CIT(A) should also be condoned. In this case there was 28 days delay before CIT(A) and 66 days delay before Tribunal. The reason stated by assessee is the dispute among the Directors as explained in Affidavit and he submitted that there is a good and sufficient reason to condone the delay and it should be considered as a reasonable cause so as to admit the appeal by Tribunal as well as CIT(A). In our opinion, "sufficient cause" should be interpreted to advance substantial justice. Therefore, advancement of substantial justice is the prime factor while considering the reason for condoning the delay in the case before us, the CIT(A) without condoning the delay of 28 days dismissed the appeal of the assessee. It is held by Supreme Court in the case of Collector, Land Acquisition Vs. Mst. Katiji 167 ITR 471 (SC) as follows:

1. *Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
2. *Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
3. *Every day's delay must be explained" does not mean WP/2530/1998 that a pedantic approach should be made. Why not*

- every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*
4. *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non- deliberate delay.*
  5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*
  6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."*

5. When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserve to be preferred, for the other side cannot claim to have vested right for injustice being done because of non-deliberate delay. In the case on our hand, there was a delay of 28 days before CIT(A) and 66 days before Tribunal and the reason explained by assessee is that there was difference of opinion among the Directors and the assessee registered police compliant in Hebbal Police Station, Bangalore, and this fact was not disputed by the Department by filing counter affidavit. Being so, in our opinion, there is good and sufficient cause in filing the appeal belatedly and the delay to be condoned both before CIT(A) and Tribunal. Accordingly, we condone the delay of 28 days in filing the appeal before CIT(A) and 66 days before the Tribunal and accordingly appeals are admitted and the issue in dispute on merit is remitted to the file of CIT(A) to decide afresh in accordance with law, after giving opportunity of hearing to the assessee. At this stage, we refrain from going into the other grounds of appeal raised by the assessee.

6. In the result, appeal of the assessee is partly allowed for statistical purposes.

*Pronounced in the open court on the date mentioned on the caption page.*

Sd/-

**(N. V. VASUDEVAN)**  
**Vice President**

Sd/-

**(CHANDRA POOJARI)**  
**Accountant Member**

Bangalore,  
Dated : 02.12.2020.  
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Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,  
ITAT, Bangalore.**