

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

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| ITA No. 256/Bang/2022 |
| Assessment Year : 2012-13 |

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| M/s. Lion Estates and Properties, No. 88 & 89, M.C. Halli, N.H. 207, Sarjapura Post, Anekal Taluk, Bangalore – 562 125. PAN: AACFL7016R | Vs. | The Income Tax Officer, Ward 2(2)(4), Bangalore. |
| APPELLANT | | RESPONDENT |

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| Assessee by | : | Shri Thirumala Naidu, CA |
| Revenue by | : | Shri Srinivas Rao Bandaru, JCIT DR |

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| Date of Hearing | : | 12-07-2022 |
| Date of Pronouncement | : | 12-07-2022 |

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by the assessee against order dated 14/02/2022 passed by Ld.CIT(A)-11, Bangalore for A.Y. 2012-13.

2. The Ld.AR at the outset submitted that the Ld.CIT(A) dismissed the appeal *in limine* as there was a delay of two days in filing the appeal before the first appellate authority. The Ld.AR submitted that ideally if the date of receipt of the appeal is excluded, the delay amounts to be of only one day and there cannot be any negligence that could attribute for one day delay in filing the

appeal before the first appellate authority. The Ld.AR submitted that the issues alleged before the Ld.CIT(A) on merits has not been decided and the appeal was dismissed for non-condonation of delay.

3. On the contrary, the Ld.DR placed reliance on orders passed by authorities below.

4. We have perused the submissions advanced and note that substantial justice has not been rendered to the assessee in the present facts of the case.

5. He referred to the decision of *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471.

6. When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right for injustice being done because of non deliberate delay. We have to prefer substantial justice rather than technicality in deciding the issue. As observed by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.(supra)*, if the application of the assessee for condoning the delay is rejected, it would amount to legalise injustice on technical ground when the *Tribunal* is capable of removing injustice and to do justice.

7. Respectfully following the above view, we condone the delay in filing the appeal before the Ld.CIT(A). The Ld.CIT(A) is directed to pass a detailed order on merits after considering the submissions / evidences filed by assessee.

Needless to say that proper opportunity of being heard must be granted to assessee in accordance with law.

Accordingly, the appeal filed by the assessee is remanded to the Ld.CIT(A)

In the result, the appeal filed by assessee stands allowed for statistical purposes.

Order pronounced in open court on 12th July, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 12th July, 2022.
/MS /

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

By order

Assistant Registrar,
ITAT, Bangalore