

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**DELHI BENCH 'B', NEW DELHI**

**BEFORE SH. MAHAVIR SINGH, VICE PRESIDENT**

**AND**

**SH. BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

ITA No.1583 to 1585/Del/2023

Assessment Year: 2007-08, 2008-09 & 2006-07

<b>G.K. Diary &amp; Milk Products Private Limited, B-5/C, Pragati Chamber, Ranjit Nagar, NEwDelhi-110008 PAN No.AAACG3118J</b>	<b>Vs</b>	<b>ITO Ward- 50 (5) Delhi</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	<b>Sh. Abhishek Mathur, Advocate</b>
Respondent by	<b>Sh. Rajesh Kumar Dhanesta, Sr. DR</b>

Date of hearing:	26/12/2024
Date of Pronouncement:	26 /12/2024

**ORDER**

**PER BRAJESH KUMAR SINGH, AM:**

These three appeals by the assessee are arising out of three different orders of CIT(A)/NFAC, Delhi in Appeal Nos. CIT(A),Delhi-4/10011/2018-19 vide even date 10.03.2023. The TDS assessment order was framed by Income Tax Officer, Ward 50(5), New Delhi

under section 201(1)/201(1A) of the Income Tax Act, 1961 (hereinafter referred as “the Act”), which is common for financial years 2005-06, 2006-07 and 2007-08 dated 30.03.2011.

2. At the outset, the Ld. Counsel for the assessee drew our attention that the CIT(A) has not condoned the delay in filing of appeal as there is a delay of 2533 days. The Ld. Counsel for the assessee has raised following grounds of appeal which are common in all the three years. Since, the facts and circumstances are exactly identical of all these three years, we will take facts from A.Y. 2007-08 in ITA No.1583/Del/2023 and will decide the issue:-

*1) That the Hon'ble Commissioner of Income Tax (Appeals) has erred in the law as much as on the facts of the case in dismissing the appeal of the appellant company by holding that the appellant has not been able to the give a sufficient explanation to condone the delay of 2533 days in filing of the appeal without appreciating the fact that the appellant had already filed a manual appeal on 27th June, 2011 which had never been disposed off and hence the appeal was re-filed causing the aforesaid delay.*

*2) That the Hon'ble Commissioner of Income Tax (Appeals) has further erred in law as much as on the facts of the case in*

*treating the manual appeal filed in one single appeal form No. 35 for three assessment years as technically invalid without appreciating the fact that the same was acknowledged by the office of the Hon'ble CIT (Appeals)-XXX, Delhi and no defect was pointed by the office of the Hon'ble CIT(Appeals) XXX, Delhi both at the time of filing the single appeal Form No. 35 for three appeals for three assessment years i.e. 2006-07, 2007-08 and 2008-09 or at any time thereafter.*

*3) That the Hon'ble Commissioner of Income Tax (Appeals) has further erred in law as much as on the facts of the case by dismissing all the grounds of appeal raised by the appellant before him without considering the detailed written submissions on all the issues filed before him.*

*4) That the appellant company reserves its right to add, amend, or alter any of the ground(s) of the appeal.*

3. The assessee before CIT(A) explained the delay of 2533 days and stated that the delay is only 53 days and not 2533 days as noted by CIT(A). The Ld. Counsel for the assessee stated the facts that the assessment order of TDS was passed by AO dated 30.03.2011 and this was received on 05.04.2011 and appeal has to be filed on or before 05.05.2011 but actually the assessee filed

appeals before CIT(A) on 27.06.2011 in a combined form 35 for all these three financial years 2005-06, 2006-07 and 2007-08. The Ld. Counsel stated that the assessee was not aware whether separate appeals are to be filed or single appeal is to be filed. He stated that even the assessment order was passed for all three years by common order dated 30.03.2011. The explanation given before the CIT(A), which is quoted and the relevant para reads as under :-

*“This appeal is being filed against the order passed by the learned Income Tax Officer, Ward 50(5), New Delhi passed by him u/sec. 201(1)/201(14) of the Income Tax Act, 1961 on 30.03.2011. This order was received by us on 05.04.2011 and accordingly, the time for filing the appeal before your honour was to expire on 5th May, 2011, however, this appeal could not be filed by 5th May, 2011 and was filed on 27.06.2011 as the father of the Director of the company was extremely unwell and who unfortunately expired on 5th May, 2011. As stated above, the appeal was filed on 27.06.2011 with the Hon'ble CIT(A)- XXX, New Delhi. However, till today this appeal has never come up for hearing and has lost track due to the change in the wards of the Assessing Officer as well*

*as the change in the office of the Commissioner of Income Tax (Appeals). Since the appeals Has already lost track, therefore, we are filing these appeals again with a request to kindly condone the delay in filing the above appeal for which we shall be obliged."*

4. In terms of the above, Ld. Counsel for the assessee made submission that there was actual delay of 52 days and when the appeal came up for hearing for the first time before CIT(A), the CIT(A) advised assessee to file separate appeal for each year. Accordingly the assessee filed separate appeals on 12.04.2018 for all these three years. He argued that if we consider this then there is a delay of 2533 days but he made statement at bar that the assessee filed appeal on 27.06.2011 and limitation is to be counted upto that date only and delay of the balance cannot be attributed because he actually rectified the mistake of filing of combined appeal and subsequently when appeal came for the hearing almost after 5 years. When these facts were confronted to Ld. Sr DR, he could not controvert the fact situation but he opposed that even if there is delay of 52 days, according to him attributable to the assessee, and is without reasonable cause.

5. After hearing both the sides and going through the record, we noted that for these three financial years 2005-06, 2006-07 and 2007-08, a combined order u/s. 201(1)/201(1A) was passed dated 30.03.2011. Admittedly the assessee received this order on 05.04.2011. The appeal against this order should have been filed on or before 05.05.2011 but it was actually filed on 27.06.2011 by a common form for all three years in form 35 before CIT(A). There was a delay of 52 days and the assessee explained this delay by stating that father of Director of the company was extremely unwell and expired on 24.05.2011 and accordingly assessee could not file the appeal within the limitation period but actually filed with a delay of 52 days i.e. on 27.06.2011. Now the controversy arises when the subsequent rectification of form No. 35 and separate appeals were filed for all the 3 years on 12.04.2018. The CIT(A) was under the belief that the delay will be counted up to 12.04.2018 and not upto 27.06.2011 when originally these 3 appeals were filed by common form No.35.

6. In our view, there is technical defect or mistake in filing of common form 35 for all these three financial years. We noted that similar mistake is committed by AO by passing the common orders for all the three years, accordingly the assessee may be under

bonafide belief that a single appeal is to be filed for this common order for all the 3 financial years i.e. 2005-06, 2006-07 and 2007-08. In our view, this is a bonafide mistake and we accept the same. Accordingly, we condone the delay of 52 days. This delay of 52 days is also with reasonable cause i.e. the father of Director of the company was extremely unwell and who expired on 24.05.2011. Hence, we find no reason not to condone the delay. Accordingly, we condone the delay and remand the matter back to the file of CIT(A) for adjudication on merits. The CIT(A) is directed to adjudicate the issue on merits. Accordingly, all the three appeals are allowed for statistical purposes.

Order dictated in the open court on conclusion of hearing on 26 .12.2024.

**Sd/-**  
**(MAHAVIR SINGH)**  
**VICE PRESIDENT**

\*NEHA, Sr. PS\*  
Date:- 26 .12.2024  
Copy forwarded to:  
1.Appellant  
2.Respondent  
3.CIT  
4.CIT(Appeals)  
5.DR: ITAT

**Sd/-**  
**(BRAJESH KUMAR SINGH)**  
**ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI