

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. NARENDRA CHODHARY, JUDICIAL MEMBER**

ITA No.2152/DEL/2015
Assessment Year: 2011-12

Chief Architect (NDR) DGW CPWD, Nirman Bhawan New Delhi AAALCO322R	Vs	ACIT Range- 49 New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. P. C. Yadav, Advocate
Respondent by	Ms. Ashima Neb, Sr. DR

Date of hearing:	26/09/2018
Date of Pronouncement:	23/10/2018

ORDER

PER N. K. BILLAIYA, AM:

ITA No.2152/Del/2015 with this appeal the assessee has challenged the correctness of the order of the CIT(A) – 30, New Delhi dated 21.10.2014 pertaining A. Y. 2011-12.

2. The only grievance of the assessee is that the CIT(A) erred in confirming the levy of penalty u/s 272 (A) 2 (K) of the Act.

3. The appeal is barred by limitation by 69 days. In its application for the condonation of delay in filing of appeal the assessee stated that due to the shifting of the office the computer and other records related to income tax were corrupted and data related to income tax matter was lost. In its affidavit the assessee has further stated that due to inadvertent mistake the appeal was filed in the office of the CIT(A) instead of filing the same before the Tribunal which has caused of delay of 69 days.

4. We have given the thoughtful consideration to the facts mentioned in the affidavit and the application for condonation of delay. In our opinion the appellant was prevented by reasonable and sufficient cause and hence the delay is condoned.

5. Coming to the facts of the case we find that the assessee has not filed e-TDS returns on time since there was of delay of 5068 days. The Assessing Officer levied penalty u/s 272 (A) 2 (K) of the Act amounting to Rs.506800/-.

6. The assessee carried the matter before the CTI(A) but without any success.

7. Before us the counsel for the assessee pointed out that in F.Y. 2007-08 also there was a delay in filing the e-TDS returns by 13768 days and the penalty levied u/s 272 (A) 2 (K) of the Act was deleted by the CIT(A). Therefore, for similar reasons the penalty so levied should be deleted. Per contra the DR strongly supported the orders of the lower authorities.

8. We have carefully considered the orders of the authorities below. It is true that in A.Y. 2008-09 there was a delay of 13768 days and the penalty levied was deleted by the CIT(A). It is equally true that the TDS has been deposited by the assessee on time and there is absolutely no loss to the ex-

chequer due to the delay committed by the assessee in filing quarterly TDS statement. In our considered opinion the assessee had committed only the technical venial breach for which it should not be invited with the penalty u/s 272 (A) 2 (K) of the Act. We accordingly direct the Assessing Officer to delete the impugned the penalty.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 23.10.2018.

Sd/-
(NARENDRA CHODHARY)
JUDICIAL MEMBER

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:- 23.10.2018

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	01.10.2018
Date on which the typed draft is placed before the dictating Member	01.10.2018
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	24.10.2018
Date on which the final order is uploaded on the website of ITAT	24.10.2018
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

