

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,
NEW DELHI (THROUGH VIDEO CONFERENCING]**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

ITA No. 5702/DEL/2019 [A.Y 2015-16]

D.S. Hotels & Inns Pvt Ltd
A-10, Chitranjan Park
New Delhi

Vs.

The A.C.I.T - CPC
Ghaziabad

PAN: AABCD 6193 M

(Applicant)

(Respondent)

Assessee By : None

Department By : Shri Yagyasaini Kakkar, CIT-DR

Date of Hearing : 24.01.2022

Date of Pronouncement : 24.01.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - 41, New Delhi dated 30.04.2019 pertaining to Assessment
Year 2015-16.

2. The grievances of the assessee read as under:

"1. That the learned Commissioner of Income Tax (Appeals)-41, New Delhi has erred both in law and on facts in upholding the addition of Rs.9,000/- being fees u/s 234E of the Income Tax Act,1961 in respect of delay in filling of Quarter-4 TDS statement in form 26Q. That the sub clause (c) was inserted under subsection (1) of the section 200A of the Act for charging fee u/s 234E of the Act by Finance Act 2015 w.e.f 01.06.2015 i.e. the returns filed from the Financial Period 2015-16.

2. That the learned Commissioner of Income Tax (Appeals) while upholding the levy of fees u/s 234E, had dismissed the appeal by rejecting the condonation request of the appellant Company.

3. That the Learned Commissioner of Income Tax (Appeals) had not even considered that the delay in filling the appeal was due to change of Consultant of the appellant Company from Bhudladia & Co to Anil Khatri & Co.

4. That the appellant had also filed rectification application u/s 154 for rectifying the demand created u/s 234E, which is still pending with the department. That further in view of no action on the rectification application, the appellant filed an appeal alongwith condonation of delay.

5. That the fact is that the same learned CIT(A) -41 in the case of appellant company in the similar cases for FY 13-14 & FY 14-15 wherein has deleted the fees charged u/s 234 vide his order dated 16.11.2018.

3. None appeared on behalf of the assessee and we decided to proceed exparte.

4. A perusal of the order of the first appellate authority shows that the ld. CIT(A), without condoning the delay, dismissed the appeal in limine.

5. In our considered opinion, technicalities should not come in the way of imparting justice. Moreso, when the assessee has given plausible reason for delay in filing the appeal. Therefore, in the interest of justice and fair play, we restore the appeal to the file of the ld. CIT(A). The ld. CIT(A) is directed to decide the appeal on merits of the case.

6. We also find that some rectification filed u/s 154 is pending. The ld. CIT(A) is also directed to expedite the matter in disposing the rectification appeal.

7. In the result, appeal of the assessee in ITA No. 5702/DEL/2019 is allowed for statistical purposes.

The order is pronounced in the open court on 24.01.2022.

Sd/-

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 24th January 2022.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
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	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	