

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA BENCH "B", KOLKATA**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, JUDICIAL MEMBER**

**ITA No. 2322/Kol/2019
Assessment Year: 2010-11**

M/s. Palogix Infrastructure Private Limited 86B/2 Gajraj Chambers, Topsia Road, Topsia, Kolkata-700 046 (W.B) PAN:AAECP4568R	Vs.	ACIT, Circle-11(2), Kolkata, P-7 Chowringhee Square, Kolkata-700 069.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Gyan Prakash Shukla, Advocate
Respondent by : Shri Sudipta Guha, CIT, (DR).

Date of Hearing : 03-02-2022

Date of Pronouncement : 09.02.2022

ORDER

PER RAJESH KUMAR, ACCOUNTANT MEMBER:

The present appeal has been preferred by the assessee against the order dated 25-01-2019 passed by the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)-4, Kolkata for the AY 2010-11 which in turn arises out of the penalty order passed by the assessing officer u/s 271(1)(c) of the Act.

2. At the time of hearing it was pointed out that the appeal is barred by limitation by 35 days. The Learned Authorised Representative (in short, the Ld.AR) drew our attention to the condonation application filed by the assessee praying for condoning the delay. He submitted that the delay of 35 days was attributed to wrong recording the date of receipt on the appellate order by an employee of the assessee and therefore, the delay in filing the appeal can not be attributed to the assessee. The Ld. AR submitted that the

assessee is not benefitted in any manner by delayed filing the appeal and prayed that since the reasons for the delay are beyond the control of the assessee and therefore, the same may kindly be condoned by admitting the appeal filed by the assessee. The Learned Departmental Representative (in short, the Ld. DR) strongly argued for not admitting the appeal as the same is barred by limitation.

3. Having heard the rival sides and perusing the condonation application and other records , we note that the delay in filing the appeal is due to the reason of wrong noting the date of receipt on the appellate order. In our opinion, there is sufficient reasons for late filing of appeal and thus justice should not be denied for the technical reasons and technicalities should not be allowed to prevail over substantial justice. In view of these facts and circumstances, we are inclined to condone the delay in filing the appeal and admit the appeal for adjudication.

4. At the outset, the Ld.AR, Mr. Gyan Prakash Shukla pointed out that the case relates to penalty levied u/s. 271(1) (c) of the Income-tax Act, 1961. The Ld. AR of the assessee submitted before the bench that quantum appeal in this case has been set aside by the Coordinate Bench of this Tribunal to the file of the AO and therefore, the penalty being consequential would not survive as it has no legs to stand. The ld. Counsel therefore prayed that the penalty may kindly be deleted. On the other hand, the Ld.DR submitted that the penalty may also be set aside to the file of the AO.

5. We have heard the rival contentions and perused the record. We note in this case quantum appeal has been set aside to the file of the AO by the Tribunal after the commencement of corporate insolvency resolution process under the provisions of Insolvency and Bankruptcy code 2016. Therefore, since the quantum appeal has

been set aside to the file of the AO, the penalty u/s 271(1)(c) of the Act has no legs to stand and has to go . Under these facts and circumstances , we set aside the order of Id CIT(A) and direct the AO to delete the penalty.

6. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 09-02-2022

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Kolkata, Dated:09-02-2022

**PP/SPS

Copy to:

- 1.The Appellant: M/s. Palogix Infrastructure Private Limited, 86B/2, Gajraj Chambers, Topsia Road, Topsia, Kolkata-700 046 (WB).
- 2.The Respondent: The Commissioner of Income Tax, Kolkata/ACIT, Cir-11(2), P-7 Chowringhee Square, Kolkata-700 069, W.B.
- 3.The CIT, Concerned, Kolkata
- 4.The CIT (A) Concerned, Kolkata
- 5.The DR Concerned Bench

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By Order

Assistant Registrar/
Private Secretary
ITAT, Kolkata Benches, Kolkata