

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: E: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA Nos. 2637 & 2638/Del/2022  
Assessment Years: 2013-14 & 2014-15

Motor Magic Auto Zone, 4/29A, Site-4, Industrial Area Shahibabad, Ghaziabad, UP 201010 PAN <b>AAPFM 6439 G</b>	vs.	The ACIT, CPC, TDS, Ghaziabad, UP
(Appellant)		(Respondent)

For Assessee :	None
Revenue For :	Shri Sumit Kumar Verma, Sr. DR

Date of Hearing :	17.05.2023
Date of Pronouncement :	22.05.2023

**ORDER**

**PER CHANDRA MOHAN GARG, J.M.**

These appeals filed by the assessee are directed against the order dated 05.08.2022 of the Ld. NFAC, New Delhi, relating to Assessment Years 2013-14 & 2014-15.

2. When the appeals were called for hearing neither the assessee nor its authorised representative appear nor any adjournment application has been filed despite due service of notice. On perusal of the record we are of the view that these appeals can be adjudicated in absence of appellant after hearing the arguments of learned Senior DR and ex-parte qua assessee. Hence we proceed to adjudicate the appeals.

Condonation of delay of 29 days

3. The assessee has filed an application in both the appeals seeking condonation of delay of 31 days and as per report of registry there was delay of 29 days in both the appeals. The Id. AR of assessee placing reliance on the judgment of Hon'ble jurisdictional Allahabad High Court in the case of Onkar Chandra Pankaj Kumar vs. Commissioner of Sales Tax submitted that the Hon'ble High Court in this judgment held that the obligation of the party is to select his advocate brief him, pay the fees

demanded by him and trust the learned advocate to do the rest of things. The Id. AR has submitted that the appellant has handed over all the papers and delay was caused by the advocate and the assessee was not at fault in not filing appeal within due time. In the applications the it is prayed that delay may kindly be condoned keeping in view reasonable cause shown by the assessee. The learned Senior DR strongly opposed to the condonation of delay.

4. On careful consideration of above we find that the delay of 29/31 days has been caused due to lapses and omissions on the part of counsel of assessee and cause shown by the assessee is a reasonable cause beyond control of the assessee. Therefore delay of 29/31 days in filing both the appeals is condoned and appeals are admitted for adjudication.

5. From the grounds of appeal it is apparent that the sole issue in both the appeals is that the AO has erred in law and on facts in positing the late fee u/s. 234E of the Income Tax Act, 1961 on the default prior to 01.06.2015.

6. The appellant in the grounds has stated that the Id. CIT(A) for AY 2015-16 has allowed appeal of the assessee under identical facts and circumstances and for AY 2013-14 & 2014-15 noted the identical facts but in the last sentence concluded that the appeal of the assessee is dismissed. Therefore it is prayed that the appeals of the assessee may kindly be allowed deleting the late fee u/s. 234E of the Act.

7. The Id. Senior DR supported the orders of the authorities below. However, in all fairness, he did not controvert that in para 6 the learned First Appellate Authority has noted facts and findings in favour of the assessee but in the last sentence of said para he concluded that ground of appeal raised by the appellant is dismissed.

8. On careful consideration of above factual position conclusion drawn by the Id. CIT(A) for AY 2015-16 and conclusion drawn for present AY 2013-14 & 2014-15, we are of the considered view that the late filing fees u/s. 234E relating to appeals for AY 2013-14 & 2014-15 also have identical and similar facts with the AY 2015-16. The AO levied late filing fees for both the years under intimation u/s. 200A of the Act, both dated 23.12.2015 for quarter 3 of both the said assessment years with pertains to the period prior to 01.06.2015. Therefore in view of various decisions of Hon'ble High Court and Co-ordinate Benches of the Tribunal late filing fee u/s. 234E prior to the period from 01.06.2015 is not leviable hence we direct the AO to delete the same. Accordingly, grievances of assessee in both the appeals are allowed.

9. In the result both the appeals of the assessee are allowed.

Order pronounced in the open court on 22.05.2023.

Sd/-  
(M. BALAGANESH)  
ACCOUNTANT MEMBER

Sd/-  
(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER

Dated: 22<sup>nd</sup> May, 2023.

NV/-

Copy forwarded to:

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

// By Order //

Asstt. Registrar, ITAT, New Delhi