

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

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 2208 /DEL/2022 : [A.Y. 2017-18 (U/s 154)]

&

ITA No. 2209 /DEL/2022 : [A.Y. 2017-18 (U/s 143(1)]

M/s Max Maintenance Limited, C-5/99, Third Floor, New Kondli, Mayur Vihar, Phase-III, Delhi-110096. PAN- AAJCM8958M	<u>Vs</u>	Income-tax Officer, Ward-16(3), New Delhi.
APPELLANT		RESPONDENT
Assessee represented by		Sh. Dishant Sethi, Adv. ; Ms. Sumangla Saxena, Adv., & Sh. Shyam Sunder, Adv.
Department represented by		Ms. Sangeeta Yadav, Sr. DR
Date of hearing		05.10.2023
Date of pronouncement		05.10.2023

ORDER

PER ANUBHAV SHARMA, JM:

The assessee has come in appeals against separate orders dated 02.09.2022, for the assessment year 2017-18, passed by the Commissioner of Income Tax (Appeals), National Faceless Centre (NFAC), Delhi (hereinafter referred as

“learned First Appellate Authority” or in short “FAA”), in appeal no. NFAC/2016-17/10065455, arising out of order dated 06.07.2019 u/s 154 of the Income-tax Act, 1961 (hereinafter referred as the “Act”); and in Appeal no. NFAC/2016-17/10066208 arising out of the order dated 17.12.2018 u/s 143(1) of the Act, passed by the Dy. Commissioner of Income Tax, CPC, Bangalore, (hereinafter referred in short as “Ld. AO”). Both the appeals were heard together and are being disposed of by a common order for the sake of convenience.

2. In ITA No. 2208/Del/2022 (order u/s 154) the facts in brief are the appellant is company engaged in the business of providing manpower. The appellant filed its return of income for AY 2017-18 dated 27.09.2017, declaring total income of Rs. 17,01,990/-. The return of income was processed on 27.12.2018. Subsequently, an order u/s. 154 dated 06.07.2019 was passed enhancing the income by applying the provisions of section 115JB. The reason for rectification was given in the rectification order. Aggrieved by the rectification, the assessee filed an appeal before CIT(A).

3. ITA No. 2209/Del/2022 (order u/s 143(1), the facts in brief are the appellant while processing of return of income at CPC, Bangalore, the DCIT disallowed Rs. 34,81,244/- claimed on account of employees contribution to ESI and Employee Provident Fund as the payment was made after the stipulated due date in that Act. He also disallowed the expenditure u/s. 37 of the Act of Rs. 9,347/- and disallowed

the expenditure u/s. 40(a)(ia) w.r.t Tax Deduction at Source (TDS) under chapter XVII-B of Rs. 12,06,000/-. Aggrieved by this, the assessee company went in appeal before Ld. CIT(A).

4. The learned CIT(A), however, dismissed the appeal of the assessee against order u/s 154 dated 6.7.2019 on the basis of delay of 900 days and the appeal against order u/s 143(1) dated 4.2.2019 for the delay of 1050 days.

5. At the time of hearing of these appeals, learned AR has stressed on the fact that the grounds raised are primarily on merits but the assessee needs an opportunity to contest on merits and the learned CIT(A) has erred in not considering the sufficient reasons cited for delay in filing the appeals.

5.1 Ld. DR has however submitted there was unprecedented delay and there was very superficial reason for delay.

6. It comes up that assessee has claimed that there were two columns for providing e-mail address in ITR-6, but only e-mail of professional was provided and the e-mail of the assessee was not mentioned due to which intimation u/s 143(1) and the subsequent order u/s 154 was not communicated personally to the assessee. It was claimed that when for the subsequent year the assessee was in the process of filing the appeal it was noticed that due to ignorance of the earlier counsel, appeal in regard to A.Y. 2017-18 could not be filed. Stating these facts an

affidavit of the Director of the Company was also filed before learned CIT(A). Learned AR has brought to the notice of the Bench that in subsequent years, in returns in ITR-6, the e-mail address of the assessee was also quoted due to which the orders of Ld. Tax authorities came directly in notice of assessee.

7. As we appreciate the the order of learned CIT(A), same shows that this aspect of quoting only the e-mail ID of counsel and not of assessee itself has not been found to be a sufficient reason to say that assessee was not aware of the orders. We are of the considered view that certainly the assessee provided only the e-mail ID of counsel but that cannot be an estoppel for claiming that service to authorized professional by e-mail should be considered to be an information upon the assessee also when assessee alleges otherwise and makes a deposition on oath through Director, that the said authorized professional whose e-mail ID was provided, failed to inform the assessee of the orders or to file the appeal.

8. It appears that learned CIT(A) has broadly gone on the basis of various judicial pronouncements which discourage the entertainment of appeals filed with inordinate delay. However, the matter of fact is that assessee has come with an allegation of fault of authorized representative and has also stated that in subsequent years the e-mail address of assessee was also provided which helped the assessee in filing appeals in subsequent years in due time, and same adds

credibility to the reasons cited. That entitles assessee an opportunity to be heard on merits for the ends of justice. Accordingly, dismissal of application for condonation of delay by the learned CIT(A) cannot be sustained.

9. Consequently, the grounds raised qua this issue in the respective appeals are allowed. **The appeals are allowed for statistical purposes.** The issue on merits, in both the appeals, is restored to the file of learned CIT(A) who shall allow the delay and proceed to decide the appeals on merits, after giving due opportunity of hearing to the assessee.

Order pronounced in open court on 05.10.2023.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

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Order signed and pronounced on	
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File sent to the Bench Clerk	
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Date on which file goes to the Head Clerk	
Date of dispatch of Order	
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