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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 559/2023**

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-3,
DELHI Appellant

Through: Mr Abhishek Maratha, Sr. Standing
Counsel with Mr Parth Semwal, Jr.
Standing Counsel.

versus

M/S INDO AUTOTECH LTD Respondent

Through: Mr Kapil Goel and Mr Sandeep Goel,
Advocates.

+ **ITA 561/2023**

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-3,
DELHI Appellant

Through: Mr Abhishek Maratha, Sr. Standing
Counsel with Mr Parth Semwal, Jr.
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versus

INDO AUTOTECH LTD Respondent

Through: Mr Kapil Goel and Mr Sandeep Goel,
Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

ORDER

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27.09.2023

[Physical Hearing/Hybrid Hearing (as per request)]

**CM APPL. 50339/2023 in ITA 559/2023 and CM APPL. 50344/2023 in
ITA 561/2023 [Applications filed on behalf of the appellant/revenue
seeking condonation of delay of 03 days in filing the appeal]**



CM APPL. 50340/2023 in ITA 559/2023 and CM APPL.50345/2023 in ITA 561/2023[Applications filed on behalf of the appellant/revenue seeking condonation of delay of 226 days in re-filing the appeal]

1. These are the applications moved on behalf of the appellant/revenue, seeking condonation of delay in filing and re-filing the appeals.

1.1 According to the appellant/revenue, there is a delay of 03 days in filing and 226 days in re-filing the appeals.

2. Mr Kapil Goel, learned counsel, who appears on behalf of the respondent/assessee, says that he does not oppose the prayers made in the applications.

3. Accordingly, the prayers made in the applications are allowed.

4. The delay in filing and re-filing the applications is accordingly condoned.

5. The applications are disposed of, in the aforesaid terms.

ITA No. 559/2023 & 561/2023

6. These appeals concern Assessment Year (AY) 2010-11 (ITA 559/2023) and AY 2011-12 (ITA 561/2023).

7. Both the appeals seek to assail a common order dated 06.07.2022, passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].

8. The Tribunal while ruling in favour of respondent/assessee has relied upon the judgment of a coordinate bench of this court, passed in a bunch of matters including ITA 23/2021, titled ***PCIT (Central)-3 vs Anand Kumar Jain (HUF)***.

9. We are informed that the said judgment was carried in appeal to the Supreme Court, in which notice has been issued.



10. The issue at hand is as to whether the respondent/assessee should have been subjected to proceedings under Section 153C of the Income Tax Act, 1961 [in short, “Act”], as against Section 153A of the Act.

11. The Tribunal *via* the impugned order has concluded that the respondent/assessee should have received another notice and if the Assessing Officer (AO) frames assessment without resorting to the specific section provided by the legislature, the whole exercise of enacting such a provision will become futile.

12. Mr Abhishek Maratha, learned senior standing counsel, who appears on behalf of the appellant/revenue, will place before this court the record which was made available to the statutory authority, which will include the warrant of authorisation and *panchnamas* whereby the search was conducted.

13. Mr Maratha is accorded four weeks for the said purpose.

14. List the above-captioned appeals on 30.11.2023.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

SEPTEMBER 27, 2023/v

Click here to check corrigendum, if any