

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

BEFORE SHRI N.K.SAINI, VICE PRESIDENT AND  
SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

**ITA No. 38/Jodh/2021**  
**(ASSESSMENT YEAR-2016-17)**

M/s Hitkari and Swaraj Enterprises Private Limited, Barmer	Vs	The Pr. CIT, Jodhpur
<b>(Appellant)</b>		<b>(Respondent)</b>
PAN: ASADCH3713R		

<b>Revenue By</b>	Smt. Alka R Jain CIT DR
<b>Assessee By</b>	Sh Gautam Chand Baid, CA
<b>Date of hearing</b>	27.09.2021
<b>Date of Pronouncement</b>	27.09.2021

**ORDER**

**PER N. K. SAINI, V.P.**

This is an appeal by the assessee against the order dated 25.3.2021 of Ld. Pr. Commissioner of Income Tax , Jodhpur (in short 'PCIT) passed u/s 263 of the Income Tax Act, 1961.

2. Following grounds have been raised in this appeal:-

1. *That on the facts and in the circumstances of the case, order framed by Ld. Pr. CIT, invoking provisions of section 263 is bad in facts and bad in law.*
2. *That on the facts and in the circumstances of the case, finding recorded by Ld. Pr. CIT that assessee did not complied with the show cause notice issued, is contrary to the factual records. On 22/03/2021 assessee sought adjournment till 25/03/2021 and duly responded on 5/03/2021 through representative. Non consideration of adjournment request (neither rejected nor accepted) and recording finding that assessee did not complied show*

*cause notice is factually incorrect. Necessary direction may kindly be issued to deletion of such incorrect factual observation of Ld. Pr. CIT.*

3. *That on the facts and in the circumstances of the case, order framed by Ld. Pr. CIT, invoking provisions of section 263 without affording an effective opportunity of hearing is contrary to statutory provisions and therefore void ab initio. Considering mandate of statutory provision, order under consideration may kindly be declared as null and void ab initio.*
4. *That on the facts and in the circumstances of the case, order framed by Ld. Pr. CIT, invoking provisions of section 263 holding that the AO while completing assessment did not examine and verify the facts mentioned above and completed the assessment at returned income without making proper inquiry. Ld. AO framed assessment after proper enquiry and after application of mind. necessary direction may kindly be issued to deletion of such incorrect factual observation of Ld. Pr. CIT.*
5. *That on the facts and in the circumstances of the case, Ld. Pr. CIT erred in holding that the order of the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue. The order of the Assessing Officer is neither erroneous nor to the interests of the revenue. The framed by Ld. PR.CIT invoking provisions of section 263 may kindly be set aside.*
6. *The appellant crave liberty to add, amend, alter, modify, or delete any of the ground of appeal on or before its hearing before your honour.*

3. Vide ground Nos. 2 & 3 of the appeal, the grievance of the assessee relates to the ex. parte order passed by the Ld. PCIT without providing due and reasonable opportunity of being heard.

4. The facts of the case in brief are that the assessee filed e-return on 6.10.2016 declaring an income of Rs. 85,51,730/-. Later on, the case was selected for scrutiny and the Assessing officer framed the assessment at the returned income. Subsequently, the Ld. PCIT by invoking the provisions of section 263 of the Act set aside the assessment order passed by the AO considering the same as erroneous and pre-judicial to the interest of revenue and directed the AO to make the assessment afresh after making proper enquiries and after providing adequate opportunity of being heard to the assessee.

5. Being aggrieved, the assessee in appeal.

6. The Ld. Counsel for the assessee submitted that the Ld. PCIT after invoking the provisions of section 263 of the Act issued a show cause notice on 15.3.2021 and the case was fixed for hearing on 22.3.2021. On the said date the assessee furnished an adjournment application, copy of which is placed at page No.5 of the assessee's compilation. It was further submitted that the assessee sought an adjournment for 25.3.2021 and physically submitted on-line submission on the said date i.e. 25.3.2021. However, the Ld. PCIT without considering the application of the assessee and without providing any opportunity of being heard to the assessee decided the case of the assessee on the same date i.e. 25.3.2021. Therefore, the Ld. PCIT was not justified in setting aside the assessment which was framed by the AO by applying his mind, by considering the same as erroneous and pre judicial to the interest of Revenue.

7. In her rival submissions, the Ld. CIT-DR strongly supported the impugned order passed by the Ld. PCIT and reiterated the observations made therein.

8. We have considered the rival submissions of both the parties and perused the material available on record. In the present case it appears that the Ld. PCIT neither considered the on-line submissions made by the assessee furnished on 25.3.2021 nor has given any findings on the request of the assessee for adjournment of the case till 25.3.2021. The application furnished by the assessee on 22.3.2021 for adjournment is placed at page 5 of the assessee's compilation and reads as under;-

*“Sir, to represent the case, CA Gautam Chand Baid (M.No.404706) has been appointed as representative. Authority letter has been issued but the same has not been reached to the CA and therefore he not able to appear before your good self. Considering this, it is requested to kindly adjourn the hearing till 25.03.2021.”*

It is noticed that the Ld. PCIT while passing the impugned order has mentioned in para 4 as under:-

*“The reply to the show cause notice dated 15.3.2021 was required to be submitted on 22.03.2021. However the assessee did not make any compliance of the said notice.”*

9. On the contrary, the assessee furnished application for adjournment on the said date i.e. 22.03.2021 stating the reasons for seeking the adjournment. The Ld. PCIT neither rejected that application nor accepted the same. It is also not clear as to whether online submissions claimed to be furnished by the assessee on 25.3.2021 were considered by the Ld. PCIT. It is well settled that nobody should be condemned, unheard as per the maxim, “*audi alteram partem*”. We, therefore, keeping in view the principles of natural justice deem it appropriate to set aside this case back to the file of Ld. PCIT to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

(Order Pronounced in the Court on 27.09.2021)

Sd/-  
**(SANDEEP GOSAIN)**  
Judicial Member

Sd/-  
**(N.K. SAINI)**  
Vice President

**Dated : 27.09.2021**

“आर.के.”

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, Jodhpur
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order

सहायकपंजीकार/ Assistant Registrar