

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI**  
**BEFORE SHRI AMARJIT SINGH, JM AND SHRI S. RIFAUZ RAHMAN, AM**

आयकर अपील सं/ I.T.A. No. 970/Mum/2021  
(निर्धारण वर्ष / Assessment Years: 2017-18)

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आयकर अपील सं/ I.T.A. No. 971/Mum/2021  
(निर्धारण वर्ष / Assessment Years: 2016-17)

Ants Ceramics Pvt. Ltd. 1 Jivdani Ind. Estate No.1, Off. Western Express Highway, Dhumal Nagar, Vasai Road (E), 401208.	<b>बनाम/</b> Vs.	PCIT, Thane-1 B Wing, Ashar IT Park, 6 <sup>th</sup> Floor, Road No.16Z, Wagle Industrial Estate, Thane (W), Thane, Maharashtra-400604.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAFCA3194D</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Anil Sathe
Revenue by:	Ms. Shailja Rai (DR)

सुनवाई की तारीख / Date of Hearing: 03/01/2022  
घोषणा की तारीख /Date of Pronouncement: 01/04/2022

**आदेश / ORDER**

**PER AMARJIT SINGH, JM:**

The assessee has filed the above mentioned appeals against the different order passed by the Principal Commissioner of Income Tax, Thane-1 [hereinafter referred to as the “PCIT”] relevant to the A.Ys.2016-17 & 2017-18 in which the Principal Commissioner of Income Tax [hereinafter referred to as the “PCIT”] has invoked the provisions u/s 263 of the I.T. Act, 1961.

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2. The assessee has filed the present appeal against the order dated 22.03.2021 passed by the Principal Commissioner of Income Tax, Thane-relevant to the A.Y.2016-17 in which the Principal Commissioner of Income Tax has invoked the revisional power u/s 263 of the I.T. Act, 1961.



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**3.** The assessee has raised the following grounds of appeal: -

1. *On the facts and in the circumstances of the case and in law, the learned Principal Commissioner of Income Tax has erred in passing the order u/s 263 of the Income tax Act 1961.*

2. *The learned Principal Commissioner of Income Tax passed order u/s 263 without granting sufficient time to the appellant to respond to the notice of hearing, thus denying the appellant an opportunity of being heard which is against the principle of natural justice.*

3. *The learned Principal Commissioner of Income Tax erroneously invoked the provisions of sec. 263 of the Act stating that the assessing officer has not appreciated the facts and provisions of the Act making the order erroneous and prejudicial to the interest of revenue, whereas the A.O. has duly examined the deduction u/s 35(2AB) claimed by the appellant and passed the order accordingly.*

4. *The learned Principal Commissioner of Income Tax Act erred in invoking sec. 263 only for the reason that the appellant failed to furnish the prescribed forms electronically and thereby failed to meet the conditions for claiming deduction u/s 35(2AB), whereas the said conditions were prescribed by the rules which became effective from 01.07.2016 and therefore were not applicable for the year under consideration.*

5. *Without prejudice to Ground No. 4 and strictly in the alternative, the learned Principal Commissioner of Income Tax failed to appreciate that the deduction is granted under the Act whereas the procedural formalities are prescribed in rules which is a piece of delegated legislation. Therefore, non-filing of Forms is at best a procedural infirmity for which the deduction should not be denied.*

6. *The appellant craves leave to add, alter or amend any of the grounds of appeal at any time before or at the time of hearing."*

**4.** The brief facts of the case are that the assessee filed its return of income on 16.10.2016 declaring total loss to the tune of Rs.10,11,928/- after claiming



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weighted deduction of Rs.56,15,494/- u/s 35(2AB) of the I. T. Act. The case was selected for scrutiny under CASS. Thereafter, the assessment was completed on 25.12.2018 assessing the total income at Rs.7,65,670/- by making a disallowance of deduction claimed u/s 35(2AB) amounting to Rs.17,77,602/-.

**5.** On verification of records, it came into notice that the assessee company has not fulfilled all the conditions laid down in the section to claim weighed deduction u/s. 35(2AB). As per CBDT Notification No. 29/2016 dtd. 28/4/2016 amended the I. T. Rule 1962 w.e.f. 1<sup>st</sup> July, 2016 and form w.r.t. expenditure on scientific Research u/s. 35(2AB) of the Act, Companies incurring expenditure on Scientific Research on in-house R&D facility, Reports to be submitted by the prescribed authority in Form 3CL to the I. T. Authority specified u/s. 35(2AB) of the I.T. Act and also to furnish the reports In Form 3CLA from an Accountant u/s, 35(2AB) relating to In-house Scientific Research & Development facility before the due date of filing Return of Income u/s. 139(1) of the Act.

**6.** However, it is noticed that the Form was uploaded by the assessee Company as per amended Rules. The assessee has only uploaded Form 3CA-3CD for A.Y. 2016-17 and uploaded Form 3CM from the DSIR. As per Notification, all Companies claiming deduction u/s. 35(2AB) for A.Y. 2016-17 onwards would require compliance with the revised Rules. Thus, the assessee company should have filed Audit Report in Form 3CLA. Since assessee has not fulfilled all the conditions as per amendment prescribed in the revised rule, assessee company was not eligible to claim deduction u/s. 35(2AB) of the Act. Since, the AO disallowed proportionate claim for the period 1.4.2015 to 30.7.2015 amounting to Rs. 17,77,602/-, the remaining claim of assessee company u/s. 35(2AB) at Rs. 40,33,314/- (Rs. 58,10,916 — Rs. 17,77,602) was disallowed and added to the total income of the assessee Company. Thus, it is evident from the above facts that the A.O has not appreciated the facts and provisions of the Income Tax Act/Rules while passing the assessment order.



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7. However, the same remained to be taxed by the AO at the time of assessment proceedings u/s 143(3). Since the assessment order passed by the AO is found to be erroneous in so far as it is prejudicial to the interests of the revenue. Notice u/s 263 of the IT Act, 1961 was issued to the assessee on 16.03.2021. In response to the notice u/s 263, the assessee failed to submit any reply to this office till passing of the order. Accordingly, the decision is made on the basis of facts and materials available on records. Considering of all the facts and circumstances, the PCIT set aside the order u/s 143(3) of the Act by virtue of order in question and passed the order in question. Feeling aggrieved, the assessee has filed the present appeal before us.

8. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. At the very outset, the Ld. Representative of the assessee has argued that no opportunity of being heard was given to the assessee, therefore, there is a violation of the principles of natural justice, hence, the order is not liable to be sustainable in the eyes of law. However, on the other hand, the Ld. Representative of the Revenue has refuted the said contention. On appraisal of the order dated 22.03.2021 in question, we noticed that the PCIT has issued the notice to the assessee on 16.03.2021 and passed the order in a very short interval on 22.03.2021. However, it is specifically mentioned in the order that the assessee failed to reply to the notice. There is no iota of evidence on record to which it can be assumed that the notice dated 16.03.2021 was ever served upon the assessee. No acknowledgement of service of notice is on record. After the issuance of notice, the order u/s 263 of the Act passed within the period of seven day's which is in very short interval. Nothing came on record that the sufficient opportunity was given to the assessee. However, the order in question dated 22.03.2021 is also non speaking on account of service of notice. Order dated 22.03.2021 nowhere marked the attendance of the assessee or his representative. Observing the violation of principles of natural justice by not providing the reasonable opportunity of being heard to the assessee, we are of



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the view that the order in question dated 22.03.2021 is not liable to be sustainable in the eyes of law, therefore, we set aside the same. Accordingly, the present appeal is hereby allowed.

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9. The facts of the present case are quite similar to the facts of the case as narrated above while deciding in ITA. No.971/Mum/2021, therefore, there is no need to repeat the same. However, the figure is different. The finding given above while deciding the ITA. No.971/Mum/2021 is quite applicable to the facts of the present case also as *mutatis and mutandis*. Accordingly, appeal of the assessee is hereby allowed.

10. In the result, the appeals of the assessee are hereby allowed.

Order pronounced in the open court on this 01/04/2022

Sd/-

Sd/-

(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER

(AMARJIT SINGH)  
JUDICIAL MEMBER

Mumbai; Dated; 01/04/2022

Vijay Pal Singh (Sr. PS)

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai