

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.88/Chny/2021

(निर्धारणवर्ष / Assessment Year: 2011-12)

Mr. Komara Gounder Chinnusamy Bhuvana Traders Poosarikadu, Alavaipatty Post Rasipuram TK, Namakkal. PIN 637 505.	Vs	The Income Tax Officer, Ward-2, Tiruchengode.
PAN: AKBPC 5305R		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Mr. T.S.Lakshmi Venkataraman, FCA
प्रत्यर्थी की ओरसे/Respondent by	:	Mr. R.N. Siddappaji, CIT DR

सुनवाईकीतारीख/Date of hearing	:	26.04.2022
घोषणाकीतारीख /Date of Pronouncement	:	28.04.2022

आदेश / ORDER

PER G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against order passed by the Principal Commissioner of Income Tax, Coimbatore-1, dated 29.01.2021 and pertains to assessment year 2011-12.

2. The brief facts of the case are that in this case, assessment has been completed u/s.143(3) r.w.s 147 of the Income Tax Act, 1961, on 29.12.2018 and determined total income at Rs.3,41,260/- by making additions towards trade discount allowed by the assessee at Rs.1,25,000/-. The case

has been subsequently taken up for revision and notice u/s.263 of the Income Tax Act, 1961 dated 16.12.2020 was served on the assessee. The assessee neither appeared nor filed any details in response to show-cause notice. Therefore, the learned PCIT passed order u/s.263 of the Income Tax Act, 1961, and set aside assessment order passed by the Assessing Officer u/s.143(3) r.w.s. 147 of the Act dated 29.12.2018 and directed the Assessing Officer to redo assessment in accordance with law. The relevant findings of the learned PCIT are as under:-

“In this case the assessment passed u/s 143 (3) rws. 147 of the Income Tax Act, 1961 dated 29/12/2018 was found to be erroneous for the following reasons.

“It is seen from the assessment record for the year under consideration the assessee had claimed expenses to the tune of Rs.2,82,720/- towards discount allowed to the buyers. On verification, it is ascertained that the assessee had received Rs.23,16,261/- as trade discount. This amount was not shown in the profit and loss account of the assessee. While computing the assessment, instead of adding the entire amount of Rs. 23,16,212/- received as trade discount, an amount of Rs. 1,25,000/- was added by taking GP Ratio of 5.4%. The gross profit ratio amount of Rs. 1,25,000/- taken into consideration was not in order. The entire amount of Rs. 23,16,261/- needs to be treated

as income of the assessee. On considering the above there would be an additional income of Rs. 21,91,261.”

2.0 Hence, invoking the provisions u/s 263 of the Income Tax Act, 1961 notice was issued to the assessee posting the case for hearing on 16/12/2020 for which the assessee has not responded. In the show cause notice the assessee was provided with the reasons for issue of show cause notice and option to respond either on line or in person for which there is no response.

3.0 In view of the above fact the assessment order passed in this case for the assessment year 2011-12 is found to be erroneous and prejudicial to the interest of revenue. Accordingly, the order is set aside for the Assessing Officer to re do the assessment de novo after giving due opportunity to the assessee and take a judicious decision and pass an appropriate order.”

3. The learned A.R for the assessee submitted that the learned PCIT has passed order u/s.263 of the Act without observing principles of natural justice, which is evident from the fact that the learned PCIT has passed order without affording reasonable opportunity of hearing to the assessee and thus, appeal maybe set aside to the file of the learned PCIT to give one more opportunity of hearing to the assessee.

4. The learned DR, on the other hand, supporting order of the learned PCIT submitted that when the assessee is not responding to show-cause notice, the PCIT has left with no choice has passed order u/s.263 of the Act and thus, there is no reason to give another opportunity to the assessee.

5. We have heard both the parties and perused order passed by the learned PCIT u/s.263 of the Act dated 28.01.2021. The learned PCIT has issued show-cause notice u/s.263 of the Act, on the ground that assessment order passed by the Assessing Officer is erroneous, insofar as it is prejudicial to the interests of revenue on the issue of assessment of trade discount received by the assessee. According to the PCIT, although the assessee had received Rs.23,16,261/- as trade discount, the Assessing Officer has estimated gross profit @ 5.4% and made addition of Rs.1,25,000/-, instead of making addition towards entire amount of trade discount amounting to Rs.23,16,261/-. The assessee neither appeared nor filed any details. Therefore, the learned PCIT left with no choice disposed off the case and passed order u/s.263 of the Income Tax Act, 1961 and set

aside the assessment order passed by the Assessing Officer. No doubt, when the assessee was not responding to show-cause notice issued by the authorities, the authorities are bound to dispose off proceedings in accordance with law, but such proceedings should be completed, after affording reasonable opportunity of hearing to the assessee. It is well settled law of principles of natural justice that before taking any decision, a reasonable opportunity must be given to the other side. In this case, the learned PCIT had passed order u/s.263 of the Act, by giving one date of hearing to the assessee. In our considered view, the order passed by the PCIT u/s.263 of the Income Tax Act, 1961, without observing principles of natural justice is contrary to law. Therefore, we are of the considered view that appeal filed by the assessee needs to go back to the file of the learned PCIT and thus, we set aside order passed by the learned PCIT and restore the issue back to the file of PCIT to reconsider the issue afresh in accordance with law, after affording reasonable opportunity of hearing to the assessee. Needless to say, the assessee shall appear before the learned PCIT as and when called for. In case, the

assessee does not appear before the authorities, then the PCIT is free to take decision in accordance with law.

6. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 28th April, 2022

Sd/-

(महावीर सिंह)

(Mahavir Singh)

उपाध्यक्ष/ Vice-President

चेन्नई/Chennai,

दिनांक/Dated 28th April, 2022

DS

Sd/-

(जी. मंजुनाथ)

(G. Manjunatha)

लेखा सदस्य / Accountant Member

आदेश की प्रतिलिपि अद्येषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.