

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND

SHRI PAVAN KUMAR GADALE, JM

**ITA No. 952/Mum/2021**

(Assessment Year 2016-17)

S Zhaveri Pharmakem Private  
Limited  
109, Shiv Smruti Chambers,  
49 Dr. Annie Besant Road,  
Worli, Mumbai-400 018

**(Appellant)**

Pr. Comm. Of Income tax-08,  
Room no. 611, 6<sup>th</sup> floor,  
Vs. Aayakar Bhavan, MK Road,  
Mumbai-400 020

**(Respondent)**

**PAN No. AAJCS 0402 N**

**Assessee by** : Ms. Vasanti Patel, Authorised  
Representative  
**Revenue by** : Shri Hemant Kumar Chimanlal  
Leava, CIT Departmental  
Representative

**Date of hearing:** 05.07.2022

**Date of pronouncement :** 06.07.2022

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. This appeal is filed by the assessee against the order passed by the Pr. Commissioner of Income-tax-8, Mumbai (PCIT) dated 22<sup>nd</sup> March, 2021 under Section 263 of the Income-tax Act, 1961 (the Act) holding that the assessment order passed under Section 143(3) of the Act on 22<sup>nd</sup> December, 2018 by the Asst. Commissioner of Income-tax, Circle 8(2)(2), Mumbai (learned Assessing Officer) accepting the returned income of the assessee is erroneous and prejudicial to the interest of the Revenue.

02. Assessee has raised following grounds of appeal:-

*"Under the facts and circumstances of the case and in law:*

*Passing of order before date of hearing*

*1. The Pr. Comm. of Income-tax-8, Mumbai (CIT) erred in passing the order under section 263 of the Income-tax Act, 1961 (the Act) on March 22, 2021 although the date fixed for hearing was on March 26, 2021 vide Notice dated March 19, 2021.*

*Without prejudice to the aforesaid*

*Invocation of section 263 of the Income-tax Act, 1961 (the Act)*

*2. The CIT erred in invoking and passing an order under section 263 of the Act for the said year.*

*3. The CIT erred in initiating the proceedings under section 263 of the Act at the fag end on March 19, 2021 just before they were getting time barred on March 31, 2021 and passing the order immediately on March 22, 2021 without giving sufficient opportunity to the appellant of being heard.*

*4. The CIT erred in observing in his order that since the issue is set aside to the file of AO, the assessee will get enough time and opportunity to make its submissions to the AO.*

*5. Without prejudice to the above, the CIT erred in failing to appreciate that the issue of project*

*expenses of Rs.51,60,377/- were duly examined by the Assessing Officer (AO) in scrutiny assessment proceedings by calling for relevant details and allowed the same after due application of mind.”*

03. The brief fact of the case shows that assessee is a company engaged in the business of importing pharmaceuticals raw material and sales. It also undertakes research and development activity.
04. It filed its return of income on 15<sup>th</sup> October, 2016, at a total income of ₹3,21,83,400/-. This return was processed under Section 143(1) of the Act. Subsequently, the assessment under Section 143(3) of the Act was passed on 22<sup>nd</sup> December, 2018 at the returned income.
05. The learned PCIT examined records and find that assessee has incurred expenditure in earlier years and has claimed and allowed deduction of the same during this year. Thus, assessee has been allowed prior period expenses as deduction. Accordingly, notice for hearing was issued on 19<sup>th</sup> March, 2021 fixing the date of hearing on 26<sup>th</sup> March, 2021 to show cause the assessee that why the order of assessment should not be held to be erroneous and prejudicial to the interest of the Revenue.
06. The learned PCIT has noted in paragraph no.3 that in response to the above notice assessee submitted its reply online. Assessee also asked for adjournment till second week of April, 21. This adjournment request was rejected stating that the case will get time barred on 31<sup>st</sup> March,

2021 and further, the issue is set aside to the file of the learned Assessing Officer where assessee will get enough time and opportunity to make submissions before the learned Assessing Officer.

07. Consequent, on 22<sup>nd</sup> March, 2021, the order under Section 263 of the Act was passed holding that the Assessing Officer has passed the order without making any specific enquiry regarding utilization of cash flow. She further held that in absence of any specific enquiry made by the learned Assessing Officer it cannot be said that the documents submitted by the assessee were duly verified by the learned Assessing Officer. Thereafter, she relied on five judicial precedents of Hon'ble Supreme Court, Hon'ble High Court and co-ordinate Benches and held that the assessment order dated 22<sup>nd</sup> December, 2018 is erroneous and prejudicial to the interest of the Revenue. Accordingly, she set aside the assessment to the file of the learned Assessing Officer directing him to frame the order denovo.
08. Thus, assessee is aggrieved with that order and is in appeal before us.
09. The learned Authorized Representative referred to the notice issued by the Id PCIT and stated that the date fixing for hearing was on 26<sup>th</sup> March, 2021, however, the order under Section 263 of the Act has been passed on 22<sup>nd</sup> March, 2021. Thus, before the date fixed for hearing the order under Section 263 of the Act was passed. She

submitted that it is a violation of the principle of natural justice and the order deserves to be quashed.

010. She further submitted that Id PCIT rejected the adjournment application only for the reason that order is set aside and assessee will get enough opportunity to appear before the learned Assessing Officer and make submissions.

011. The learned CIT Departmental Representative supported the order of the learned PCIT.

012. We have carefully considered the rival contention and perused the orders of the lower authorities. Firstly, we find that on 19<sup>th</sup> March, 2021 the notice for hearing was issued fixing date of hearing on 26<sup>th</sup> March, 2021. On 22<sup>nd</sup> March, 2021, the learned Chief Commissioner of Income-tax (OSD) Pr. Commissioner of Income-tax-8 passed an order u/s 263 of the Act. We find that it is blatant violation of Principle of Natural justice. Assessee was denied opportunity of hearing. Further rejecting the adjournment application stating that the issue was getting time barred on 31<sup>st</sup> March, 2021 and stating that as the issue is set aside to the file of learned Assessing Officer where assessee will get enough time and opportunity to make its submissions to the learned Assessing Officer, which shows the callousness in the approach of the learned PCIT. Firstly, the notice was issued at the fag end of the time barred period on 19<sup>th</sup> March, 2021, the hearing is fixed on 26<sup>th</sup> March, 2021 and the order was passed on 22<sup>nd</sup> March,

2021 rejecting the application of adjournment clearly shows that the order passed by the learned PCIT on this ground cannot be sustained.

013. Further holding that the assessee will get opportunity of hearing before the learned Assessing Officer once again relegating assessee to the multiple proceedings without considering the obligations and responsibility of the PCIT by deciding the issue on merits without granting an opportunity of hearing to assessee, is also not sustainable. It is also not the case that assessee was granted time even till 30<sup>th</sup> March, 2021. The learned PCIT was so much in hurry to pass the order on 22<sup>nd</sup> March, 2021 despite assessee was asked to appear till 26<sup>th</sup> march, 2021. If the orders are getting time barred on 31<sup>st</sup> March, 2021 and the learned PCIT is issuing notice on 19<sup>th</sup> March, 2021 for revising the assessment order, it is not the fault of the assessee that for initiation of proceedings taken up at the last moment. It is the responsibility of the learned PCIT to have initiated the proceedings sufficiently in advance. For the reason that learned PCIT initiated the proceedings late, assessee cannot be put to such harassment. As the proceedings and the orders clearly shows that the principle of natural justice have been thrown to winds, we are unable to sustain the order of the learned PCIT for this reason only. Accordingly, ground no. 1 of the appeal is allowed and the order passed by the learned PCIT is quashed.



014. Appeal of the assessee is allowed without deciding the issue on the merits of the order.

015. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 06.07.2022.

Sd/-  
(PAVAN KUMAR GADALE)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated:06.07.2022

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai