

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.121/PUN/2021
निर्धारण वर्ष / Assessment Year: 2016-17

M/s. Maharashtra Solvent Extraction Pvt. Ltd., Shivaji Nagar, Old Dhulia Road, Jalgaon- 425001. PAN : AADCM8466G	Vs.	Pr.CIT-1, Nashik.
Appellant		Respondent

Assessee by : Shri Sanket M. Joshi
Revenue by : Shri Abhinay S. Kumbhar

Date of hearing : 19.07.2022
Date of pronouncement : 21.07.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Id. Pr. Commissioner of Income Tax- 1, Nashik ('the PCIT') dated 12.03.2021 for the assessment year 2016-17.

2. Briefly, the facts of the case are that the appellant is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of extraction of Soyabean Oil. The return of income for the assessment year 2016-17 was filed on 17.10.2016 declaring total income of Rs.69,40,600/-. Against the

said return of income, the assessment was completed by the Dy. Commissioner of Income Tax, Circle-1, Jalgaon ('the Assessing Officer') vide order dated 21.12.2018 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at total income of Rs.85,21,990/- after making (a) disallowance u/s 40A(3) of Rs.4,92,634/-, (b) disallowance u/s 36(1)(iii) of Rs.6,89,023/- and (c) disallowance of expenditure of Rs.4,00,000/-.

Subsequently, on verification of the assessment record, the Id. PCIT formed an opinion that the assessment order is erroneous and prejudicial to the interests of the revenue on the ground that the Assessing Officer without examining had allowed the claim of set off of speculative loss against profit earned and, accordingly, issued show-cause notice dated 01.03.2021 requiring the appellant to show-cause as to why the assessment order cannot be set-aside.

On receipt of the said notice, the appellant had sought an adjournment of hearing of appeal through e-mail on the Income Tax Department's website portal, which reads asunder :-

"Our income tax consultant is not available at this time due to COVID-19. Hence, we seek adjournment in hearing of the notice by 15 days."

3. However, the Id. PCIT without disposing of the adjournment petition had proceeded with passing of the order u/s 263 and had

set-aside the assessment order to the Assessing Officer with direction to re-frame the assessment order in accordance with law.

4. Being aggrieved by the impugned order of ld. PCIT passed u/s 263, the appellant is in appeal before us in the present appeal.

5. It is submitted that the ld. PCIT had passed the impugned order in gross violation of principle of natural justice without affording of reasonable opportunity of being heard to the appellant. Thus, it is pleaded that the order passed by the ld. PCIT u/s 263 may be set-aside.

6. On the other hand, ld. CIT-DR placed reliance on the order of the ld. PCIT passed u/s 263 of the Act.

7. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the validity of the order passed by the ld. PCIT u/s 263 of the Act. The appellant had questioned the validity of the order of revision on the ground of gross violation of principles of natural justice, as the appellant was not afforded a reasonable opportunity of representing the matter before the ld. PCIT. On perusal of the impugned order, it is clear that the ld. PCIT had issued notice only once i.e. on 01.03.2021 fixing the matter for hearing for 08.03.2021. On receipt of the said

notice of hearing, the appellant sought adjournment of hearing through e-mail on the Income Tax Department's website portal. The ld. PCIT without disposing of the adjournment petition and without giving reasonable opportunity of hearing had proceeded with passing the order u/s 263 of the Act. In doing so, the ld. PCIT had violated the principle of natural justice by granting unreasonable short time to respond to the notice of hearing and without disposing of request for adjournment had proceeded with passing of order u/s 263 of the Act. Therefore, we remand the matter to the file of the ld. PCIT with direction to pass a fresh order u/s 263 after giving a reasonable opportunity of being heard to the appellant. Accordingly, the grounds of appeal raised by the assessee stands partly allowed for statistical purposes.

8. In the result, the appeal filed by the assessee stands partly allowed for statistical purposes.

Order pronounced on this 21st day of July, 2022.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 21st July, 2022.
Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, Nashik.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.