

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI GAGAN GOYAL, AM

आयकर अपील सं/ I.T.A. No.326/Mum/2022

(निर्धारण वर्ष / Assessment Years: 2015-16)

M/s. Balaji Exports Gala no. E-887/888 APMC Market, APMC Market Vegetable, Vashi Navi Mumbai-400703.	बनाम Vs.	PCIT-28 Room No.301, 3 rd Floor, Income Tax Department, Vashi Railway Station Building, Tower No.6 Navi Mumbai-400703.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAIFB2566Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Abhishek Jhunjunwala
Revenue by:	Dr. Mahesh Akhade (DR)

सुनवाई की तारीख / Date of Hearing: 19/07/2022

घोषणा की तारीख /Date of Pronouncement: 28/07/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Principal Commissioner of Income Tax-28, Mumbai dated 19.02.2020 for assessment year 2015-16 passed under section 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. At the outset, the Ld. AR of the assessee, pointed out that the main grievance of the assessee is against the action of the Ld. PCIT not to have given any opportunity to the assessee before passing the impugned revisional order. The Ld. AR of the assessee pointed out that the Ld. PCIT had issued show cause notice u/s 263 of the Act dated 21.01.2020 intimating his desire to exercise his revisional jurisdiction in respect of AY. 2015-16 and it was served to the assessee on 23.01.2020 (acknowledged by the Ld. PCIT at para no. 3 of his order). And the Ld. PCIT has passed the impugned order on 19.02.2020



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without giving any other opportunity to the assessee. According to the Ld. AR, the show cause notice dated 20.01.2020 was issued fixing the date of filing of reply on 28.01.2020. And thereafter, the Ld. PCIT neither did issue any notice fixing the date of hearing nor gave any opportunity to the assessee before passing the impugned order. Thus, according to the Ld. AR, the impugned order of the Ld. PCIT is bad in law for violation of nature justice. According to the Ld. AR, as per Section 263 of the Act, the assessee has to be given an opportunity of hearing before the Ld. PCIT passes any revisional order. Therefore, the Ld. AR prayed that since the impugned action of the Ld. PCIT is not in accordance with Section 263 of the Act (no opportunity of hearing given to the assessee), the impugned action of the Ld. PCIT needs to be quashed or in the alternative, the assessee may be given an opportunity of hearing before the Ld. PCIT.

3. Per contra, the Ld. CIT-DR submitted that the assessee was given an opportunity of hearing vide show cause notice dated 20.01.2020 which was served upon the assessee on 23.01.2020 and since assessee did not file any details/explanation as sought for by 28.01.2020, the Ld. PCIT had passed the impugned order on 19.02.2020. So it can be seen that sufficient opportunity has been given to the assessee, therefore, no interference is called for.

4. We have heard both the parties and perused the records. We note that the assessee had been given only one opportunity by Ld.



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PCIT vide show cause notice dated 20.01.2020 wherein he asked the assessee to file the details called for by him to be filed within 28.01.2020. Since the assessee had to collect the details asked for by Ld. PCIT, the assessee could not file the same within two (2) working days i.e. on 28.01.2020 (Saturday & Sunday being holidays). Therefore, though the assessee wanted to file the documents before the Ld. PCIT but due to time constraint and due to the scare caused by spread of Covid-19, and there were restrictions placed everywhere, the assessee could not file the requisite documents before the Ld. PCIT. We also note that the Ld. PCIT did not issue any other notices other than the notice dated 20.01.2020. Taking into consideration the overall facts and circumstances, in the interest of justice and fair play, we are inclined to set aside the impugned order of the Ld. PCIT and restore the same back to the file of the Ld. PCIT with a direction that proper opportunity to be given the assessee to address the issues raised by him (Ld. PCIT) and thereafter to pass the revisional order in accordance to the law.

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

Order pronounced in the open court on this 28/07/2022.

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

Mumbai; Dated 28/07/2022.
Vijay Pal Singh, (Sr. PS)



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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**