

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

**BEFORE SHRI ABY T. VARKEY, JM AND SHRI S. RIFAUR RAHMAN, AM**

आयकर अपील सं/ I.T.A. No.1355/Mum/2022

(निर्धारण वर्ष / Assessment Years: 2017-18)

PVS Herbals C/o RC Reshamwala & Co, 323 Varma Chambers, 11 Homji Street, Fort-400001.	<b>बनाम/</b> Vs.	PCIT-27 401, 4 <sup>th</sup> Floor, Tower-6, Vashi Railway Station, Commercial Complex, Vashi Navi Mumbai- 400703.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAJFP1361Q</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Kirit Sanghavi/Shri Manish Reshamwala
Revenue by:	Shri K. C. Salvamani (DR)

सुनवाई की तारीख / Date of Hearing: 03/11/2022

घोषणा की तारीख /Date of Pronouncement: 28/11/2022

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the action of the Ld. Principal Commissioner of Income Tax-27, Mumbai dated 21.03.2022 for assessment year 2017-18 passed under section 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. At the time of hearing, on perusal of the impugned order, we note that the Ld. PCIT has made an observation at para no. 4 "As the assessee has not filed any reply, therefore, it is concluded that assessee has no submission to file". And thereafter, the Ld. PCIT has passed an ex-parte order against the assessee setting aside the assessment order passed by the AO dated 16.12.2019 with a direction to make fresh assessment order as per the observation made therein the impugned order. It was brought to our notice that the assessee had in-fact replied



ITA No.1355/Mum/2022  
A.Y. 2017-18  
PVS Herbals

to the show cause notice issued by Ld.PCIT by uploading the reply in the website of the Income Tax Department before the case was fixed on 11.03.2022 [ *the reply letter of assessee is found placed on 3-4 of the PB along with details of duly cash deposited, summary of cash, bank-statement etc. is placed at page no. 5-58 of the PB*].

3. In such a factual scenario, we find that the Ld. PCIT's action of recording erroneously that assessee has not filed any reply to SCN is on wrong assumption of fact. Consequently, the impugned order has been passed by Ld PCIT without hearing the assessee which is in clear violation of principle of natural justice. For that we rely on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Amitabh Bachchan Civil Appeal No. 5009 of 2016 dated 11.05.2016 wherein the Hon'ble Supreme Court has held that even though Ld.PCIT need not issue show cause notice u/s 263 of the Act, however, section 263 of the Act contemplates an opportunity of hearing, to be afforded to the assessee. Failure to give such an opportunity would render the revisional order legally fragile not on the ground of lack of jurisdiction but on the ground of violation of principle of natural justice. And since there is violation of natural justice, we are inclined to set aside the impugned order and restore the issue back to the file of the Ld. PCIT for fresh proceedings. For doing that we rely on the ratio of decision of the Hon'ble Supreme Court in the case of ITO Vs. M. Pirai Choda (2011) 334 ITR 262 wherein the Hon'ble Supreme Court held "*that if there were procedural lapses on the part of the AO while making the assessment, the proper course for it would be not to invalidate the*



ITA No.1355/Mum/2022  
A.Y. 2017-18  
PVS Herbals

*assessment or delete the additions. But to remand the assessment to the AO so that the procedural lapses which had prejudicially affected the assessee can be set right and the assessment be completed after duly complying with the rules of natural justice''*. The principle/ratio enunciated in the said order of Hon'ble Supreme Court has been followed by the Hon'ble Delhi High Court in the case of Sonal Construction (2012) 211 Taxman 167 (Del) & CIT Vs. PC Chemicals (Delhi High Court) dated 13.09.2012. Therefore, we set aside the impugned order of the Ld. PCIT and restore the same back to the file of the Ld. PCIT for de-novo action and the Ld. PCIT to give proper opportunity of hearing to the assessee and act in accordance to law.

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

Order pronounced in the open court on this 28/11/2022.

Sd/-

**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Sd/-

**(ABY T. VARKEY)**  
**JUDICIAL MEMBER**

Mumbai; Dated 28/11/2022.  
Vijay Pal Singh, (Sr. PS)



ITA No.1355/Mum/2022

A.Y. 2017-18

PVS Herbals

**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**