

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “C” DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
&  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.1130/DEL/2022  
Assessment Year 2017-18

Jawahar Lal Gulati, 147/B, Yamuna Enclave, Panipat.	Vs.	Pr.CIT, Rohtak.
TAN/PAN: AAYPG9251D		
(Appellant)		(Respondent)

Appellant by:	Shri J.B. Sharma, Adv.		
Respondent by:	Smt. Abha Rani Singh, CIT-DR		
Date of hearing:	12	12	2022
Date of pronouncement:	12	12	2022

**ORDER**

**PER PRADIP KUMAR KEDIA, A.M.:**

The captioned appeal has been filed by the Assessee against the order of the Principal Commissioner of Income Tax (Appeals), Rohtak [‘Pr.CIT’ in short] dated 19.03.2022 passed under Section 263 of the Income Tax Act, 1961 (the Act) whereby the assessment order passed by the Assessing Officer dated 17.10.2019 under Section 143(3) of the Act was sought to be set aside for reframing the assessment in terms of supervisory jurisdiction.

2. The grounds of appeal raised by the assessee read as under:

*“1 That the order of the Id Pr.CIT, Rohtak u/s 263 of IT Act, 1961 setting aside the order of Id AO (ACIT CIT, Panipat) is without jurisdiction and bad in the eyes of law.*

*2 That the Id Pr CIT, Rohtak wrongly applied sec 263 which is not applicable in the case of appellant as the Id. AO has accepted the*

*returned income of appellant declared under the head 'Income from other sources'.*

*3 That the Id Pr CIT, Rohtak has erred in law while setting aside the order of Id AO on the applicability of sec 115BBE of IT Act, 1961, whereas sec 115BBE is not applicable in the case of appellant.*

*4 That the Id Pr CIT, Rohtak has erred in law while setting aside the order of Id. AO observing the applicability of sec. 68/69/69A/69B/69C whereas the Id A 0 has accepted the income of with due diligence after considering the documents/submissions of the appellant.*

*5 That the appellant was not given proper opportunity of being heard.*

*6 That the appellant requests to accept the appeal, quash the orders of Id Pr CIT, Rohtak and Oblige.*

*7 That the appellant craves to add, forego, amend, vary, delete any of the grounds of appeal before disposal of this appeal.”*

3. As per the captioned appeal, the assessee has challenged the revisional order passed by the Pr.CIT by resorting to Section 263 of the Act.

4. When the matter was called for hearing, the Id. counsel for the assessee pointed out that the revisional order has been passed *ex-parte* on the ground that no reply has been filed by the assessee in response to show cause notice dated 08.03.2022 issued by the Pr.CIT seeking to revise the assessment order dated 17.10.2019 passed under Section 143(3) of the Act. Another notice dated 14.03.2022 was issued by the Pr.CIT for which the response was expected to be filed by 17.03.2022. The Id. counsel contends that the assessee has duly complied with the 2<sup>nd</sup> notice and uploaded the reply online on 15.03.2022, a copy of which is placed before the Tribunal. The Ld. counsel contends that it is incorrect to observe that Assessee has not filed in response to the show cause.

5. The ld. counsel submitted that the Pr.CIT has proposed the revisional order without taking any cognizance of the online reply so made and thus the revisional order is vitiated on the grounds of non consideration of reply. The ld. counsel thus submitted that revisional order passed under Section 263 be set aside and the matter be restored back to the file of the Pr.CIT for passing the revisional order afresh after taking note of the reply of the assessee and other objections that may emanate and after giving suitable opportunity to defend the position taken by the assessee.

6. In the light of the factual position pointed out on behalf of the assessee, the ld. DR for the Revenue did not seriously controvert the averments made.

7. In the light of the assertions made and duly substantiated by the online receipt, we find the grievance of the assessee to be *prima facie* convincing. Apparently, the revisional order has been passed without meeting the explicit requirement of opportunity and without consideration of the reply filed against the show cause notice. The ingredients of Section 263 are thus not met.

8. The revisional order is accordingly set aside and restored back to the file of the Pr.CIT for *denovo* consideration of the stand of the assessee and disposal thereof in accordance with law. Needless to say, proper opportunity shall be given to the assessee before taking any adverse view in the matter. The impugned revisional order passed under Section 263 is thus set aside and the proceedings are restored to the file of the

revisonal authority for adjudication afresh. It shall be open to the Assessee to advance all contentions as he may deem expedient.

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

**Order pronounced in the open Court on 12/12/2022.**

Sd/-

**[KUL BHARAT]  
JUDICIAL MEMBER**

DATED: /12/2022

*Prabhat*

Sd/-

**[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER**