

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

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

आयकर अपील सं/ I.T.A. No.2018/Mum/2021

(निर्धारण वर्ष / Assessment Years: 2015-16)

Anil Agrawal (HUF) 2401-2402, Anmol Pride, Off. S. V. Road, Goregaon (West), Mumbai-400062.	बनाम/ Vs.	ACIT, Central Circle-3(4) Air India Building, Nariman Point, Mumbai- 400021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACHA9591E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Poojan Mehta	
Revenue by:	Smt. Shailja Rai (DR)	

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

घोषणा की तारीख /Date of Pronouncement: 30/11/2022

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-2, Mumbai dated 18.01.2021 for assessment year 2015-16 passed under section 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. At the time of hearing, we note that the Ld. PCIT has passed the impugned order ex-parte without hearing the assessee which fact is discernable from para 5 of the impugned order of Ld. PCIT as under: -

“On the date fixed for compliance, no reply was filed neither any adjournment was sought. However, for the sake of natural justice, one more opportunity was allowed to the assessee by issuing notice on 6.1.2021 fixing the date of compliance on 14.1.2021. On this date also, neither anybody attended nor any request for adjournment was



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submitted. Accordingly, the case is decided on the basis of material on record and merits.”

3. Further, it has been brought to our notice that Ld. PCIT issued show cause notice during Covid-19, dated 24.12.2020 and hurriedly passed the impugned order on 18.01.2021. Therefore assessee could not respond to the notice of Ld. PCIT. Therefore, according to Ld. AR, there is violation of natural justice and cited 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 their Lordship has held that even though show cause notice is not required u/s 263 of the Act (revision proceedings) however, an opportunity of hearing should be given to the assessee. The Hon’ble Supreme Court further observed that in case if opportunity of hearing were not given to the assessee, the order of the Ld. PCIT would be fragile for violation of natural justice and not for lack of jurisdiction. In the present case, we note that the Ld PCIT has passed an ex-parte order, during Covid-19 and it is common knowledge that there were restrictions placed by the State Government during the period when Ld PCIT has issued notice and passed the impugned without hearing the assessee. Thus we note that assessee was not heard before passing of the impugned order, which is in violation of natural justice. In the aforesaid facts and circumstances, we are inclined restore the matter back to the file of Ld PCIT for giving proper opportunity to assessee. For that we rely on the decision of the Hon’ble Supreme Court in the case of ITO Vs. M. Pirai Choda (2011) 334 ITR 262 which was followed by Hon’ble



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Delhi High Court in the case of CIT Vs. PC Chemicals (Delhi High Court) dated 13.09.2012 wherein their Lordship has held that if there were procedural lapses on the part of the AO while making the assessment, the proper course would be not to invalid the 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 which was followed also in the case of Sonal Construction (2012) 211 Taxman 167 (Del).

4. In the light of the facts discussed, we note that the assessee did not get proper opportunity of hearing before the Ld. PCIT before he has passed the impugned order. Therefore, we are inclined to set aside the impugned order and direct the Ld. PCIT to give an opportunity to assessee and after hearing the assessee/Ld. AR to pass a reasoned order in accordance to law.

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

Order pronounced in the open court on this 30/11/2022.

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

Mumbai; Dated 30/11/2022.
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**