

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. CHANDRA MOHAN GARG, JUDICIAL MEMBER**

ITA No. 681/Del/2022
(Assessment Year : 2017-18)

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| Ebixcash Ltd. Plot No.122 & 123, NSEZ, Phase-II, Noida PAN No. AAACE 9981 H (APPELLANT) | Vs. | Circle – 5(1)(1) Gautam Budh Nagar (RESPONDENT) |
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| Assessee by | Shri Gautam Jain, Adv. |
| Revenue by | Shri T. James Singson, CIT-D.R. |

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| Date of hearing: | 28.02.2023 |
| Date of Pronouncement: | 07.03.2023 |

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order dated 23.03.2022 of the Pr. Commissioner of Income Tax (Appeals)-Noida relating to Assessment Year 2017-18.

2. Brief facts of the case as culled out from the material on record are as under :-

3. Assessee is a resident stated to be engaged in the business of technology/information technology enabled services (IT/ITES) and online healthcare services. Assessee electronically filed its

return of income on 28.11.2017 for A.Y. 2017-18 declaring taxable income of Rs.5,77,79,680/-. The case was selected for scrutiny through CASS and thereafter notices u/s 143(2)/142(1) of the Act were issued and served upon the assessee. In response to notices, assessee furnished the details and replies from time to time during the year under consideration. Thereafter, assessment was framed u/s 143(3) of the Act vide order dated 28.05.2019 whereby the income declared by assessee in the return of income was accepted. Thereafter on the basis of the examination of case records, PCIT concluded that the order passed by AO u/s. 143(3) was erroneous and prejudicial to the interest of revenue. He accordingly issued show cause notice u/s. 263 of the Act to the assessee. Thereafter vide order dated 23.02.2022 [DIN & Order No. ITBA/REV/F/REV5/2021-22/1041313974(1)] and for the reasons stated in the order PCIT set aside the order passed by AO u/s. 143(3) and directed the AO to conduct the inquiries on the issues stated in the order and pass fresh assessment order. Aggrieved by the order of PCIT passed u/s. 263 of the Act, the assessee is now in appeal before the Tribunal and has raised the following grounds:-

- “1. That order dated 23.03.2022 u/s 263 of the Act by the learned Pr. Commissioner of Income Tax, Noida has been made without satisfying the statutory preconditions contained in the Act and is therefore without jurisdiction and thus, deserves to be quashed as such.*
- 2. That the learned Pr. Commissioner of Income Tax has failed to appreciate that once the learned Assessing Officer on examination of the facts on record and after making all possible enquiries had accepted claim of the appellant then such an order of assessment could not be regarded as*

erroneous in as much as prejudicial to the interest of revenue merely because the learned Commissioner of Income Tax had a different opinion and that too, without having established in any manner that, view adopted by the learned Assessing Officer was an impossible or unsustainable view.

3. *That the learned Principal Commissioner of Income Tax has failed to appreciate that action u/s 263 of the Act is otherwise too inapplicable on the factual matrix of the facts of the instant case since it is not a case of "lack of enquiry" or "lack of investigation" and therefore the invocation u/s 263 of the Act is not in accordance with law.*
4. *That the finding of the learned Principal Commissioner of Income Tax that "it is evident that the AO accepted the version of the assessee without making any inquiry or verification. Thus, by accepting the unsubstantiated, varying and disjointed claims of the assessee, failing to conduct detailed and legitimate inquiries, the AO utterly failed to conduct meaning full investigations essential to determine the total income of the assessee. Hence the AO has failed to take notice of all the relevant facts and has failed to examine the correctness or otherwise of the claims and assertions by the assessee, it is evident that he has failed to apply his mind and discharge his duty as an assessing officer during the course of the assessment proceedings" is factually incorrect, contrary to record and otherwise to perverse and without application of mind and therefore untenable.*
5. *That the learned Pr. Commissioner of Income Tax has erred both in law and on facts that deduction of sum of Rs.5,92,02,560/- was accepted by the learned Assessing Officer without enquiry was not based on correct appreciation of facts and in law and therefore unsustainable.*
6. *That the learned Principal Commissioner of Income Tax has failed to appreciate that invocation to Explanation 2 of section 263(1) of the Act in the impugned order without any opportunity in the show cause notice dated 07.03.2022; the impugned order is illegal, invalid and without jurisdiction.*

7. *That the learned Pr. Commissioner of Income Tax has also failed to appreciate that, u/s 263 of the Act, an order of assessment cannot be set-aside to simply to make further enquiries and thereafter pass fresh order of assessment and as such, impugned order is contrary to law and hence, unsustainable.*
8. *That while passing the order u/s 263 of the Act the learned Principal Commission of Income Tax cannot travel beyond the show cause notice and therefore findings and observation and also the material relied upon not referred in the show cause notice but made part of the order could neither in law and nor on fact be made a basis to assume jurisdiction u/s 263 of the Act; and thus order on this ground alone deserve to be quashed as such.*
9. *That the learned Principal Commissioner of Income Tax has framed the impugned order without granting opportunity to the appellant and therefore the order made is illegal, invalid and, vitiated order.*

It is therefore prayed that, impugned order dated 23.3.2022 under section 263 of the Act be held to be without jurisdiction and, therefore be quashed and appeal of the appellant company be allowed.”

4. Before us, Learned AR submitted that though the assessee has raised various grounds challenging the invocation of provision of sec. 263 and on merits but however pointing the ground no.9 submitted that PCIT did not grant adequate opportunity of hearing to the assessee. He therefore submitted that one more opportunity be granted to the assessee to plead its case and he undertakes that the assessee would be represented before the authorities and all the required details called for by authorities will be furnished.

5. Learned DR on the other hand objected to the seeking of second innings by assessee and supported the order of PCIT.

6. We have heard the rival submissions and perused the material available on record. The perusal of order of PCIT passed u/s. 263 reveals that PCIT has passed only on the basis of material on record. It order is a well settled principle of natural justice that sufficient opportunity of hearing should be offered to the parties and no parties should be condemned unheard. In view of these facts, we are of the view that assessee deserves proper opportunity of hearing. In such circumstances, we set aside the impugned order of PCIT and restore the issue to the file of PCIT for re-adjudication of the issues. Needless to state that PCIT shall grant sufficient opportunity of hearing to the assessee. Assessee is also directed to promptly furnish the required details called for by the lower authorities. In view of our decision to restore the issue back to PCIT, we are not adjudicating on merits the grounds raised by the assessee. **Thus the grounds of assessee are allowed for statistical purposes.**

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

Order pronounced in the open court on 07.03.2023

**Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 07.03.2023

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI