

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 469/Del/2021
Assessment Year: 2015-16**

Sunil Kumar Agarwal,
Rudra enterprises, 218,
Rajvansh Vihar, Meerut.
PAN: ABNPA9643H
(Appellant)

Versus Pr. C.I.T.,
Ghaziabad.

(Respondent)

Assessee by: Shri Gautam Jain, Advocate
Revenue by: Shri Raghunath, Sr. DR

Date of hearing : 02.05.2023
Date of pronouncement : 02.05.2023

ORDER

PER SAKTIJIT DEY, J.M.:

This is an appeal by the Assessee assailing the order dated 10.03.2021 passed by learned Principal Commissioner of Income-tax(PCIT), Ghaziabad u/s. 263 of the Income-tax Act, 1961 for the assessment year 2015-16.

2. We have heard Shri Gautam Jain, learned counsel appearing for the Assessee and Shri Raghunath, learned Sr. Departmental Representative. The basic grievance of the Assessee, as canvassed by ld. Counsel for the Assessee is, before concluding the proceedings u/s. 263 of the Act, the Revisionary Authority had not extended adequate opportunity of being heard to the Assessee. In this context, ld. Counsel appearing for the Assessee, drawing our attention to the order passed u/s. 263 of the Act, submitted that ld. PCIT issued a single show cause notice u/s. 263 of the Act on 01.02.2021 and thereafter without providing any personal hearing to the Assessee has passed the order u/s. 263 of the Act. He submitted that even while passing the order u/s. 263 of the Act, ld. PCIT has completely ignored two replies to show cause notice issued u/s. 263 of the Act, which were uploaded in ITBA Portal. Thus, he submitted, the issue may be restored back to ld. PCIT for passing a fresh order after providing reasonable opportunity of being heard to the Assessee.

3. Learned Departmental Representative, though, submitted that as per the observations of ld. PCIT, the Assessee did not comply with the

show cause notice issued u/s. 263 of the Act, however, he submitted that matter can be restored back to ld. PCIT for fresh adjudication.

4. Having considered rival submissions and perused the materials on record, *prima facie*, we are of the view that ld. PCIT has passed the impugned order without providing adequate opportunity of being heard to the Assessee. Though, in the body of the order, ld. PCIT has stated that in response to show cause notice dated 01.02.2021 issued u/s. 263 of the Act, the Assessee did not furnish any reply on or before the date of compliance fixed on 10.02.2021, however, the materials placed on record clearly reveal that the Assessee did file its replies to the show cause notice issued u/s. 263 of the Act. It appears, neither learned PCIT has taken note of the replies filed by the Assessee nor he has given any further opportunity of being heard to the Assessee, except, the single date of compliance fixed on 10.02.2021. This, in our view, is in gross violation of the principles of natural justice. Therefore, we are inclined to set aside the impugned order of ld. PCIT and restore the matter back to his file for *de novo* adjudication after providing due and reasonable opportunity of being heard to the assessee. Learned PCIT must pass a

reasoned order after considering all the submissions to be made by Assessee. Grounds are allowed for statistical purposes.

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

Order pronounced in the open court on 02/05/2023.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

*aks/-