

**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. 1056/Del/2022
(Assessment Year : 2015-16)

Creative Free Trade Ware Housing Pvt. Ltd., 17/10, 1 st Floor, Rear Portion, Opposite Desh Bandhu College, Kalkaji, New Delhi. PAN No. AADCC7559G	Vs.	AO Ward 6(1) Delhi.
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Sakar Sharma, CA
Revenue by	Shri Pankaj Khanna, Sr. DR

Date of hearing:	28.02.2023
Date of Pronouncement:	31.05.2023

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 19.09.2017 of the Pr. Commissioner of Income Tax, Delhi-1 relating to Assessment Year 2015-16.

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

3. Assessee is a company stated to be engaged in the business of providing warehousing and ancillary services during the year under consideration. Assessee filed its return of income for AY 2015-16 on 29.02.2016 declaring taxable income at Rs. Nil and book profit u/s 115JB of the Act at Rs.2,54,19,166/-. The case of the assessee was selected for scrutiny and thereafter assessment was framed u/s 143(3) vide order dated 19.09.2017.

4. Ld. PCIT thereafter called for the assessment records for AY 2015-16 and on perusing the records he noticed that assessee had claimed deduction u/s 10AA of the Act on the profits derived on services of warehousing in SEZ located in Kandla. He was of the view that for claiming deduction u/s 10AA of the Act, assessee should have exported any articles or things or services. According to him the export would mean sending the articles or things or services out of India. In the case of the assessee since the assessee was providing warehousing services to its associated enterprises in India and received payments in foreign currencies which according to him does not amount to export of any article or thing or services out of India and, therefore, assessee had wrongly claimed deduction u/s 10AA which has also been allowed by the AO. He, accordingly, issued show-cause notice u/s 263 asking assessee to show cause as to why the order be not passed u/s 263 of the Act. PCIT noted that no response to the notice was received from the assessee till the finalization of order. Ld. PCIT thereafter passed order u/s 263 of the Act dated 30.03.2021 by holding that the assessment order framed by the AO u/s

143(3) to be erroneous and prejudicial to the interest of the Revenue. He, accordingly, directed the AO to enhance the assessed income by disallowing the claim u/s 10AA of the Act.

5. Aggrieved by the order of PCIT, assessee is now in appeal and has raised the following grounds:

1. *“The Ld. PCIT erred on facts and in law in invoking provisions of section 263 of the Act even though the assessment order under revision was neither erroneous nor prejudicial to the interests of Revenue in as much as view taken by the Assessing Officer was one of the permissible possible view.*
2. *The Ld. PCIT erred on facts and in law in holding that the deduction u/s 10AA amounting to Rs.2,42,22,037/- was wrongly allowed by the Assessing Officer without appreciating that provisions of SEZ Act, 2005 prevail over Income-tax Act, 1961.*
3. *The Ld. PCIT erred on facts and in law in directing the Assessing Officer to enhance the assessed income by disallowing claim u/s 10AA of the Act.”*

6. Before us, Ld. AR at the outset submitted that in the grounds raised by the assessee, assessee is challenging the validity of the order of PCIT passed u/s 263 and also on merits. He, however, pointed to the notice in respect of the proceedings u/s 263 dated 12.03.2021 the copy of which is placed at page 78 to 80 of the paper book and from the aforesaid notice he submitted that though the notice was dated 12.03.2021 the assessee was asked to furnish its explanation and appear on 18.03.2021. Ld. AR submitted that only one opportunity was given to the assessee by PCIT and due to the Covid pandemic the assessee could not appear. He submitted that during that period

the entire country was in the grip of severe Covid pandemic and there were restrictions in the movement of people and, therefore, assessee could not respond and file the necessary details. He, therefore, prayed that following the principle of natural justice, the assessee be granted one more opportunity to present its case before PCIT. He further gave an undertaking that if an opportunity is provided to the assessee, assessee undertakes to appear before the authorities and furnish all the required details called for by them.

7. Ld. DR did not controvert the factual submissions made by Ld. AR but, however, supported the order of PCIT.

8. We have heard the rival submissions and perused the material on record. Before us, it is the submission of the assessee that prior to the passing of order u/s 263 of the Act, only one opportunity of hearing was granted to the assessee to appear before PCIT and submit the necessary details. It is also the submissions of Ld. AR that when the date on which the details were called for submission by PCIT, the entire country was in the grip of Covid pandemic and the assessee therefore could not furnish the required details. In such a situation, we agree with the contention of Ld. AR that it cannot be reasonably expected that assessee would be able to collect all the required details and make submissions before PCIT. In the present facts, we are of the view that there has been breach of principles of natural justice as the order was passed without considering the

assessee's submissions which goes against the first and foremost principle of nature justice that no one should be condemned unheard.

9. Considering the aforesaid, we are of the view that the assessee deserves one more opportunity of hearing. We, therefore, restore the issue back to the file of PCIT and direct him to pass the order afresh after granting adequate opportunity of hearing to the assessee. Assessee is also directed to promptly furnish the details called for by the authorities.

10. Since we have restored the issue back to the file of the PCIT, we are not adjudicating the other grounds raised by the assessee. **Thus, appeal of the assessee is allowed for statistical purposes.**

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

Order pronounced in the open court on 31.05.2023

Sd/-

**(CHANDRA MOHAN GARG)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 31.05.2023

*Kavita Arora

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI