

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "D", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
**ITA No. 1122/Mum/2023 (A.Y.2018-19)**

**Masani Engineering Company Pvt. Ltd,**

111-A, Currimji Building,  
M. G. Road, Opp-Mumbai  
University, Mumbai-400 001

**PAN: AAECM7256M**

..... Appellant

Vs.

**PCIT-2**

Aayakar Bhavan,  
Mumbai-400 020

..... Respondent

Appellant by : Shri Bhupendra Shah  
Respondent by : Smt. Riddhi Mishra, CIT-DR

Date of hearing : 27/06/2023  
Date of pronouncement : 07/08/2023

**ORDER**

**PER GAGAN GOYAL, A.M:**

This appeal by assessee is directed against the order of PCIT, Mumbai dated 29.03.2023 u/s. 263 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2018-19. The assessee has raised the following grounds (revised) of appeal:-

*1. In the facts of the case and in Law, the learned PCIT erred in invoking Section 263 to the case of the Appellant only by way of change of opinion, without pointing out*

*any error in the order of the A.O. and also by disregarding detailed submissions made to him from time to time.*

*2. In the facts of the case and in Law, the Show Cause Notice & or order u/s 263 alleging errors and prejudice, itself is erroneous on one count as follows.*

*a. In the facts of the case and in Law, the learned PCIT has erred in invoking the provision of sec. 263 merely because he wants to take a view different from the one taken by the Assessing Officer and thereby changing the opinion of the Assessing Officer by his opinion and even though this specific query was duly answered during the course of assessment proceedings.*

*b. In the facts of the case and in Law, the learned PCIT has erred in holding that the Assessing Officer failed to examine and verify as to why there is a difference of receipts amounting to Rs. 22,82,138/- between for 26AS and Profit and loss a/c.*

*c. In the facts of the case and in Law, the learned PCIT has erred in passing the order u/s. 263 by disregarding the adjournment request in reply to show cause notice and thereby passing the order not tenable in law.*

*[B] Relief Prayed:*

*The appellant therefore prays as follows,*

*1. To quash the order u/s. 263 because PCIT had no proper jurisdiction to invoke provisions of revision.*

*[C] General:-*

*The appellant reserve rights to add alter or delete any portion of this appeal before its conclusion.*

*This appeal is filed in time and be fully allowed.*

*A Detailed paper book along with case laws will be submitted at the time of hearing.*

2. The brief facts of the case are that assessee filed its return of income for the year under consideration on 31.10.2018 declaring total income of Rs. 13,65,900/-. Subsequently the case was selected for scrutiny under CASS for the reason of High Ratio of refund to TDS, Low net profit shown by construction contractors and claim of large refund. Notices u/s. 143(2) and 142(1) were served upon assessee. In response, assessee furnished various details and submissions to the AO. Accordingly, assessment u/s. 143(3) finalized on return income of Rs. 13, 65,900/- was made by the AO.

3. Thereafter Ld. PCIT, Mumbai-2 called for case records and examined the records. In his examination, he found that there is mismatch in total receipts as per 26AS i.e. Rs. 23, 38, 48,997/- vis-a-vis receipts shown in P & L a/c. i.e. Rs. 23, 15, 66,859/-. This resulted into a difference in receipts of Rs. 22, 82,138/-. On this ground, Ld. PCIT issued notice u/s. 263 vide dated 21.03.2023. Copy of notice issued is reproduced herein below:-



**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX  
PCIT, Mumbai-2**

To, MASANI ENGINEERING COMPANY PRIVATE LIMITED 111- A CURRIMJI BUILDING . M. G. ROAD OPP MUMBAI UNIVERSITY MUMBAI 400001 , Maharashtra India	
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PAN/ PAN <b>AAECM7256M</b>	AY <b>2018-19</b>	DIN & NO <b>ITBA/REV/F/REV1/2022- 23/1051037051(1)</b>	DTG <b>21/03/2023</b>
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**NOTICE FOR THE HEARING**

**M/s/Mr/Ms**

**Subject:** Notice for Hearing in respect of Revision proceedings u/s 263 of the **THE INCOME TAX ACT, 1961** – Assessment Year **2018-19**.

In this regard, a hearing in the matter is fixed on **27/03/2023** at **12:00 PM**. You are requested to attend in person or through an authorized representative to submit your representation, if any alongwith supporting documents/information in support of the issues involved (as mentioned below). If you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portal using the link: [incometaxindiaefiling.gov.in](http://incometaxindiaefiling.gov.in)

1. In your case, the relevant case records were called for the AY 2018-19 and examined. It is seen from the examination of the said records that the Return of Income was filed for the year on 31.10.2018 declaring total income of Rs.13,65,900/-. The assessment was completed u/s 143(3) r.w.s. 143(3A) & 143(3B) on 12.02.2021 accepting the returned income.
2. On perusal of the case records, it is noticed that as per 26AS total receipts are Rs.23,38,48,997/-. However, as per the P & L a/c the assessee had offered receipts of only Rs.23,15,66,859/- on which TDS of Rs.46,94,907/- was claimed by you. Accordingly, receipts of Rs.22,82,138/- (23,38,48,997 - 23,15,66,859) are not offered for taxation.
3. It is prima facie noticed that the above issue has not been inquired/verified during the course of assessment proceedings and the consequent assessment order is erroneous in so far as it is prejudicial to the interest of the revenue.
4. You are therefore hereby given an opportunity to represent your case as to why the

proposed action u/s 263 be not pursued and necessary order be passed on the issues discussed above as well as other issues that may come to the notice of the undersigned during this proceeding. You or any duly authorized person can appear on **27.03.2023 at 12:00 PM** in Room No. 344, Aaykar Bhavan, M.K. Road, Mumbai-400020 with written submissions. You are requested to make submissions online on email id [mumbai.pcit2@incometax.gov.in](mailto:mumbai.pcit2@incometax.gov.in) on or before the due date. Failure to comply will lead to the conclusion that you have nothing to offer and you are agreeable to the proposed action as deemed fit on the materials available on record or gathered during these proceedings.

RAVJIT SINGH BHOPINDER SINGH ARNEJA  
PCIT, Mumbai-2



(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

4. To verify the concern of Ld. PCIT i.e. whether assessee has under stated its receipts or otherwise, we need to examine the notices issued during assessment proceedings and response of the assessee thereon. In this regard, we are reproducing the notice issued u/s. 142(1) vide dated 23.12.2020 alongwith its annexure wherein relevant issue has been enquired:-



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
National e-Assessment Centre  
Delhi



To, MASANI ENGINEERING COMPANY PRIVATE LIMITED 111- A CURRIMJI BUILDING, M. G. ROAD OPP MUMBAI UNIVERSITY MUMBAI 400001, Maharashtra India	
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PAN: AAECM7256M	Assessment Year: 2018-19	Date: 23/12/2020	DIN: ITBA/AST/F/142(1)/2020- 21/1029160006(1)
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Notice under sub-section (1) of Section 142 of the Income Tax Act, 1961

Dear Taxpayer,

Kindly refer to notice u/s 143(2) of the Income tax Act, dated 22/09/2019 for A.Y 2018-19 for conducting assessment proceedings under E-assessment Scheme, 2019.

2. We appreciate the anxiety and uncertainty that is facing all of us in the times of Covid-19. This communication is to assist you in ending one uncertainty, which is pending e-Assessment in your case for the Assessment Year 2018-19.
3. You are requested and required to kindly furnish or cause to be furnished on or before 07/01/2021 by 11:00 AM, the accounts and documents specified in the Annexure to this notice.
4. The accounts or documents, as mentioned above, are required to be submitted online electronically in 'E-proceedings' facility through your account in e-Filing website ([www.incometaxindiaefiling.gov.in](http://www.incometaxindiaefiling.gov.in))

Yours faithfully,

Additional / Joint / Deputy / Assistant Commissioner of Income Tax,  
National e-Assessment Centre,  
Delhi

Please refer to scrutiny assessment proceedings in your case for A.Y 2018-19. In this regard, you are requested to furnish the following details and explanation along with supporting documentary evidences:

**A. High ratio of refund to TDS.**

With respect to Income for the year under consideration and the claim of refund during the year, kindly submit the below specified details:

1. Please furnish a detailed note about the business activities carried out during the relevant previous year.
  2. Please furnish the certified copies of all bank accounts including FDR & TDR.
  3. Please furnish the computation of income for the relevant AY.
  4. Please furnish the details of deductions, exemptions and rebate claimed during the year along with supporting documents.
  5. Please furnish the statement of set-off/adjustment of current year/carried forwarded loss against any income of the year under consideration.
  6. Please furnish the comparison of income reported, deductions/exemptions/rebate claimed, current year/carried forwarded loss set-off/adjusted, advance tax paid, self assessment tax paid, TDS deducted, total tax paid, refund claimed for the current year under consideration and previous two years.
  7. Please furnish the comparison of sales/turnover, gross profit, net profit, GP ratio, NP ratio for the year under consideration and previous two years.
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8. Please furnish the justification of large refund claimed in ITR vis-a-vis TDS deducted for the assessment year under consideration.

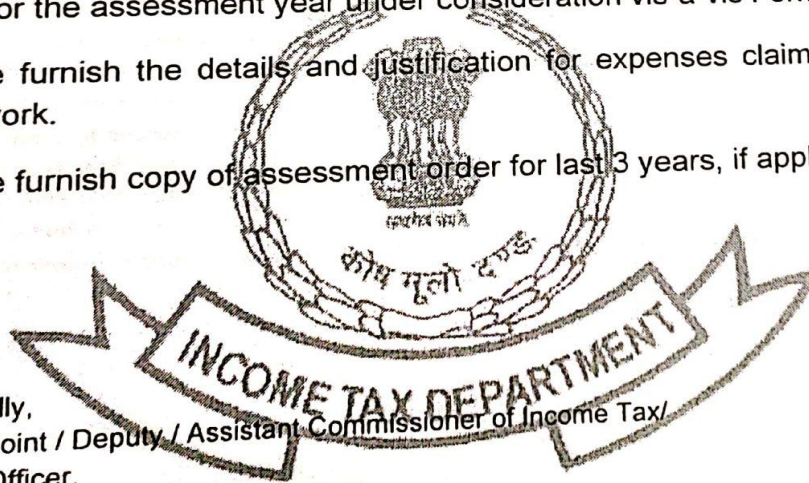
**B. Low net profit shown:**

With respect to the low net profit shown by construction contractors and claim of large refund, kindly submit the below specified details:

1. Please furnish the detailed note on nature of business/profession carried out

during the year.

2. Please furnish detailed computation of income for the relevant AY along with details of deduction, exemption and rebate claimed, if any.
3. Please furnish the comparative chart of trading results indicating sales/turnover, gross profit, net profit, GP rate, NP rate for the year under consideration and previous two years. Please explain fall in GP rate/NP rate, if any along with supporting documentary evidences.
4. Please furnish the comparative chart of income as per ITR, deductions/exemptions/rebate claimed, current year/carried forward loss set-off/adjusted, advance tax paid, self assessment tax paid, TDS deducted, total tax paid, refund claimed for the current year under consideration and last year.
5. Please furnish the justification of declaring substantially low sales/turnover in the ITR filed for the assessment year under consideration vis-a-vis Form 26 AS.
6. Please furnish the details and justification for expenses claimed on account of contract work.
7. Please furnish copy of assessment order for last 3 years, if applicable.



Yours faithfully,  
 Additional / Joint / Deputy / Assistant Commissioner of Income Tax/  
 Income-tax Officer,  
 National e-Assessment Centre,  
 Delhi

9. In the annexure reproduced (supra) in point no. 4 & 5 of para B, the relevant issue has already been enquired by the AO. Assessee's response to the same is furnished vide page no. 64 and 72 of the paper book.

**Schedule 1**

TDS as per Form 16A

**Deductor, TAN & Certificate No.**

	TDS deducted	TDS claimed in current year	Gross Receipts as per 26AS
Aderbad Co-operative Housing Society Limited, TAN- MUMA29450B	2,965	2,965	1,48,253
Agile Real Estate Private Limited, TAN- MUMA37519G	4,90,710	4,90,710	2,45,35,752
Aurum Platz It Private Limited, TAN- MUML09950D	94,385	94,385	47,19,242
Classique Associates, TAN- MUMC00378A	47,396	47,396	23,69,776
Cosmos Landmarks, TAN- MUMC17945E	38,000	38,000	19,00,000
Dkp Engineers And Constructions Private Limited, TAN- MUMD13804A	32,000	32,000	16,00,000
Era Realtors Private Limited, TAN- MUME07364A	40,624	40,624	20,31,247
Gamma Constructions Pvt.ltd, TAN- MUMG08443B	55,655	55,655	27,82,674
Godrej & Boyce Manufacturing Company Ltd, TAN- MUMG00108D	4,71,134	4,71,134	2,35,56,862
Godrej Memorial Trust, TAN- DELG03497E	2,089	2,089	1,04,456
Godrej Memorial Trust, TAN- MUMG08933B	1,593	1,593	79,650
Hgp Community Private Limited, TAN- MUMH16383D	5,38,757	5,38,757	2,69,37,831
Hiranandani Properties Pvt Ltd, TAN- MUMH02704C	13,856	13,856	6,92,780
Horizon Projects Private Limited, TAN- MUMR27640E	3,60,481	3,60,481	1,80,24,027
International Society For Krishna Conciousness Mumbai, TAN- PNEI05580B	46,777	46,777	23,38,890
Kalpataru Plus Sharyans, TAN- MUMK10281F	75,108	75,108	37,55,340
Kalpataru Properties (thane) Private Limited, TAN- MUMK04915B	41,170	41,170	20,58,464
Keystone Realtors Pvt. Ltd., TAN- MUMK05983F	13,594	13,594	6,79,661
Lanco Hills Technology Park Private Limited, TAN- HYDL01343G	2,84,079	2,84,079	1,42,03,947
Mahanagar Gas Limited, TAN- MUMM09778G	1,28,378	1,28,378	64,18,836
Nathani Parekh Constructions Private Limited, TAN- MUMN13998F	3,53,809	3,53,809	1,76,90,450
New India Co-op Bank Ltd Registered & Corporate Office, TAN- MUMN10679E	22,224	22,224	2,22,232
Omkar Realtors And Developers Private Limited, TAN- MUMO03950C	55,330	55,330	27,66,490
Parsi Punchayet Funds & Properties, TAN- MUMP17179B	1,554	1,554	77,628
Roma Builders Pvt Ltd, TAN- MUMR14060E	8,84,376	8,84,376	4,42,18,642
Runwal Constructions, TAN- MUMR01103E	22,701	22,701	11,35,045
Runwal Realty Private Limited, TAN- MUMR20418G	1,83,072	1,83,072	91,53,601
Sears Constructions Private Limited, TAN- MUMS45679E	1,380	1,380	69,000
Shree Naman Developers Private Limited, TAN- MUMN04277A	76,325	76,325	38,16,220
Skystar Buildcon Private Limited, TAN- MUMS66255A	1,598	1,598	79,898
Starlight Systems (I) Ltp, TAN- MUMS77002C	18,922	18,922	9,46,174
Sunteck Realty Limited, TAN- MUMI06319F	2,36,492	2,36,492	1,18,24,566
Suraj Estate Developers Private Limited, TAN- MUMS42876B	56,308	56,308	28,08,125
Vrihis Properties Private Limited, TAN- MUMV23760C	2,065	2,065	1,03,239
<b>Total</b>	<b>46,94,907</b>	<b>46,94,907</b>	<b>23,38,48,998</b>

Bank A/c for Refund: BANK OF INDIA 000120110000183 IFSC: BKID0000001

For MASANI ENGINEERING COMPANY PRIVATE LIMITED

Date : 31-Oct-2018

Place : MUMBAI

Authorised Signatory

MASANI ENGINEERING CO PVT LTD  
RECONCILIATION WITH 26AS FOR FY 2017-18

Name of the Deductor	TAN	TDS deducted	Gross Receipts as per 26AS	As per Books		Difference		
				Net Sales	TDS claimed	Gross	TDS	
Aderbad Co-operative Housing Society Limited	MUMA 29450 B	2,965	1,48,253	92,717	2,965	55,536	-	TDS deducted on payment - Bill no 15-17/113 accounted L/y
Agile Real Estate Private Limited	MUMA 37519 G	4,90,710	2,45,35,752	2,14,82,644	4,90,710	30,53,108	-	TDS deducted on Advances Received 5244613/- (Less adj ag sale 2221773/- Balance 3022839/-
Aurum Flats It Private Limited	MUNL 09950 D	94,385	47,19,242	35,68,242	94,385	11,51,000	-	TDS Deducted on Advances received on 1-8-17 of Rs 1151000
Classique Associates	MUMC 00378 A	47,396	23,69,776	22,07,622	47,396	1,62,154	-	TDS deducted on gross value incl of tax - diff amount is of tax
Cosmos Landmarks	MUMC 17945 E	38,000	19,00,000	12,41,898	38,000	6,58,102	-	TDS deducted on payment - diff sales accounted in 16-17
Dkp Engineers And Constructions Private Limited	MUMD 13804 A	32,000	16,00,000	13,55,932	32,000	2,44,068	-	TDS deducted on gross value incl of tax - diff amount is of tax
Era Realtors Private Limited	MUME 07364 A	40,624	20,31,247	19,73,387	40,624	57,860	-	TDS deducted on gross value incl of tax - diff amount is of tax
Gamma Constructions Pvt Ltd	MUMG 08443 B	55,655	27,82,674	26,51,357	55,655	1,31,317	-	TDS deducted on gross value incl of tax Rs 57317 and on advance Rs 73000/
Godrej & Boyce Manufacturing Company Ltd	MUMG 00108 D	4,71,134	2,35,56,862	2,33,21,928	4,71,134	2,34,934	-	TDS deducted on gross value incl of tax - diff amount is of tax
Godrej Memorial Trust	DEIG 03497 E	2,089	1,04,456					TDS deducted on gross value incl of tax - diff amount is of tax
Godrej Memorial Trust	MUMG 08933 B	1,593	79,650	1,77,630	3,457	6,476	-	Sale booked is more
HGP Community Private Limited	MUMH 16383 D	5,38,757	2,69,37,831	2,88,97,582	5,38,757	(19,59,751)	-	Sale booked is more
Hiranandani Properties Pvt Ltd	MUMH 02704 C	13,856	6,92,780	7,72,981	13,856	(80,201)	-	TDS deducted on gross value incl of tax - diff amount is of tax
Horizon Projects Private Limited	MUMR 27640 E	3,60,481	1,80,24,027	1,77,21,973	3,60,481	3,02,054	-	TDS deducted on gross value incl of tax - diff amount is of tax - Rs. 197536 & adv
International Society For Krishna Conciousness Mumbai	PNEI 05580 B	46,777	23,38,890	30,33,900	46,777	(6,95,010)	-	sales booked is more
Kalpataru Plus Sharyans	MUMK 10281 F	75,108	37,55,340	35,67,264	75,108	1,88,076	-	TDS deducted on gross value incl of tax - diff amount is of tax
Kalpataru Properties (thane) Private Limited	MUMK 04915 B	41,170	20,58,464	19,35,737	41,170	1,22,727	-	TDS deducted on gross value incl of tax - diff amount is of tax
Keystone Realtors Pvt. Ltd.	MUMK 05983 F	13,594	6,79,661	1,35,122	13,594	5,44,539	-	Credit Notes amount not revised by customer but TDS is on net amount only
Lanco Hills Technology Park Private Limited	HYDL 01343 G	2,84,079	1,42,03,947	1,42,03,508	2,84,079	439	-	Matched
Mahanagar Gas Limited	MUMM 09778 G	1,28,378	64,18,836	64,01,352	1,28,378	17,484	-	TDS deducted on gross value incl of tax - diff amount is of tax
Nathani Parekh Constructions Private Limited	MUMN 13998 F	3,53,809	1,76,90,450	1,76,33,287	3,53,809	57,163	-	TDS deducted on gross value incl of tax - diff amount is of tax
Omkar Realtors And Developers Private Limited	MUMO 03950 C	55,330	27,66,489	26,53,019	55,330	1,13,470	-	TDS deducted on gross value incl of tax - diff amount is of tax
Parsi Panchayet Funds & Properties	MUMP 17179 B	1,554	77,628	53,620	1,554	24,008	-	TDS deducted on payment - Bill accounted in 16-17 Bill no 16/22/23
Roma Builders Pvt Ltd	MUMR 14060 E	8,84,376	4,42,18,642	4,51,18,198	8,84,376	(8,99,556)	-	sales booked is more
Runwal Constructions	MUMR 01103 F	22,701	11,35,045	11,35,046	22,701	(1)	-	Matched
Runwal Realty Private Limited	MUMR 20418 G	1,83,072	91,53,601	84,37,708	1,83,072	7,15,893	-	TDS deducted on VAT Rs. 215893 and advance Rs. 51
Sears Constructions Private Limited	MUMS 45679 E	1,380	69,000	1,38,000	1,380	(69,000)	-	sales booked is more
Shree Naman Developers Private Limited	MUMN 04277 A	76,325	38,16,220	45,75,754	76,325	(7,59,534)	-	sales booked is more
Skystar Buildcon Private Limited	MUMS 66255 A	1,598	79,898	76,808	1,598	3,090	-	TDS deducted on gross value incl of tax - diff amount is of tax
Starlight Systems (I) Llp	MUMS 77002 C	18,922	9,46,174	11,26,249	18,922	(1,80,075)	-	sales booked is more
Sunteck Realty Limited	MUMI 06319 F	2,36,492	1,18,24,566	1,28,76,522	2,36,492	(10,51,956)	-	sales booked is more
Suraj Estate Developers Private Limited	MUMS 42876 B	56,308	28,08,125	25,36,067	56,308	2,72,058	-	TDS deducted on gross value incl of tax - diff amount is of tax
Vrnh Properties Private Limited	MUMV 23760 C	2,065	1,03,239	68,826	2,065	34,413	-	TDS deucted extra
New Siddharth Enterprises- Purandarwadi				79,911		(79,911)	-	sales booked is more
TSV Esamp Pvt. Ltd.				92,836		(92,836)	-	sales booked is more
<b>Total</b>		<b>46,72,683</b>	<b>23,36,26,765</b>	<b>23,15,44,627</b>	<b>46,72,458</b>	<b>22,82,138</b>	-	
New India Co-op Bank Ltd Registered & Corporate Office	MUMN 10679 E	22,224	2,22,232	2,22,232	22,224	-	-	matched
<b>Total</b>		<b>46,94,907</b>	<b>23,38,48,997</b>	<b>23,15,66,859</b>	<b>46,94,682</b>			

10. We have gone through the response of the assessee and found the same to be in order. It is pertinent to mention here that the documents /replies furnished to us are available on the record of the AO and Ld. PCIT also. This fact is not under challenge but the same has been ignored by the Ld. PCIT while passing order u/s. 263, dated 29.03.2023. It is observed that issues relating to revenue of the assessee for the relevant financial year were duly examined with reference to the books of accounts and response of the assessee during assessment proceedings. The allegation of the Ld. PCIT that

revenue has been under stated is found to be baseless as the difference in the figure of TDS claimed vis-à-vis amount of receipts declared in the P & L account is arisen because sometime TDS is deducted on VAT amount also, credit notes not reversed by the customer, but TDS amount is still there, TDS deducted applying extra rate and TDS deducted on advance received which assessee disclosed in next year etc. Resultantly, the order of AO is found to be correct and not an erroneous order in so far as prejudicial to the interest of revenue for the purposes of section 263 of the Act. In the result, grounds raised by the assessee are allowed and order of Ld. PCIT is set aside.

**11. In the result appeal of the assessee is allowed.**

Order pronounced in the open court on 7<sup>TH</sup> day of August, 2023.

Sd/-

(VIKAS AWASTHY)

JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 07/08/2023

*Sr. PS (Dhananjay)*

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar)  
ITAT, Mumbai