

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI "G" BENCH, MUMBAI**

**Before Shri Prashant Maharishi, Accountant Member  
&  
Shri Narender Kumar Choudhry, Judicial Member**

**ITA No. 1485/Mum/2023**  
(Assessment Year: 2018-19)

Shri Sameer Ramesh Vashi  
702, Samrock Apartments  
C.D. Barfiwala Road  
Andheri West,  
Mumbai 400058  
PAN – AAAPV6356Q

**Appellant**

Pr. Commissioner of Income Tax  
Room No. 120, Kautilya  
Vs. Bhavan, C-41-43, G Block,  
BKC, Bandra(East),  
Mumbai 400051

**Respondent**

Appellant by : Shri Kuldip Mehta, Ld. CA  
Respondent by : Dr. Kishor Dhule, Ld. CIT-DR

Date of Hearing : 07.08.2023  
Date of Pronouncement: 10.08.2023

**ORDER**

**Per: N.K. Choudhry, JM**

This appeal has been preferred by the Assessee against the order dated 25.03.2023 impugned herein passed by the learned Commissioner of Income Tax/National Faceless Appeal Centre, Delhi (NFAC) (in short Id. PCIT) under section 263 of the Income Tax Act, 1961 (in short the Act) for AY 2018-19.

**2.** In this case the case of the Assessee was selected for scrutiny assessment under the e-assessment scheme 2019 on 2 issues: first agricultural income and second business income. The Assessing Officer (AO) vide assessment order dated 24.03.2021 u/s 143(3) of the Act, accepted the income declared by the Assessee to the tune of Rs.15,97,520/- and has not made any addition. Later on the case of

the Assessee was scrutinised under section 263 of the Act and as per para 5 of the impugned order dated 25.03.2023 by issuing notice dated 14.03.2023 u/s 263 of the Act to the Assessee, fixed the case for hearing on 23.03.2023. However, the Assessee made no compliance with the said notice and therefore the learned PCIT by construing that the since the Assessee has not filed any reply, decided the case on the basis of the available facts on record and ultimately by invoking provisions of section 263 of the Act, set aside the assessment order referred to above and directed the AO to frame the assessment de novo.

- 3.** The Assessee being aggrieved is in appeal before us.
- 4.** At the outset the Assessee claimed that he never received any such notice as mentioned by the PCIT in the impugned order.
- 5.** We have given thoughtful consideration to the peculiar facts and circumstances of the case and observe that the learned PCIT issued the notice under section 263 of the Act only once on dated 14.03.2023, whereby the case of the Assessee was fixed for hearing on 23.03.2023, on which date the Assessee made no compliance as alleged. However, thereafter immediately on 25.03.2023, the learned Commissioner passed the impugned order, which resulted into denial of opportunity of being heard as alleged by the Assessee and therefore considering the peculiar facts and circumstances in totality, we at this stage are not inclined to dwell into the controversy, as to whether the alleged notice under section 263 of the Act dated 14.03.2023 has been issued or received by the Assessee, but for proper and just decision of the case and ends of substantial justice, inclined to set aside the impugned order and remand the instant case to the file of the learned PCIT for decision afresh, suffice to say by issuing a fresh notice under section 263 of

the Act and by giving reasonable opportunity of being heard to the Assessee. Ordered accordingly.

**6.** In the result, the appeal filed by the Assessee stands allowed for statistical purposes.

Pronounced in the open Court on 10<sup>th</sup> August, 2023.

Sd/-

**(Prashant Maharishi)**  
**Accountant Member**

Sd/-

**(Narender Kumar Choudhry)**  
**Judicial Member**

Mumbai, Dated: 10<sup>th</sup> August, 2023

Copy to:

1. The Appellant
2. The Respondent
3. The CIT concerned
4. The DR, ITAT, Mumbai
5. Guard File

By Order

//True Copy//

Assistant Registrar  
ITAT, Mumbai

n.p.