

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

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No.3446/Del/2023
Assessment Year: 2018-19

Draken Metals Trading Private Limited, Plot No. 6, First Floor, Park End Vikas Marg, East Delhi-110092	Vs.	PCIT, Delhi-1, New Delhi
PAN :AAGCD0836Q		
(Appellant)		(Respondent)

Assessee by	Ms. Mansi Jain, CA
Department by	Sh. T. James Singson, CIT(DR)

Date of hearing	27.05.2024
Date of pronouncement	30.05.2024

ORDER

PER SAKTIJIT DEY, VICE-PRESIDENT

This appeal by the assessee is against order dated 30.03.2023 passed by learned Principal Commissioner of Income Tax (PCIT), Delhi-1, under section 263 of the Income-tax Act, 1961 (in short 'the Act') pertaining to assessment year 2018-19.

2. Before we proceed to adjudicate the appeal, it is necessary to observe that the Registry has notified delay of 186 days in filing the appeal. The assessee has filed an affidavit seeking

condonation of delay. On going through the contents of the affidavit, we are satisfied that the delay in filing the appeal was due to the reasonable cause. Therefore, we condone the delay and admit the appeal for adjudication on merits.

3. We have heard the parties and perused the materials on record. Briefly the facts are, the assessee is a resident corporate entity. For the assessment year under dispute, the assessee filed its return of income on 30.10.2018 declaring income of Rs.1,80,190/-. The return so filed was selected for scrutiny and assessment was completed under section 143(3) read with section 144B of the Act vide order dated 19.10.2020, accepting the return of income. Post completion of assessment, as aforesaid, learned PCIT, in exercise of power under section 263 of the Act, called for and examined the assessment records. Upon such examination, he was of the view that the assessment order passed is erroneous and prejudicial to the interest of Revenue, as the Assessing Officer has not examined the issue relating to substantial increase in share capital during the year. Accordingly, he issued a show-cause notice to the assessee seeking assessee's explanation, as to why the assessment order, being erroneous and prejudicial to the

interest of Revenue, should not be revised. Alleging that the assessee did not respond to the show-cause notice, learned PCIT proceeded to pass an order under section 263 of the Act setting aside the assessment order with a direction to the Assessing Officer to make a *de novo* assessment after taking into account the observations made in the revision order.

4. Before us, the limited grievance of the assessee is against the *ex-parte* disposal of the proceedings initiated under section 263 of the Act.

5. Learned counsel appearing for the assessee submitted that the revisionary authority issued a single show-cause notice at the fag end when the proceedings were getting barred by limitation and, immediately, thereafter passed an *ex-parte* order without providing due and reasonable opportunity of being heard to the assessee. Therefore, she submitted that the revision order may be set aside with a direction to pass a fresh order after providing opportunity of being heard to the assessee.

6. Learned Departmental Representative did not express any serious objection with regard to restoration of the issue for fresh adjudication.

7. Having considered rival submissions, we find, learned PCIT had issued a single show-cause notice purportedly under section 263 of the Act to the assessee on 24.03.2023, calling upon the assessee to furnish its reply by 28.03.2023. Since, there was no response from the assessee on 28.03.2023, learned PCIT proceeded to pass the order under section 263 of the Act without providing any further opportunity of being heard to the assessee. From the observations of learned PCIT in paragraph 6 of the impugned order, it is very much clear that, being conscious of the fact that the proceedings under section 263 of the Act are getting barred by limitation on 31.03.2023, he issued the show-cause notice at the very last moment on 24.03.2023, requiring the assessee to furnish his response by 28.03.2023. Since the assessee was unable to furnish the reply by that date, he proceeded to pass the impugned order. From the aforesaid facts, it is very much clear that the time granted to the assessee to furnish reply to show-cause notice, is grossly inadequate by any standard and cannot, at all, be considered to be reasonable. Even, it is not forthcoming from the order of learned PCIT whether the

show cause notice issued under section 263 of the Act was, at all, served on the assessee.

8. Be that as it may, when learned PCIT was conscious of the fact that the proceedings are getting barred by limitation on 31.03.2023, it is not understood why he waited for issuing show-cause notice under section 263 of the Act till the eleventh hour. This, in our view, is in gross violation of Principles of Natural Justice.

9. In view of the aforesaid, we are inclined to set aside the impugned order of learned PCIT and restore the matter back to him for fresh adjudication after providing due and reasonable opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

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

Order pronounced in the open court on 30th May, 2024

Sd/-
(NAVEEN CHANDRA)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 30th May, 2024.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi