

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA BENCH, AGRA**

**BEFORE : SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

ITA No.53/Agr/2022
Assessment Year: 2017-18

Ritu Bansal, 17, Kailash Vihar, Agra-282007.	Vs.	Pr. CIT, Income-tax-1 Agra.
PAN : AEDPB6637B		
(Appellant)		(Respondent)

ITA No.54/Agr/2022
Assessment Year: 2017-18

Sudhir Bansal, 17, Kailash Vihar, Agra-282007.	Vs.	Pr. CIT, Income-tax-1 Agra.
PAN : AEDPB6639B		
(Appellant)		(Respondent)

ITA No.55/Agr/2022
Assessment Year: 2017-18

Sinwan Ahmad Shah, 17/99, Mewa Katra, Seo Ka Bazar, Agra-282004.	Vs.	Pr. CIT, Income-tax-1 Agra.
PAN : AOAPS4105C		
(Appellant)		(Respondent)

Assessee by	Ms. Ishita Farsaiya, Advocate
Department by	Sh. Sukesh Kumar Jain, CIT/DR

ITA No.151/Agr/2022
Assessment Year: 2017-18

Shree Balaji Concast Private Limited, 1, Jammanlal Compound, Agra Road, Durga Puri, Aligarh.	Vs.	Pr. CIT, Income-tax-1 Agra.
PAN : AAICS8706L		
(Appellant)		(Respondent)

Assessee by	Sh. Pratiyush Jain, CA
Department by	Sh. Shailender Shrivastava, Sr. DR

ITA No.100/Agr/2022
Assessment Year: 2017-18

Ganpati Enterprises, 94, Old Vijay Nagar Colony, Agra-282005	Vs.	CCIT (OSD)/PCIT-1, Agra.
PAN : AANFG3520G		
(Appellant)		(Respondent)

Assessee by	None
Department by	Sh. Sukesh Kumar Jain, CIT/DR

Date of hearing	27.03.2025
Date of pronouncement	24.04.2025

ORDER

Per Annapurna Gupta, Accountant Member:

The present appeals have been filed by different assessees argued by different counsels, against separate orders passed by the learned Principal Commissioner of Income-tax-1, Agra u/s. 263 of the Income-tax Act, 1961 (hereinafter referred to as "the Act").

2. The common argument of the counsels in these appeals was that all these appeals were covered in favour of the assessee by recent judgment passed by ITAT, Agra Bench in group of 21 appeals in ITA No. 33/Agr/2023 and Others vide order dated 21.02.2025. Learned counsels for the assesseees pointed out that the impugned appeals were all against the orders passed u/s. 263 of the Act by Id. PCIT/CIT and all the impugned orders had been passed without affording any opportunity of hearing to the assesseees.

3. In all the cases, facts relating to grant of opportunity of hearing were almost identical that the notice issued u/s. 263 of the Act being dated 28.03.2022 served on the assessee on 29.03.2022 directing the assesseees to file reply by 30.03.2022 and the order u/s. 263 being passed on 31.03.2022 without any reply being filed by the assesseees. The absence of adequate opportunity of hearing to the assesseees, it was pointed out, was evident from the chronology of events as noted above and it was contended that in the order dated 21.02.2025 passed by ITAT in case of ITA No. 33/Agr/2023 & Ors. , the facts were identical and ITAT had followed the decision of Hon'ble Allahabad High Court in M.L. Chains vs. PCIT, 461 ITR-457 (All) while quashing all the orders passed by the PCIT u/s. 263 of the Act. Copy of the order was placed before us. Our attention was drawn to the relevant findings of ITAT at para-5 of its order as under :

5. We have given out thoughtful consideration to the vehement rival pleadings. We find no reason to sustain any of the impugned revision direction forming subject matter of our adjudication in all these cases. This is for the precise reason that apart from reproducing the corresponding show-cause notices which went un-responded by the most of the assessees, there is not even a single instance wherein the learned revisional authority has arrived at any categorical finding on merits after having discussed the relevant error as well as prejudice caused to the interest of the Revenue. Needless to say, the law on exercise of the impugned revision jurisdiction stand very well settled since long in light of Malabar Industries Ltd. vs. CIT (2000) 243 ITR 83(SC) that before the same is invoked, the assessment has to be simultaneously erroneous as well as causing prejudice to the interest of the Revenue. Meaning thereby that till the time such a conclusion is not arrived at by the learned revision authority, an assessment could not be held as liable to be revised merely because of the fact that the corresponding show-cause notice(s) issued to the taxpayer have gone un-responded. We are further informed that case law M. L. Chains Vs. PCIT (2024) 461 ITR 457 (All.) has already decided the very issue involving a similar revision direction, as not sustainable, in para 20 thereof. We thus accept the assessees identical submissions in all these cases to this extent and reverse the learned PCIT's section 263 corresponding identical revision directions. Ordered accordingly. All necessary computation shall follow."

4. Learned DR, though was unable to controvert any of the contentions made by the Id. Counsels for the assessees before us, as noted above, both with respect to the facts of the case – the order u/s. 263 having been passed by giving only one day's notice to the assessee, as also with respect to identical orders passed in the cases of different assessees being caused by ITAT in its order passed on 21.02.2025, learned DR, however, contended that the right course of action was that when the assessee was

not granted opportunity, the matter was to be restored back to the Id. PCIT for reconsideration.

5. Having heard the contentions of both the parties and noting the uncontroverted contentions of the counsels for the assessees that the issue stood covered in favour of the assessee by the order of ITAT in ITA No. 33/Agr/2023 & Ors. dated 21.02.2025 and that no distinguishing facts being pointed out, we hold all the appeals to be covered by the said decision and following the same, we hold the orders passed by Id. PCIT in the cases of all the assessees to be not sustainable.

6. As for the contention of the Id. DR that the orders passed u/s. 263 without affording adequate opportunity be restored back for reconsideration, we are not inclined to agree with the same. Reason for the same being that the Apex Court in the case of Sona Builders vs. Union of India, 251 ITR 197 has categorically held that where there is gross breach of the principle of natural justice, matter could not be remanded back to the appropriate authority. In the said case notice of hearing gave only five days' time to the parties to respond, which could not be responded. In such circumstances, it was held that there was gross breach of principle of natural justice on account of inadequate time given to respond and therefore, considering the statutory limit within which appropriate authority was to act in the said case and noting his failure to act in conformity with

the principle of natural justice, Hon'ble Apex Court held that the matter could not be remanded to the appropriate authority and must be set aside.

Relevant findings of the Apex Court are as under :

“3. We are quite unable to agree with the view taken by the High Court. The notice was addressed on 21-5-1993 from Delhi to the appellant in Jaipur fixing the hearing on 31-5-1993. It was patent that it would take two or three days for that notice to be received in Jaipur even though dispatched by speed post. In effect, therefore, the notice gave five days to the addressees to respond, and we are told that two of those days were Saturday and Sunday. Under Section 269-UD the Appropriate Authority had two months to act commencing from the end of the month in which the 37(l) form was filed. The form was filed on 9th March so that the Appropriate Authority had about two months and twenty days to take action. He did not take action until only one week from the last available date, and then it gave the appellant, in reality, only three days to respond. This was, plainly, most inadequate.

4. Further, the notice alleged that the apparent consideration of the transaction between the appellant and the transferor was low based on the sale instance mentioned therein. To be able adequately to respond to that allegation, it was necessary for the appellant to ascertain what the merits and demerits were of that property which had been auctioned, and to know what were the terms and conditions of the auction. No copy of any document relating to the sale instance was furnished by the Appropriate Authority to the appellant along with the notice, or at any time whatsoever.

5. There is no doubt in our minds that on both counts there has been a gross breach of the principles of natural justice because adequate opportunity to meet the case made out in the notice was not given to the appellant.

6. Having regard to the statutory limit within which the Appropriate Authority has to act and its failure to act in conformity with the principles of natural justice, we do not think we can remand the matter to the Appropriate Authority. We must set its orders aside.”

7. Identical view was taken by Hon'ble Delhi High Court in the case of *Tulsi Tracom Private Ltd .v. CIT (2018) 161 DTR 148 (Delhi)(HC)*, wherein Hon'ble High Court held that the Commissioner who had issued order u/s.

263 ought to have been fully satisfied that adequate opportunity had been given to the assessee to controvert the facts stated in the notice and to explain the situation concerning such facts. Further, considering the limitation for passing of order u/s. 263, Hon'ble Court had held that no useful purpose would be served in giving opportunity of hearing to the assessee at this stage again. The order passed by Id. CIT was accordingly set aside in the facts of the said case.

8. In the light of the above, we do not find any substance in the contention of the Id. DR that the matter be restored back to the PCIT for reconsideration. Accordingly, finding all the present appeals to be covered by the decision of ITAT in ITA No. 33/Agr/2023 & others dated 21.02.2025, we hold all the orders passed by Id. PCIT u/s. 263 of the Act in the case of all the assesseees before us to be not sustainable.

9. All the appeals of different assesseees are accordingly allowed.

Order pronounced in the open court on 24.04.2025.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Dated: 24.04.2025

*aks/-

Copy forwarded to:

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

Asst. Registrar, ITAT, Agra

Sl. No.	Particulars	Date
1.	Date of dictation of Tribunal Order:	28.03.2025
2.	Date on which typed draft of Tribunal order is placed before the Dictating Member:	
3.	Date on which the typed draft of Tribunal order is placed before the other Member:	
4.	Date on which the approved draft of Tribunal order comes to the Sr. PS/PS:	
5.	Date on which fair order is placed before the Dictating Member for pronouncement:	
6.	Date on which the signed order comes back to the Sr. PS/PS:	
7.	Date on which the final order is uploaded by the Sr. PS/PS on official website:	
8.	Date on which the file goes to the Bench Clerk along with Tribunal Order:	
9.	Date of killing off the disposed of files on judiSIS portal of ITAT by the Bench Clerks	
10.	Date on which file goes to the Supervisor (Judicial)	
11.	Date on which file goes to the Assistant Registrar for endorsement of the order:	
12.	Date of dispatch of order:	