

आयकर अपीलीय अधिकरण
पटना पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA BENCH AT KOLKATA**

[वर्चुअल कोर्ट]
[Virtual Court]

श्री जॉर्ज माथान, न्यायिक सदस्य
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SHRI GEORGE MATHAN, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 564/PAT/2024
Assessment Year: 2018-19**

Ashutosh Kumar Prabhat <i>(Appellant)</i>	Vs.	PCIT-1, Patna <i>(Respondent)</i>
PAN: AKJPP9771C		

Appearances:

Assessee represented by : Abhi Sarkar, Adv.

Department represented by : Rinku Singh, CIT DR.

Date of concluding the hearing : April 2nd, 2025

Date of pronouncing the order : May 6th, 2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Pr. Commissioner of Income Tax -1, Patna [hereinafter referred to as Ld. 'Pr. CIT'/Ld. 'PCIT'] passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2018-19 dated 19.03.2024,



which has been passed against the assessment order u/s 147 r.w.s. 144 r.w.s. 144B of the Act, dated 27.02.2023.

1.1. The Registry has informed that the appeal filed by the assessee is barred by limitation by 103 days. An application seeking condonation of delay has been filed by the assessee stating as under:

“1. That this is an application for condonation of delay in the filing of the instant appeal.

2. That the appellant states that the impugned order was passed on 19.03.2024 by the Id. Principal Commissioner of Income Tax, Patna-1, Patna under Section 263 of the Income Tax Act, 1961 (hereinafter called the Act).

3. That the appellant states that he was required to file the appeal 19/05/2024. The appellant states that the appeal has been filed on 29/08/2024. Hence there is a delay of around 3 months and 10 days in filing the present appeal.

4. That the appellant states that the above order was an ex-parte order and aggrieved, the appellant filed an application under Section 154 of the Act on 28.03.2024 before the Id. Principal Commissioner of Income Tax, Patna-1, Patna whereby the appellant prayed for recall of the ex-parte passed under Section 263 of the Act.

5. That the Id. Principal Commissioner of Income Tax, Patna-1, Patna rejected the application filed under Section 154 of the Act vide order dated 02.08.2024 bearing DIN & Order No: ITBA/COM/F/17/2024-25/1067269667(1). Copy of dated 02.08.2024 by the Id. Principal Commissioner of Income Tax, Patna-1, Patna.

6. That the appellant was later advised to challenge the order dated 19.03.2024 passed under Section 263 of the Act by the Id. Principal Commissioner of Income Tax, Patna-1, Patna. Accordingly the appellant filed the present appeal.

7. That the appellant submits that the delay in filing the present appeal is not attributable to the appellant since the appellant was trying to exhaust his legal remedies.

8. That the appellant states that the delay had happened beyond the control of the appellant and the same merits to be condoned.

It is, therefore, prayed that this Hon'ble Tribunal may graciously be pleased to consider the submissions as made in the foregoing paragraphs and

further be pleased to condone delay, if any, in the filing of the instant appeal.”

1.2. On consideration of the application for condonation of delay and the reasons stated therein, we are satisfied that the assessee had a reasonable and sufficient cause and was prevented from filing the instant appeal within the statutory time limit. We, therefore, condone the delay and admit the appeal for adjudication.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

“1. For that the grounds of appeal hereto are without prejudice to each other.

2. For that the order of the Id. Principal Commissioner of Income Tax-1, Patna, is bad both in law and on facts.

3. For that the appellant was not given any opportunity, much less sufficient opportunity to put forth his contentions during the revision proceeding.

4. For that the order of the Id. Principal Commissioner of Income Tax-1, Patna, is based on presumption, surmises and conjectures.

5. For that the order of the Id. Principal Commissioner of Income Tax-1, Patna, is wholly perverse in as much as the same are contrary to and at variance with the materials available on record.

6. For that the Id. Principal Commissioner of Income Tax-1, Patna, has erred in setting aside the assessment order dated 27.02.2023 passed by the Assessing Officer at Faceless Assessment Centre, Income Tax Department, which was neither erroneous nor prejudicial to the interest of the Revenue.

7. For that the Id. Principal Commissioner of Income Tax-1, Patna has erred in holding that the assessing officer did not make any cognizance on the issue of cash deposits of Rs.3,40,83,000 and passed the assessment order dated 27.02.2023 u/s 147 r.w.s 144 of the Income Tax Act, 1961 on a total income of Rs.12,03,513.

8. For that the Id. Principal Commissioner of Income Tax-1, Patna has erred in holding that the assessing officer completed the assessment without making enquiries and verifications, notwithstanding the fact that the assessing officer made all the enquires required as per the Act, particularly the provisions of Section 144B of the Act.



9. For that the Id. Principal Commissioner of Income Tax-1, Patna has erred in directing the assessing officer pass assessment order afresh, notwithstanding the fact that the appellant has also filed appeal before the Commissioner of Income Tax (Appeals) and the matter is sub-judice.

10. For that the appellant shall place any other point/points at the time of hearing of the appeal.”

3. Brief facts of the case are that the assessee is an individual and a non-filer and had not filed the return of income for AY 2018-19. The assessment of the assessee was reopened u/s 147 of the Act after issuing notice u/s 148 of the Act and after ensuring statutory compliance as per the procedural requirement. The assessee e-filed the return on 24.04.2022 declaring total loss of Rs. 3,89,460/- and the assessment order u/s 147/144 read with Section 144B of the Act was passed on 27.02.2023 and the total income of the assessee was assessed at Rs. 12,03,513/- after making addition of Rs. 8,14,053/- u/s 68 of the Act. On going through the order of the Ld. AO, the Id. Pr. CIT noticed on examining the case of the assessee that the Ld. AO completed the assessment without making proper enquiry and verifications. Accordingly, the proceeding u/s 263 of the Act was initiated and an opportunity of being heard was given to the assessee vide issue of show cause notice dated 05.10.2023 and subsequently, another opportunity was granted on 25.10.2023 and the last and final opportunity was provided on 29.02.2023 but as the assessee did not respond to the Id. Pr. CIT, he directed the Ld. AO to make a fresh assessment de novo after taking into account the finding of the issue discussed in the order passed u/s 263 of the Act and to make enquiry, verification and investigation regarding the aforesaid issues and finalize the assessment in accordance with the provisions of law. It was directed that the Ld. AO should afford proper opportunity of being heard to the

assessee before passing the appropriate order in order to meet the ends of justice. Aggrieved with the order of the Ld. Pr. CIT, the assessee has filed the appeal before the Tribunal.

4. Rival contentions were heard and the submissions made have been examined. The assessee has filed the written submissions dated 10.03.2025 which are reproduced as under:

“1. That the present appeal is directed against the order passed by the Learned Principal Commissioner of Income Tax, Patna-1 (hereinafter referred to as "Ld. PCIT") under Section 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), whereby the assessment order passed under Section 147 of the Act has been set aside and the matter has been remanded back to the Assessing Officer for fresh assessment.

2. That the said order of the Ld. PCIT is liable to be quashed on the ground that it was passed ex-parte, without affording an effective opportunity of being heard to the Appellant and without considering the submissions and evidences furnished by the Appellant.

EX-PARTE NATURE OF THE ORDER AND VIOLATION OF PRINCIPLES OF NATURAL JUSTICE

3. That it is a settled principle of law that no adverse order can be passed without affording a proper and meaningful opportunity of being heard to the affected party. The Ld. PCIT issued a show cause notice under Section 263 of the Act; however, the order was passed without granting the Appellant an adequate opportunity to present its case.

4. That the Appellant had duly responded to the notice issued under Section 263 and had submitted detailed explanations and supporting evidences justifying the correctness and legality of the original assessment order passed by the Assessing Officer. However, the Ld. PCIT has failed to take cognizance of such submissions and evidences while passing the impugned order.

5. That in view of the above, the impugned order stands vitiated as it violates the principles of natural justice, which are sacrosanct in quasi-judicial proceedings.

*6. That the Hon'ble Supreme Court in *Tin Box Company v. CIT* [(2001) 249 ITR 216 (SC)] has categorically held that where an order is passed without affording a reasonable opportunity of being heard, such order is liable to be*

set aside. The Hon'ble Apex Court emphasized that a meaningful hearing is a fundamental requirement of justice.

7. That in **Vijay Gupta v. CIT** [(2016) 386 ITR 643 (P&H)], the Hon'ble Punjab & Haryana High Court held that an *ex-parte* order under Section 263, passed without considering the submissions of the assessee, is not sustainable in law and is liable to be quashed.

8. That further, in **PCIT v. Delhi Airport Metro Express Pvt. Ltd.** [(2022) 442 ITR 49 (Del.)], the Hon'ble Delhi High Court ruled that orders passed in violation of natural justice, without proper consideration of evidences and submissions, are bad in law and should be set aside.

9. That in **Rampiyari Khemka v. CIT** [(1966) 61 ITR 600 (Cal)], the Hon'ble Calcutta High Court held that if the Commissioner proposes to use any enquiry results against the assessee, the substance of such information must be disclosed to the assessee to provide a fair opportunity of rebuttal. Failure to do so vitiates the order under Section 263.

10. That in **CIT v. Ramendra Nath Ghosh** [(1971) 82 ITR 888 (SC)], the Hon'ble Supreme Court held that when the service of notice under Section 263 is not in accordance with the law, it cannot be said that the assessee has been given a proper opportunity to put forward their case, thereby rendering the order invalid.

11. That in **CIT v. National Taj Traders** [(1979) 121 ITR 535 (SC)], the Hon'ble Supreme Court observed that the principles of natural justice must be adhered to in proceedings under Section 263, and failure to do so would render the order unsustainable.

12. That in **CIT v. Prem Syndicate** [(1983) 141 ITR 290 (MP)], the Hon'ble Madhya Pradesh High Court held that when proper opportunity is not given to the assessee in a Section 263 proceeding, the order is liable to be set aside.

13. That in **Sona Construction v. ITO** [(1998) 64 ITD 1 (Patna-Trib.) (TM)], the ITAT Patna Bench (Third Member) ruled that an *ex-parte* order under Section 263 should be set aside if the assessee was not given an opportunity to produce relevant materials before the Commissioner.

14. That in **Chirag P. Thummar v. PCIT** [(2024) 159 taxmann.com 1628 (ITAT Surat)], the ITAT held that an *ex-parte* and non-speaking order under Section 263, passed without affording sufficient opportunity to the assessee, is liable to be set aside.

FAILURE TO CONSIDER SUBMISSIONS AND EVIDENCES



15. That apart from being *ex-parte*, the impugned order is also erroneous in law as the Ld. PCIT has failed to consider the merits of the case and the submissions/ evidences provided by the Appellant.

16. That the Appellant had duly furnished all relevant details and explanations to justify the assessment order passed under Section 143(3) of the Act, demonstrating that the assessment was neither erroneous nor prejudicial to the interest of revenue. However, the Ld. PCIT has mechanically invoked the jurisdiction under Section 263 without appreciating these submissions, thereby rendering the order bad in law.

17. That in light of the foregoing facts and legal contentions, the Appellant most humbly prays that:

a. The impugned order passed under Section 263 of the Act be quashed as it is *ex-parte* and in violation of the principles of natural justice.

b. The assessment order passed under Section 143(3) of the Act be restored.

c. Any other relief that the Hon'ble Tribunal deems fit in the interest of justice be granted to the Appellant.

18. The Appellant reserves the right to make further submissions, both oral and written, as may be necessary during the course of hearing before this Hon'ble Tribunal.”

5. It was submitted by the Ld. AR in the course of hearing that the order u/s 263 of the Act was passed *ex parte* and our attention was drawn to page 3 of the order of the ld. Pr. CIT that the due date for reply was mentioned as 19.02.2023 and the order was passed on 27.02.2023. It was submitted that the submissions were filed online and page 7 of the written submission is stated to be online submission made vide Acknowledgment Number dated 21.02.2024. It was also submitted that the ld. Pr. CIT was required to consider the reply and the submissions; however, without considering the reply, the order has been passed. Page 9 of the written submission is evidence of filing the reply dated 21.02.2024 which is response to the Notice ID100074606556. The assessee had also filed VAT returns for the three months. The assessee also relied upon the decision of the Third Member of the Coordinate

Bench of the ITAT, Patna Bench in the case of **Sona Construction vs. Income-Tax Officer [1998] 64 ITD 1 (Patna - Trib.) (TM) [22-04-1997]** and requested that the order of the Id. Pr. CIT may be set aside to be decided afresh. It has been held in the case of **Sona Construction** (supra) as under:

“The Commissioner, in the instant case gave a finding that since the Assessing Officer resorted to determination of net income of the year by applying the net profit rate, no further deduction therefrom should have been considered and allowed by the Assessing Officer. It was, however, the claim of the assessee that sales tax was deducted from the bill in the previous year relevant to the instant assessment year, which was debited in the profit and loss account. Accordingly, the Assessing Officer allowed the claim. Similar facts were stated for royalty and cess which had been paid for road roller and similar claim was allowed in the earlier years. Since this aspect of the matter had not been placed before the Commissioner before passing the order under section 263, it would be fair and reasonable that the assessee should be given a chance to produce the trading and profit and loss account and other relevant materials and then the Commissioner should decide the question whether the order of assessment was erroneous and prejudicial to the interests of the revenue. In that view of the matter, the matter should go back to the Commissioner with a direction to dispose of the proceedings under section 263(1) afresh after giving reasonable opportunity to the assessee.”

6. The Ld. DR relied upon the order of the Id. Pr. CIT and submitted that since adequate opportunity was provided to the assessee, the order of the Id. Pr. CIT may be confirmed.

7. We have considered the rival submissions made and find that even though the assessee had filed the reply online, however, the order has been passed *ex parte*. Therefore, in the interest of justice, the order of the Id. Pr. CIT is hereby set aside with the direction to afford sufficient opportunity of being heard to the assessee and consider the submissions of the assessee already filed online and any additional submissions which may be filed by the assessee and thereafter pass the



order u/s 263 of the Act afresh. Needless to say, the assessee shall not seek unnecessary adjournments. Accordingly, the grounds taken by the assessee in his appeal are allowed for statistical purposes.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 6th May, 2025.

Sd/-

[George Mathan]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 06.05.2025

Bidhan (P.S.)



Copy of the order forwarded to:

1. **Ashutosh Kumar Prabhat, Gajiyapur House, Bichali Road, Ara, Bhojpur, Arrah, Bihar, 802301.**
2. **PCIT-1, Patna.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Patna Bench, Patna.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata