

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B”BENCH: BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.854/Bang/2025
Assessment Year : 2020-21

Muthyala Suryababu M/s. Guruswamy and Associates No.311, 1 st Floor, 10 th Main, 3 rd Block Jayanagar, Bangalore - 560011 PAN NO :AGAPS5455P	Vs.	Pr. CIT, Bangalore – 1 Income Tax Office, BMTC Building Koramangala, Bangalore - 560095
APPELLANT		RESPONDENT

Assessee by	:	Shri H. Guruswamy, ITP
Department by	:	Shri Murali Mohan, CIT DR

Date of Hearing	:	19.06.2025
Date of Pronouncement	:	15.09.2025

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the Order of the Id. PCIT, Bengaluru-1 dated 28.03.2025 vide DIN & Order No. ITBA/REV/F/REV5/2024-25/1075190463(1) passed u/s. 263 of the Income Tax Act, 1961 (in short “the Act”) for the assessment year 2020-21.

2. The assessee has raised the following grounds of appeal:

“1. The impugned Order passed u/s 263 of the Act 28-03-2025 by PCIT Bangalore - 1 is opposed to Law and facts of the case.

2. The Ld. PCIT Bangalore -1 has erred in assuming the Jurisdiction u/s 263 of the Act on the basis of the clause (a) of Explanation 2 without appreciating the fact that the said explanation is not applicable to the case of the assessee.

3. *The Ld. PCIT Bangalore - 1 has erred in holding that the Assessment Order dated 28-08-2022 was erroneous and prejudicial to the interest of Revenue without appreciating the facts and circumstances of the case.*
4. *The Ld. PCIT Bangalore - 1 has erred in holding that the arrears of Property Tax reimbursed by the Assessee was neither adds as cost of the acquisition of the assets sold nor amounts to improvement without appreciating the facts and circumstances of the case that the Ld. PCIT, Bangalore - 1 has appreciated the objections filed by the assessee against the Notice u/s 263 of the Act.*
5. *Without prejudice to the Ground No. 2 to 4 it is urged that the Ld.PCIT, Bangalore -1 ought to have appreciated that the payment of arrears of Property Tax amounted to cost of acquisition or alternatively amounts to incidental expenses without which the sale of property would not have materialized.*
6. *Without prejudice to the Ground No. 2 to 5 it is urged that the Ld. PCIT, Bangalore -1 ought to have reduced the sale proceeds to an extent of arrears of Property Tax paid amounting to Rs.10,42,815/-.*
7. *The Ld. PCIT Bangalore - 1 has erred in not providing adequate opportunity to the assessee for effective representation.*
8. *The Ld. PCIT Bangalore - 1 has erred in setting aside the Assessment Order to the file of the AO with a direction to cause verification of the admissibility of the amount of Rs.10,42,815/- without appreciating the fact that the NFAC has completed the assessment with due verification.*
9. *The Appellant craves leave to add, alter, amend and delete any of the grounds at the time of hearing.”*

3. The brief facts of the case are that the ld. PCIT on examination of the record noticed that the assessee had sold an immovable property for a consideration of Rs.12,50,00,000/-. Further, it was noticed that in computing the long term capital gain (LTCG), a sum of Rs.10,42,815/- expended towards “Arrears of Property Tax” as cost against the above sale consideration, had been allowed. The ld. PCIT is of the opinion that the above expenditure towards property tax arrears would neither qualified as cost of acquisition nor as cost of improvement and thus the same need to be disallowed. After examination of the assessment record, the ld. PCIT observed that this aspect of whether the impugned expenditure of “arrears of property tax” is eligible to be allowed as

cost of acquisition or cost of improvement had not been verified and examined during the assessment proceedings. In view of the clause (a) of explanation 2 of section 263 of the Act, the impugned order dated 28/08/2022 is deemed to be erroneous in so far as it is prejudicial to the interest of the revenue.

3.1 The Id. PCIT, accordingly issued show cause notice dated **18/03/2025** fixing the date of hearing on **02/04/2025**. Further, the Id. PCIT issued another notice cum corrigendum dated **24/03/2025** preponing the date of hearing on **27/03/2025** by mentioning that owing to inadvertent typing mistake, the date was wrongly mentioned as **02/04/2025**. In response, the assessee filed a written submission along with various supporting documents online on **27.03.2025** thereby challenging the initiation of section 263 of the Act. The Id. PCIT vide his order dated **28/03/2025** did not accept the written submission made by the assessee as in his opinion the arrears of property tax do not fall with the definition of cost of acquisition and cost of improvement as defined in section 55 r.w.s 48 of the Act. Considering the fact of the case, the Id. PCIT held that assessment order passed u/s. 143(3) of the Act dated 28.08.2022 is erroneous and prejudicial to the interest of revenue in so far as the AO had passed the order without examining the fact that whether impugned expenditure of “arrears of property tax” is eligible for being claimed as cost of acquisition or cost of improvement and accordingly set-aside the assessment order with a direction to the AO to pass fresh order after carrying out the necessary verification of impugned expenditure of “ Arrears of Property Tax”.

4. Aggrieved by the revisionary order passed by the Id. PCIT dated 28.03.2025, the assessee has filed the present appeal before

this Tribunal. The assessee has also filed a paper book comprising 26 pages containing therein the written submissions/copy of notices/ intimations/ application / order/ acknowledgement in support of his case.

5. Before us, the ld. A.R. of the assessee vehemently submitted that the ld. PCIT, Bengaluru-1 has grossly erred in not providing adequate opportunity to the assessee for effective representation of his case which is a gross violation of principles of natural justice. Further, the ld. A.R. submitted that once the AO had taken a judicious view in allowing the claim of the assessee, the ld. PCIT cannot termed the same as erroneous merely because the commissioner does not feel satisfied with the conclusion reached.

6. The ld. D.R. on the other hand, highly relied on the order of the ld. PCIT and submitted that the AO had passed the order without examining the fact that whether impugned expenditure of “arrears of property tax” is eligible for being claimed as cost of acquisition or cost of improvement.

7. We have heard the rival submissions and perused the orders of ld. PCIT as well as of the AO. According to provisions of section 263 of the Act, the ld. PCIT may call for and examine the record of any proceeding under the act if he considers that any order passed by the AO is erroneous and in so far as it is prejudicial to the interest of revenue. The ld. PCIT can pass an order of enhancement or modifying the assessment or cancelling the assessment and directing to pass fresh assessment order. This is subject to the twin conditions i.e. the order passed by the AO is erroneous in so far as it is prejudicial to the interest of revenue after giving the assessee an opportunity of being heard. The commissioner, in our

opinion can only after giving the assessee an opportunity of being heard and after making such enquiry as he deems necessary, pass an order to justify an order of enhancement or modifying the assessment or cancelling the assessment and directing a fresh assessment.

7.1 We observe that the ld. PCIT issued show cause notice dated **18/03/2025** fixing the date of hearing on **02/04/2025**. Further, the ld. PCIT issued another notice cum corrigendum dated **24/03/2025** preponing the date of hearing on **27/03/2025** by mentioning that owing to inadvertent typing mistake, the date was wrongly mentioned as **02/04/2025**. In response, the assessee filed a written submission along with various supporting documents online on **27.03.2025** thereby challenging the initiation of section 263 of the Act. The ld. PCIT straightway passed the order u/s 263 of the Act on the very next day i.e. on **28/03/2025** without giving any further opportunity of being heard. The Apex Court in the case of Commissioner of Income-tax, Mumbai v. Amitabh Bachchan reported in (2016) 384 ITR 200 held as under-

“10. Reverting to the specific provisions of Section 263 of the Act what has to be seen is that a satisfaction that an order passed by the Authority under the Act is erroneous and prejudicial to the interest of the Revenue is the basic pre-condition for exercise of jurisdiction under Section 263 of the Act. Both are twin conditions that have to be conjointly present. Once such satisfaction is reached, jurisdiction to exercise the power would be available subject to observance of the principles of natural justice which is implicit in the requirement cast by the Section to give the assessee an opportunity of being heard. It is in the context of the above position that this Court has repeatedly held that unlike the power of reopening an assessment under Section 147 of the Act, the power of revision under Section 263 is not contingent on the giving of a notice to show cause. In fact, Section 263 has been understood not to require any specific show cause notice to be served on the assessee. Rather, what is required under the said provision is an opportunity of hearing to the assessee. The two requirements are different; the first would comprehend a prior notice detailing the specific grounds on which revision of the assessment order is tentatively being proposed. Such a notice is not required. What is contemplated by Section 263, is an opportunity of hearing to be afforded to the assessee. Failure to give such an opportunity would render the revisional order

legally fragile not on the ground of lack of jurisdiction but on the ground of violation of principles of natural justice. Reference in this regard may be illustratively made to the decisions of this Court in Gita Devi Aggarwal vs. Commissioner of Income Tax, West Bengal and others [1970] 76 ITR 496 and in The C.I.T., West Bengal, II, Calcutta v. M/s Electro House [1971] [82 ITR 824](#). Paragraph 4 of the decision in The C.I.T., West Bengal, II, Calcutta v. M/s Electro House (supra) being illumination of the issue indicated above may be usefully reproduced hereunder:

"This section unlike Section 34 does not prescribe any notice to be given. It only requires the Commissioner to give an opportunity to the assessee of being heard. The section does not speak of any notice. It is unfortunate that the High Court failed to notice the difference in language between Sections 33-B and 34. For the assumption of jurisdiction to proceed under Section 34, the notice as prescribed in that section is a condition precedent. But no such notice is contemplated by Section 33-B. The jurisdiction of the Commissioner to proceed under Section 33-B is not dependent on the fulfilment of any condition precedent. All that he is required to do before reaching his decision and not before commencing the enquiry, he must give the assessee an opportunity of being heard and make or cause to make such enquiry as he deems necessary. Those requirements have nothing to do with the jurisdiction of the Commissioner. They pertain to the region of natural justice. Breach of the principles of natural justice may affect the legality of the order made but that does not affect the jurisdiction of the Commissioner. At present we are not called upon to consider whether the order made by the Commissioner is vitiated because of the contravention of any of the principles of natural justice. The scope of these appeals is very narrow. All that we have to see is whether before assuming jurisdiction the Commissioner was required to issue a notice and if he was so required what that notice should have contained? Our answer to that question has already been made clear. In our judgment no notice was required to be issued by the Commissioner before assuming jurisdiction to proceed under Section 33-B. Therefore the question what that notice should contain does not arise for consideration. It is not necessary nor proper for us in this case to consider as to the nature of the enquiry to be held under Section 33-B. Therefore, we refrain from spelling out what principles of natural justice should be observed in an enquiry under Section 33-B. This Court in Gita Devi Aggarwal v. CIT, West Bengal ruled that Section 33-B does not in express terms require a notice to be served on the assessee as in the case of Section 34. Section 33-B merely requires that an opportunity of being heard should be given to the assessee and the stringent requirement of service of notice under Section 34 cannot, therefore, be applied to a proceeding under Section 33-B." (Page 827-828).

[Note: Section 33-B and Section 34 of the Income Tax Act, 1922 corresponds to Section 263 and Section 147 of the Income Tax Act, 1961]

11. It may be that in a given case and in most cases it is so done a notice proposing the revisional exercise is given to the assessee indicating therein broadly or even specifically the grounds on which the exercise is felt necessary. But there is nothing in the section (Section 263) to raise the said notice to the status of a

mandatory show cause notice affecting the initiation of the exercise in the absence thereof or to require the C.I.T. to confine himself to the terms of the notice and foreclosing consideration of any other issue or question of fact. This is not the purport of Section 263. Of course, there can be no dispute that while the C.I.T. is free to exercise his jurisdiction on consideration of all relevant facts, a full opportunity to controvert the same and to explain the circumstances surrounding such facts, as may be considered relevant by the assessee, must be afforded to him by the C.I.T. prior to the finalization of the decision.”

7.2 Thus, the Apex Court held that unlike the power of reopening an assessment under Section 147 of the Act, the power of revision under Section 263 is not contingent on the giving of a notice to show cause. In fact, Section 263 of the Act has been understood not to require any specific show cause notice to be served on the assessee. Rather, what is required under the said provision is an opportunity of hearing to the assessee. Further, the failure to give such an opportunity would render the revisional order legally fragile not on the grounds of lack of jurisdiction but on the grounds of violation of principles of natural justice. There can be no dispute that while the PCIT is free to exercise his jurisdiction on consideration of all relevant facts, a full opportunity to controvert the same and to explain the circumstances surrounding such facts, as may be considered relevant by the assessee, must be afforded to him by the PCIT prior to the finalization of the decision.

7.3 In the present case, the ld. PCIT after preponing the date of hearing on 27/03/2025 & without giving further opportunity to controvert, passed an Order on the very next day i.e. on 28/03/2025 which in our opinion is a gross violation of principles of natural justice. This being so, in the interest of justice and fair play and as requested by the ld. A.R. of the assessee, we deem it fit and proper to remit the entire issue in dispute to the file of ld. PCIT for fresh consideration in accordance with law. Needless to say, a

reasonable opportunity of being heard must be granted to the assessee. It is ordered accordingly.

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

Order pronounced in the open court on 15th Sept, 2025

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated: 15th Sept, 2025.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.