

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“A” BENCH, AHMEDABAD**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER &**  
**SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 1026/Ahd/2018  
(निर्धारण वर्ष / Assessment Year : 2013-14)

<b>Smt. Shardaben B. Patel</b> D-85, Shaktidhar Society, India Colony Road, Bapunagar, Ahmedabad - 380024	<b>बनाम/ Vs.</b>	<b>Pr. Commissioner of Income Tax-5</b> 1st Floor, Narayan Chambers, Near Patang Hotel, Ahmedabad - 380009
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABCPP5208J</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Vijay Mehta, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri O. P. Vaishnav, CIT.DR

सुनवाई की तारीख / Date of Hearing	09/08/2019
घोषणा की तारीख /Date of Pronouncement	25/09/2019

**आदेश/ORDER**

**PER PRADIP KUMAR KEDIA - AM:**

The captioned appeal has been filed at the instance of the assessee impugning the revisional order dated 21.03.2018 passed by the Principal Commissioner of Income Tax, Ahmedabad-5 ('PCIT' in short) under S. 263 of the Income Tax Act, 1961 (the Act) in connection with the assessment order passed by the AO under s.143(3) of the Act dated 24.07.2015 for AY. 2013-14.

2. The grounds of appeal raised by the assessee read as under:

“1. *The Learned Principal Commissioner of Income Tax (Pr. CIT) erred in law and in facts of the case in setting aside the assessment order u/s 143(3) dated 24.07.2015 to the file of the AO and in directing him to frame an order de-novo.*

2. *The Ld. Pr. CIT erred in law and on facts of the case in not providing the proper opportunity of being heard to the appellant and thus in violating the principles of natural justice, before passing the order u/s 263 of the Income Tax Act.”*

3. As per the grounds of appeal, the essential grievance of the assessee is that in the facts and circumstances of the case, the Pr.CIT was not justified in exercising revisionary powers under s.263 of the Act and thereby setting aside the assessment order passed under s.143(3) of the Act with a direction to the AO to frame assessment afresh after proper examination, inquiry and verification with reference to long term capital gains of Rs.1,50,69,856/- derived by the assessee. To adjudicate the grievance of the assessee, it would be pertinent to take note of the relevant facts.

3.1 The assessee filed her return of income for AY 2013-14, declaring total income at Rs.18,22,490/-. The assessee *inter alia* claimed exemption under s.10(38) of the Act on account of long term capital gains of Rs.1,50,69,856/- on sales of shares. The return filed by the assessee was subjected to scrutiny assessment and assessment order was framed under s.143(3) of the Act dated 24.07.2015 wherein the capital gains so declared by the assessee was duly accepted without any disturbance. The assessment so framed by the AO under s.143(3) of the Act was however could not met approval of the PCIT, who invoked supervisory jurisdiction provided under s.263 of the Act and sought to modify the impugned order passed by the AO. A show cause notice dated 27.02.2018 was accordingly issued in this regard alleging the aforesaid assessment order to be erroneous and prejudicial to the interest of the Revenue. The relevant portion of the show cause notice is reproduced hereunder:

*“During the course of search proceedings detection of over 500 Cr. has been made on the basis of off market purchase of shares in both the scrip KGN Industries Ltd and KGN Enterprise Ltd. wherein the sale proceeds of shares were not brought through Stock Exchange. On verification, it is noticed that the assessee has booked bogus long term capital gain by transition in the shares of M/s. KGN Enterprises to the tune of Rs. 1,50,69,856/-. At the time of assessment, this information of fraudulent transaction was on records of the AO but during the course of assessment proceedings, the AO has not verified or conducted any inquiry in respect of the share transactions in respect of the bogus claim LTCG and completed the assessment.”*

3.2 As per the show cause notice reproduced above, the PCIT essentially observed that the assessee has booked bogus long term capital gains in the share of KGN Enterprise Ltd. for which requisite inquiry was not carried out by the AO while completing the assessment.

3.3 In response to the show cause notice, the assessee filed written reply which is reproduced in para 4 of the Revisional order impugned herein. The same read as under:

*“4. In response to the above notice, the assessee filed written submission on 05/03/2018. In its reply the assessee has mentioned that the assessment order should not be considered as erroneous and prejudicial to the interest of the revenue and consequently the same should not be set-aside u/ 263 of the Act or to be framed de-Novo after complete proper enquiries and verification. The reply given to the AO is reproduced as under-*

*i) It is mentioned in your captioned show cause notice that, during the course of search proceedings detection of over 500cr has been made on the basis of off market purchase of shares in both the scrip KGN industries Ltd and KGN Enterprise Ltd wherein the sale proceeds of shares were not brought through stock exchange. In response to the same, I humbly submit that it is not clear from the show cause notice as to on whom the search was carried and how my sale transaction is being linked to it. I therefore request you good self to supply me following details:*

- a. Where and in whose search was conducted?*
- b. Statement recorded of the concerned person during the search.*
- c. What are the seized materials of search?*
- d. What is the outcome in their search case?*
- e. How is my transaction alleged to be not genuine?*

*I humbly request that till full details are provided to me, no proper opportunity of being heard is considered to be given to me which is a mandate of section 263 of the Act. Till such time I request your*

*good self to treat my reply as an interim reply and I should be allowed to make further submissions based on details provided to me. Further, it is very crucial to note that my purchase transaction was made from a recognized broker and the sale transactions through recognized stock exchange "NSE" as against the allegation of sale not being any stock exchange as mentioned in your show cause notice.*

- (ii) *Your attention is drawn to the provisions of section 263 of the Act which is reproduced as under:*

*“The Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and direct a fresh assessment. ”*

*Therefore, the pre requisite for applying the provisions of section 263 of the Act are not present in my case which is explained as under.*

- iii) *You have mentioned in your show cause notice at para 2(i),*

*"On verification, it is noticed that the assessee has booked bogus long term gain by trading in the shares of M/s. KGN Enterprises to the tune of Rs.1,50,69,856/-. During the course of assessment proceedings, the AO has not verified the share transactions in respect of the bogus claim of LTCG. "*

- iv) *I hereby, deny the observation made by you as above.*

- v) *In this connection, I quote the questionnaire (copy enclosed) issued by the AO enclosed with notice u/s. 142(1) of the Act dated 12-06-2015, which at question no. 7 specifically called from me as under:*

***“The details of demat account, purchase/sale of shares and securities account with supporting evidences.”***

- vi) *In response to the same, I furnished the details called for vide my submission (copy enclosed) dated 08-07-2015, wherein at point no. 3-5, I have submitted complete details of the capital gains made by me amounting to Rs. 1,50,69,856/-. The details submitted by me vide this submission is reproduced as below:*

*"3. I am furnishing herewith a copy of income-tax return, computation of income, profit and loss account, balance sheet and capital account.*

*4. Detail of bank account held by me is as under:*

<i>Name of the bank and branch</i>	<i>Type of A/c.</i>	<i>A/c. No.</i>
<i>Union Bank of India-Bapunagar</i>	<i>Saving</i>	<i>454802010573856</i>
<i>Mehsana Nagrik Sahkari Bank-Bapunagar</i>	<i>Saving</i>	<i>3014</i>

*Copy of bank pass books ore bank books are submitted herewith.*

*5. In respect of long term capital gain from share Transactions, I am submitting following details*

- a. Copy of ledger account of share transactions*
  - b. Copy of sales bills-12 bills*
  - c. Copy of debit note, delivery note, confirmation end ledger account from Vijay Bhagwandas & Co. for purchase of shares of KGN Enterprise*
  - d. Copy of ledger account from India Infoline Ltd."*
- vii) Further, vide submission dated 23-07-2015, I submitted my demat statements reflecting the said scrip. (Copy enclosed).*
- viii) It is pertinent to clarify that, the purchases were made through Vijay Bhagwandas & Co, the registered stock broker under SEBI. Details of purchases made through the broker and proper confirmation from the stock broker were duly submitted to AO as reflected in point 6(c) above. I am submitting herewith annexure reflecting sale and purchase of the said shares for your good self's reference and record.*
- ix) These shares were held in demat account and were subsequently sold in National Stock Exchange ("NSE") through India Infoline Ltd. The details thereof were duly submitted to AO as reflected in point 6(d) above.*
- x) The entire transaction was reflected in the bank statement submitted to the AO as reflected in point 4 above.*
- xi) Therefore, it gets confirmed that full details regarding purchase/sale of shares were called for by the AO and were duly submitted by me. The AO scrutinized all the details and supporting evidences submitted by me and only after being fully Satisfied, he accepted the claim of long term capital gains amounting to Rs. 1,50,69,856/-.*
- xii) In view of the above your honour's remark in para 2(i) for your show cause notice dated 27-02-2018 that the AO has not verified the said transaction and therefore the assessment order u/s. 143(3) of the Act dated 24-07-2015 is erroneous and prejudicial to the interest of the revenue, thereby liable to be set aside, is not correct.*

- xiii) *The AO is not empowered to apply his mind on the same issue again and again especially when the particular issue has been thoroughly examined and after proper verification the assessee's claim has been accepted.*
- xiv) *In view of the above submission, it is humbly submitted that the order passed u/s. 143(3) of the Act dated 24-07-2015 is not erroneous in so far as it is not prejudicial to the interests of the revenue.*
- xv) *Therefore, no proceeding u/s 263 of the Act should be initiated in my case since the AO's order u/s. 143(3) of the Act dated 24-07-2015 does not require any modification.*
- xvi) *Without prejudice to above, if your honour come to a conclusion for any reason to proceed ahead with the matter, you are requested to verify/examine my claim of capital gains once again now.*
- xvii) *Kindly place the above on record, drop the proceedings initiated u/s.263 of the Act and oblige.”*

3.4 The PCIT, however, was not impressed by the pleadings of the assessee. The PCIT in broader terms, observed in the revisional order that information was received from Investigation Wing with reference to search in the case of Glob Eco Logistics Group of Ahmedabad whereby it was discovered that assessee is one of beneficiaries of bogus long terms capital gain in the shares of KGN Enterprise Ltd. The information was made available to the AO on 01.07.2015 before the conclusion of assessment. The AO however has failed to make any verification and investigation in this case. In the light of information available as per the report of the Investigation Wing, the PCIT thereafter referred to the contents of the report and observed that as per the report, the assessee in connivance with the brokers has abused the process for laundering her undisclosed income in the garb of long term capital gain. It was observed that the AO has not conducted requisite inquiry in respect of such long term capital gains reported by the assessee except collecting customary documents like contract notes and calculation of long term capital gains etc. It was alleged that the AO has failed to make any inquiry as to whether the company namely KGN Enterprise Ltd. possesses any economic and financial substance to justify the phenomenal rise in the share price and consequent capital gains. The PCIT thus essentially noted that the AO has not

ventured into any inquiry in respect of impugned transactions and completed assessment under s.143(3) of the Act mechanically and perfunctorily. The PCIT accordingly set aside and cancelled the assessment order and directed the AO to look into the factual aspects and finalize the assessment after giving reasonable opportunity to the assessee and pass afresh assessment order in accordance with law.

4. Aggrieved by the revisional directions of the PCIT seeking to nullify the assessment order passed by AO in exercise of power under s.263 of the Act, the assessee preferred appeal before the Tribunal.

5. The learned AR for the assessee reiterated various submissions made earlier before the PCIT as noted in its order and pointed out that the jurisdiction assumed by the PCIT is without sanction of law and the revisional order passed thereon is unsustainable in law. The learned AR for the assessee made two fold objections of proceedings carried out under s.263 of the Act; (i) the assessment order is neither erroneous nor prejudicial to the interest of the Revenue & (ii) the revisional order passed by the PCIT is in gross valuation of principles of natural justice and thus not tenable in law. Moving further, the learned AR for the assessee submitted that all documents pertaining to the transactions giving rise to the purchase and sale of shares in the possession of assessee were provided to the AO in the course of the assessment proceedings. On receipt of such documents, it is the prerogative of the AO to determine the extent of the inquiry thereon. The observation of PCIT is in the realm of inference without reference to any falsity in the documents filed.

5.1 The learned AR thereafter adverted to serious lapse by the PCIT while setting aside the original assessment order by holding it as erroneous in so far as prejudicial to the interest of the Revenue is contemplated under s.263 of the Act. The learned AR referred to the revisional order and submitted that in pursuance of the show cause notice dated 27.02.2018, a written reply was promptly filed within a week's time on 05.03.2018. By the aforesaid reply, it was pointed out to the PCIT that the show cause

notice issued is nondescript and do not reveal the basis for making serious averments against the assessee. The PCIT was accordingly requested to supply certain details regarding the name of the person who are searched, the statement of the person searched, seized material found in search and outcome of the search incriminating the assessee in some manner. Delving further, the learned AR pointed out that it was specifically submitted to the PCIT that in the absence of material, it will not be possible to meet the show cause notice and the object of granting proper opportunity of being heard as mandated under s.263 of the Act will not be fulfilled. While doing so, it was also pointed out to the PCIT that purchase/sale transactions were made through recognized broker on the platform of the stock exchange as against the allegation of the sale not recorded in the stock exchange platform.

5.2 The learned AR pointed out that the assessee expressly denied the allegations made by the PCIT on lack of enquiry and referred to the questionnaire issued by the AO alongwith notice under s. 143(1) dated 12.06.2015 wherein specific inquiry was made on the issue reads as under:

*“The details of demat account, purchase/sale of shares and securities account with supporting evidences.”*

It was submitted that in response to the aforesaid query, the assessee has filed relevant evidence vide submission dated 08.07.2015. The demat statement reflecting the scrip in question was also provided. The shares were held in demat account and entire accounts were reflected in the bank statement submitted to the AO which is not in dispute. It was thus contended that observations made in the show cause notice that the AO has not verified the said transactions as wholly incorrect. Our attention was thereafter adverted to para (xvi) of the reply as noted in para 5 of the revisional order seeking verification of the claim of the long term capital gain at the end of the PCIT himself before drawing any adverse conclusion.

5.3 It was thereafter vociferously submitted that the PCIT did not choose to respond to the material asked to support the non-descript show cause nor



did any further correspondence with the assessee while taking a drastic step of setting aside a statutory order. It was pointed out that the PCIT merely disagreed with the contents of the reply of the assessee filed in pursuance of solitary show cause and came to his own conclusions and that too in unequivocal terms. It was pointed out that PCIT himself has observed and concluded that the assessee has abused the process in connivance of the brokers and laundered his own undisclosed income overlooking all replies made and all questions raised. The revisional order was passed on 21.03.2018 i.e. within a span of less than one month from the date of issuance of solitary notice and a singular reply thereon of interim nature by the assessee as narrated. The learned AR thus pointed out that the text and tenor of the order of the PCIT make it undoubtedly clear that the PCIT himself has reached to an adverse conclusion without any opportunity and without confronting material in possession in this regard. It was submitted that the act of setting aside the original order and returning the matter back to the AO for further inquiry is only an empty formality and a farce where the adverse conclusion has already been drawn. In the light of categorical assertions made by the PCIT, the conclusion is forgone against the assessee and the AO was left with no discretion but to toe the conclusion already drawn by the PCIT without any *demur*. The whole exercise therefore has grievously injured the assessee and has resulted in irreparable miscarriage of justice. It was thus concluded that such order is a nullity in the eye of law.

5.4 The learned AR in this regard referred to the decision of the co-ordinate bench of Tribunal in the case of *Tata Chemicals Limited vs. DCIT ITA No. 3127/Mum/10* order dated 30<sup>th</sup> June, 2011 for the proposition that if the ground of revision is not mentioned (similar to the obscure reasoning in the instant case) in the show cause notice, it cannot be made the basis of order for the reason that the assessee would have no opportunity to meet the point. The learned AR in the context submitted that the co-ordinate bench had held that in the circumstances as existing in the present case, the infringement of fundamental principles of natural justice would result in the revisional order to be nullity. Para Nos. 9 & 10 of the order of the co-

ordinate bench was referred to buttress the plea of the order resulting in the nullity for such serious breach.

5.5 A reference was made to the decision of the Hon'ble Supreme Court in the case of *M/s. Andaman Timber Industries vs. Commissioner of Central Excise, Kolkata Civil Appeal No. 4228 of 2006* judgment dated 02.09.2015 to contend that when the ratio of the decision is applied, a serious flaw in not allowing the assessee to access the basis of show cause notice when particularly disputed, would lead to action of the PCIT wholly untenable and without authority of law.

5.6 It was reiterated that no material was confronted to the assessee despite specific request and the order was passed hurriedly without any opportunity based on a nondescript show cause notice and giving unilateral conclusive finding against the assessee thereby totally curtailing the statutory discretion of the AO. Such act of the PCIT is not in consonance with authoritative judicial pronouncement made in this regard. A reference was made to yet another decision of the Hon'ble Supreme Court in *CIT vs. Amitabh Bachchan (2016) 384 ITR 200 (SC)* to contend that opportunity to the assessee to be heard on all issues is mandatory and conclusions drawn adverse to the assessee in the order of revision on issues not mentioned in the notice is impermissible. It was contended that the satisfaction to exercise jurisdiction under s.263 of the Act is available subject to the strict observance of principle of natural justice which is ingrained in the requirement of the Section itself.

5.7 Dwelling further, the learned AR submitted that the breach of principle of natural justice can typically happen in two ways; (i) the competent authority passes order without giving reasonable opportunity to deal with the points raised and facts in issue or (ii) passes order without revealing the facts itself despite having inquired into by the assessee. The case of the assessee falls in the second category of breach which is far more stringent and has outrightly deprived the assessee of her right to make

any effective representation to defend her case as contemplated in the provisions of Section 263 of the Act.

5.8 Mounting his defense further, the learned AR thereafter referred to the decision of the Hon'ble Delhi High Court in the case of *ITO vs D. G. Housing Project Ltd. (2012) 343 ITR 329 (Del)* and contended that the Revisional Commissioner cannot remit the matter for a fresh decision to the AO to conduct further inquiries without making some minimal inquiry himself and come to some *prima facie* conclusion that tax which was lawfully exigible has not been imposed. In the instant case, the consideration of Revisional Commissioner as to whether an order is erroneous in so far as it is prejudicial to the interest of the Revenue is not based on underlying material to implicate the assessee in some manner. Despite being inquired, the PCIT has not allowed the assessee to participate in the process of inquiry before him nor has the PCIT made any inquiry to demonstrate the alleged error or mistake made by the AO as held so assertively in the revisional order. The learned AR next contended that the present case at best can be dubbed as the case of inadequate investigation or inquiry and not a case of total lack of inquiry *per se* in the light of the relevant material placed before him against a specific query. It was thus contended that viewed from any angle the revisional action of the PCIT laying blame on the doorstep of assessee is not justified.

5.9 The learned DR, on the other hand, relied upon the order of the PCIT submitted that a standard questionnaire putting few lines with respect to the transactions of capital gain in question would not give rise to an inference of an inquiry contemplated in law that has to be carried out. It was contended that subsequent to the receipt of Investigation Report on 01.07.2015 no inquiry was made by the AO in connection with the issue in question and therefore the order of the AO clearly suffers from gross lack of inquiry rendering it erroneous in so far as prejudicial to the interest of the Revenue. The learned DR also submitted that the matter was set aside to the AO and thus no serious prejudice has been caused to the assessee. It

was thus contended that no interference with the revisional order of the PCIT is called for.

6. We have carefully considered the rival submissions. The assessee has challenged the assumption of revisionary jurisdiction under s.263 of the Act as well as made imputations on the serious lapse in abiding by express mandate of opportunity to assessee, while setting aside statutory order of the lower authorities. The assessee has delineated on aspects of principles of natural justice at length and has essentially contended that such gross neglect in providing effective opportunity and serious transgression of principles of natural justice tantamount to illegality and consequently the revisional order setting aside the assessment order passed by AO is not sustainable in law.

6.1 Having regard to the lengthy and ardent defense on behalf of the assessee, we consider it expedient to delineate on the impact of palpable flaw in following the principles of natural justice allegedly committed by the Revisional Commissioner. It is the case of the assessee that a solitary show cause notice was issued by the Revisional Commissioner on 27.02.2018 seeking to displace the assessment order passed by the AO under s.143(3) of the Act in exercise of its statutory functions. The assessee filed a reply thereto within a week's time strongly objecting to the averments made in the show cause notice and asked for the relevant background material to derive an understanding on the allegations made in the show cause notice to enable it to defend its case in an effective manner. The assessee has also alleged that the show cause notice itself is vague and nondescript without any reference to any objective information or material for making an allegation adverse to the assessee. It is thus the case of the assessee that the solitary show cause notice issued by the PCIT is not focused on the issue with desired objectivity and the same is cryptic and unintelligible. The assessee thus reserved its right to submit proper reply on addressing redressal of the points raised in interim reply by the PCIT. No correspondence has been exchanged thereafter. The whole action is marred by lack of opportunity.

6.2 We notice from the case records that only a solitary notice was issued to giving opportunity to the assessee to discuss as to why action under s.263 of the Act should not be undertaken. As noted, the assessee in its immediate reply has pointed out lack of clarity in the show cause notice on vital aspects and sought the particulars thereof alongwith requisite material for proper reply and submitted that the present reply should be treated as interim reply with a caveat to make further submissions on obtaining requisite details as mentioned in the reply. It is also noticed that the assessee has also pointed out factual incorrectness in the assertions made in the show cause notice viz. the allegation of sales not being through stock exchange is incorrect.

6.3 We also notice that the assessee has also demonstrated that all primary documents in relation to the long term capital gains were duly provided to the AO without any *demur* which reflected the occurrence of transactions in normal course on the platform of the stock exchange. The Revisional Commissioner however has jettisoned all the contentions of the assessee raised as per its interim reply but remained silent as to why further opportunity is not required and why the material called for cannot be supplied for effective representation. As noticed, the PCIT heavily relied on certain information received from Investigation Wing in the search proceedings in the case of a third party. The details of information received were not provided to the assessee at all at any stage of the proceedings. As per para 8 of the revisional order, the PCIT has relied upon the so-called information purportedly received with which no-one is privy to. The whole action is thus self-virtuous and repugnant. Significantly, the PCIT has concluded in unequivocal terms and with a degree of finality that the assessee in connivance with the brokers has abused the process for laundering her undisclosed income in the garb of bogus long term capital gains. The assertions made in the revisional order against the assessee clearly forecloses the case against the assessee with finality leaving no scope with the AO to apply his own mind, while directing him to make all inquiries and investigations. The direction to AO make inquiries is ostensibly an empty formality leaving no liberty with AO

to think differently. The result is thus a foregone conclusion. The direction to make enquiry clearly lacks purpose. Except the solitary correspondence, there is no reference to any other opportunity. The whole process has begun with show cause notice and culminated with a hurried revisional order in about a month's time based on one correspondence of incomplete and shallow nature.

6.4 In this backdrop, we need to ascertain the justification in the action of the PCIT.

6.5 It is ostensible from the sequence of events that the action of the Revisional Commissioner is in negation of overriding principles of natural justice which were explicitly required to be followed while exercising authority under s.263 of the Act. Section 263 of the Act expressly provides for giving an opportunity of being heard to the assessee before passing revisional order. Such opportunity thus has serious connotations in the context of revisional jurisdiction. The object is obvious, it is meant to enable the assessee to understand what is weighed against him to suitably defend his position. Needless to say, the opportunity to be given to the assessee must be real, effective and realistic. A notional opportunity would tantamount to a mere empty formality and would naturally not meet the express intent of law. The Revisional CIT has chosen to remain silent on the contents of interim reply filed by the assessee. As quipped on behalf of assessee, the vagueness and ambiguity in the show cause notice has defeated the right of reasonable opportunity of the assessee to effectively defend its case. Thus, allegation of show cause notice being illusory is somewhat stark. The basic canons of natural justice are found to be dispensed with.

6.6 It is trite that the right to fair hearing is a guaranteed right of an assessee. Every person before authority exercising adjudicatory powers has a right to know the evidence to be used against him. The supply of documents relied upon would, in our view, be necessary to set the law in motion. It is difficult to comprehend full facts from the show cause notice

and consequently insistence for supply of relevant information possessed by the revisional authority cannot be regarded as unreasonable insistence. The letter of law in Section 263 of the Act is express and founded on the principles of natural justice, which in the present case is scantily fulfilled. The action of the Revisional Commissioner was continued in violation of this cardinal requirement. The assessee is sought to be visited with the civil consequences on the basis of symbolic compliance of the requirement. The context holds the key while examining the extent to which the violation of natural justice has impacted the other side. A granting of effective opportunity is a *sin qua non* in Section 263 of the Act for unsetting a statutory order. It is the duty of the Revisional Commissioner to provide the assessee an effective opportunity to enable it to disengage the truth from wrongs instead of taking an easy course of rejecting the reply in its entirety solely on the ground that same is not acceptable. At this juncture, it would be pertinent to quote the observations of the coordinate bench in *Tata Chemicals Limited vs. DCIT ITA No. 3127/Mum/10* order dated 30<sup>th</sup> June, 2011 as extracted below:

“9. *In the case of Synergy Enterprises Solutions Pvt Ltd Vs DCIT (ITA No 2076/Mum/2010; order dated 31<sup>st</sup> March 2011), a coordinate bench had an occasion to deal with a materially identical situation. As held in this decision, following Maxpack Investments 13 SOT 67 (Del), G.K. Kabra 211 ITR 336 (AP) and Jagadhri Electric Supply 140 ITR 490 (P&H), if a ground of revision is not mentioned in the show-cause notice, it cannot be made the basis of the order for the reason that the assessee would have had no opportunity to meet the point . While learned Departmental Representative does not dispute this position and that decision of the coordinate bench squarely covers the issue, he urges us to at best remit the matter to the file of the CIT so as the assessee can be given an opportunity to meet the point on which revision powers are exercised, even though, according to the learned Departmental Representative, strictly speaking even this partial relief is not due to the assessee because subject matter of the revision has remained the same as was set out in the notice, i.e. deduction under section 80 IA in respect of notional sale of steam. We are unable to see any legally sustainable merits in the stand of the learned Departmental Representative. While subject matter of revision may have been the same as in the show cause notice, the ground on which revision was sought to be done in the show cause notice is materially different than the ground on which revision powers are actually exercised. As such, assessee had no opportunity to defend on the ground which is ultimately decided against him. It is well settled legal position, as we have seen in the erudite discussions in Maxpack decision (supra), that revision powers can not be exercised on a ground which has not been put to the assessee. In any case, it is one of the*

*fundamental principles of natural justice that no person can be condemned unheard i.e audi alterant partem, and the impugned revision order was thus passed in violation of the principles of natural justice. As for the plea that the matter should be remitted to the file of the learned Commissioner for affording the assessee an opportunity of hearing, we find what is in challenge before us is the revision order passed by the learned Commissioner, and, as we have noted above, the said order is legally unsustainable in law, and quashed accordingly. As observed by a Special Bench of this Tribunal in the case of Colonizers Vs. ACIT (41 ITD SB 57), the violation of principles of justice, as has happened in this case, results in an order being rendered null and void. The Special Bench has, inter alia, observed as follows:*

*As it has been discussed in the earlier paragraph there are plethora of cases holding that violation of principles of natural justice makes the decision void as in every other case ultra vires. The rules of natural justice operate as implied mandatory requirement, non-observance of which amounts to arbitrariness and discrimination. The principles of natural justice have been elevated to the status of fundamental rights guaranteed in the Constitution of India as is evident from the decision of the Full Bench of the Hon'ble Supreme Court in the case of Union of India vs. Tulsiram Patel & Ors. reported in AIR 1985 SC1416 at 1469, holding that the principle of natural justice have thus come to be recognised as being a pan of the guarantee contained in Article 14 of the Constitution of India because of the new and dynamic interpretation given by the Supreme Court to the concept of equality which is the subject-matter of that Article and that violation of principles of natural justice by a State action is a violation of Article 14, A quasi-judicial or administrative decision rendered or an order made in violation of the rule of audi alteram partem is null and void and the order made in such a case can be struck down as invalid on that score alone (Maneka Gandhi vs. Union of India AIR 1978 SC 597; Gangadharan Pillai vs. ACED (1978) 8 CTR (Ker) 352 : (1980) 126 ITR 356 (Ker) at pp. 365 to 367). In other words, the order which infringes the fundamental principle, passed in violation of audi alteram partem rule, is a nullity. When a competent Court or authority holds such an order as invalid or sets it aside, the impugned order becomes null and void. (Nb. Khan Abbas Khan vs. State of Gujarat AIR 1974 SC 1471 at 1479).*

*10. Once we come to the conclusion that the impugned order is null and void, it is not for us to advise the Commissioner as to what should he do. He is always at liberty to do whatever action he can take in accordance with the law, but we cannot give life to a null and void order by remitting it back to the learned Commissioner for giving an opportunity of passing the fresh order after giving the assessee an opportunity of hearing. In case, it is possible for the Commissioner to pass a fresh order at this stage, in accordance with the scheme of the Act, he can very well do so, but in case the time limit for passing such order has already expired, we cannot extend the same by directing him to pass the order afresh after giving an opportunity of hearing to the assessee. As for learned Departmental Representative's suggestion that no real prejudice is caused to the legitimate interests of the assessee since by way of impugned order*



*learned Commissioner has only directed fresh decision of the Assessing Officer on merits and in accordance with the law, all we can say is that if we are to uphold such a contention, we will have bury the concept of finality of assessment deep and ignore the statutory limitations on the powers of the revenue authorities to tinker with the assessments altogether. Learned Departmental Representative's argument is thus clearly contrary to the scheme of the Act. For all these reasons, we reject the submissions of the Departmental Representatives, and quash the impugned revision order on the ground that the revision is done on a ground other than the ground set out in the show cause notice. The assessee gets the relief accordingly. However, as we have quashed the impugned revision order on the technical ground set out above, we see no need to deal with the merits of other arguments raised by the assessee."*

The co-ordinate bench has thus concluded that such lack of opportunity would render the revisional order a nullity and accordingly quashed the revisional order.

6.7 To reiterate, the grounds for revision in the show cause notice is vague and opportunity given to the assessee is effectively no opportunity despite express request. The action of the Revisional Commissioner in violation of the express mandate of Section 263 of the Act cannot thus be countenanced. A question may momentarily arise that the gaffes in following principles of natural justice is only a procedural irregularity and therefore matter should be restored to the file of the PCIT to restart the proceedings from the place where the irregularity has occurred. We are not inclined to agree. The opportunity was specifically sought but denied. The breach of sacrosanct opportunity expressly enjoined by the legislature in Section 263 of the Act is fundamental and goes to the root of the issue. It is not open to proceed to frame the revisional order by overriding express intent of law. Such flaw is fatal which seeks to ensue civil consequences and effects the rights of the assessee in a completed matter. The provisions of Section 263 of the Act expressly enjoin providing opportunity. The assessee had on its part has exercised its right to seek background information to enable it to file an informed defense. The dissuasion of such categorical request renders the action of the Revisional Commissioner incompetent in law. The total absence of opportunity alone renders the revisional order null and void.

6.8 We however also peep into another line of defense on behalf of the assessee. The assessee has admittedly filed the primary evidence in the course of the assessment. The PCIT however seeks to rely upon certain additional information which appears to transcend the bonafides of the transactions. It was thus incumbent upon the PCIT to undertake a minimal inquiry himself with regard to the claim of bonafides before remanding the matter back to the AO.

6.9 Most significantly, in the instant case, as noted above, the matter has been remanded to actually carry out the conclusions already drawn by the PCIT unilaterally which conclusions gives the infallible impression of it being absolute and rigid. The PCIT has thus actually foreclosed the matter without opportunity. Therefore, the whole exercise of remanding the matter back to the AO is only a pretense and an empty formality. Such act of the PCIT thus cannot be endorsed when seen in entirety. The contentions of the assessee on palpable illegality in the order passed under s.263 of the Act merits acceptance.

6.10 To sum up, the revisional action under Section 263 of the Act is unsustainable in law on two counts; (i) A revisional action which began with a nondescript notice and culminated in revisional order without any effective opportunity despite specific request is an order passed in blatant transgression of natural justice & (ii) The Revisional CIT made an unflinching and adverse conclusion in the league of finality (without granting any opportunity) and closed the door for the assessee before the AO while setting aside the order of AO. The enquiry or investigation set in motion in the proceedings before the AO in pursuance to the revisional order is clearly a pretense and an empty formality. The AO was effectively asked to obdurately adhere to the pre-conceived observations made in the revisional order of *ex parte* nature. Such directions are clearly unsustainable.

6.11 Hence, in view of the fatal error committed towards lack of effective opportunity and conclusive averments made in the revisional order,

consequential action of setting aside the assessment order is a nullity. Such revisional order thus deserves to merge in void and disappear. Hence, we thus do not consider it necessary to dwell upon other aspects of the maintainability of revisional order. We may however hasten to add at this juncture that our observations are limited to the correctness of process of framing revisional order under s.263 of the Act and should not in any manner be read as our expressions on merits.

6.12 The order of the Revisional Commissioner is thus vitiated and consequently bad in law. The impugned order under s.263 of the Act is accordingly set aside and quashed.

7. In the result, the appeal of the assessee is allowed.

**This Order pronounced in Open Court on 25/09/2019**

Sd/-  
(RAJPAL YADAV)  
JUDICIAL MEMBER  
Ahmedabad: Dated 25/09/2019

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

*True Copy*

S. K. SINHA

**आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-**

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।