IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

SHRI PRAMOD KUMAR, VICE PRESIDENT
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 878/MUM/2021
(ASSESSMENT YEAR: 2015-16)

Acron Hospitality Private Limited,
John Ville Annexe, 13th Road, Chembur,
Mumbai - 400071
[PAN: AAFCA6339N] .... **Appellant**

Vs

Principal Commissioner of Income Tax – 6,
Mumbai
Room No. 501, 5th Floor,
Aayakar Bhavan, Maharshi Karve Road,
Mumbai - 400020 .... **Respondent**

Appearances

For the Appellant/ Assessee	:	Ms. Aarti Vissanji
For the Respondent/Department	:	Shri K.K. Mishra
Date of conclusion of hearing	:	28.02.2022
Date of pronouncement of order	:	23.05.2022

O R D E R

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant/Assessee has challenged the order, dated 26.03.2021, passed by the Ld. Principal Commissioner of Income Tax, Mumbai – 6 (Hereinafter referred to as 'the PCIT'] under Section 263 of the Income Tax Act, 1961 (hereafter referred to as 'the Act') whereby the PCIT had set aside Assessment Order, dated 15.12.2017, passed under Section 143(3) of the Act by holding the same to the erroneous and prejudicial to the interest of the revenue with the direction to the Assessing Officer to pass the assessment order de-novo.

2. Brief facts of the case are that the Appellant is a private limited company engaged in the hospitality business. The Appellant filed its

return of income for the assessment year 2015-16 on 30.09.2015 declaring 'Nil' income and claiming current year loss of INR 5,62,91,672/- which was revised to INR 4,61,35,010/- by filing a revised return on 20.04.2016.

3. The case of the Appellant was selected for scrutiny and assessment order under Section 143(3) of the Act was passed on 15.12.2017 whereby the returned loss of INR 4,61,35,010/- was accepted by the Assessing Officer.

4. However, the PCIT instituted revision proceedings under Section 263 of the Act on 16.03.2021. The PCIT noted that the Appellant had issued 5,99,076 equity shares having face value of INR 10 each at a premium of INR 555/- per share during the financial year relevant to the Assessment Year 2015-16, whereas, according to the PCIT, the fair market value of such shares was (-) 44. The PCIT was of the view that receipt by the Appellant in excess of the aforesaid fair market value should have been taxed in the hands of the Appellant under Section 56(2)(viib) of the Act. According to the PCIT, the Assessing Officer failed to examine these aspects in the assessment proceedings which resulted in passing of assessment order that was erroneous in so far as it is prejudicial to the interest of revenue. Accordingly, vide order dated 26.03.2021, passed under Section 263 of the Act the Assessment Order was set aside.

5. The Appellant is before us in appeal against the above said order passed by PCIT under Section 263 of the Act. Ld. Authorised Representative for the Appellant, at the outset, submitted that during the assessment proceedings detailed submission were filed on the issue of receipt of share application money as 'Reply to Notice under Section 143(2) of the Income Tax Act', dated 14.11.2017 which formed part of the assessment record. However, the PCIT has not considered the same. Further, the order has been passed ex-parte

without giving effective opportunity of being heard and therefore, matter be remanded back to the file of PCIT. Ld. Departmental Representative relied on paragraph 4 of the impugned order to show that opportunity was granted to the appellant, but fairly accepted that restoring the matter to the file of the PCIT would not adversely affect the interest of revenue.

6. We find that the Appellant had filed letter, dated 14.11.2017, containing valuation report, financial statement, return to allotment filed before the registrar of companies, details of shares allotted, bank statements etc. during the assessment proceedings which has been placed before us at pages 64 to 150 of the paperbook. This has not been considered by PCIT even though it formed part of assessment record. Even the Appellant could not place the relevant facts and material before PCIT as the proceedings were concluded ex-parte. Though, in paragraph 4 of the impugned order the PCIT has stated that multiple opportunities were granted to the Appellant, in our view, in effect reasonable opportunity was not granted to the Appellant meet the point on which revisional powers were sought to be exercised. Notice under Section 263 of the Act was issued on 16.03.2021 fixing 22.03.2021 as date of compliance. This was followed by a reminder, dated 22.03.2021, fixing 25.03.2021 as date for compliance, and on 26.03.2021 order was passed under Section 263 of the Act.

7. In the facts and circumstances of the present case as noted hereinabove, we are of the view that it would be in the interest of justice to remit the matter to the PCIT for fresh adjudication. Accordingly, order dated 26.03.2021 passed under Section 263 of the Act is set aside and the matter is restored to the file of the PCIT with the directions to pass a speaking order after taking into consideration the material on record and after giving reasonable opportunity of

being heard to the Appellant as mandated by Section 263(1) of the Act.

8. In result, the present appeal is allowed for statistical purposes.

Order pronounced on 23.05.2022.

Sd/-	*Sd/-*
(Pramod Kumar)	(Rahul Chaudhary)
Vice President	Judicial Member

मुंबई Mumbai; दिनांक Dated : 23.05.2022
Alindra, PS

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai