<u>आयकर अपीलीय अधिकरण "B" न्यायपीठ मुंबई में।</u>

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

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री राजेश कुमार लेखा सदस्य के समक्ष।

BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM

आयकर अपील सं./ ITA No. 1790/Mum/2019

(निर्धारण वर्ष / Assessment Year 2015-16)

BSE Ltd. Phiroze Jeejeebhoy Towers, Dalal Street, Fort, Mumbai-400001	**बनाम/** Vs.	The Pr. Commissioner of Income Tax-2, 25th Floor, Room No. 344, 3rd Floor, M.K. road, Churchgate, Mumbai-400 020
(अपीलार्थी / Appellant)		**(प्रत्यर्थी/ Respondent)**
स्थायी लेखा सं./PAN No. AACCB6672L		

अपीलार्थी की ओर से / **Appellant by**	:	S/shri Vijay Mehta & Rajesh Shah, ARs
प्रत्यर्थी की ओर से **/ Respondent by**	:	Shri M Dayasagar, CIT DR

सुनवाई की तारीख **/ Date of hearing:**	10.07.2019
घोषणा की तारीख **/ Date of pronouncement :**	04.10.2019

<u>आदेश / O R D E R</u>

<u>महावीर सिंह, न्यायिक सदस्य</u>/
<u>PER MAHAVIR SINGH, JM</u>:

This appeal by the assessee is arising out of the Revision order of Pr. Commissioner of Income Tax [in short PCIT] Mumbai in Appeal No. Nil dated 30.01.2019 passed u/s 263 of the Income-tax Act, 1961 (hereinafter 'the Act'). The Assessment was framed by the Dy. Commissioner of Income Tax, Circle 2(1)(1), Mumbai (in short DCIT/ AO) for AY 2015-16 vide dated 29.12.2017 under section 143(3) of the Act.

2. The only issue in this appeal of assessee is against the Revision order passed by PCIT under section 263 of the Act revising the assessment framed under section 143(3) of the Act by the AO allowing the amounts contributed towards Settlement Guarantee Fund and Investor Service Fund. For this assessee has raised the following grounds: -

> *"1. The Learned Principal Commissioner of Income Tax - 2 ("Ld. PCIT - 2") erred in initiating revision proceedings under section 263 of the Income Tax Act, 1961 ("the Act"). Your Appellants submit that the initiation of proceedings under section 263 of the Income Tax Act, 1961 is illegal and bad in law and the order of the Ld. PCIT —2 be quashed.*
>
> *2. The Ld. PCIT - 2 erred in stating that the order passed by the then Learned Assessing Officer ("Ld. AO") for A.Y. 2015-16 is erroneous and prejudicial to the interest of the revenue on the ground that, Ld. AO had passed the Assessment Order without making inquiries and verification which were required and directing the Ld. AO to disallow the amount of ₹25,78,84,501/- and ₹6,75,00,000/- contributed towards*

Settlement Guarantee Fund and Investor Service Fund respectively. Looking into the facts and circumstances of your Appellant, it is submitted that specific queries with respect to contribution made to Settlement Guarantee Fund and Investor Service Fund were raised by the Ld. AO in his notices dated November 23, 2017 and December 9, 2017. In response your Appellant vide acknowledgement nos. 1512171001529 2, 30111710012737 and 1512171005310 uploaded the necessary details along with the Annexures. Thereafter Ld. AO after due application of his mind and in accordance with law, passed the assessment order by accepting the claim. Therefore, assessment order passed is not erroneous and prejudicial to the interest of the revenue and proceedings under section 263 of the Income Tax Act, 1961 is illegal, bad in law and the order of the Ld. PCIT - 2 be quashed.

3. The Ld. PCIT —2 erred in deciding the fate of the issues himself, by directing the Ld. AO to disallow the expenditure instead of setting aside the order and

directing the Ld. AO to make fresh assessment. Thereby, violating the basic provisions of Sec. 263 of the Income Tax Act, 1961. Therefore, the proceedings under section 263 of the Income Tax Act, 1961 is illegal and bad in law and the order of the Id. PCIT - 2 be quashed."

3. Brief facts are that the assessee filed its return of income on 27.11.2015 declaring total income of Rs.24,48,63,440/-. Subsequently, it revised its return of income declaring the same income on 19.01.2016. The assessment u/s 143(3) of the Act was completed on 29.12.2017 assessing the total income at Rs.31,05,79,241/- by making disallowance of Rs. 5,45,68,743/- on account of disallowance u/s 14A and an amount of Rs. 1,1 1,47,058/- on account of depreciation of assets (in the form of server). Subsequently, the PCIT, on examination of records, noted that the assessment order dated 29.12.2017, passed by the Assessing Officer is erroneous and prejudicial to the interest of the revenue due to the reasons stated here under: -

"a) Rs.25,78,84,501/- had been reduced while computing taxable income as 'contribution towards settlement guarantee fund'.

b) Rs.6.75 Crore had been debited to P&L a/c as contribution towards investors service fund."

4. We noted from the facts of the case that in the Show Cause notice issued u/s 263 of the Act, the PCIT have raised the following issues due to which he was of the opinion that the order of the AO is erroneous and prejudicial to the interest of the revenue. In respect of issue raised by him in the above mentioned notice, the issues are as under:

> *"3. On examination of records, it is observed that the assessment order dated 29/12/2017, passed by the Assessing Officer is erroneous and prejudicial to the interest of the revenue due to the reasons stated here under;*
>
> *4. It has been observed that*
>
> > *(a) Rs.25,78,84,501/- had been reduced while computing taxable income as 'Contribution towards settlement guarantee fund'*
> >
> > *(b) Rs.6.75 Crore had been debited to P&L A/c as contribution towards investors service fund."*
>
> *4.1 While carrying out assessment proceedings for assessment year 2016-17 details were asked for allowability of contribution towards aforementioned funds as business expenditure.*

Based on the details is has been held in the assessment order that

> *a) Contribution towards settlement / core settlement guarantee fund is in the nature of deposit / contingency reserve for the assessee. The SEBI Circular on the contribution itself says that It is 'transfer of profit'. Hence, it cannot be allowed as business expenditure.*
>
> *b) Contribution towards investors service fund is Just set-aside amount as mandated by SEBI. This set-aside amount cannot be allowed as deductible business expenditure unless it was actually spent during the year for the purpose of business."*

4.2 In view of the above, since the facts and circumstances of the case for A. Y. 2015-16 ore same, allowing the claim of contribution to the two funds as business expenditure makes the assessment order for A.Y. 2015-16 erroneous. This has resulted in under-assessment of income

by Rs. 32.53 crore which is prejudicial to the interest of revenue."

5. The basic facts are that the assessee company (BSE) is a recognized Stock Exchange. BSE is self-regulatory body governed by Companies Act, 2013 and Securities and Exchange Board of India (SEBI) along with Securities Contracts (Regulation) Act, 1956. The business of BSE is to support and protect the interest of investing public and the status of Brokers and dealers having dealings on the exchange; to establish and promote honorable and just practices in securities transaction; to promote, develop and maintain a well- regulated market for dealing in securities; to promote industrial development in the country through efficient resource mobilization by way of investment in corporate securities. BSE has been providing infrastructure facilities for trading in securities. All the Directors of BSE are Independent and Non-Executive.

6. BSE in response to the notices issued u/s. 143(2) and 142(1) of the Act, from time to time had uploaded online all the details on the Income Tax Portal as called for by the AO. After looking into each and every aspect of the income and expenses of BSE, assessment was completed. Details of notices issued and replied filed by BSE are filed in the assessee Paper Book. From these details, it can be seen that all the details as required by AO were uploaded online on the Income Tax Portal during the course of the assessment proceedings. It is proved beyond doubt that the AO had made a detailed and complete enquiry

about each and every aspect of income and Expenditure of BSE and thereafter the AO completed the assessment in accordance with law.

7. As regards to the merits of the case are concerned, the Ld Counsel pointed out that the observation in para 4(a) of Show Cause Notice with respect to the amount contributed to Core Settlement Guarantee Fund, it is submitted that the AO had issued a notice u/s. 142(1) of the Act dated 23.11.2017, (refer point no. 17 of Annexure 1) particularly asking BSE to *"Please furnish the detailed explanation w.r.t. mandatory contribution to settlement guarantee fund of As. 25,78,84,501/- reduced in the computation, along with supporting documents."* It was explained in response to the aforementioned questionnaire vide letter dated 15.12.2017 (Refer Annexure 3), BSE had uploaded online on the Income Tax Portal a detailed note along with the Annexures as follows;

> *"Point 17: Mandatory Contribution to settlement guarantee fund of Rs. 25,78,84,501/-.*
>
> *Objective of the Core SGF:*
>
> *In order to protect the interest of the investors in securities & to regulate the securities market, Securities and Exchange Board of India (SEBI) vide circular no CIR/MRD/DRMNP/25/2015*

dated August 27, 2014 (Annexure 22.1) (presently refer annexure 3) directed the Clearing Corporation (CC) to create a fund coiled Core Settlement Guarantee Fund (Core SGF) for each segment of each Recognized Stock Exchange (SE) to guarantee the settlement of trades executed in respective segment of the SE. In the event of a clearing member (member) failing to honour settlement commitments, the Core SGF shall be used to fulfill obligations of that member and complete the settlement without affecting the normal settlement process.

Corpus of Core SGF:

As per SEBI Circular, the corpus of the fund should be adequate to meet out all the contingencies arising on account of failure of any member(s). The risk or liability to the fund depends on various factors such as trade volume, delivery percentage, maximum settlement liability of the members, the history of defaults, capital adequacy of the members, and the degree of safety measures employed by the CC/BSE etc. A fixed formula,

therefore, cannot be prescribed to estimate the risk or liability of the fund. However, in order assess the fair quantum of the corpus of Core SGF, CC should consider the following factors:

- *Risk management system in force*
- *Current and projected volume/turnover to be cleared and settled by the CC on guaranteed basis.*
- *Track record of defaults of members (number of defaults, amount in default)*

However, the Minimum Required Corpus of Core SGF (MAC) for each segment of each stack exchange shall be subject to the following:

1. The MRC shall be fixed for a month.

2. By 15th of every month CC shall review and determine the MAC for the next month based on results of the daily stress test of the preceding month.

3. For every day of the preceding month uncovered loss numbers shall be estimated by the various stress tests for credit risk conducted by the CC for the segment and highest of such numbers shall be taken as worst case loss number for the day.

4. Average of all the daily worst case loss numbers determined in (3) above.

5. The MAC for next month shall be higher of the average arrived in at step 4 above and the segment MAC as per the previous review.

Contribution to Core SGF:

At any point of time, the contributions of various contributors to Core SGF of any segment shall be as follows:

a. Clearing corporation shall contribute at least 50% of the MAC from its own funds which shall be considered as part of its Networth.

b. Stock Exchange shall contribute at least 25% of the MAC (can be adjusted against transfer of profit by Stock Exchange as per Regulation 33 of SECC Regulations).

c. The clearing corporation has the option to collect the remaining 25% of MAC from clearing members. The clearing corporation also has the option to contribute the balance 25% from its own funds.

- *Any penalties levied by CC (as per Regulation 34 of SECC Regulations shall be credited to Core SGF corpus.*

- *Interest on cash contribution to core SGF shall also accrue to the core SGF and pro-rota attributed to the contributors in proportion to their cash contribution.*

- *CC shall ordinarily accept cash collateral from Core SGF contributions. However, CC may accept clearing member contribution in the form of bank FD5 too. CC shall adhere to specific guidance which may be issued by SEBI from time to time in this regard.*

As mandated by Circular CIR/MRD/DRMNP/25/2014 dated August 27,

2014 (refer Annexure 22.1) (presently refer annexure 3), BSE, implemented the provisions of this circular with effect from December 1, 2014 and contributed to the "Core SGF" of Indian Clearing Corporation Ltd (ICCL) total amount of 25,78,84,501/- as at March 31, 2015. At the time of finalizing the accounts for FY 2014-15, since there was no clarity regarding the regulation and its implementation, the said amount of 25,78,84,501/- contributed by SSE Limited to the Core SGF of Indian Clearing Corporation Limited was shown as "Contribution to Settlement Guarantee Fund" under the head "Other Current Assets". After receiving necessary clarification that the amount mandatorily contributed including the income earned on the said Core SGF belongs to Core SGF of ICCL and in view of Sec. 10(23EE) of the Income Tax Act, 1961 and as per the SEBI circular, BSE Ltd has been prohibited from sharing this fund either wholly or partly for its normal business purpose. Hence in view of the above, it is submitted that the contribution mode to SGF is nothing, but the expenditure incurred wholly & exclusively for the purpose of business of SSE & accordingly has been claimed as a revenue expenditure.

As per Sec 10 (23EE), the said amount contributed will become income of the BSE Ltd only when such fund has been shared for the purpose of its business and will be considered BSE'S income for that particular assessment year and not otherwise. it therefore presupposes that contribution by BSE to Core SGF of ICCL is a statutory payment and hence an allowable expenditure in the hands of BSE Limited. It may be noted that BSE ltd has not gained any advantage of enduring nature or any capital asset is acquired as a result of contribution made mandatorily. The expenditure is incurred wholly & exclusively for the purpose of business of BSE. It is submitted that, if the said amount is not allowed in this A. Y. then the same amount will be taxed twice; i.e. one when the amount contributed is disallowed and second when the said amount in whole or in part is shored with BSE Limited in subsequent assessment year when it is shared. In view of the above facts and in law, the said sum of 25,78,84,501/- contributed during the year is an allowable expenditure under Sec 37 (1) of the Income Tax Act, 1961 and has been claimed accordingly. A confirmation from the Indian Clearing Corporation Ltd. is attached as Annexure

22.2 (presently refer annexure 3). It may be noted that, in subsequent year i.e. F. Y. 2015-16 the said amount of Rs. 25,78,84,501/- contributed by BSE Limited to the Care SGF has been debited in the profit & loss A/c under the head "Prior period item" and accordingly disallowed in the computation of income for FY 2015-16 Copy of computation is attached as Annexure 22.3 (presently refer annexure 3)"

BSE claimed before us that the above detail was once again re-uploaded online on the Income Tax Portal on 20.12.2018 (refer Annexure 4 filed in the Assessee Paper Book).

8. From the above it is clear that a specific query was raised by the AO. A detailed note along with the annexures was submitted by BSE. Thereafter considering all the facts, AO allowed the claim of BSE of contribution made to Core Settlement Guarantee Fund (CSGF) of Rs. 25,78,84,501/-. It is therefore submitted that once the conclusion is arrived at by the AO is in accordance with law after detailed enquiry then such conclusion of allowability of claim of contribution to CSGF of Rs. 25,78,84,501/- cannot be termed to be erroneous and prejudicial to the interest of revenue.

9. As regards to the issue raised in para 4(b) of Show Cause Notice with respect to the amount set aside to Investor Service Fund. It is submitted that the AO had issued a notice u/s.

142(1) of the Act dated 23.11. 2017 (refer point no. 24 of Annexure 1) particularly asking BSE to "Please refer to Rare: Other Liability includes; a) Investors' Service Fund" and furnish the details of Annual Listing Fees Received vis-à-vis expenses incurred towards investors services and its treatment in the books of account along with the supporting documents. In response to the aforementioned questionnaire dated 30.11.2017 (refer Annexure 2) BSE had uploaded online on the Income Tax Portal a detailed note along with the Annexures as follows: -

"Details of other liability (AY 2015-16)

SEBI vide circular no Ref. SE/10118 dated October 12, 1992 and Master circular (attached for reference) (present refer Annexure 2) requested BSE Limited to set aside 20% of the Annual listing fees received to an Investors' Services Account. It may be noted that income from Annual Listing Fees is port of Income from Services to Corporates and has been offered to tax accordingly.

The details of Annual Listing Fees received during FY 2014-15 are as under:

Particulars	Amount (₹)
Annual Listing Fees (Equity and Debt capital)	57,69,87,668
Annual Listing Fees (Mutual Fund)	1,78,31,073
Further Listing Fees (Equity	2,32,16,768

and Debt Capital)	
Total Annual Listing Fees received	61,80,35,509

The Exchange has charged all direct expenses incurred towards Investors Services to contribution to investor service fund and has also charged on a pro- rata basis other relevant expenses. It may be noted that this contribution to Investor Services Account is regulatory requirement and compulsory for stock exchange business operation since the issue of SEBI circular no Ref. SE/10118 dated October 12, 1992.

The details of contribution of Investor Service Fund are as under:

Particulars	Amount (₹)
Annual Listing fees for the year	61,80,35,509
29% of the above (as per SEBI requirement)	12,36,07,102
Expenditure incurred towards investor service activities (Charged to respective nature of expenses)	5,60,92,345
Charged to contribution to investor service fund	6,75,14,757
Total	12,36,07,102

These details were once again re-uploaded online by BSE on the Income Tax Portal on 20.12.2018 (refer Annexure 5).

10. In addition to the above, another notice u/s. 142(1) of the Act dated 9.12.2017 was issued asking to "*Please furnish the details of contribution to SCSI / contribution to investor service*

fund/ contribution to investor protection fund with supporting" (refer point no. 5 of Annexure 6). In response, BSE vide letter dated 15.12.2017 (refer Annexure 7) in continuation of earlier submissions BSE further submitted the detailed note alongwith the Annexures as follows: -

> *"Points 5 — Contribution to SEBI, IPF & ISF (AY 2015-16)*
>
> *SEBl, vide its Circular No. MDR/DA/C&D/84135/07 doted 09th January 2007 and vide its Circular No. MDR/OOP/SE/Cir-38/2004 dated 28" October 2004 (attached as Annexure 29.1) directed the exchange to contribute 10% of the listing fees collected during the quarter, within 15 days of end of each quarter of a financial year to SEW and 1% of the listing fee received during the quarter to Investor Protection Fund (IPF) respectively.*
>
> *Accordingly, as a practice for the past many years, BSE Limited has been making these timely contributions to SEBI & IPF on quarterly basis and thus, paid ₹6,22,80,123 to SEBI and ₹62,28,013 to IPF for the financial year 2014-2015.*
>
> **Note: The details of the Investors Service Fund during financial year 2014-15 has already been uploaded in reply to Point 24 of*

the notice u/s 142(1) of the Income Tax Act, 1961 dated November 23, 2017."

11. These details were once again re-uploaded online on the Income Tax Portal on 20.12.2018 (refer Annexure 8). From these details it is clear that a specific query was raised by the AO. A detailed note alongwith the annexures were submitted by BSE. Thereafter considering all the facts, AO allowed the claim of BSE of set-aside amount to Investor Service Fund (ISF) of Rs. 12,36,07,102/-. It is therefore submitted that once the conclusion is arrived at by the AO in accordance with law after detailed enquiry then such conclusion of allowability of claim of amount set aside to ISF of Rs. 12,36,07,102/- cannot be termed to be erroneous and prejudicial to the interest of revenue.

12. In view of the above, we noted that the PCIT observed in para 4.1(a) of Show Cause Notice that the contribution is in the nature of deposit/ contingency reserve. According to us, the said issues were already examined by the AO during the course of assessment proceedings. During the course of assessment proceedings, it was explained that contribution by BSE to Core SGF is a mandatory payment and expenditure is neither of capital in nature nor it has any enduring benefit or personal in nature but incurred wholly and exclusively for the purpose of business and therefore allowable under section 37 of the Act. We are of the view that contingency means a future event or circumstances which is possible but cannot be predicted with

certainty. In the present case the liability to pay/ contribute is certain and accrued as per the Circular of SEBI. The said amount is transferred to CSGF and has not remained with BSE; therefore, it cannot be said to be in a nature of contingency reserve. Secondly, the contribution cannot also be termed as deposit. Oxford dictionary defines deposit as "place (something) somewhere for safekeeping". In the present case the amount is transferred to CSGF of Indian Clearing Corporation Limited (ICCL) and has not been kept for safekeeping. The amount transferred will be utilized by ICCL as per the guidelines provided by SEBI from time to time. Therefore, the contribution is revenue in nature and not an asset or deposit. ICCL has also confirmed vide letter dated 7.12.2017 (refer Annexure 3) that BSE has contributed a sum of Rs. 25,78,84,501/- to CSGF and no amount has been shared with BSE as on 31.03.2015. BSE has no right over the amount already contributed to CSGF. We are of the view that the assessee is able to prove beyond doubt that the contribution to CSGF is not in the nature of any deposit/contingency reserve. Thirdly, on the contribution the circular itself says that it is "transfer of profit". We noted and are of the view that SEBI has prescribed the methodology to arrive at a figure of contribution to CSGF and therefore it's not an appropriation of profit as alleged. This fact was already explained before the AO and has also been considered in the assessment order.

13. We noted from the observations made in para 4.1(b) of Show Cause Notice with respect to the amount set aside to

Investor Service Fund that the said issue was already examined by the AO during the course of assessment. Moreover, the contribution to the Investors Service Fund is being made by BSE from 1992 onwards and has been claimed as expense under section 37 of the Act. The said claim has been allowed and accepted by the department till date and there is no change in facts compared to earlier years. If there are no changes in the facts or circumstances over the years, then it would not be appropriate on part of the department to change the opinion in subsequent years. The details are as under: -

Sr. No.	AY	Contribution to Investor Service Fund	Whether order u/s 143(3) was passed	Whether Contribution was allowed
1.	2006-07	1,75,00,000	Yes	Yes
2.	2007-08	2,99,00,000	Yes	Yes
3.	2008-09	3,13,00,000	Yes	Yes
4.	2009-10	3,13,00,000	Yes	Yes
5.	2010-11	3,95,00,000	Yes	Yes
6.	2011-12	3,99,00,000	Yes	Yes
7.	2012-13	5,59,00,000	Yes	Yes
8.	2013-14	6,05,00,000	Yes	Yes
9.	2014-15	6,40,00,000	Yes	Yes
10.	2015-16	12,3,00,000	Yes	Yes (since revised u/s 263)

The contribution has been made by assessee even in prior years and never disallowed by Department.

For this proposition of consistency, Ld Counsel drew our attention to the decision of Hon'ble Supreme Court in the case of Radhasoami Satsang v/s CIT 193 ITR 321(SC), wherein it was held as under: -

"13. We are aware of the fact that strictly speaking res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

14. On these reasonings in the absence of any material change justifying the revenue to take a different view of the matter—and if there was no change it was in support of the assessee—we do not think the question should have been reopened and contrary to what had been decided by the Commissioner in the earlier proceedings, a different and contradictory stand should have been taken. We are, therefore, of the view that these appeals should be a!!owed, and the question should be answered in the affirmative, namely, that the Tribunal was justified in holding that the income derived by the Radhasoami Satsang was entitled to exemption under sections 11 and 12'

14. We also noted that the PCIT in para 4.2 of Show Cause Notice noted that the facts and circumstances of the case for A.Y. 2015-16 being same as A.Y. 2016-17, allowing the claim of contribution to the two funds as business expenditure makes the assessment order for A.Y. 2015-16 erroneous. In this connection, Ld Counsel submitted that during the assessment proceedings for A.Y. 2015-16 the AO had specifically enquired on both the relevant issues and after due application of his mind and considering the relevant provisions of the law accepted the stand of the BSE. Therefore, revision u/s 263 of the Act cannot be made on the basis of the assessment order passed u/s 143(3) of the Act of the subsequent assessment year. Hence, the order passed by the AO is in accordance with law and cannot be considered as erroneous and prejudicial to the interest of the revenue.

15. In this respect, our attention was invited to the decision of the jurisdictional High Court in the case of CIT v/s. Gabriel India Limited (203 ITR 108) wherein upholding the order of the Tribunal, which had set aside the revision order of the CIT, held as under: -

> *"The power of suo motu revision under sub-section (1) is in the nature of supervisory jurisdiction and the same can be exercised only if the circumstances specified therein exist. Two circumstances must exist to enable the Commissioner to exercise power of revision under this sub-section, viz., (i) the*

order is erroneous; (ii) by virtue of the order being erroneous prejudice has been caused to the interests of the Revenue. It has, therefore, to be considered firstly as to when an order can be said to be erroneous. We find that the expressions "erroneous", "erroneous assessment" and "erroneous judgment" have been defined in Black's Law Dictionary. According to the definition, "erroneous" means "involving error; deviating from the law". "Erroneous assessment" refers to an assessment that deviates from the law and is, therefore, invalid, and is a defect that is jurisdictional in its nature and does not refer to the judgment of the Assessing Officer in fixing the amount of valuation of the property. Similarly, "erroneous Judgment" means "one rendered according to course and practice of court, but contrary to law, upon mistaken view of law, or upon erroneous application of legal principles.

From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written

more elaborately. This section does not visualize a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order, unless the decision is held to be erroneous. Cases may be visualized where the Income-tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. It may be said in such a case that in the opinion of the

Commissioner the order in question is prejudicial to the interests of the Revenue. But that by itself will not be enough to vest the Commissioner with the power of suo motu revision because the first requirement, viz., that the order is erroneous, is absent. Similarly, if an order is erroneous but not prejudicial to the interests of the Revenue, then also the power of suo motu revision cannot be exercised. Any and every erroneous order cannot be the subject-matter of revision because the second requirement also must be fulfilled.

As observed in Dawjee Dadabhoy and Co. vs. S. P. Jam [19571 31 ITR 872 (Cal), "the words" "prejudicial to the interests of the Revenue" have not been defined, but it must mean that the orders of assessment challenged are such as are not in accordance with law, in consequence whereof the lawful revenue due to the State has not been realized or cannot be realized. It can mean nothing else". The aforesaid observations were also applied by the Gujarat High Court in Addl. CIT v. Mukur Corporation [1978] 111 ITR 312. We are of the opinion that the aforesaid interpretation given by the Calcutta High Court to the expression "prejudicial to

the interests of the Revenue" is the correct interpretation."

16. We have also gone through the judgment of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. v/s CIT 243 ITR 83 (SC). Wherein Hon'ble Court has stated that the provision of Sec. 263 of the Act cannot be invoked to correct each and every type of mistake or error committed by the AO and that it is only when the order is erroneous that the section would be attracted. In other words, what has been emphasized by the Hon'ble Supreme Court is that every loss of revenue as a consequence of an order of the AO cannot be construed to be prejudicial to the interests of the revenue, unless it can be established that the assessment order is erroneous in as much as the same is unsustainable in law. Hence, we are also of the view that in order to set aside an order under section 263 there must exist two circumstances to enable your honor to exercise the power of revision, viz; the order passed by the AO has to be erroneous and by virtue of the order being erroneous should be prejudicial to the interest of the revenue. From the facts as stated in the earlier paragraphs, it is very well established that the AO has not only applied his mind after proper enquiries but has examined and considered various details submitted during the course of assessment. Hence, the order passed by the AO is neither erroneous nor prejudicial to the interest of revenue i.e. involving any error or it is deviating from law. (as defined in Black's Law Dictionary). Since, the AO has acted in accordance with law and passed the assessment order, the same cannot be

considered as erroneous and prejudicial to revenue, simply because AO has not elaborated various things in the body of the assessment order. Hence, we quash the revision order passed by PCIT and allow the appeal of the assessee on this issue.

17. **In the result, the appeal of the assessee is allowed.**

Order pronounced in the open court on 04.10.2019.

Sd/-	Sd/-
(राजेश कुमार / RAJESH KUMAR)	(महावीर सिंह /MAHAVIR SINGH)
(लेखा सदस्य / ACCOUNTANT MEMBER)	(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 04.10.2019

सुदीप सरकार, व.निजी सचिव / *Sudip Sarkar, Sr.PS*

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

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 (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**

Sr. No.	Particulars	Date	Initials	Person concerned
1	Draft dictated on	30.09.19		Sr.PS
2	Draft placed before author	30.09.19		Sr.PS
3	Draft proposed & placed before the second Member			AM
4	Draft discussed/approved by Second Member			AM
5	Approved Draft comes to the Sr.PS/PS			Sr.PS
6	Kept for pronouncement on			Sr.PS
7	File sent to the Bench Clerk			Sr.PS
8	Date on which file goes to the Head Clerk			
9	Date of dispatch of Order	Yes		