

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI A. D. JAIN, VICE PRESIDENT AND
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.683/Lkw/2018
Assessment Year:2014-15

M/s Basti Wine Co. (English), 24/4, The Mall, Kanpur. (Appellant)	Vs.	Pr. C.I.T.-1, Kanpur. (Respondent)
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Appellant by	Shri Ashish Jaiswal, Advocate
Respondent by	Shri Sunil Bajpai, CIT, D.R.
Date of hearing	31/01/2022
Date of pronouncement	02/02/2022

ORDER

PER T. S. KAPOOR, A.M.

This is an appeal filed by the assessee against the order of learned Pr. CIT-1, Kanpur dated 11/10/2018 passed u/s 263 of the Act. In this appeal the assessee has raised the following grounds:

- "1. *That the Ld. PCIT has erred in passing order U/s. 263 of the Income Tax Act, 1961.*
2. *That the Ld. PCIT has erred in passing order U/s. 263 of the Income-tax Act, 1961 mechanically without application of mind.*
3. *That the assessment order against which Ld. PCIT has passed order U/s. 263 of the Income Tax Act, 1961 is neither erroneous nor prejudicial to the interest of revenue.*

4. *That the Ld. PCIT has passed order U/s. 263 of the Income-tax Act, 1961 without properly examining the records or cause to make any inquiry to justify the order passed U/s. 263 of the Income-tax Act, 1961.*
5. *That the basis on which order U/s. 263 of the Income-tax Act, 1961 is passed has already been examined by the Assessing Officer U/s. 143(3) of the Income-tax Act, 1961 during assessment proceedings."*

2. Learned counsel for the assessee, at the outset, submitted that the Assessing Officer, during the course of assessment proceedings, had raised certain queries to which the assessee had replied and which the learned CIT, in his show cause notice, has again raised. It was submitted that the copy of show cause notice detailing queries raised by the Assessing Officer vide notice dated 12/07/2016 is placed at pages 22 to 25 of the paper book and the replies filed by the assessee before the Assessing Officer during the assessment proceedings is placed at pages 26 to 233 of the paper book. Learned counsel for the assessee also invited our attention to the copy of show cause notice issued by learned CIT u/s 263, placed at pages 5 to 7 of the paper book and submitted that the first objection of learned CIT was regarding maintenance of quantitative details, to which his allegation is that no quantitative details were called for by the Assessing Officer. Learned counsel for the assessee in this respect invited our attention to query no. 13 in the query notice dated 12/07/2016 wherein the Assessing Officer had specifically asked for providing quantitative details and assessee had filed reply to this query, a copy of reply was placed at page 35 of the paper book where the assessee had stated the reason for non maintenance of quantitative details and therefore, the Assessing Officer, after due application of mind regarding this reply, had made the appropriate disallowances. Learned counsel for the assessee submitted that the second objection of learned CIT was with regard to expenses incurred by the

assessee on account of salary & wages, shop rent, license fee and house rent etc. and this query regarding expenses was also raised by the Assessing Officer vide query no. 11, 12 and 16 and to which the assessee filed proper reply along with the copies of ledger accounts and our attention was invited to pages 32, 35, 36 and 37 of the paper book where the assessee had submitted the details of expenses, as asked for by the Assessing Officer. Our attention was also invited to pages 38 to 233 of the paper book where the copies of ledger accounts of various expenses was placed. Learned counsel for the assessee submitted that after considering the reply of the assessee, the Assessing Officer was not satisfied with the reply and therefore, he had made a disallowance of 10% out of such expenditure and such disallowance has attained finality as on an appeal, filed by the assessee, the disallowance has been deleted by the Tribunal and our attention was invited to pages 265 to 267 where the copy of order of the Tribunal, deleting such disallowance, was placed. Learned counsel for the assessee invited our attention to further objections of learned CIT regarding source of addition in capital of the partners and submitted that the query regarding capital contribution was also raised by the Assessing Officer vide query no. 5 of notice dated 12/07/2016 and the assessee had filed its reply to this query, a copy of which was placed at pages 34 and 35 of the paper book. Learned counsel for the assessee therefore, submitted that after being satisfied with the reply of the assessee the Assessing Officer has passed the assessment order and had taken a plausible view. In view of these facts, it was argued that the assessment order was neither erroneous nor prejudicial to the interest of the Revenue as the matter has been examined upto the Tribunal level also and Assessing Officer had taken a plausible view after due application of mind. It was submitted that detailed reply was submitted to learned CIT against his show cause notice and he, without pin pointing as to how he was not satisfied with the reply of the


assessee, rejected the contentions of the assessee and passed order u/s 263. It was submitted that the order passed by learned CIT u/s 263 is not in accordance with law as on all the issues on which proceedings were initiated and order was passed u/s 263, were already assessed/examined during the assessment proceedings and reliance in this respect was placed on the order of Jurisdictional High Court in the case of CIT vs. Krishna Capbox (P.) Ltd. [2015] 372 ITR 310 (All). It was argued that it is not a case where no inquiry was made and it is also not a case of lack of inquiry and therefore, the assessment order passed by the Assessing Officer cannot be revised u/s 263. Reliance in this respect was placed on the order of Hon'ble Delhi High Court in the case of CIT vs. Sunbeam Auto Ltd. [2009] 289 Taxman 436 (Delhi) (HC) and further reliance was placed on an order of Delhi Tribunal in the case of in the case of Vodafone Essar South Ltd. vs. CIT [2011] 141 TTJ 84 (Delhi) (Trib)

3. Without prejudice to the above, it was argued that where revisionary authority opined that further inquiry was required, such inquiry should have been conducted by the revisionary authority himself which he has not done. It was submitted that the assessee had filed elaborate replies to the show cause notice by learned CIT and learned CIT, without conducting further inquiry, just rejected the same. Reliance in this respect was placed on a judgment of Hon'ble Delhi High Court in the case of DIT vs. Jyoti Foundation in I.T.A. No. 267 of 2013 [2013 357 ITR 0388 (Delhi). Without prejudice to the above, Learned counsel for the assessee submitted that during the preceding year i.e. assessment year 2013-14, similar order was passed u/s 263 by learned CIT on similar issues which has been quashed by the Tribunal vide order dated 28/09/2021 in I.T.A. No.409/Lkw/2018.

Therefore, in view of these facts and circumstances, it was submitted that the order passed by learned CIT be cancelled.

4. Learned CIT, D.R., on the other hand, heavily placed reliance on the order of learned CIT and submitted that learned CIT, after noting the submissions of the assessee, has clearly rejected the same after due application of mind and therefore, it was prayed that the order passed by learned CIT be sustained.

5. We have heard the rival parties and have gone through the material placed on record. We find that vide notice dated 27/08/2018, placed at pages 5 to 7 of the paper book, the learned CIT had raised certain issues. For the sake of completeness, such notice has been made part of this order as follows:


OFFICE OF THE
PRINCIPAL COMMISSIONER OF INCOME TAX-I
"Aayakar Bhawan", 16/69, Civil Lines, Kanpur-20 80 01
Telephone 2304495, 2304066, FAX 2306979

F.No. Pr.CIT-1/KNP/Show cause/263/2018-19/1400 Dated: 27.08.2018

To
M/s Basti Wines Co.,
24/4, The Mall, Kanpur

Sub: Show cause notice u/s 263 of the I.T.Act, 1961 in the case of M/s Basti Wines Co., 24/4, The Mall, Kanpur for the A.Y. 2014-15 (PAN:AAAAB4224A)- Regarding.

The assessment in your case for A.Y. 2014-15 was completed u/s 143(3) of I.T.Act, 1961 on 31.12.2016 at the income of Rs. 41,26,000/- against the return income of Rs.31,07,915/-.

From the perusal of assessment records it has been noticed that while completing the assessment, quantitative details were not called for by the Assessing Officer during the course of Assessment proceedings. It has also been found that no query to verify the reason, for which case was taken for scrutiny i.e. low net profit from large gross receipt, has been made by the AO.

From the perusal of assessment records and the details of expenses debited in the Profit and Loss account it is noticed that under the head salary and wages is sum of Rs. 73,20,000/- has been claimed. In the details filed by the assessee during the course of assessment proceedings in respect of these expenses only details of these expenses have been filed treating the payments made to sales man and manager. No copy of ledger in respect of these expenses has been filed.

From the perusal of assessment records and the details of expenses debited in the Profit and Loss account it is noticed that under the head Shop rent Rs. 35,13,600/- has been claimed. The assessee, during the course of assessment proceedings in respect of this, has filed the details of these expenses. No copy of ledger in respect of these expenses has been filed.

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From the perusal of assessment records and the details of expenses debited in the Profit and Loss account it is noticed that under the head License fee Rs. 6,50,000/- has been claimed whereas in the details filed by the assessee during the course of assessment proceedings in respect of these expenses the amount is at Rs. 6,50,000/-. No copy of ledger in respect of these expenses has been filed. The assessing officer did not make any query in respect of this difference.

From the perusal of assessment records and the details of expenses debited in the Profit and Loss account it is noticed that under the head House Rent Rs. 35,42,400/- has been claimed whereas in the details filed by the assessee during the course of assessment proceedings in respect of these expenses is amounting to Rs. 35,42,400/-. No copy of ledger in respect of these expenses has been filed. The assessing officer did not make any query in respect of this difference.

From the perusal of assessment records it has also been noticed that the source of addition in capital of Rs. 3,15,00,000/- has also not been examined properly with supporting documents.

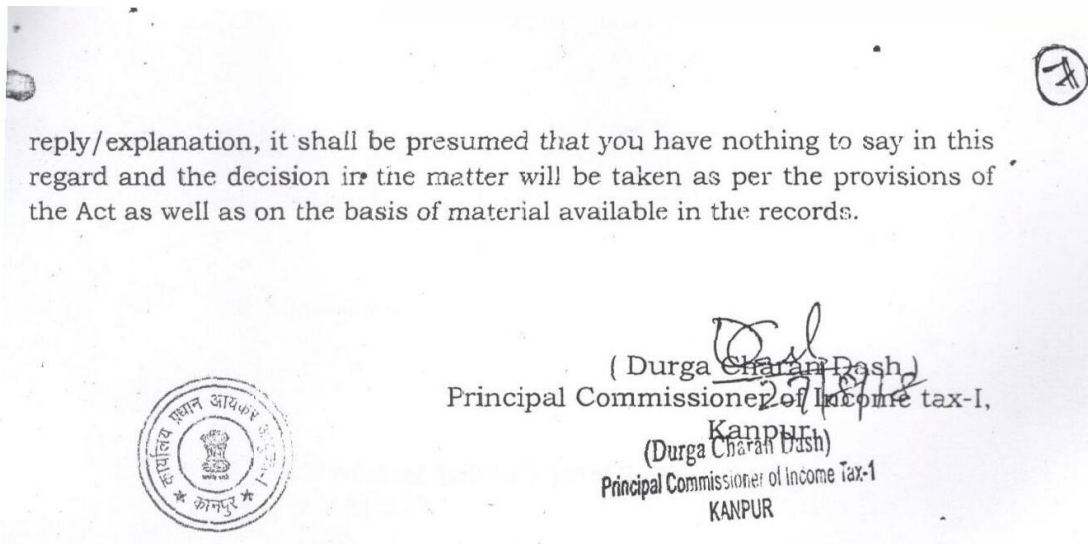
You are required to please give the details of State Excise Duty/Tax paid by your firm to state government alongwith details in following format:-

Sl.No.	Date	Discretion	Challan NO.	Amount	Remarks

You are also required to please give agreement of selling liquor made with state govt. in this regard.

From the above, it is clear that the AO has failed to examine the issues/facts while completing the assessment. In view of above facts, the above referred order of the AO is erroneous and prejudicial to the interest of the revenue and is liable to be set aside under the provision of section 263 of the I.T. Act 1961.

You are hereby given an opportunity to explain as to why the assessment order passed by the Assessing Officer should not be set aside and a fresh order may be passed in light of above observations. You are required to submit your replies and explanations on **11.09.2018 at 012:30 PM**; before the undersigned either personally or through your authorized representative. In case you do not attend or do not file any



5.1 From the above show cause notice, we find that the following were the issues which the learned CIT had raised while issuing notice u/s 263:

- (i) Quantitative details were not called for by the Assessing Officer.
- (ii) No copy of ledger account in respect of salary and wages, shop rent, license fee and house rent etc. was demanded by the Assessing Officer.
- (iii) No details regarding addition in capital of partners was examined by the Assessing Officer.

5.2 As regards the first objection of learned CIT, we find that the Assessing Officer, vide notice dated 12/07/2016, vide query No. 13, required the assessee to file the following:

"13. Please furnish month wise quantitative details of opening stock, purchases, shortage/excess, sales and closing stock in respect of all items of goods sold. Also produce stock register for verification."

5.3 In reply to this query, the assessee filed reply, the copy of reply is placed at page 35, which is reproduced below:

Point No-13

Quantitative details:

That as required by your honour to furnish the month wise quantitative details of purchases and sales and closing stock. In this regards it is submitted that assessee is engaged in business of trading of foreign liquor i.e. Beer and wine. Both products has number of varieties in brands, quality, quantity and measurements like quarter, half, Bottles i.e. 180ML, 375 ML and 750 ML. The assessee has never maintained any quantitative details for its recordings and therefore desired information could not be furnished. Your good self may appreciate that license is granted for a year and therefore it is compulsion on the assessee to make entire sales before the closing of year as it is not possible for assessee to sale the product after expiry of license period. In other words, it is compulsion on the assessee to NIL its stock at the end of year. Liquor is purchased from distilleries after paying license fees which is subject to deduction TCS. The assessee has claimed TCS in which amount of purchases made by members are given. Your honour may verify purchases from TCS Certificates

regarding purchases made by members from the distilleries in which amount of TCS and amount of purchases made by members of AOP is given and therefore purchases of the assessee is completely verifiable. Your good self may appreciate that this practice is being consistently followed by assessee and accordingly assessee make humble request that assessee may please very kindly be exempted from furnishing this information which is not possible for assessee because of the reason narrated above.

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5.4 As regards the query against the genuineness of expenses in the form of salary and wages, house rent, license fee etc., we find that this query was raised by the Assessing Officer vide query No. 11 and 16. Against these queries, the assessee filed reply, a copy of reply is placed at pages 35 and 36 of the paper book, which are reproduced below:

Point No-11
Detail of Shop:

That as required by your honour, assessee is furnishing herewith the followings:

- i) That Shop address details is being furnished herewith.
- ii) Shop wise details of rent paid giving name, address of Land Lord.
- iii) Shop wise details of employees giving name, address and total salary paid and nature of duties performed.
- iv) Shop wise details of License Holders.
- v) That evidence in respect of license fee has already filed along with previous reply.
- vi) Details of month wise purchases and sales is being enclosed herewith.

Point No-16
Details of Expenses:

That as required by your honour to furnish the copies of accounts of all the expenses claimed in the profit and loss account and to prove the reasonableness of all the expenses. In this regards it is submitted that assessee is furnishing herewith the copies of accounts of all the expenses claimed in the Trading and Profit & Loss Account. With regards to genuineness and reasonableness of the expenses, it is submitted that all the expenses claimed are having direct nexus with the assessee's nature of business. The assessee has not claimed any expenses which are either personal nature or capital nature. The assessee is also furnishing comparative details of expenses claimed in preceding 3 years to justify the claim. The assessee has also maintained proper books of accounts. The Books of accounts are duly audited and auditor has not made any adverse comments on the reasonableness of the expenses. In view of the above, your honour is requested to allow the claim and oblige.

5.5 We find that along with this reply the assessee had submitted copy of ledger account of various expenses along with their break-ups of various expenses, a copy of which is placed at pages 38 to 70 of the paper book. Such evidences, filed by the assessee during the course of assessment proceedings, negates the findings of learned CIT that necessary details were not examined by the Assessing Officer. We find that the Assessing Officer, during the assessment proceedings, rejected the reply of the assessee and made a disallowance equivalent to 10% of the entire expenditure after due

application of mind and therefore, the Assessing Officer has taken a plausible view.

5.6 As regards the observation of learned CIT regarding capital contribution by the partners, we find that this issue was also raised by the Assessing Officer vide query No. 5 and its reply was also filed by the assessee, a copy of such reply is placed at pages 34 and 35 of the paper book, which for the sake of completeness are reproduced below:

Query No. 5:

Please furnish copies of all partner's capital account and explain sources of additions made in capital with supporting evidences justifying the creditworthiness and genuineness of transactions.

Reply:

Point No-5

That as required to furnish the copies of accounts of all the members of A.O.P along with details of contribution made in their capital account justifying the credit worthiness and genuineness. In this regard it is submitted that assessee is furnishing herewith the copy of capital accounts of all the members duly confirmed giving name, address and PAN. Your honour may appreciate that in the assessee AOP, there are 27 members. Capital Accounts of all the members of A.O.P along with their confirmations as well as their copy of Income Tax Returns incorporating their complete postal addresses and PAN. On perusal of the capital account, your good self may appreciate that there is fresh addition in most of the accounts of the members. It may be appreciate that License fee, Security, Assessment and processing fee is borne by member themselves and this amount at the time of admission of partners is credited to their capital accounts as fresh addition. It is normal practice of the most of members to withdraw maximum/ entire amounts standing in the name of members at the end of each financial years which is used in for payment of License fee, security, assessment and processing fee payable to government. It may be appreciated that all the members are individually assessed to tax with the ITO having jurisdictions over the case. The addition was made by him out of their withdrawal from firm as on 31.03.2015 as well as their own sources

and regular income shown to Income Tax Department. The confirm copies of accounts of all members are being furnished herewith in supports of facts. This practice is very old and consistently followed by assessee and accepted by the department. In view of the above, your honour is requested that additions made by members may please very kindly be treated as explained in the hand of AOP Firm and no adverse inference may please very kindly be drawn.

5.7 After the receipt of such reply, the Assessing Officer has taken a plausible view and has not made any addition on this account and therefore, it cannot be said that the order of the Assessing Officer is erroneous and prejudicial to the interest of Revenue. When the Assessing Officer takes a plausible view, such order cannot be subjected to order u/s 263 as both the conditions of assessment order being erroneous and prejudicial to the interest of Revenue has to be fulfilled which is not in the present case. This is also not a case of no enquiry. Hon'ble Delhi High Court in the case of CIT vs. Sunbeam Auto Ltd. [2009] 289 Taxman 436 held that the order of the Assessing Officer cannot be revised u/s 263 on the basis that there was lack of inquiry. We further find that in reply to show cause notice by the learned CIT, the assessee filed elaborate reply and learned CIT, without conducting further inquiries, rejected the reply of the assessee and passed the order u/s 263 which is also not in accordance with law as held by Hon'ble Delhi High Court in the case of DIT vs. Jyoti Foundation in I.T.A. No. 267 of 2013 [2013 357 ITR 0388 (Delhi) where the Hon'ble court vide order dated 9th July, 2013 held that where revisionary authority opined that further inquiry was required, such inquiry should have been conducted by the revisionary authority himself to record the finding that the assessment order passed by the Assessing Officer was erroneous and prejudicial to the interest of the Revenue. We further find that in the case of the assessee itself in assessment year 2013-14, the learned CIT passed similar order u/s 263 on

similar issues and the Tribunal, vided order dated 28/09/2021, allowed the appeal of the assessee by holding as under:

4. We have heard the rival parties and have gone through the material placed on record. We find that Id. CIT in this case observed from the assessment record that in support of various expenses incurred by the assessee there was no details filed by the assessee during the course of proceedings and there was no copy of ledger accounts in respect of these expenses. The expenses observed by the Id. CIT are salary and wages, shop rent, license fee and house rent etc. Besides the above observations with regard to the expenses Id. CIT further observed that assessee had made an addition on account of capital of partners to the extent of Rs.2,13,64,000/- . He observed that Assessing Officer had not carried out sufficient verifications in this respect. Further he observed that the assessee had not given the details of excise duty tax paid by it and further he held that quantitative records were not maintained and therefore held that the order passed by Assessing Officer was prejudicial to the interest of Revenue and erroneous and concluded by holding as under:

"I have carefully considered the submission made by the assessee as well as perused the case records. It is noticed that no ledger accounts of the expenses as mentioned in the AO report is available in the case records. It is also noticed that assessee is not maintaining stock register as well as sales invoice. The assessee has filed copies of acknowledgement of ITR's as well as confirmations of members in respect of capital contribution of Rs.2,13,64,000/- made by members but AO has failed to verify these documents through independent enquiry. The Assessment records show that during the assessment proceedings A.O has not correctly verified the expenses claimed under the various heads as discussed above so as to bring correct facts on record to examine the allowability of these expenses which renders the order passed by the A.O is erroneous and prejudicial to the interest of revenue." The order has been passed without application of mind. The Hon'ble jurisdictional High Court in the case of C/7" v. Bhagwan Das 12005] 272 ITR 367 (Ail.)(HC), held

that non-application of mind by the Assessing Officer was prejudicial to the interest of the revenue.

In view of the above facts, it is clear that the assessment order passed by AO is erroneous as well as prejudicial to the interest of the revenue. Accordingly, the order u/s!43(3) of the I.T. Act, 1961 passed by the assessing officer on 31.03.2016 is set aside to be framed denovo. The assessing officer is directed to pass a fresh assessment order, after considering all the facts of the case and above observations after providing an opportunity of being heard to the assessee, within the time limit as given in the Income Tax Act, 1961."

5. *Before Id. CIT against show cause notice, the assessee filed detailed replies with respect to his each observation which the Id. CIT has made part of his order. We find that the assessee before Id. CIT had explained that Assessing Officer had raised the queries during original assessment proceedings and assessee had filed necessary explanations to which Assessing Officer was satisfied and therefore he had passed the assessment order and therefore the order passed by the Commissioner u/s. 263 of the Act is not as per the provisions of law. We find that as regards the observations of Id. CIT with respect to various aspects the Assessing Officer besides other questions during assessment proceedings raised the following queries:*

- "5. Please furnish copies of all partner's capital account and explain sources of additions made in capital with supporting evidences justifying the creditworthiness and genuineness of transactions.*
- 10. Please furnish following details in respect of all shop owned by you:*
 - (i) Addresses of all shops.*
 - (ii) Name of landlord, amount of rent paid and copy of rent agreement in respect of each shop.*
 - (iii) Shop wise details of all employees including salary paid to each of them and identify proof in respect of each employee.*

- (iv) Shop wise details of licence holder's alongwith copy of licence for the year under consideration.*
 - (v) Shop wise details of license fee details alongwith proof of payment.*
 - (vi) Shop wise details of purchases and sales of liquor alongwith freight and cartage paid.*
12. *Please furnish month wise quantitative details of opening stock, purchases, shortage/excess, sales and closing stock in respect of all items of liquor shop wise. Also produce stock register of each shop for verification.*
15. *Please furnish the copies of accounts of all expenses claimed in the trading and P&L account and prove the reasonableness of these expenses stating nature of each type of expense.*
17. *Please give details of all employees to whom salary has been paid. State duties of each employee.*
22. *Please explain renewal fee, assessment fee and processing fee and its necessity for the business."*
6. *In respect of query relating to Query No. 5, the assessee submitted as under:*
- "4&5. That as required to explain the source of deposit in name of members of A.O.P. In this regard it is submitted that assessee has already furnished copy of Capital Accounts of all the members of A.O.P along with theirs confirmations as well as theirs ITR's. The assessee- has already furnished the copy of income Tax- acknowledgments of members incorporating their complete postal addresses and PAN, On perusal of the capital account, your good self may appreciate that there is fresh addition in most of accounts of the members. It may be appreciate that it is normal practice of the members to withdraw entire amounts standing in the name of members at the end of each financial years and thereafter they used to deposit the same by rolling back the amount earlier withdrawn for*

payment of License Fees etc in next year. In supports of the above facts, assessee is furnishing herewith the copy of Balance Sheet as on 31.03.2011 for your honour kind perusal and records. At may be appreciated that all the members are individually assessed to tax with the ITO having jurisdictions over the case. The addition was made by him out of their withdrawal from firm as on 31.03.2012 as well as theirs own sources and regular income shown to Income Tax Department. The assessee is furnishing-herewith the confirmations received from partners, their capital accounts, in support of justification of investment in, the form of Capital."

7. *The assessee also relied on certain case laws in support of its claim that the firm is not required to satisfy itself that money which it received from the partners was the money which had partners earned by honest means. With respect to Query relating to Question No. 10, the assessee filed following reply:*

"Point No.10

That as required by your honour, assesses is furnishing herewith the followings:

- (i) That Shop address details is being furnished herewith.*
- (ii) Shop wise details of rent paid giving name, address of Land Lord.*
- (iii) Shop wise details of employees giving name, address and total salary paid and nature of duties performed.*
- (iv) Shop wise details of License Holders.*
- (v) That evidence in respect of license fee has-already filed along with reply dated 15.12.2015.*
- (vi) Details of purchases and sales have also already been filed placed on assessment record."*

8. *With respect to Query No.12, the assessee submitted as under:*

"Point No-12

That as required by your honour to furnish the month wise quantitative details of purchases and sales and closing stock. In this regards it is submitted that assessee's engaged in business of trading of foreign liquor i.e. Beer and wine. Both products has number of varieties in brands, quality, quantity and measurements like quarter, half Bottles i.e. 180ML, 375 ML and 750 ML. The assessee has never maintained any quantitative details for its recordings and therefore desired information could not be furnished. Your good self may appreciate that license is granted for a year and therefore it is compulsion on the assessee to make entire sales before the closing of year as it is not possible for assessee to sale the product after expiry of license period. In other words, it is compulsion on the assessee to NIL its stock at the end of year. Liquor is purchased from distilleries after paying license fees which is subject to deduction TCS. The assessee has claimed TCS in which amount of purchases made by members are given. Your honour may verify purchase; from TCS Certificates regarding purchases made by members from the distilleries in which amount of TCS and amount of purchases made by members of AOP is given and therefore purchases of the assessee is completely verifiable. Your good self may appreciate - that this practice is being consistently followed by assessee and accordingly assessee make humble request that assessee may please very kindly be exempted from furnishing this-information which is, not possible for assessee because of the reason narrated above."

9. *With respect to Query No.15, the assessee submitted as under:*

"Point No-15

That as required by your honour to furnish the copies of accounts of all the expenses claimed in the profit and loss account and to prove the reasonableness of all the expenses. In this regards it is submitted that assessee is furnishing herewith the copies of accounts of all the expenses claimed in the Trading and Profit & Loss

Account. With regards to genuineness and reasonableness of the expenses, it is submitted that all the expenses claimed are having direct nexus with the assessee's nature of business. The assessee has not claimed any expenses which are either personal nature or capital nature. The assessee is also furnishing comparative details of expenses claimed in preceding 3 years to justify the claim. The assessee has also maintained proper books of accounts. The Books of accounts are duly audited and auditor has not made any adverse comments on the reasonableness of the expenses. In view of the above, your honour is requested to allow the claim and oblige."

10. *With respect to Query No.17, the assessee submitted as under:*

"Point No.17

That as required by your honour to furnish the proof of all employees. In this regards it is submitted that all the employees are residing at various places of Basti, Siddhartha Nagar and Gorakhpur shops and therefore it is very impracticable to collect ID proof immediately. The assessee make humble request that at least 1 month time may please very kindly be allowed to get the ID proof. Without prejudice to the above, it is submitted that during the year under question, assessee has paid salary of Rs.4608000/-. There are 48 shops in which business is being carried out and at least 2 employees are required to in each and every shops. The assessee has paid salary 96 employees and average monthly salary per employee comes to Rs.4000/- which is very reasonable looking to the place of services and price inflation indeed. In view of the above, your honour is requested not to take any adverse view and oblige."

11. *With respect to Query No.22, the assessee submitted as under:*

"Point No.22

That as required, assessee is furnishing herewith the details of renewal fee, assessment fee and processing

fee. The renewal fee is paid to Excise Department as renewal of license. The assessment fee is nothing but fee for model shop paid to Excise department. Processing fee is a Form Fee for renewal. The necessary Challans are being furnished herewith."

12. The above submissions made by the assessee during the course of assessment proceedings indicate that Assessing Officer did carryout the necessary investigation and assessee filed the relevant replies which in our opinion are plausible explanations and therefore Assessing Officer rightly passed the assessment order accepting the explanations of the assessee.

13. The Assessing Officer took a plausible view and therefore the order passed by the Assessing Officer is not erroneous and therefore the condition for initiating the action u/s. 263 does not arise as on all the issues on which the Id. CIT took u/s. 263 were examined during the assessment proceedings. The Jurisdictional High Court of Allahabad in CIT vs. Krishna Capbox (P.) Ltd. [2015] 372 ITR 310 (All) has held where the Assessing Officer made certain queries which were replied to by assessee and after inquiry, being satisfied in respect to any queries replied by the assessee, Assessing Officer accepted declared income and passed the assessment order, Commissioner cannot issue notice u/s. 263 on the ground that Assessing Officer had not made enquiry on certain accepted version of assessee without making any enquiry or verification. In DIT vs. Jyoti Foundation in ITA No. 267 of 2013, 357 ITR 0388 (Del) the Hon'ble Delhi High Court held that where revisional authority opined that further enquiry was required such enquiry should have been conducted by the revisionary authority himself to record finding that assessment order passed by the Assessing Officer was erroneous and prejudicial to the Revenue. In Salora International Ltd. vs. Addl. CIT [2005] 2 SOT 705 (Del) the Tribunal held that merely because from a preferential point of view it is apprent that some more enquiry and verification could have been made by the Assessing Officer while making assessment order cannot be declared to be erroneous and prejudicial to the interest of the Revenue. The Hon'ble Delhi High Court in the case of CIT vs. Vikas Polymers, 194 Taxman 57 (Del) held that there is difference between lack of enquiry

and inadequate enquiry and it is only cases of lack of enquiry that the Commissioner is empowered to exercise his revisional powers by calling for and examining the records of any proceedings under the Act and passing orders thereon.

14. In view of the facts and circumstances, we find that Id. CIT was not justified in passing the order u/s. 263 of the Act and directing the Assessing Officer to make assessment order de novo and therefore we cancel the order passed by the Id. CIT(A) u/s. 263 of the Act.

15. In the result, the appeal filed by the assessee is allowed.

6. We find that the reasons cited by learned CIT in assessment year 2014-15 are similar to the reasons cited by him in assessment year 2013-14 therefore, in view of the above facts and circumstances and judicial precedents, the appeal filed by the assessee is allowed.

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

(Order pronounced in the open court on 02/02/2022)

Sd/.
(A. D. JAIN)
Vice President

Sd/.
(T. S. KAPOOR)
Accountant Member

Dated:02/02/2022
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Assistant Registrar