



**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER AND  
SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

ITA No.117/LKW/2022  
(Assessment Year: 2017-18)

<b>Etah Wine Traders</b> C/o Kunwar Devendra Singh Yadav, Laxmiganj, Kasganj, Uttar Pradesh-207123.	v.	<b>PCIT, Bareilly</b> Aaykar Bhawan, Central Revenue Building, Kamla Nehru Marg, Civil Lines, Bareilly.
<b>PAN:AAAAE1483E</b>		
(Appellant)		(Respondent)

Appellant by:	Shri Vivek Agrawal, C.A.		
Respondent by:	Shri Manu Chaurasia, CIT(DR)		
Date of hearing:	18	10	2024
Date of pronouncement:	25	10	2024

**ORDER**

**PER SUBHASH MALGURIA, J.M.:**

This is an appeal preferred by the assessee against the order of the Ld. Principal Commissioner of Income Tax [hereinafter referred to as the "PCIT"], Bareilly dated 25.03.2022 for assessment year 2017-18 passed under section 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

**2.** The only issue involved in ground taken by the assessee is that the order passed by the Principal Commissioner of Income Tax cancelling the assessment order and directing the Assessing Officer to reframe the assessment as per the direction given in the impugned order passed u/s 263 is bad in law inasmuch as the order of the Assessing Officer is neither erroneous nor prejudicial to the interest of the Revenue. The Principal Commissioner of Income Tax has not appreciated the facts and law correctly and hence arrived at incorrect conclusion.

**3.** The facts of the case, in brief, are that the assessment u/s 143(3) of the Act was completed in this case vide order dated 13/12/2019 by ACIT-1, Bareilly at a total income of 82,09,210/-. The Principal Commissioner of Income Tax called for the record and was of the opinion that the order passed by the Assessing Officer is erroneous in so far it is prejudicial to the interest of the Revenue. Accordingly, he issued show cause notice dated 25/01/2011 to the assessee as to why proceedings u/s 263 should not be initiated against him and the assessment order passed be revised. The said show cause notice gives the following reasons: -

*“4. I have gone through the submissions of the assessee filed in response to show cause notice issued u/s 263 of the Act and perused the assessment record. Following observations are made with regard to the assessment order passed by the AO being considered erroneous as pointed out in the show cause notice also:*

*(i) The case was selected for scrutiny through CASS under complete scrutiny category to examine the following reasons:*

*(a) High value of refund to TDS.*

*(b) Large value cash deposit during demonetization period.*

*(ii) During the year, the assessee had deposited Rs. 67.32 lakhs in old SBNs during the demonetization period.*

*The main issue of examination before the AO was to examine the genuineness of the source of the cash deposits in old SBNs. CBDT vide internal guidelines note for assistance of AOs for verification of cash deposits and framing of assessment in demonetization related cases dated 13.06.2019(F.No. 225/145/2019-/TA II) has issued approach note for verification of cash deposits in demonetization.*

*The AO was mandatorily to follow these guidelines and issue specific queries to examine the nature and source of cash deposits as well as to make relevant enquiries before completion of assessment proceedings. However, the AO has not issued any further queries for examination of cash deposits during the demonetization period. Thus, the order of the AO is not in accordance with the SO issued by CBDT in this regard. Hence, it is erroneous in so far as prejudicial to the interest of revenue (clause(c) Explanation 2 to section 263 of the Act).*

*This was particularly important keeping in view the huge cash deposits made in bank by the assessee during demonetization period during the year under consideration, but no examination or third party verification/enquiry was made by the AO. The AO has accepted all the submissions of the assessee as true and correct without any further verification/enquiry.*

(iii) With regard to High value of refund to TDS, the AO was to examine the different heads shown in P&L Account and Balance Sheet, so as to look into about the genuineness of the financial results declared by the assessee for the year under consideration. Though the case was selected for complete scrutiny and detailed questionnaire was issued by the AO vide notice 23.01.2019 and 05.04.2019. However, the AO did not even ensure that all the queries raised in these questionnaires were submitted by the assessee. A few of these are as follows:

1. Details of unsecured loans/deposits from members and others including squared off loans along with confirmation in given format.
2. Details of security deposits with confirmation from concerned persons.
3. Loans and advances given and purpose of the same and why the interest not charged.
4. Copies of accounts of all creditors whose transaction exceeds Rs. 10 lakhs.
5. Evidence for payment of Rs. 4,22,71,000/for rent, rates and taxes.
6. Details of payment of pending Statutory & other liabilities and details of payment.
7. Details of Misc. expenses and major expenses debited to P&L A/c.
8. Reconciliation of income as per P&L A/c as per 26AS.
9. To explain 30 transactions made in cash as given in ITS data.
10. Details and evidence of current liabilities.

Further, no verification regarding submissions filed nor enquiry was done by the AO to find out true and correct affairs of assessee's business.

The Assessing officer has passed the assessment order on 13.12.2019 u/s 143(3) of the Act without enquiries on the above issues.

5. Following judicial pronouncements are relevant to the facts of the case discussed and hence relied upon while adjudicating this case:

(i) Hon'ble Jurisdictional High Court of Allahabad in the case of Meerut Roller Flour Mills Ltd. vs CIT(2013) 35 Taxmann.com 13(Allahabad) held that, "Return filed by assessee was scrutinized and assessment was completed. Thereafter, Commissioner noticed that AO had not conducted proper enquiry to verify cash credit entries and trade creditors. He exercised his jurisdiction u/s 263 and remanded matter to AO Assessee filed writ petition against the order. Records showed that AO did not verify genuineness of trade creditors and assessment order was completely silent and bereft of any discussion on material points whether, therefore, assessment order was erroneous and prejudicial to interest of Revenue." Held, yes.

It was further held by the Hon'ble Court that:

"The Commissioner may consider an order to be 'erroneous' for the purpose of section 263 even if error of law may not be apparent on the face of the order. The Commissioner may consider an order of the assessing authority to be erroneous not only if it contains some apparent error of reason or of law or of fact on the face of it but also because it is stereotype order which simply accepts what the assessee has stated in his report and fails to make inquiry which are called for in circumstances of the case."

(ii) Further in the case of Ram Pyari Deri Saraogi v/s CIT(1968) 67 ITR 184, the Hon'ble Apex Court while examining the question of revisional power of the CIT under the old Act held that, "where assessment was completed by the ITO with under haste, without holding necessary enquiry, it is sufficient to hold that the assessment order is erroneous."

(iii) In the case of Smt Tara Devi Agarwal vs CIT (1973) 88 ITR 323(SC), it was held by the Hon'ble Apex Court that, "even where income has not been earned and is not assessable merely because the assessee wants it

*to be assessed in his or her end in order to assist someone else who would have been assessed to a larger amount, the assessment to made can certainly be erroneous and prejudicial to the interest of revenue.”*

*(iv) Hon’ble Delhi High Court in the case of Gee Vee Enterprises v/s Addl.CIT(1975) 99 ITR 375(Delhi) following the aforesaid above two judgments of the Hon’ble Apex Court held that “the position and function of the Income Tax Officer is very different from that of a Civil Court. The statements made in a pleading proved by minimum amount of evidence may be accepted by Civil Court in absence of any rebuttal. The Civil Court is neutral. It simply gives decision on the basis of the pleading and evidences which comes before it.”*

*Further, it was held by the Hon’ble Court that:*

*“The Income tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparent in the order but call for further enquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an enquiry. The meaning to be given to the word “erroneous” in section 263 emerges out of its context. It is because it is incumbent on the Income Tax officer to further investigate the facts stated in the return when circumstances would make an enquiry prudent that the word “erroneous” in section 263 includes the failure to make such an enquiry. The order becomes erroneous because such an enquiry has not been made and not because there is anything wrong with the order if all facts stated therein are assumed to be correct.”*

*6. In view of the facts of the case discussed and judicial pronouncements relied upon, I am of the opinion that the AO has not examined/enquired into the details of the facts of the case and the assessment order passed u/s 143(3) of the Act is erroneous in so far as prejudicial to the interest of revenue as 3 per explanation 2(a) to section 263 of the Income Tax Act, 1961.*

*Therefore, the assessment framed by AO is hereby set aside to be framed denovo as per law by the AO, keeping in view the observations made after giving reasonable opportunity to the assessee of being heard.”*

**4.** On both the aforesaid reasons, according to the Ld. PCIT, the AO has not conducted proper inquiry. Therefore, according to him, the order of the AO was erroneous as well as prejudicial to the revenue. Therefore, he set aside the assessment order dated 13/12/2019 and directed the AO to frame afresh order de nova. This impugned action of Ld. PCIT has been challenged before us by the assessee.

**5.** Assailing the action of the Ld. PCIT, the assessee submitted a detailed reply in respect of all the above allegation which are reproduced in brief as under:-

**Copy of reply dated 10/02/2021 filed before PCIT**

- a) Return of income was e-filed on 30/10/2017 declaring income of Rs. 8209210/-. The Assessment was made on the same income on 13/12/2019.
- b) That the case was selected under scrutiny to consider the following reasons :
- A) High value of refund to TDS
- B) Large value cash deposits during demonetization period.
- c) That the sales of the assessee amounted to Rs.59.74 crore. Sale Per day is worked out at Rs 16,59,467/- if divided by 365 days. Thus SBN currency deposited in banks Rs. 6032500/- can not be said to be excessive. It is hardly sales of 3.6 days.
- d) In compliance of various notices U/s 142(1) necessary replies were filed on-line on 20/09/2019, 08/10/2019, 09/10/2019 (manually), 06/11/2019 & 01/12/2019.
- e) That in reply filed on 8/10/2019 justification of net profit was given by filing comparative chart of sale & Profit of this year & earlier years (Copy of reply enclosed). In reply manually filed on 09/10/2019 copy of various expenses debited to P/L account were enclosed.
- f) That in reply filed on 6/11/2019 copy of cash book of 07/11/2016 & 08/11/2016 , Details of SBN & legal tender were filed. ( Copy of reply enclosed).
- g) That in reply filed on 01/12/2019 details of cash balance & sale figure from 01/10/2016 to 08/11/2016, Details of sales from 09/11/2016 to 30/12/2016, comparison of sales & bank deposits for the period 01/04/2015 to 08/11/2015 & 01/04/2016 to 08/11/2016, Bank-wise SBN deposit amount & cash book for the period 09/11/2016 to 15/11/2016 were filed.
- h) That in para 4 & 5 of your notice it has been stated that guidelines issued by CBDT have not been followed. In this connection it is submitted that in reply of the assessee dt. 01/12/2019 the comparison chart of sales & cash deposit in bank for the period 01/04/2015 to 08/11/2015 & 01/04/2016 to 08/11/2016 were duly furnished. (copy of reply dt. 01/12/2019 enclosed).
- i) That para 5.1 to 5.6 are replied as below :-
- 1) That the cash deposit limit in banks were at Rs. 10 lakhs per day in PNB/ & Rs. 5 Lakh per day in Canara bank. If cash is deposited above this limit bank charges are payable. This contention is supported from copy of bank statement. Therefore to avoid this situation cash is deposited per day in banks not exceeding Rs 10 lakh in PNB & 5 lakh in Canara Bank. A chart showing SBN deposit & legal tender deposit in banks is attached.
  - 2) There was no OD loan account in any bank. All accounts are current account. Thus having cash balance in hand has no adverse effect in business profits.
  - 3) There was risk of life as well as loss of money if any loot/dacoity is happened on the way. More amount means more loss of money.
- 4) The demonetized currency was deposited in banks between 10/11/2016 to 15/11/2016. Thus the gap is very nominal particularly when there was limit of cash deposit in banks and moreover there was heavy rush in every banks.
- 5) In para 5.4 in your notice it has been stated that the assessee has inflated sales. This view is not fair and against the facts below:-
- i) The sale of full year amounted to Rs.59.74 Crore i.e. average sale per day is worked out at Rs.16.59 Lakh.
  - ii) The sale for the period 01/10/2016 to 08/11/2016 (39 Days) before date of demonetization is at Rs.6.82 Crore i.e. average sale per day is worked out at Rs.17.49 Lakh.
  - iii) During 01/10/2016 to 08/11/2016 it was winter season. In winter season the sales are much higher than summer season. Further during this period there was Dassehra & Dewali season. In view of these facts the sales were more than normal days.
  - IV) It will not be out of place to mention that during F.Y.2016-17 there were hardly 275 bank working days. If sale is divided by 275 days the average is worked out per day Rs. 21 or 22 Lakh. It is very tuff job to count & deposit such heavy amount every day.
- From the above details it is clear that percentage of sale before date of demonetization was Rs.17.49 Lakhs per day whereas average sale per day of full year was 16.59 lakh. In view of the facts stated above the sales during 01/10/2016 to 08/11/2016 were slightly higher. Thus it can not be said that the assessee has inflated sales during period before date of demonetization.
- 6) That various case laws referred to are not relevant to the facts of the assessee.
- j) In para 6 of the notice it has been stated that enquiries have not been made from Excise Deptt. regarding purchases made by the assessee In this connection it is submitted that purchases are fully verifiable from Form No. 26AS and moreover daily stock register is maintained. The Net profit rate this year was better & progressive as compared to past results and therefore results were accepted. Full quantitative details have been maintained & duly furnished in Audit report in para 35(a).
- k) The assessee was having valid license of CL, Foreign liquor & beer granted by Excise Deptt.. License fees & license renewal fees was duly paid at Rs. 39787000/- & 2484000/- respectively.
- l) The sales is entirely made in cash. This is the regular features of the assessee and have always been accepted by your department in past. More over under license sale price is fixed (MRP) by Excise Deptt & license holder is bound not to charge above MRP.
- m) It is not correct to say that only routine queries were made. Actually five replies were filed on various dates. The information required for by A.O. in various notices have been duly complied with by filing necessary details and information. The A.O. has gone through all the details and information available with him before passing assessment order.
- n) In view of the facts & submission above it is not fair to say that asstt. Order is erroneous & prejudicial to the interest of the revenue.
- In view of above submissions and facts of the case it is requested that the notice issued u/s 263 of Income Tax Act, 1961 may kindly be dropped.

## Copy of reply dated 04/01/2022 filed before PCIT

With Reference to your queries noted in order sheet dated 02/12/2021 it is submitted as under:

1. Please find herewith copy of all Bank Accounts for FY 2015-16 & 2016-17.
2. Please find herewith copy of Audited Balance sheet for FY 2015-16 & 2016-17.
3. Please find herewith copy of Cash Book for the period 01/10/2016 to 31/12/2016 (Comprising sales and Bank Deposit date wise). 1-48
4. Details of old and new notes deposited in different Bank A/c for the period 08/11/2016 to 31/12/2016 are attached herewith. A to D
5. Copy of Form No. 26AS for AY 2017-18 is attached herewith.
6. Details of Stock (Quantity Wise) from 01/11/2016 to 15/11/2016 in respect of CL-5, FL-5 and Beer are attached herewith. E to L

**Copy of reply dated 04/02/2022 filed before PCIT**

In continuation to our earlier replies Dated 10/02/2021 and 04/01/2022 it is submitted as under:

1. The Cash balance on 08/11/2016 (Date of Demonetization) Rs.68,85,128/- cannot be said to be excessive in view of the fact that in following dates it was always above Rs. 68,85,128/- (Kindly Refer to Page No. 15 of reply Dated 10/02/2021) and copy of cash book for the period given below: -

Date	Amount of Closing Cash Balance
01/10/2016	75,91,104/-
09/10/2016	69,47,418/-
10/10/2016	83,98,510/-
11/10/2016	96,62,515/-
12/10/2016	1,11,55,692/-
16/10/2016	80,69,925/-
22/10/2016	81,39,870/-
23/10/2016	98,04,297/-
24/10/2016	75,02,127/-
25/10/2016	82,29,897/-
26/10/2016	95,97,497/-
27/10/2016	98,75,239/-
28/10/2016	1,14,38,269/-
29/10/2016	1,32,64,451/-
30/10/2016	1,58,55,517/-
31/10/2016	1,79,61,383/-
01/11/2016	1,94,61,133/-
02/11/2016	87,73,873/-
03/11/2016	88,68,893/-
04/11/2016	89,29,553/-
06/11/2016	85,92,003/-
07/11/2016	70,67,578/-

2. Moreover looking to sales (Entire Cash) for whole year Rs 59.74 Crore the Cash Balance as on 08/11/2016 Rs. 68,85,128/- (i.e. 1.15% of sales) is up to the mark.

**Copy of reply dated 08/03/2022 filed before PCIT**

e-Proceedings Response Acknowledgement				
INCOME TAX DEPARTMENT				
PROCEEDING DETAILS				
AN/TAN	AAAAE1483E			
Name	ETAH WINE TRADERS			
Financial Year	2016-17			
Assessment Year	2017-18			
Proceeding Name	Revision Proceedings u/s 263 (Income Tax)			
Notice/Communication Reference ID	100044946382			
Notice Section	263			
Description	[ITBA]Hearing notice			
Notice Issue Date	03-Mar-2022			
Due Date for Submission	10-Mar-2022			
Communication Sent date				
Document Reference ID	ITBA/REV/F/REV1/2021-22/1040319808(1)			
RESPONSE SUBMITTED				
Remarks	Kindly find final written submission enclosed in support of above. It is requested to consider replies filed manually (along with annexures) on 10/02/2021, 04/01/2022, 04/02/2022 and written submission online herein today i.e. 08/03/2022 and drop the proceedings initiated u/s 263 of the Income Tax Act, 1961.			
Hash * Value Of Remarks	2a54bd835c619651a819dd3317e0f0f3103919857a1a5a887827b0e424031f48			
Sl No	Attachment Name	Description	Size(bytes)	Hash * value of Attachment
1	WSETAH.pdf	Written Submissions (Final Reply)	527817	62dc249f319d58d07d58f43b8a0dfe010680ef67725600922d9275fa5eb99fc

This is a system generated acknowledgement and does not require signature

\* Hash : This value will uniquely identify the uploaded files and remarks.

To  
The Principal Commissioner of Income-tax,  
BAREILLY (UP)

PAN # AAAAE1483E  
DATED :- 08/03/2022

Ref: ETAH WINE TRADERS,LAXMIGANJ, KASHGANJ (UP). (AY 2017-18)

Sir,

With reference to your notice No. ITBA/REV/F/REV1/2021-22/1040319808(1) Dt. 03/03/2022 fixing the matter on 10/03/2022 it is submitted that the chart of comparative sales & bank deposits during F.Y 2015-16 & 2016-17 was duly filed before AO alongwith reply Dt. 01/12/2019. A copy of the same has also been filed before your honour at page No. 18 & 19 of the reply Dt. 10/02/2021.

It will not be out of place to mention that Demonetization was announced in the night of 8<sup>th</sup> November 2016. The closing cash balance on 8/11/2016 was at Rs. 6885128/-. In support of cash balance details of closing cash balance & bank deposits for the period of 01/10/2016 to 31/12/2016 (one month prior & two months after the date of demonetization) have been duly filed. According to the same & copy of cash book filed on 04/01/2022 for the period 01/10/2016 to 31/12/2016 the cash balance was mostly above Rs. 6885128/- and even on 01/11/2016 & 27/11/2016 it was at Rs. 19461133/- & Rs. 13802450/- respectively.

In view of above it can not be said that the availability of cash in hand on 08/11/2016 at Rs. 6885128/- have not been substantiated by the assessee.

6. The Principal Commissioner of Income Tax did not agree with the contention of the assessee and set aside the assessment order with the direction to frame denovo assessment order, observing as under:

*“6. In view of the facts of the case discussed and judicial pronouncement relied upon, I am of the opinion that the AO has not examined/enquired into the details of the facts of the case and the assessment order passed u/s 143(3) of the Act is erroneous in so far as prejudicial to the interest of revenue as per explanation 2(a) to section 263 of the Income Tax Act, 1961.”*

**7.** Learned counsel for the assessee vehemently contended before us that the order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of the Revenue. The Assessing Officer has duly examined all the issues. The assessee has given complete details in this regard during the course of hearing. Further, the Ld AR submitted that the Ld. PCIT has erroneously presumed that AO had not inquired into the issue. According to the Ld. AR, during the course of assessment proceedings, the assessee submitted the following papers before the AO in support of the claims are as under: -

1. Comparative chart of sales & Net profit
2. Details of Expenses debited to Profit & Loss account
3. Details of purchases
4. Details of SBN deposited in different banks
5. Copy of Cash Book Dt. 07/11/2016 & 08/11/2016
6. Justification of SBN Rs.60,32,500
7. Details of cash balance & Sale amount for the period 01/10/2016 to 08/11/2016
8. Details of sales from 09/11/2016 to 30/12/2016 in legal tender (Rs.6,82,86,680/-)
9. Details of Cash deposited Rs.5,57,57,500/- in legal tender in all bank accounts, during demonetization period i.e., 09/11/2016 to 30/11/2016 further out of which legal tender Rs.37,85,000/- is deposited simultaneously with SBN of Rs.60,32,500/-.
10. Comparative chart of sales & Bank deposits for F.Y. 2015-16 & 2016-17.
11. Month-wise sales & purchases.

**8.** During the proceedings u/s 263 of the Act, the assessee submitted the following papers before the Ld. PCIT: -

1. All papers as above filed before AO
2. Copy of cash book for the period 01/10/2016 to 31/12/2016
3. Details of old & new notes deposited in bank during 08/11/2016 to 31/12/2016
4. Copy of form No.26AS
5. Details of stock (Quantity-wise) from 01/11/2016 to 15/11/2016
6. Details of cash balance from 01/10/2016 to 07/11/2016
7. Details of legal tender deposit Rs.37,85,000/- simultaneously along with SBN Rs.60,32,500/-
8. Reply Dt. 08/03/2022

**9.** So according to assessee, the Ld. PCIT could not have invoked the revisional jurisdiction on this issue which has been inquired into by the AO. So the impugned action of Ld. PCIT is without jurisdiction.

**10.** Learned D. R., on the other hand, relied on the order passed by learned Principal Commissioner of Income Tax u/s 263 of the I.T. Act.

**11.** We have heard the rival submissions and carefully considered the same along with the order of the tax authorities below before deciding the order passed by the CIT u/s 263 is valid or not, it is necessary to discuss the provisions of section 263 which are stipulated as under:-

*“263. (1) The 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 insofar as it is prejudicial to the interests 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 directing a fresh assessment.*

*Explanation-I.-For the removal of doubts, it is hereby declared that, for the purposes of this sub-section, -*

*(a) an order passed on or before or after the 1st day of June, 1988 by the Assessing Officer shall include -*

*(i) an order of assessment made by the Assistant Commissioner or Deputy Director or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A;*

*(ii) an order made by the Joint Commissioner in exercise of the power or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Chief Commissioner or Director General or Commissioner authorised by the Board in this behalf under section 120;*

*(b) "record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Commissioner;*

*(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.*

*Explanation 2.— For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,—*

*(a) the order is passed without making inquiries or verification which should have been made ;*

*(b) the order is passed allowing any relief without inquiring into the claim ;*

*(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119 ; or*

*(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.”*

*(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.*

*(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, the High Court or the Supreme Court.*

*Explanation.-In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any*

*period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.”*

**12.** For invoking the provisions of section 263, both the conditions that the order passed by the A.O. is erroneous and also that it is prejudicial to the interest of Revenue must be satisfied. If one of them is absent, the provisions of section 263 cannot be invoked. The term ‘erroneous’ has not been defined under the Income-tax Act but it is well settled that each and every type of mistake or error committed by the A.O. cannot be said to be an error. The expressions ‘erroneous’, ‘erroneous assessment’ and ‘erroneous judgment have been defined in Black’s Law Dictionary, Sixth Edition, page 542. 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 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 judgement’ 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’. Thus, an order can be said to be erroneous if there is incorrect assumption of facts or incorrect application of law by the A.O. If the A.O. after making the enquiries and examining the records taken one of the possible view, it cannot be said that the order passed by the A.O. was erroneous until and unless the view taken by the assessing officer is unsustainable in law.

**13.** According to the Ld. PCIT, assessment order is erroneous for lack of enquiry because the AO did not conduct proper queries before completion of assessment proceedings. On this issue on which the Ld. PCIT found fault with by the AO for lack of proper inquiry, we find that the AO has made inquiries into

same, i.e, in respect of the claimed by assessee In this regard, we note that the assessee had filed the details along with supporting documents regarding (i) high value of refund to TDS and (ii) large value cash deposit during the demonetization period. Therefore, per-se the action of the AO cannot be called as a case of “*no inquiry*”. According to us, AO while passing the assessment order on an issue had conducted inquiry and has taken a plausible view, and the Ld PCIT can be said to have validly invoked the revisional jurisdiction. Since we find in the present case that the AO had carried out inquiry on the issue which the Ld. PCIT holds erroneous for lack of inquiry, the Ld PCIT ought not to have interdicted the assessment order. Therefore, we hold the impugned action of the Ld. PCIT to be without jurisdiction. Accordingly, the impugned order u/s 263 of the Act is set aside; and the assessment order dated 13/12/2019 is restored.

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

Order pronounced in the open Court on 25/10/2024.

Sd/-  
[ANADEE NATH MISSHRA]  
ACCOUNTANT MEMBER

Sd/-  
[SUBHASH MALGURIA]  
JUDICIAL MEMBER

DATED: 25/10/2024

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR
5. Guard file

//True Copy//

By order

Assistant Registrar