

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'B', CHANDIGARH**

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA Nos. 154 to 157/Chd/2013

(Assessment Years: 2005-06 to 2008-09)

Sh. Sunder Mal Sat Pal
Shop No. 2, New Grain Market
Mukatsar

Vs. The DCIT
Central Circle-III
Ludhiana

PAN: AAJFS3902J

(Appellant)

(Respondent)

Assessee by	: Shri. Ashwani Kumar
Department by	: Shri Manu Malik
Date of hearing	: 04/06/2018
Date of Pronouncement	: 15/06/2018

O R D E R

PER DR.B.R.R.KUMAR, A.M. :

All the above appeals have been filed by Assessee against the order of the Ld. CIT(A)-I, Ludhiana dt. 29/11/2012.

2. Year wise grounds of appeal are reproduced hereunder:

Grounds of Appeal in ITA No. 154/Chd/2013 for the A.Y. 2005-06:

1. That the Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in upholding the assessment framed u/s 153C read with section 143(3) by the Ld. Deputy Commissioner of Income Tax, Central Circle-III, Ludhiana is against law and facts on the file in as much as the very initiation of proceedings u/s 153C is bad in law.

2. That the assessment framed is bad in law in as much as the assessment has been framed by total disregard of principles of natural justice.

3. That the Ld. CIT(A) has erred in law and on facts in upholding the directions by the Ld. Assessing Officer to the appellant for getting the accounts audited by a special auditor u/s 142(2A) and the assessment framed thereafter. The assessment made deserves to be quashed in as much as the Special Auditor has travelled beyond the provisions of section 142(2A) for the purpose of conducting the audit.

4. That he further not justified to uphold the disallowance of Rs. 35,539/- made by the Ld. Assessing Officer on account of non-payment of TDS.

Grounds of Appeal in ITA No. 155/Chd/2013 for the A.Y. 2006-07:

1. That the Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in upholding the assessment framed u/s 153C read with section 143(3) by the Ld. Deputy Commissioner of Income Tax, Central Circle-III, Ludhiana is against law and facts on the file in as much as the very initiation of proceedings u/s 153C is bad in law.

2. That the assessment framed is bad in law in as much as the assessment has been framed by total disregard of principles of natural justice.

3. That the Ld. CIT(A) has erred in law and on facts in upholding the directions by the Ld. Assessing Officer to the appellant for getting the accounts audited by a special auditor u/s 142(2A) and the assessment framed thereafter. The assessment made deserves to be quashed in as much as the Special Auditor has travelled beyond the provisions of section 142(2A) for the purpose of conducting the audit.

4 That he further not justified to arbitrarily uphold the action of the Ld. Assessing Officer in adding:-

(a) a sum of Rs. 69,770/- on account of alleged difference in books of accounts.

(b) a sum of Rs. 18,02,160/- on account of alleged payments made by the appellant to M/s Om Industries.

(c) a sum of Rs. 3,00,946/- on account of alleged negative cash balance.

(d) a sum of Rs. 10,70,000/- on account of alleged entries in katcha books.

5 The Ld. CIT(A) gravely erred in not adjudicating on the following grounds:-

(a) disallowance of Rs. 8,732/- by resort to provisions of section 40A(3).

(b) a sum of Rs. 5,315/- on account of alleged interest received by the appellant.

(c) a sum of Rs. 8,585/- on account of payment of insurance of car

Grounds of Appeal in ITA No. 156/Chd/2013 for the A.Y. 2007-08:

1. That the Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in upholding the assessment framed u/s 153C read with section 143(3) by the Ld. Deputy Commissioner of Income Tax, Central Circle-III, Ludhiana is against law and facts on the file in as much as the very initiation of proceedings u/s 153C is bad in law.

2. That the assessment framed is bad in law in as much as the assessment has been framed by total disregard of principles of natural justice.

3. That the Ld. CIT(A) has erred in law and on facts in upholding the directions by the Ld. Assessing Officer to the appellant for getting the accounts audited by a special auditor u/s 142(2A) and the assessment framed thereafter. The assessment made deserves to be quashed in as much as the Special Auditor has travelled beyond the provisions of section 142(2A) for the purpose of conducting the audit.

4. That he was further not justified to arbitrarily uphold:-

(a) a sum of Rs. 19,123/- by resort to provisions of section 40A(3).

(b) a sum of Rs. 9,77,000/- out of alleged discrepancies in cash in hand / loans received and repaid in cash.

(c) a sum of Rs. 15,000/- on account of non deduction of TDS.

Grounds of Appeal in ITA No. 157/Chd/2013 for the A.Y. 2008-09:

1. That the Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in upholding the assessment framed u/s 153C read with section 143(3) by the Ld. Deputy Commissioner of Income Tax, Central Circle-III, Ludhiana is against law and facts on the file in as much as the very initiation of proceedings u/s 153C is bad in law.

2. That the assessment framed is bad in law in as much as the assessment has been framed by total disregard of principles of natural justice.

3. That the Ld. CIT(A) has erred in law and on facts in upholding the directions by the Ld. Assessing Officer to the appellant for getting the accounts audited by a special auditor u/s 142(2A) and the assessment framed thereafter. The assessment made deserves to be quashed in as much as the Special Auditor has travelled beyond the provisions of section 142(2A) for the purpose of conducting the audit.

4 That he was further not justified to arbitrarily uphold:-

(a) disallowance of Rs. 5,000/- on account of alleged cash payment by resort to provisions of section 40A(3)

(b) sum of Rs. 10,000/- and Rs. 3,00,598/- on account of alleged differences in books of accounts.

5. That he was further not justified to arbitrarily uphold an addition of Rs.51,578/- on account of alleged payment of labour in which no evidence was available and the appellant had denied having made any such payment.

3. We shall deal with the legal ground taken at Sr. No. 3 of the grounds of appeal regarding the getting the accounts audited by a special auditor under section 142(2A).

4. Brief facts of the case are that the a search and seizure operation under section 132(1) of the Income Tax Act,1961 was carried out on 24/10/2007 at the premises of Shri R.K. Bansal / M/s Chet Ram Ravi Kumar and the last Panchnama was drawn on 28/11/2007. During the search based on the incriminating document found and seized which belongs to the assessee who is a sister concern of M/s Chet Ram Ravi Kumar proceedings under section 153(C) were initiated and the assessment under section 153(C) has completed on 28/07/2010. The sequence of events are as under:

24/10/2007 : Action under section 132(1) initiated

11/11/2009 : Notice under section 143(2) was issued

08/12/2009 : Show cause was issued for conducting special

14/12/2009 : Audit under section 142(2A)

21/12/2009 : Reply to the show cause by the assessee

23/12/2009 : Approval for special audit u/s 142(2A) obtained

29/12/2009 : Letter was issued to the assessee

30/12/2009 : Due date for completion of assessment

31/05/2010 : Report of the Special Auditor

28/07/2010 : Assessment completed

5. The show cause dt. 14/12/2009 (PB-32) mentioned the following points:

- a) To translate the books found from Mahajani to English
- b) To bifurcate the transactions recorded in the kacha cash book. So as to clarify whether they pertain to M/s Chet Ram Ravi Kumar or Sunder Mal Sat Pal.
- c) To bifurcate the accounted transactions from unaccounted transactions to arrive at a definite conclusion and also reconcile the regular books of accounts with these seized books.
- d) Reconciliation of the promotes with the regular books of accounts to bifurcate the accounted for promotes from the unaccounted ones and to work out the interest income earned on these advances and also to check the source of investment made in these advances, on yearly basis from Asstt. Year 2002-03 to Asstt. Year 2008-09.
- e) To redraw the balance sheet, P&L account from A.Y. 2002-03 to 2008-09, so as to arrive at a true and correct income.
- f) To check the loose papers found and reconcile them with your regular books of account.

6. In reply to the show cause the assessee submitted before the Assessing Officer that the assessee has fully cooperated with the department and attended all the proceedings in complied with all requirements. It was submitted that so far as Kacchi books in Mahajani language are concerned, the translated version has already been submitted and also the regular books of accounts have been translated into computerized accounts and they are available for verification.

7. The Assessing Officer considered the report and held that the perusal of appraisal report clearly states that the assessee did not attend the post search proceedings to explain the nature of the seized material, the assessee has not complied to the notice issued from January 2009 to November 2009 and since no compliance to the questionnaire issued was made by the assessee and keeping in view the intricate nature of the seized material and since a true picture of the undisclosed income cannot be worked out within a short span of a week and therefore in view of the complexity of accounts and the interest of the Revenue special audit was necessary.

8. Holding as above, the Assessing Officer has determined the terms of reference of special audit which are in toto as per the points raised from a) to f) mentioned in the show cause notice (refer para 1 of this order).

9. Consequent to the order issued by the Assessing Officer the report of the Special Auditor was submitted on 31/05/2010.

10. The Assessing Officer has mentioned certain salient points regarding the Special Audit which are as under:

- a) The Auditor was not provided the required information and explanation necessary for the purpose of the audit.
- b) The assessee did not care to reply to various letters issued by the auditor during the course of the audit.
- c) No proper books of accounts maintained and kept by the assessee.
- d) The examination by the auditor further revealed that evidences like proper bills/vouchers for items debited/credited in the Profit and Loss accounts not produced, suggesting the non availability of the same.
- e) The auditor, therefore, based his report on the books of account produced and documents seized during the course of the search.

11. During the hearing before us the Ld. AR argued that the Special Audit conducted was only to extend the time to complete the assessment inspite of all compliances required by the Assessing Officer are met. It was further argued

that at the outset the notice was issued not to the assessee who is a partnership firm. The address mentioned in the show cause was Ravi Kumar Bansal C/o Chet Ram Ravi Kumar, 2, New Grain Market, Muktsar whereas the assessee firm name is M/s Sundar Mal Sat Pal. He argued that the point no. 1 of the reasons given by the assessee that the assessee did not attend the post search proceedings to explain the nature of the seized material cannot be a reason for ordering Special Audit. Similarly the AO's observation that the special audit is being referred keeping in view the intricate nature of the seized material and true picture of undisclosed income cannot be worked out within a short span of a week at this juncture belays all the statutory provisions enshrined for referring the matter to the special audit.

Further on core issues of references, it was argued that translation from Mahajani language to English language cannot be a function of the Special Audit as translated versions have already been given to the Assessing Officer. It was argued that the person who writes or translates the books of accounts cannot be authority to conduct the Special Audit in any case. Taking objection to the point no. b) of the show cause "To bifurcate the transactions recorded in the kacha cash book. So as to clarify whether they pertain to M/S Chet Ram Ravi Kumar or Sunder Mai Sat Pal " cannot be a purpose of Special Audit as bifurcation of transactions in one cash book no way, involves auditing of accounts.

12. Similarly taking objection to the point nos. c, d & f) of the show cause

"c) To bifurcate the accounted transactions from unaccounted transactions to arrive at a definite conclusion and also reconcile the regular books of account with these seized books".

"d) Reconciliation of the pronotes with the regular books of accounts to bifurcate the accounted for pronotes from the unaccounted ones and to work out the interest income earned on these advances and also to check the source of investment made in these advances, on yearly basis from Asstt. Year 2002-03 to Asstt. Year 2008-09."

"f) To check the loose papers found and reconcile them with your regular books of account".

it was argued that the Assessing Officer is trying to delegate the job of the Assessing Officer to the Special Auditor which cannot be accepted. Further referring to point no. e) wherein it was mentioned to redraw the balance sheet, P&L Account to arrive at a correct picture cannot be said to be a function under audit or special audit as per the Income Tax Act, 1961.

13. Referring to the provisions of Section 142(2A) as defined in the Income Tax Act, 1961, the Ld. AR argued that there was no reference to the nature and complexity of the accounts which is the pre-requirement for ordering Special Audit. To conclude he argues that the entire reasons given by the Assessing Officer revolve around non cooperation on the part of the assessee, difficulty in working out the undisclosed income within a short span of a week time and no complexity of accounts was brought about.

14. Against the arguments of the Ld. AR Shri. Manu Malik CIT(DR), vehemently argued that the assessee has not complied to the notices issued and the contumacious conduct of the assessee in non cooperation to provide any details, in the absence of correct books of accounts, the ordering of special audit is the only action which is available to the Assessing Officer in determining the undisclosed income. He argued that since the books are non decipherable

language i.e; Mahajani the accounts in all reasons have to be re-audited and accordingly reference to the special audit is highly valid.

15. The Ld. DR argued referring to the decision of Hon'ble Delhi High Court in the case of DLF Ltd And Another vs Additional Commissioner Of Income Tax dt. 28 March, 2014 wherein it was held that the managements may at times regard such enquiries as an unwarranted intrusion or a hounding approach but is a regulated provision which accepts the need and necessity of the Assessing Officer to take help of an expert accountant i.e. a Chartered Accountant, a person who is academically qualified and has practical experience to understand accounts and unearth tax evasion or furnishing of inaccurate particulars etc. The provision balances the right of the Revenue with the inconvenience which the assessee may face. Assessing Officers are not Chartered Accountants and when required and permissible, therefore, can take help and assistance from the qualified specialists to complete the assessment and determine the taxable income of an assessee.

16. Ld. DR taking cue from the order of the Hon'ble Delhi High Court in the case of Sahara India Financial ... vs CIT And Ors. Dt. 23 August, 2017 wherein the earlier judgment was quoted argued that the powers under Section 142(2A) were exercised in terms of the legislative provisions only. The object and purpose behind the legislation is to facilitate investigation and proper determination of the tax liability. The importance and relevancy of the legislation cannot be underestimated and it is a power available with the Assessing Officer to aid and assist him. Accounts should be accurate and provide real time record of the financial transactions of the assessee. In order to ensure reliability and accuracy, enterprises resort to internal audit and an external audit which can be a statutory audit. Internal audits are normally

conducted in house generally by acquainted or qualified accountants. Statutory audit is compulsory under the Companies Act, 1956 or when stipulated by the Act and accounts have to be audited by a qualified Chartered Accountant. Chartered Accountants are not ordinary accountants but specialists who have successfully undergone academic study and have extensive practical experience and trained for the said work. As opposed to an ordinary accountant, a Chartered Accountant with his experience and academic background is in a better position to investigate, examine and scrutinize entries and records of financial transactions.

16.1 He further argued that the entire events shows a high degree of non cooperation on the part of the assessee in extending statutory compliance and keeping in view the nature and complexity of the accounts the Special audit under section 142(2A) was rightly ordered to be conducted.

16.2 Rebutting the arguments of the Ld. DR, Ld. AR argued that no case was made by the Assessing Officer regarding the nature and complexity of the accounts while ordering the Special Audit.

17. We have heard Ld. Representatives of both the parties and perused the material available on record.

18. The provisions of Section 142(2A) of the Income Tax Act, 1961 provides for

“(2A) If, at any stage of the proceedings before him, the [Assessing] Officer, having regard to [the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialised nature of business activity of the assessee, and] the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of the [Principal Chief Commission or] Chief Commissioner or [Principal Commissioner or] Commissioner], direct the assessee to get the accounts audited by an accountant, as defined in the Explanation below sub-section (2) of section 288, nominated by the [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner] in this behalf and to furnish a report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed and such other particulars as the [Assessing]

Officer may require: [Provided that the Assessing Officer shall not direct the assessee to get the accounts so audited unless the assessee has been given a reasonable opportunity of being heard]

18.1 The above provisions were applicable w.e.f 01/06/2013 and prior to that definition was only for the nature and complexity of the accounts of the assessee and all other conditions have been inserted by Finance Act, 2013 w.e.f 01/06/2013.

18.2 The provisions provides for certain conditional requirements for Special Audit which are as under:

- Nature and complexity of accounts
- Volume of the accounts
- Doubts about correctness
- Multiplicity of transactions
- Specialized nature of business
- Interest of Revenue

19. And the pre amendment it was only the nature and complexity of the accounts. The reasons given by the Assessing Officer while ordering the special audit are being examined in the context of the requirements laid down by the statute. No doubt the services of the expert in the field of accounts cannot be denied to the Assessing Officer at the same time the Assessing Officer should have reasonable satisfaction to be brought out on record about the nature and complexity of the accounts. In the instant case the Assessing Officer has not given any finding about the nature and complexity of accounts, volume of accounts, multiplicity of transactions, specialized nature of business activity. We find from the record the assessee has submitted books of accounts translated in English and the reasons given by the Assessing Officer viz details have not been given, intricate nature of the seized material, true picture of undisclosed income

could not be worked out within a span of a week cannot make any valid ground for referring a case to Special Audit.

In the case of AT&T Communication Services India Pvt. Ltd. the Hon'ble High Court of Delhi upheld the validity of Special Audit even though books of accounts were not called for examination by the Assessing Officer because the Assessing Officer has given a reasoned satisfaction regarding the method of accounting showing the complexity of accounts and referring the terms of identifying the accounting standard applied for recognition of income. Thus we hold that even when books of account have not been called for satisfaction as to the nature and complexity of accounts of the assessee is a sine-qua-non for directing the assessee to get the accounts audited by an accountant as defined in the explanation below Sub Section (2) of Section 288.

20. Having gone through the reasons as well as the terms of reference given, we find that the Assessing Officer has nowhere mentioned about method of accounting or nature of complexity of accounts. It was relied only on non cooperation during the post search proceedings, during the assessment proceedings reconciliation of loose papers redrawing of balance sheet and P&L Account, and reconciliation of promotes. Not only that, no comments on nature of complexity of accounts year wise has been attempted by the Assessing Officer. Relying on the facts and circumstances of the case and following the judgment of Punjab and Haryana High Court in the case of Hind Samachar Ltd. Vs. Assistant Commissioner of Income Tax and Another (335 ITR 277) where in it was observed that though grant of approval by the Commissioner has been mentioned, it has not been mentioned as to why it was considered necessary having regard to nature and complexity of accounts and interest of the Revenue that special audit was necessary. The fact remains

that these reasons are conspicuous by their absence in the impugned order. The impugned order under section 142(2A) of the Act thus does not meet the requirement of law and based on the judgment of Hon'ble High Court of Delhi in the case of Delhi Development Authority and Another Vs. Union of India and Another (350 ITR 432) wherein it was held that an Assessing Officer is required to scrutinize the entries and verify them, but this does not require services of a special auditor or a Chartered Accountant to undertake the said exercise. Section 142(2A) is not a provision by which the Assessing Officer delegates his powers and functions, which he can perform to the special auditor, it can be said that the Assessing Officer is not right in getting the accounts audited. We also hereby place reliance in the case of Sahara India (Firm) Vs. Commissioner of Income Tax, Central-1 300 ITR 403 (SC) wherein it was observed that "Before dubbing the accounts to be complex or difficult to understand, there has to be a genuine and honest attempt on the part of the Assessing Officer to understand accounts maintained by the assessee; to appreciate the entries made herein and in the even of any doubt, to seek explanation from the assessee. But opinion required to be formed by the Assessing Officer for exercise of power under the said provision must be based on an objective criteria and not on the basis of an objective satisfaction. There is no gainsaying that recourse to the said provision cannot be had by the Assessing Officer merely to shift his responsibility of scrutinizing the accounts of an assessee and to pass on the buck to the special auditor".

21. Similarly the ratio laid down in the case of Unitech Ltd. Vs. Addl. CIT (74 Taxman 121) the Hon'ble High Court of Delhi held that examining the impugned order in the present case, it is apparent that the order is non speaking order and gives no reasons for arriving at the conclusion that having regard to the nature and complexity of assessee's accounts and interest of the revenue, the AO was

of the opinion that accounts are to be audited u/s 142(2A) of the Act. The order is silent as to on what basis and on what grounds, the accounts proposed to audit under section 142(2A) were considered complex and on what considerations it was arrived that it is in the interest of revenue to direct audit of accounts. Mere reference to a prior approval of CIT does not satisfy the precondition of a "Speaking order" containing reasons for invoking the provision of section 142(2A) of the Act. There is no reference to detailed replied furnished by the assessee during the proceedings.

22. Having regard to the above it is held that the impugned order reasons are clearly invisible and conspicuous by their absence. In other words, order is bereft of any reason. It is stated here that reasons are heart and soul of an order, as they facilitate the process of judicial review and therefore in absence of any reason much less cogent, clear and succinct reasons order u/s 142(2A) of the Act is held to be bad in law and without proper jurisdiction.

23. The facts mentioned above are squarely applicable to the instant case as there was no speaking order, and gives no reason for arriving at the conclusion having regard to the nature and complexity of the accounts and the reasons are clearly invisible and inconspicuous and hence the order under section 142(2A) of the Act is held to be bad in law.

24. Since the extended period was taken under the guise of Special audit, which is held without proper jurisdiction, the time so taken cannot be counted and the period does not get extended. Since the order was passed on 28/07/2010, the same has to be considered, as time barred. Therefore, we are of

the opinion that the order passed by AO suffers from legal jurisdiction and is therefore, bad in law.

25. As a result, all the appeals of the assessee are allowed.

Order pronounced in the open Court.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER
Dated : 15/06/2018

AG

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Copy to: 1.The Appellant,
2. The Respondent,
3. The CIT(A),
4. The CIT,
5. The DR