

**आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणेमें।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "A"**  
**BENCH, PUNE**

**BEFORE SHRI PARTHA SARATHI CHAUDHURY,**  
**JUDICIAL MEMBER AND**  
**DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**आयकरअपीलसं. / ITA No's.929 & 930/PUN/2019**  
**निर्धारणवर्ष /Assessment Years: 2005-06 & 2006-07**

The DCIT, Central Circle-1(3), Pune.	Vs	M/s.Chaudhary A. Yadav Memorial Educational Trust, Pride Plaza, 1 <sup>st</sup> Floor, Near Ambedkar Chowk, Pimpri, Pune – 411018. PAN: AAAAC 2210 P
Appellant/ Revenue		Respondent/ Assessee

Assessee by	None.
Revenue by	Shri Sardar Singh Meena – CIT
Date of hearing	26/07/2022
Date of pronouncement	28/07/2022

**आदेश/ ORDER**

**PER DR.DIPAK P.RIPOTE, AM:**

These two appeals filed by the Revenue are directed against the common order of Id.Commissioner of Income-tax(Appeals)-13, Pune's dated 29.03.2019, for the Assessment Years 2005-06 and 2006-07 respectively. Since the facts and issue involved in both these appeals are same, therefore, two appeals are clubbed, heard and are decided together by a consolidated order. For the sake of convenience, we take the Appeal in **ITA No.929/PUN/2019 for A.Y.2005-06** as lead case.

2. The Revenue for the **A.Y. 2005-06** has raised the following grounds of appeal:

“1. Whether on the facts and in the circumstances of the case and in law, the CIT(A) was right in holding that opportunity of being heard has to be given by the AO only and opportunity of being heard given by the superior authority, i.e., Commissioner of Income-tax (Central), does not constitute sufficient compliance with the rules of audi alteram partem, ignoring the fact that the task of determining whether the case involves a situation where a special audit is necessary is placed on the AO and the Commissioner simultaneously?”

2. Whether on the facts and in the circumstances of the case and in law, the CIT(A) was right in holding that the CIT(A) is right in holding that the assessment order is invalid and bad in law, ignoring the fact that reasonable opportunity of being heard was afforded by the Commissioner of Income Tax (Central) before the order of Special Audit U/s.142(2A) of the Act was passed by the Assessing Officer, which constitutes compliance with the principle of natural justice?”

3. Whether on the facts and in the circumstances of the case and in law, the CIT(A) was right in relying on the decision of ITAT in the case of *Vilson Particle Boad Industries Ltd.*, where in turn reliance is placed on the decisions of the Hon.ble Supreme Court in the *Sahara India (Firm) Vs CIT and another* (2008) 300 ITR 403 (SC) and in the case of *Rajesh Kumar and Others Vs DCIT* (2006) 287 ITR 91 (SC) and treating the assessment orders are bad in law though the facts are distinguishable and not squarely applicable to the facts of the assessee’s case?”

4. The appellant prays that the order of the CIT(A) may be vacated on the issue and that of the AO be restored.”

2. Brief facts of the case are that the assessment order under section 143(3) r.w.s 153A(b) of the Act was passed on 12.08.2008 for assessment year 2005-06 by the Assessing Officer. In this case there was a search under section 132(1) of the Act on 20.07.2005. A notice under section 153A of the Act was served upon the assessee. The assessee filed Return in response to notice under section 153A, on 15.02.2007 declaring total loss of Rs.18,04,496/-. Due to the complexity of the accounts and voluminous nature of the seized documents, The AO submitted a proposal to the Commissioner of Income Tax-Central, Pune for conducting special audit under section 142(2A) of the Act in the case of the assessee. The Commissioner of Income Tax-Central, Pune approved the proposal and appointed Special Auditor. The Special Auditor submitted his report on 13.06.2018. Taking into consideration the seized documents and report of the special auditor under section 142(2A), the AO arrived at total income of Rs.4,71,15,700/-.

3. Aggrieved by the order of the AO, the assessee filed appeal before the Id.CIT(A). The Id.CIT(A), Pune passed a common order for A.Y. 2004-05, 2005-06 & 2006-07 on 29.03.2019. The Id.CIT(A) allowed the appeal of the assessee on technical ground that the AO had not allowed an opportunity of being heard before

referring the case for Special Audit under section 142(2A) of the Act.

The ld.CIT(A) has not discussed the merits of the additions.

4. Aggrieved by the order of the ld.CIT(A), the Revenue has filed appeal before this Tribunal. The ld.Departmental Representative(ld.DR) for the Revenue has submitted that in this case, opportunity of hearing was granted by the Commissioner of Income Tax, Central before referring the case for Special Audit under section 142(2A) of the Act, thus, principle of natural justice was followed. The ld.DR explained that the Hon'ble ITAT Pune in the case of Shri Rajendrasingh Yadav Vs. ITO in IT(SS)A No.84/PUN/2017 dated 10.05.2022, has decided the identical issue in favour of Revenue.

4.1. The ld.DR further explained that Shri Rajendrasingh Yadav is the trustee of the assessee trust and this entire group was searched on the same day. The ld.DR explained that the facts of the present case are identical to the facts of the case Shri Rajendrasingh Yadav(supra). Therefore, the ld.DR submitted that assessment is valid and ld.CIT(A)'s order may be set-aside.

5. We have heard the ld.DR for the Revenue and studied the case record. We find that the issue is covered by ITAT Pune's order in the case of Shri Rajendrasingh Yadav(supra), the ITAT has held that

the assessment order passed under section 143(3) r.w.s 153A is valid assessment. The relevant part of the ITAT Pune in para no.4 was held as under:

*“4. Heard ld. DR and perused the material available on record. We note that the assessee is an individual derives income from consultancy service in the education sector. A search was conducted on 20-07-2005 in the case of Yadav Group u/s. 132 of the Act. The assessee is a member of the said group. The assessee provides consultancy service under the name and style of “Siddhant Consultancy Services” in respect of professional education, besides also arranges admissions in different colleges, for which charges commission from prospective students. In response to the notice u/s. 153A of the Act, the assessee filed return of income declaring a total income of Rs.42,50,820/-. We note that the AO received special audit report in response to order of CIT(Central) u/s. 142(2A) of the Act. Before the CIT(A) a contention was raised, there was no opportunity for the assessee of being heard by the AO regarding invocation of special audit u/s. 142(2A) of the act and it was vehemently contended that the order passed by the AO is barred by limitation which was passed beyond the date stipulated as per Act. The CIT(A) discussed the said issue from Page Nos. 16 to 27 and held the assessment order passed by the AO is valid by rejecting the contention of assessee that it was barred by limitation. We note that there were no response from the assessee regarding the notice u/s. 142(1) of the Act which was issued on 20-08-2007 fixing the date of hearing on 04-09-2007. The AO forwarded a proposal for special audit to the CIT on 26-09-2007. The CIT issued show cause notice on 02-11-2007 and conducted hearing on 13-11-2007. There is no dispute by the assessee that he was not called for hearing in respect of AO’s proposal to get the accounts of the special audit of assessee. Having heard on 13-11- 2007, the*

*CIT ordered special audit u/s. 142(2A) of the Act on 22-11-2007. It is established from the record that there was a reasonable opportunity was provided by the AO and also CIT(A) in the impugned proceedings to the assessee in respect of proposal u/s. 142(2A) of the Act. We find that the assessee participated before the AO in respect of proposal for special audit and the order of CIT(A) for the same and raising a ground challenging the order passed by the AO without giving an opportunity which was confirmed by the CIT(A) is invalid, in our opinion, is contrary to the evidence on record. Therefore, ground Nos. 1 to 4 raised by the assessee challenging the validity of assessment passed u/s. 143(3) r.w.s. 153A of the Act are dismissed.”*

6. In the case under consideration, the AO had asked the assessee to produce the books of accounts, bills for examination, so that doubts are cleared. It was specifically explained by the AO to the AR, if assessee fails to clear the doubts, then the case will be referred for Special Audit. However, the assessee failed to produce the supporting documents. Then, the AO submitted proposal to Id.CIT(Central) for Special Audit. Thus, the AO had given an opportunity.

6.1 Also, it is an admitted fact by the assessee, that Id.CIT(Central) had given opportunity to the assessee before Special Audit. Therefore, facts of the case under consideration are identical to the facts of the case of Rajendrasingh Yadav Vs. ITO(supra), hence, we respectfully follow the ITAT Pune Bench decision in the case of Shri Rajendrasingh Yadav(supra). Therefore, we hold that the assessment

order passed under section 143(3) r.w.s 153A of the Act is legally valid. Therefore, grounds of appeal raised by the Revenue are allowed. However, since the Id.CIT(A) has not decided the others grounds of the assessee which were regarding merits of the additions, we direct the Id.CIT(A) to decide the other grounds of the assessee regarding merits of the additions after giving opportunity of being heard to the assessee.

7. In the result, appeal of the Revenue is allowed.

**ITA No.930/PUN/2019 for A.Y. 2006-07:**

8. As we have noted above that the Revenue has raised identical ground of appeal and the facts of this appeal under consideration are almost identical to the facts for the **A.Y. 2005-06**, therefore, our decision in **ITA No.929/PUN/2019** will apply *mutatis-mutandis* to the appeal number in **ITA No.930/PUN/2019 for A.Y. 2006-07**. Accordingly, grounds of appeal raised by the Revenue are allowed.

9. In the result, both the appeals of the Revenue are allowed.

Order pronounced in the open Court on 28th July, 2022.

Sd/-  
**(PARTHA SARATHI CHAUDHURY)**  
**JUDICIAL MEMBER**

Sd/-  
**(DR. DIPAK P. RIPOTE)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 28<sup>th</sup> July, 2022/ SGR\*

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.