

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

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA Nos.299 to 305/Lkw/2020  
Assessment Year:2010-11 to 2016-17

M/s Cityon Nano Technology Private Limited, 15/33, Ram Asrey Nagar, Govind Nagar, Kanpur-208006,U.P. PAN:AADCC6583G	v.	The Deputy Commissioner of Income-tax, Central Circle-1, Kanpur-208002,U.P.
(Appellant)		(Respondent)

ITA Nos.306 to 312/Lkw/2020  
Assessment Year:2010-11 to 2016-17

M/s Cityon Systems (India) Ltd., 215, Delhi Chambers, Delhi Gate, New Delhi-110002. PAN:AACCC3822B	v.	The Deputy Commissioner of Income-tax, Central Circle-1, Kanpur-208002,U.P.
(Appellant)		(Respondent)

ITA Nos.313 to 319/Lkw/2020  
Assessment Year:2010-11 to 2016-17

M/s Cityon Infrastructure Private Limited, Flat No. 3, 2A/377A(2), Zoo View Apartment, Azad Nagar, Kanpur-208002,U.P. PAN:AADCC6582H	v.	The Deputy Commissioner of Income-tax, Central Circle-1, Kanpur-208002,U.P.
(Appellant)		(Respondent)

Appellant by	Shri Anoop Srivastava with Adjournment Application on behalf of the assessee
Respondent by	Smt. Sheela Chopra, CIT, D.R.
Date of hearing	20/10/2022
Date of pronouncement	20 /10/2022

## **ORDER**

### **PER Bench**

These 21 appeals are filed by three different assessee's namely Cityon Nano Technology Private Limited, Cityon Systems (India) Ltd. and Cityon Infrastructure Private Limited , for seven assessment years from assessment year's 2010-11 to 2016-17. As in all these twenty one appeals common questions/issues are involved , and hence all these 21 appeals were heard together and are disposed off by this common order. We will take I.T.A. No.299/Lkw/2020 filed by assessee namely Cityon Nano Technology Private Limited for assessment year 2010-11 as lead appeal , and our decision in I.T.A. No.299/Lkw/2020 shall apply mutatis mutandis to all the other twenty appeals.

2.The grounds of appeal raised by assessee in memo of appeal filed with Income Tax Appellate Tribunal, Lucknow , U.P. (hereinafter called "the tribunal") in I.T.A. No.299/Lkw/2020 for assessment year 2010-11 , reads as under:

- "1. *The CIT(A) has disregarded the principal of natural justice by passing the order ex-parte, without giving the appellant a reasonable opportunity to represent their case.*
2. *The CIT(A) failed to acknowledge that the AO passed the penalty order without giving proper opportunity to the assessee hence, denying the principal of natural justice.*
3. *The CIT(A) failed to consider the fact that the AO without regarding the provisions of section 275 of the Act, 1961 and imposing penalty in the case of the appellant before the disposal the quantum appeal already pending before the first*

*appellate authority despite the appellant reminding them of the same.*

4. *The CIT(A) failed to acknowledge the fact that the AO had no jurisdiction over the appellant to pass the penalty order.*
5. *The Assessing Officer after receiving the approval of CIT - Central, Kanpur for special audit u/s 142(2A), failed to pass an order directing to the appellant to get its accounts audited, hence, seized to extend their time limitation to pass an order and lost their jurisdiction on 31.12.2017, and the CIT(A) failed to uphold the fact and passed the order ex-parte.*
6. *That without prejudice the order passed by the CIT(A) is completely unwarranted and against the principals of natural justice by not considering the adjournment applications filed by the appellant amid the time of covid pandemic.*
7. *The CIT(A) failed to uphold the fact that the AO was not having any jurisdiction over the appellant at the time of passing the penalty order as well as the assessment order. The jurisdiction of the AO expired on 31.12.2017 in the absence of any order u/s 142(2A).*
8. *That the CIT(A) failed to acknowledge the fact that since the special auditor appointed, failed to submit any audit report either to the appellant or to the AO within the stipulated time, the extension of limitation assumed by the AO seizes back. The assessment as well as penalty order being completely without jurisdiction is void and shall be quashed.*
9. *That the appellant did not non-comply to any notice u/s 142(1) or the directions u/s 142(2A). The appellant failed to provide the special auditor with the books of account because they were already impounded by the AO vide order dated 15.12.2017. Hence, the penalty of Rs. 10,000/- is unwarranted, against the facts of the case and shall be quashed.*
10. *That since the lack of jurisdiction of the AO, makes the assessment order void-ab-initio, this was also a ground for appeal taken by the appellant before the CIT(A) for the quantum appeal. Hence, since the quantum appeal was pending before the CIT(A), the AO acted unlawfully, in contradiction to section 275 of the Act, 1961, by passing the*

*penalty order and imposing a penalty of Rs. 10,000/- before the disposal of the appeal of the relevant assessment order."*

3. The appeal in I.T.A. No.299/Lkw/2020 for assessment year 2010-11 has arisen from common appellate order dated 6<sup>th</sup> August, 2020 passed by Id. CIT(A)-4, Kanpur for assessment years 2010-11 to 2016-17, in Appeal No. CIT (A)IV/ KNP/ 10093, 10101, 10109, 10115, 10122, 10128, 10137 / 2019-20, which appeal in turn for assessment year 2010-11 has arisen from penalty order dated 27.03.2019 passed by Id. Assessing Officer u/s 271(1)(b) of the Income-tax Act, 1961(hereinafter called "the Act") imposing penalty of Rs. 10,000/- on the assessee.

4. The brief facts of the case are that a search & seizure operation u/s 132 of the 1961 Act was conducted by Revenue in the case of Rich Udyog Network Ltd. group of cases on 28/04/2015 . Simultaneously search & seizure operations u/s 132 of the 1961 Act were also carried out by Revenue at the residential and business premises of the assessee namely Cityon Nano Technology Pvt. Ltd., Kanpur. The cases were thereafter centralized by the Department .During the course of assessment proceedings. , the Assessing Officer observed that the accounts of the assessee were voluminous and complex , and therefore, he referred the cases of the assessee to Id. Pr. Commissioner of Income-tax (C), Kanpur for seeking approval for special audit. The Id. Pr. CIT gave opportunity to the assessee of being heard and passed an order dated 29<sup>th</sup> December, 2017 vide which approval for special audit was given by Id. PCIT(C), Kanpur , and M/s Rajiv Mehrotra and Associates, Kanpur were nominated as special auditor by Id. Pr. CIT,Kanpur. After obtaining approval of Id. Pr. CIT(C), Kanpur, the Assessing Officer directed the assessee to get its books of account audited by the special auditor and submit a report thereon within a period of 90 days. The special auditors issued several letters dated 08/01/2018,

20/01/2018, 13/02/2018, 23/02/2018, 26/03/2018, 16/05/2018 and 25/05/2018 to the assessee requesting them to provide the documents/information with regard to conducting of special audit and to co-operate in the audit proceedings , but no information/documents were provided by the assessee to the auditors. The period for getting special audit done was later extended by AO to 180 days , but still there was no compliance by the assessee. As is emanating from the penalty order dated 27/03/2019 passed by the Assessing Officer u/s 271(1)(b) of the 1961 Act , the assessee has filed Writ Petition before Hon'ble Allahabad High Court, Allahabad for quashing the order directing conducting of special audit and it was claimed before the AO that the matter was subjudice before Hon'ble Allahabad High Court. The Assessing Officer has observed in its penalty order that there was no stay order granted by Hon'ble High Court, and Writ Petitions were at the stage of admission only as is evident from the Writ Petition of Hon'ble High Court's official website. The assessee had also raised objection during the proceedings before the AO that there were no valid direction given to it by the Assessing Officer to get the accounts audited by the special auditor. The Assessing Officer has refuted such charges levied by the assessee as per para 10 of the penalty order , and the Assessing Officer concluded that the assessee has not followed the directions to get the special audit done by the Auditors appointed for the said purposes, and in the absence of audit report and non co-operation of the assessee, the Assessing Officer passed assessment order u/s 144 of the Act. Since, the assessee did not co-operated and did not complied with the directions to get the special audit done u/s 142(2A) , it led to levy of penalty of Rs. 10,000/- against the assessee by the AO u/s 271(1)(b) of the 1961 Act, vide penalty order dated 27.03.2019. The assessee challenged the said penalty of Rs. 10,000/- levied by the Assessing Officer u/s 271(1)(b) of the 1961 Act vide order dated 27/03/2019, by filing first appeal before Id.

CIT(A) . The assessee had raised several issues in the statements of facts and grounds of appeal filed by the assessee before Id. CIT(A). The Id. CIT(A) issued notices electronically to the assessee for hearings . However, there was no compliance by the assessee before Id. CIT(A) as the assessee did not submit any reply before Id. CIT(A) although adjournment applications were filed by the assessee , which ultimately led to passing of ex-parte appellate order dated 06.08.2020 by Id. CIT(A) confirming the penalty order passed by the Assessing Officer and the appeal of the assessee stood dismissed by Id. CIT(A).

5. Now , the assessee has come in appeal before the Tribunal and has raised several grounds of appeal in its appeal filed before the Tribunal. When this appeal came up for hearing before Division Bench, on 20<sup>th</sup> October,2022, none appeared on behalf of the assessee although an adjournment application is filed by the assessee on the ground that the counsel is out of station, and one Mr.Anoop Srivastava was authorized to be present before the Bench for seeking adjournment . It is observed that when this appeal came up for hearing before this Bench on 31<sup>st</sup> August, 2022, similar adjournment application verbatim was presented before the Bench on the same ground that the counsel is out of station and the Bench was pleased to adjourn the hearing on the basis of aforesaid written request made by the assessee and the matter was fixed for hearing on 20.10.2020. As referred above on 20.10.2020 , the aforesaid adjournment application verbatim is moved . It is observed from the record that no power of attorney or Vakalatnama has been filed by the assessee in favour of any counsel , although it is claimed that counsel is out of station. Further it is observed that the notices were sent by Registry through RPAD which were served on the assessee as none of the notices have been returned back by the postal authorities. The Bench decided to adjudicate this appeal on

merits after hearing learned CIT, D.R. and based upon the material available on record.

6. The Learned CIT, D.R. opened arguments before the Bench that this appeal is filed by the assessee against the penalty order passed by the Assessing Officer u/s 271(1)(b) of the Act , levying penalty of Rs.10,000/- for non compliance with the directions issued u/s 142(2A) of the Act to the assessee for getting the accounts audited by special auditor. The order of the penalty was later confirmed by Id. CIT(A). Our attention was drawn to the assessment order as well as to the appellate order passed by Id. CIT(A). It was submitted by Id. CIT-DR that the assessee has filed Writ Petition before Hon'ble Allahabad High Court for quashing of the order directing for special audit, but no stay was granted by Hon'ble High Court. So far as quantum appeals are concerned, it was submitted by learned CIT-D.R. that she is not aware about the present status of quantum appeals filed by the assessee before Id. CIT(A), although it is emanating from the grounds of appeal that first appeal filed by the assessee against quantum assessment was pending with Id. CIT(A) when the penalty order was passed by AO.

7. We have considered the contentions of learned CIT-D.R. and perused the materials available on record. We have observed that a search & seizure operation u/s 132 of the 1961 Act was conducted by Revenue in the case of Rich Udyog Network Ltd. group of cases, on 28/04/2015 . Simultaneously search & seizure operations u/s 132 of the 1961 Act were also carried out by Revenue at the residential and business premises of the assessee namely Cityon Nano Technology Pvt. Ltd., Kanpur. The cases were thereafter centralized by the Department .During the course of assessment proceedings. , the Assessing Officer observed that the accounts of the assessee were voluminous and complex therefore, he referred the cases of the assessee to Id. Pr. Commissioner of Income-tax (C), Kanpur for seeking

approval for special audit. The Id. Pr. CIT gave opportunity to the assessee of being heard and passed an order dated 29<sup>th</sup> December, 2017 vide which approval for special audit was given by Id. PCIT(C), Kanpur, and M/s Rajiv Mehrotra and Associates, Kanpur were nominated as special auditor by Id. Pr. CIT, Kanpur. After obtaining the approval of Id. Pr. CIT(C), Kanpur, the Assessing Officer directed the assessee to get its books of account audited by the special auditor and submit a report thereon within a period of 90 days. The special auditors issued several letters dated 08/01/2018, 20/01/2018, 13/02/2018, 23/02/2018, 26/03/2018, 16/05/2018 and 25/05/2018 to the assessee requesting them to provide the documents/information with regard to conducting of special audit and to cooperate in the audit proceedings, but no information/documents were provided by the assessee to the auditors. The time was further extended by AO to 180 days for completion of special audit u/s 142(2A), but even then there was no compliance on the part of the assessee. As is emanating from the penalty order dated 27/03/2019 passed by the Assessing Officer u/s 271(1)(b) of the 1961 Act, the assessee has filed Writ Petition before Hon'ble Allahabad High Court, Allahabad for quashing the order directing conducting of special audit, and it was claimed before the AO that the matter was subjudice before Hon'ble Allahabad High Court. The Assessing Officer levied penalty of Rs.10,000/- under section 271(1)(b) of the Act, as the assessee failed to comply with the directions issued u/s 142(2A) for getting special audit conducted, and this penalty order was later on confirmed by Id. CIT(A). The assessee did not enter appearance before Id. CIT(A) although adjournment applications were filed, and virtually an exparte appellate order was passed by Id. CIT(A) as the assessee did not submitted any reply before Id. CIT(A). We have observed that Id. CIT(A) passed the appellate order on 6<sup>th</sup> August 2020, when there was COVID-19 pandemic and there were several restrictions and lockdown imposed by

State and Central Government, although it is also observed that Id. CIT(A) sent notices to assessee electronically . We have observed that the assessee has raised several grounds of appeal before Id. CIT(A) and has also filed detailed statement of fact before Id. CIT(A). The assessee has also claimed that the assessee has challenged the direction issued by the Assessing Officer to get the special audit done by filing a Writ Petition before Hon'ble Allahabad High Court ,and said petition was pending before Hon'ble High Court , when the penalty order was passed by AO on 27/03/2019 , as well as when the appeal was filed before Id. CIT(A). It is also observed that the assessee has also stated that its books of accounts were all impounded by the department , and hence the assessee could not make compliances. It is also observed that Id. CIT(A) has not dealt with all the issues raised by the assessee in the statement of facts and grounds of appeal, filed by assessee before Id. CIT(A). It is further observed that fate of first appeal filed by the assessee before Id. CIT(A) against quantum assessment has also not been dealt with by Id. CIT(A). Thus, keeping in view all the facts and circumstances of the case as discussed above, we are of the considered view that it is fit case wherein the matter can be remitted back to the file of Id. CIT(A) for fresh adjudication denovo by give one more opportunity to the assessee to present its case before Id. CIT(A) , and Id. CIT(A) shall decide the matter afresh on merits in accordance with law after giving proper and adequate opportunity of being heard to the assessee. In case the assessee do not cooperate in set aside proceedings before Id. CIT(A), then Id. CIT(A) shall be free to adjudicate the appeal on merits in accordance with law based upon the material on record. Thus, in nut-shell the appeal filed by assessee in ITA No. 299/Lkw/2020 for ay: 2010-11 is allowed for statistical purposes. We order accordingly.

8.In the result , appeal in ITA no. 299/Lkw/2020 for ay: 2010-11 filed by the assessee is allowed for statistical purposes.We order accordingly.

9. Since in all the remaining six appeals filed by the assessee for ay's: 2011-12 to 2016-17 in ITA no. 300-305/Lkw/2020, common question/issue is involved, our decision in ITA no. 299/Lkw/2020 shall mutatis mutandis apply to these six appeals in ITA No. 300-305/Lkw/2020 . Thus, all the six appeals in ITA no. 300-305/Lkw/2020 for ay's: 2011-12 to 2016-17 are allowed for statistical purposes.We order accordingly.

10.In the result , all the seven appeal's in ITA no. 299-305/Lkw/2020 for ay's: 2010-11 to 2016-17 filed by the assessee are allowed for statistical purposes.We order accordingly.

**Cityon Systems (India) Limited-Appeal No.s ITA 306-312/Lkw/2020 for ay's 2010-11 to 2016-17**

11 In all these seven appeals filed by the assessee namely Cityon Systems (India) Limited for ay's: 2010-11 to 2016-17 in ITA no. 306-312/Lkw/2020, common question/issue is involved, our decision in ITA no. 299/Lkw/2020 shall mutatis mutandis apply to these seven appeals in ITA No. 306-312/Lkw/2020 . Thus, all the seven appeals in ITA no. 306-312/Lkw/2020 for ay's: 2010-11 to 2016-17 are allowed for statistical purposes.We order accordingly.

12. In the result , all the seven appeal's in ITA no. 306-312/Lkw/2020 for ay's: 2010-11 to 2016-17 filed by the assessee are allowed for statistical purposes.We order accordingly.

**Cityon Infrastructure Private Limited-Appeal No.s ITA 313-319/Lkw/2020 for ay's 2010-11 to 2016-17**

13 In all these seven appeals filed by the assessee namely Cityon Infrastructure Private Limited for ay's: 2010-11 to 2016-17 in ITA no. 313-

319/Lkw/2020, common question/issue is involved, our decision in ITA no. 299/Lkw/2020 shall mutatis mutandis apply to these seven appeals in ITA No. 313-319/Lkw/2020 . Thus, all the seven appeals in ITA no. 313-319/Lkw/2020 for ay's: 2010-11 to 2016-17 are allowed for statistical purposes.We order accordingly.

14. In the result , all the seven appeal's in ITA no. 313-319/Lkw/2020 for ay's: 2010-11 to 2016-17 filed by the assessee are allowed for statistical purposes.We order accordingly.

15. In the result , all the twenty one appeal's in ITA no. 299-319/Lkw/2020 for ay's: 2010-11 to 2016-17 filed by three different assessee's are allowed for statistical purposes.We order accordingly.

(Order pronounced in open court on 20/10/2022 at Lucknow, U.P. on the conclusion of hearing)

**Sd/.**  
**(VIJAY PAL RAO)**  
**Judicial Member**

**Sd/.**  
**(RAMIT KOCHAR)**  
**Accountant Member**

Dated: 20/10/2022  
\*Singh

**Copy of the order forwarded to :**

1. Appellant: The Cityon Nano Technology Private Limited, Kanpur (2) Cityon Systems (India) Limited, New Delhi & (3) Cityon Infrastructre Private Limited , Kanpur
2. The Respondent : The Deputy Commissioner of Income-tax, Central Circle-1, Kanpur
3. Concerned Id. CIT, Kanpur
4. The Guard File
5. The Id. CIT-D.R., I.T.A.T., Lucknow
6. The Id. CIT(A), Kanpur

Asstt. Registrar