

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'H', NEW DELHI**

**Before Sh. Kul Bharat, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 429/Del/2021 : Asstt. Year : 2014-15**

DCIT, Circle-9(1), New Delhi-110002	Vs.	Patanjali Ayurved Ltd., 19, Rajendra Park, D-26, Kapshera Pushpanjali, New Delhi-110060
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAAPP1907F</b>		

**CO No. 51/Del/2023 : Asstt. Year : 2014-15**

Patanjali Ayurved Ltd., 19, Rajendra Park, D-26, Kapshera Pushpanjali, New Delhi-110060	Vs.	DCIT, Circle-9(1), New Delhi-110002
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAAPP1907F</b>		

**Assessee by : Sh. S. S. Nagar, CA**

**Revenue by : Ms. Sapna Bhatia, CIT-DR**

**Date of Hearing: 12.03.2024**

**Date of Pronouncement: 07.06.2024**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of National Faceless Appeal Centre (NFAC), Delhi dated 11.08.2023.

2. Following grounds have been raised by the Revenue:

*"i. Whether on the facts and in law, Ld. CIT(A) has erred in coming to a conclusion that order for Special Audit u/s 142(2A) was passed just before the time barring period and hence it is simply a tool for extension of time whereas the Special Audit was ordered well within the time frame as prescribed in the Act, hence it has no infirmity?"*

*ii. "Whether on the facts and in law, Ld.CIT(A) has erred in coming to a conclusion that order for Special Audit u/s 142(2A) was passed just to gain a time by relying on the judgment of in the case of Unitech Limited vs. Addl. CIT ITA No. 5180 of 2013, whereas the factual matrix in the present case are distinguishable and Ld. CIT(A) erred in identifying the ratio/principles laid down by the Hon'ble ITAT in the case of Unitech Limited?"*

*iii. "Whether on the facts and in law, Ld.CIT(A) has erred in considering only the technical issue leaving other substantial issues on which addition has been made?"*

3. In CO No. 51/Del/2023, the assessee has raised the following grounds:

*"1. That on the facts and circumstances of the case, the Ld. CIT-(A) has passed the order as per the provision of the Act and hence the appeal filed by the department is not maintainable.*

*1.1 That on the facts and circumstances of the case, the assessment order passed u/s 143(3) r.w.s 144C(3) of the Act is time barred by limitation and is void ab-initio."*

NOT PRESSED

4. The assessee is a Limited company, engaged in trading and manufacturing of Fast-Moving Consumer Goods (FMCG). The assessee had filed its return of income on 28.11.2014 declaring total income at Rs. 83,53,21,350/-. Subsequently, a revised return was filed on 27.11.2015 declaring total income at Rs.138,49,25,610/-. The AO having reasonable doubt about the correctness of accounts maintained by the assessee issued a show cause notice dated 27.11.2017 to the assessee to explain as to why special Audit u/s. 142(2A) of the Act should not be conducted, keeping in view the nature and complexity of accounts. After considering the submissions of the assessee and after obtaining approval from the Ld. Commissioner of Income

Tax vide letter dated 22.12.2017, the AO directed the assessee vide letter dated 26.12.2017 to get its account audited as required u/s 142(2A) of the Act. The assessee after getting its accounts audited u/s 142(2A) of the Act, filed the copy of Special Audit Report on 02.07.2018 in terms of section 142(2C) of the Act. Thereafter the AO completed the assessment u/s 143(3) r.w.s. 144C of the Act on 24.08.2018 assessing the total income of the assessee at Rs. 208,31,63,890/-.

5. Core issue adjudicated by the Id. CIT(A) was,

**“Whether the Pr. CIT has exceeded his jurisdiction in granting approval for the extension of the time limit for conducting special audit or not?”**

6. Before the Id. CIT(A), the Id. AR of the assessee contended that the Pr. CIT has exceeded his jurisdiction in granting approval for the extension of the time limit for conducting special audit. In support of his contention, the Id. AR has relied upon the decision of the jurisdictional ITAT in the case of ACIT vs. Soul Space Projects Ltd. in ITA No. 193/Del/2015, order dated 03.06.2020 as well as on the decision in the case of the Hon'ble Delhi High Court in the case of CIT vs. SPL's Siddhartha Ltd. [(2012) 345 ITR 223 (Del.)].

7. The provisions of Section 142(2A) which reads as under:

*“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 t correctness of the accounts, multiplicity of transactions in the accounts or specialized 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 Commissioner 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]."*

8. It was argued by the Id. AR that the statute demands, the satisfaction to be framed by the AO and approved by the Commissioner. It is further seen that in terms of Section 142(2C) of the Act, it is the AO who has the jurisdiction/power to extend the period of special audit. The provisions of Section 142(2C) of the Act reads as under:

*"Every report under sub-section (2A) shall be furnished by the assessee to the Assessing Officer within such period as may be specified by the Assessing Officer:*

*Provided that the [Assessing] Officer may, suo motu, or on an application made in this behalf by the assessee and for any good and sufficient reason, extend the said period by such further period or periods as he thinks fit; so, however, that the aggregate of the period originally fixed and the period or periods so extended shall not, in any case, exceed one hundred and eighty days from the date on which the direction under sub-section (2A) is received by the assessee."*

9. It was submitted by the Id. AR before the Id. CIT(A), that the special auditor has been granted extension vide letter dated 27.03.2018 after getting approval and direction from the Pr. CIT. **It is the contention of the Id. AR that the statute demands that the extension of period of Special Audit has to be granted by the Assessing Officer only.** However, in the present case, the special auditor has been granted extension vide letter dated 27.03.2018 after getting approval and direction from Pr. CIT which is not in terms of Sec. 142(2C) of the Act as has been reproduced above.

10. After going through the arguments mentioned as above, the Id. CIT(A) held that the powers and the jurisdiction of the various authorities to implement the Income Tax Act stands clearly defined in the statute. The Hon'ble Apex Court in the case of Anirudh Sinhji Karan Sinhji Jadeja vs. State of Gujarat [1995] 5 SSC 302 has held that if a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If discretion is exercised under the direction or in compliance with some higher authorities instruction, then it will be a case of failure to exercise discretion altogether.

11. The Hon'ble jurisdictional High Court of Delhi in the case of CIT vs. SPL'S Siddhartha Ltd. [2012] 17 taxmann.com 138 (Delhi) again reiterated the above and held as under:

*"7. Section 116 of the Act also defines the Income Tax Authorities as different and distinct Authorities. Such different and distinct authorities have to exercise their powers in accordance with law as per the powers given to them in specified circumstances. If powers conferred on a particular authority are arrogated by other authority*

*without mandate of law, it will create chaos in the administration of law and hierarchy of administration will mean nothing. Satisfaction of one authority cannot be substituted by the satisfaction of the other authority. It is trite that when a statute requires, a thing to be done in a certain manner, it shall be done in that manner alone and the Court would not expect its being done in some other manner. It was so held in the following decisions:*

- (i) CIT Vs. Naveen Khanna (dated 18.11.2009 in ITA No.21/2009 (DHC)*
- (ii) State of Bihar Vs. J.A.C. Saldanna & Ors. AIR (1980) SC 326*
- (iii) State of Gujarat Vs. Shantilal Mangaldas, AIR (1969) SCN 634.*

*8. Thus, if authority is given expressly by affirmative words upon a defined condition, the expression of that condition excludes the doing of the Act authorized under other circumstances than those as defined. It is also established principle of law that if a particular authority has been designated to record his/her satisfaction on any particular issue, then it is that authority alone who should apply his/her independent mind to record his/her satisfaction and further mandatory condition is that the satisfaction recorded should be "independent" and not "borrowed" or "dictated" satisfaction. Law in this regard is now well-settled. In Sheo Narain Jaiswal & Ors. Vs. ITO, 176 ITR 35 (Pat.), it was held:*

*"Where the Assessing Officer does not himself exercise his jurisdiction under Section 147 but merely acts at the behest of any superior authority, it must be held that assumption of jurisdiction was bad for non-satisfaction of the condition precedent."*

12. The Id. CIT(A) held that an identical issue had come up for adjudication before the jurisdictional ITAT recently in the case of ACIT vs. Soul Space Projects Ltd. in ITA No. 193/Del/2015, order dated 03.06.2020 wherein the ITAT did not accept the submissions by the revenue that since on substantial basis the requirement of proviso has been met, just on account of only administrative approval of CIT for sanctioning the extension should not vitiate the extension of time for special audit. The ITAT also did not accept the argument that CIT is the approving authority for special audit u/s 142(2A) and therefore his involvement for extension of time as per proviso is inherent. The ITAT accordingly held as under:

*"16. The Sec. 142 (2A) provides that the directions for special audit shall be given by the Assessing officer, with the previous approval of Chief Commissioner or Commissioner. In this case, there is no dispute that these directions have been given. Thus, the legislature clearly intended that initial direction shall be with the approval and after examination of the subject matter by the higher after prior approval of CIT, Central - II, New Delhi. Thereafter, proviso below Sec. 142 (2C) provides for the procedure for giving extension for completing the special audit task. It clearly provides that the Assessing Officer shall extend the said time period if the conditions as mentioned in the said proviso stands satisfied. Thus, while initial direction is to be given with the approval of CCIT / CIT, however, for extension, it is only the Assessing Officer who has to take a decision for extension. It is to be specifically pointed out that in Sec. 142 (2A) law mandates the prior approval of CCIT/ CIT, while in the proviso below Sec. 142 (2C), while to grant extension, the sole power is vested with the Assessing Officer. The statute u/s 142(2A) provides for special audit with the previous approval of the CIT is intended with an objective that the subject matter stands examined by the higher and more experienced officers so that it may not bring unnecessary work and equity to the assessed. Once the issue u/s 142(2A) stands examined by the higher*

*authorities, thereafter, for the issue of extension u/s 142(2C), there is no need for the higher authorities to be involved and the law provided the circumstances, on existence of which, this decision has been left over to be taken by the concerned Assessing Officer.*

17. *In the present case, the extension has been given by CIT and not by the Assessing Officer, vide letter dtd. 13.04.2010, as under:-*

*"In this connection you are hereby informed that the Commissioner of Income Tax (Central)-II, New Delhi vide his office letter F.No. CIT/(C)-II/10-11/24 dated 12/04/2010 has granted extension of 60 days to the special auditors M/s. Sanjay Satpal & Associates, Chartered Accountants, for furnishing the audit report u/s. 142 (2A) in your case."*

18. *We have carefully gone through the entire events and the verbatim of the letters. We also tried to dwell whether the intention of the Assessing Officer is to "extend the period" or conveying the "approval of the CIT". While it may be an administrative phenomenon to intimate, inform the CIT about the fact of the special audit party appointed seeking extension, but statutorily that power is vested with the Assessing Officer. On going through the established judgment, it cannot be disputed that the statutory powers vested with one specified authority cannot be exercised by another authority unless and until the statute provides for the same. And we find that the extension has not been given by the Assessing Officer.*

19. *The powers and the jurisdiction of the various authorities to implement the Income Tax Act stands clearly defined in the statute. For example, the power to approve the accounts audited u/s 142(2A) lies with CIT/PCIT/CCIT or PCCIT. The powers u/s 144A are to be exercised by the Joint Commissioner or Additional Commissioner. The powers u/s 251 are specific to the Commissioner (Appeals). Similarly, the powers u/s 263 and 264 are to be exercised by the PCIT/CIT. Further, in exercise of the powers conferred under clause (a) of sub-section (2) of section 119 of Income-tax Act, 1961, Central Board of Direct Taxes, may direct that the Chief Commissioner of Income-tax and Director General of Income-tax may*

*reduce or waive interest charged under section 234A or section 234B. Further to mention, while levy of the penalty u/s 271AAB is the power of the Assessing Officer, the provisions u/s 274(2) mandates that the prior approval of the JCIT is required before levy of such penalty. Thus, we find that the statute has accorded implementation of the various provisions to specified authorities which cannot be interchanged.*

20. *A power which has been given to a specified authority has to be discharged only by him. Substitution of that officer/authority by any other officer, may be of higher rank, cannot validate the said order/ action. The extension could have been valid only if it had been given by the Assessing Officer after due application of mind and after examining the existence of circumstances as provided in proviso below Sec. 142 (2C), since, it has to be given only by competent authority. In this case, the extension has not been given by the Assessing Officer but by the CIT, Central-II and the Assessing Officer has only conveyed the approval, therefore, we hold that the extension given by the CIT, Central-II is beyond the powers vested as per the statute and accordingly the assessment completed after the due date is held to be void ab initio."*

13. The Id. CIT(A) held that the facts of the present appeal are identical to that of Soul Space Projects Ltd. In the present case too, the AO vide his letter dated 27.03.2018 informed the assessee as under:

*"In this regard, it is submitted and intimated that the Ld. Pr. CIT-7, New Delhi has accorded approval for extension of period by 90 days for special audit u/s 142(2A) in the above mentioned case for AY 2014-15."*

14. The Id. CIT(A) wholly relied on the judgment of ITAT in the case of Soul Space Projects Ltd. (supra) wherein it was held that a power which has been given to a specified authority has to be discharged only by him. Substitution of that officer/authority by any other officer, may be of higher rank,

cannot validate the said order/ action. Thus, the Id. CIT(A) held that in terms of Section 142(2C) of the Act, the extension of time period for furnishing the Special Audit Report has to be specified by the AO and not by the CIT. The Id. CIT(A) held in the present case, it is clear from the letters dated 27.03.2018 addressed to the AO by the Addl. CIT and letter dated 27.03.2018 addressed by the AO to the assessee, that the approval for granting extension of the time limit for conducting special audit was sought from and granted by the Pr. CIT only. The AO has not extended the said time limit *suo-moto*. The Id. CIT(A) has also examined, the assessee's own case for AY 2012-13 wherein vide order dated 21.09.2020 in Appeal No. CIT(A), Delhi -7/10162/2019-20 on identical facts & circumstances, it was held that the order of the AO as void ab-initio since due procedure as mandated under the provisions of Sec. 142(2A) & Sec. 142(2C) has not been followed.

15. Before us, the Id. DR supported the order of the Assessing Officer and the Id. AR supported the order of the Id. CIT(A).

16. Heard the arguments of both the parties and perused the material available on record.

17. We find that the Id. CIT(A)'s decision was based on the order of the ITAT in the case of ACIT vs. Soul Space Projects Ltd. in ITA No. 193/Del/2015, order dated 03.06.2020. The said order has been affirmed by the Hon'ble jurisdictional High Court in Pr. Commissioner Of Income Tax (Central) Vs. Soul Space Projects Ltd vide order dated 11 December, 2023 while the

order of the Id. CIT(A) was dated 11.08.2023 which was relied upon the order of the ITAT.

18. Therefore, considering the totality of facts & circumstances of the case, judicial position, the order of the AO and the procedure adopted for getting the special audit done u/s 142(2A) of the Act suffers from multiple infirmities. Accordingly, in view of the discussions above, the order of the Assessing Officer is held to be *void ab-initio* and the order of the Id. CIT(A) is hereby affirmed.

19. Since, the appeal of the Revenue has been dismissed, the Cross Objection filed by the assessee is dismissed as infructuous.

20. In the result, the appeal of the Revenue is dismissed and the Cross Objection of the assessee is dismissed.

Order Pronounced in the Open Court on 07/06/2024.

Sd/-

**(Kul Bharat)**  
**Judicial Member**

**Dated: 07/06/2024**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**