

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : F : NEW DELHI

BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITAs No.1988 to 1990/Del/2020
Assessment Years: 2010-11 to 2012-13

DCIT,
Circle-19(1),
New Delhi.

Vs Patanjali Ayurved Ltd.,
19, Rajendra Park,
D-26, Kapashera Pushpanjali,
Delhi – 110 060.

PAN: AAACP4424C

CO Nos.84 & 85/Del/2023
(ITA No.1989 & 1990/Del/2020)
Assessment Years: 2011-12 & 2012-13

Patanjali Ayurved Ltd.,
19, Rajendra Park,
D-26, Kapashera Pushpanjali,
Delhi – 110 060.

Vs. DCIT,
Circle-19(1),
New Delhi

PAN: AAACP4424C

(Appellant)

(Respondent)

Assessee by : Shri S.S. Nagar, Advocate &
Shri Gaurav Sachdeva, CA
Revenue by : Shri Javed Akhtar, CIT-DR
Date of Hearing : 02.12.2024
Date of Pronouncement : 27.12.2024

ORDER

PER ANUBHAV SHARMA, JM:

These appeals are preferred by the assessee against the orders dated 23.09.2020 of the Commissioner of Income-tax (Appeals) Delhi-7 (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeals No.

CIT(A), Delhi-7/10204/2019-20, CIT(A), Delhi-7/10164/2019-20 CIT(A) and Delhi-7/10162/2019-20 arising out of the appeal before it against the order dated 24.06.2019, 25.05.2019 and 20.05.2019 passed u/ss 143(3) r.w.s. 145, 143(3) and 143(3) of the Income Tax Act, 1961, respectively, (hereinafter referred to as 'the Act') by the ACIT, Circle-19(2), New Delhi (hereinafter referred to as the Ld. AO). The assessee has filed Cross Objections for AY 2011-12 and 2012-13. The appeals involve common question of law and facts therefore are taken up together for hearing and disposal. As for convenience the facts of AY 2010-11 shall be referred.

2. The brief facts of the case are that the appellant is a Limited company, engaged in trading and manufacturing of Fast Moving Consumer Goods (FMCG). The appellant had filed its return of income on 15-10-2010 declaring total income at Rs. 28,57,69,730/-. Subsequently, a revised return was filed on 09-07-2011. The case of the appellant was selected for scrutiny assessment. During the course of assessment proceedings, ld. AO observed that as considerable details/evidences were not forthcoming and as the appellant was failing to file most of the details/evidences despite availing several opportunities, the AO having reasonable doubt about the correctness of accounts maintained by the appellant issued a show cause notice dated 13-03-2013 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-

consideration of the submissions of the appellant and after obtaining approval from' the Ld. Commissioner of Income Tax vide letter dated 28.03.2013, the AO directed the appellant vide letter dated 30.03.2013 to get its account audited as required u/s 142(2A) of the Act.

3. Being aggrieved with such order of Special Audit passed u/s 142(2A) of the Act, the appellant preferred a Writ Petition before the Hon'ble Delhi High Court vide WP(C) No. 2591/2013 challenging the order for special audit and the Hon'ble Delhi High Court had granted stay on the operation of the order passed u/s 142(2A) of the Act. Finally, the Writ petition- of the assessee was dismissed by the Hon'ble High Court on 06/12/2018. Accordingly, the Special Auditor completed the special Audit as per order u/s. 142(2A) as the interim order of stay had been vacated by the Hon'ble High Court. After getting the Special Audit completed, the assessee has filed the copy of Special Audit Report on 29/04/2019 in terms of section 142(2C) of the Act. Thereafter the Ld. AO completed the assessment u/s 143(3) r.w.s. 145(3) of the Act on 24-06-2019 assessing the total income of the assessee at Rs. 59,97,42,340/-, wherein the Ld. AO made various disallowances.

4. During course of appellate proceedings, before the ld. CIT(A), the assessee has filed written submissions which are summarized as under:

- i) That the reference to the Special Auditor was made at the very fog end of the assessment year just 1 day prior to expiry of limitation for

passing the assessment order and was done in order to gain time.

Reliance in this regard was placed on the decision of the jurisdictional ITAT in the case of Unitech Limited -vs.- Addl. CIT - ITA No. 5180 of 2013 (Order dated 08-04-2016).

- ii) That in terms of Section 142(2A), the satisfaction for reference to Special Audit has to be recorded by the AO (and nobody else) and approved by the CIT. It was submitted that in the present case the satisfaction has been recorded by the AO and the CIT as well and then approved by the CIT himself. Such a scenario is neither contemplated nor mandated under the statute.

Further it was submitted that in terms of Section 142(2C), 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. It was submitted that in the present case, the original period of furnishing the audit report has been specified by the CIT. Such a scenario is neither contemplated nor mandated under the statute. It is further submitted that the CIT has no role to play in terms of Section 142(2C) and has exceeded his jurisdiction in specifying the period in which the Audit Report has to be submitted. For both the proposition as mentioned above, the appellant has placed reliance on the decision of the jurisdictional ITAT in the case of ACIT -vs.- Soul Space Projects Ltd. - ITA No.193/Del/2015 (Order dated 03-06-2020).

(iii) That in terms of proviso of Sec.142(2C), the extension of further time period of furnishing the Special Audit Report u/s 142(2A) can be done by the Assessing Officer suo-motu or on an application made in this behalf by the assessee. It was submitted that in the present case, the extension of time period for furnishing the Special Audit Report u/s 142(2A) has been provided by the Assessing Officer on an application made by the Special Auditor in this regard. It is submitted that the extension has not been granted in terms of provisions of Sec. 142(2C) and therefore the extension so granted is beyond jurisdiction and Is time barred.

(iv) That in terms of proviso of Sec. 142(2C), the extension of further period by the Assessing Officer has to happen before the expiry of the original period as specified in the main section of 142(2C). It is submitted that In the present case, the initial period for furnishing the Audit Report was fixed for 90 days. The said period (after excluding the period during which audit was stayed by the Delhi High Court in terms of Explanation to Section 153 expired on 21-03-2019. The extension of another 30 days was granted by the Assessing Officer on 27-03- 2019 which was after the expiry of the initial period. Extension of such period if any should have happened before the expiry of the original period. Having not done so, the extension granted is beyond jurisdiction and is time barred.

- (v) Without prejudice, it is also submitted that in terms of proviso to Section 142(2C), the period originally fixed and the period further extended in this case was 120 days (90 days + 30 days) and therefore the time limit to furnish the Special Audit Report in this case expired on 20-04-2019. However, the Audit Report was furnished on 29-04-2019 and therefore is time barred.
- (vi) It is further submitted that in terms of proviso to Explanation 1 to Section 153, in case the time limit for passing the order u/s 153(1) after exclusions is less- than sixty days then such remaining period shall be deemed to be extended to sixty days for calculating the period of limitation. It is submitted that in the present case, the extended period of sixty days expired on 21-06-2019, however the order was passed on 27-06-2019 and is accordingly time barred.

5. Ld. CIT(A) has sustained the contentions and concluded as follows;

“Therefore, considering the totality of facts and circumstances of the case, judicial position with reference to the judgements of Hon’ble Apex Court and jurisdictional High Court and jurisdictional ITAT, Delhi, as discussed in preceding paras, the order of the AO and the procedure adopted for getting the special audit done u/s 142(2A) suffers from multiple infirmities and is therefore, the assessment order is held to be void ab-initio and is therefore, quashed.”

5.1 Revenue is in appeal raising following grounds in AY 2010-11;

“i. Whether on the facts and in law, Ld.CIT(A) has erred in arriving to a conclusion based on erroneous and suppressed fact that the case is barred by limitation of time ignoring the relevant and material facts and without considering the further extension of time allowed for Special Audit by the Department vide letter dated 07/08.02.2019”

"ii. Whether on the facts and in law, Ld.CIT(A) has erred in dealing with the approval for Special Audit given vide letter dated 28.03.2013 and order for Special Audit dated 30.03.2013 which has already been approved by the Hon'ble High Court in Writ Petition (Civil) 2591/2013."

"iii. Whether on the facts and in law, Ld.CIT(A) has erred in finding fault with the merged order of the A.O. with the order of Hon'ble High Court ordered vide order dated 06.12.2018 in Writ Petition (Civil) 2591/2013"

"iv. 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 action of the department was approved by the Hon'ble High Court as regards existence of pre-conditions for Special Audit involved in this case

v. "Whether on the facts and in law, Ld.CIT(A) has erred in finding fault with satisfaction recorded by the Ld. CIT whereas it was imperative for the CIT to do so as per requirement of section 142(2A) of the I.T. Act, 1961"

vi. "Whether on the facts and in law, Ld.CIT(A) has erred in observing that the time for Special Audit was allowed by the CIT whereas it was allowed by the Assessing Officer and further extended by the A.O. from time to time within the limits available u/s. 142 (2C)

vii. "Whether on the facts and in law, Ld.CIT(A) has erred in only considering the erroneous and suppressed facts put forward by the assessee and not getting it verified from the records of the Department or through remand"

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

"ix. The Appellant craves leave to add, alter, amend or withdraw any ground(s) of the appeal raised above at the time of hearing."

6. The Id. CIT(A) has sustained the contention of assessee observing that that according to section 153(1) of the Act, the limitation period for framing an assessment was 24 months from the end of the relevant assessment year and, since AY involved is assessment year 2010-11, the limitation date u/s 153(1)

was expiring on 31.03.2013. In the instant case, just one day prior to that i.e. on 30.03.2013, the directions were given for special audit u/s 142(2A) of the Act. This proposition gives rise to the suspicion that the matter was referred for Special Audit just to extend the period of limitation.

6.1 Ld. CIT(A) observed that a show cause notice dated 13.03.12043 was issued asking the appellant to show cause as to why the books of accounts should not be audited u/s 142(2A) of the Act and in turn, the appellant filed his reply on 20.03.2013. The AO sent proposal to CIT, for conduct of special audit. Thereafter, the CIT issued a further show cause notice dated 21-03-2013 to the appellant clearly stating that he was of the considered opinion that it is a fit case for invoking provisions of Sec. 142(2A) of the Act and asked the appellant to furnish his reply in relation to the same. After considering the reply of the appellant, finally, the CIT granted approval to the AO to get special Audit conducted on 28-03-2013 and vide order dated 30-03-2013, the AO conveyed to the appellant that M/s Sanjay Satpal & Associates have been appointed as the special auditor to conduct audit of appellant's books of account.

6.2 Ld. CIT(A) relied the jurisdictional ITAT decision in the case of **Unitech Limited -vs.- Addl. CIT - ITA No. 5180 of 2013** to hold that directions for special audit at the fag end of assessment time barring, is fatal.

6.3 Ld. CIT(A) also held that in terms of Section 142(2A), of the Act, the satisfaction for reference to Special Audit has to be recorded by the AO and nobody else. In the present case, the satisfaction has been recorded by the AO and indirectly by the CIT as well and then approved by the CIT himself. Thus same was also considered to hold that order of special audit is illegal.

6.4 Further, Ld. CIT(A) considered that in terms of Section 142(2C) of the Act, 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. In the present case the original period of furnishing the audit report has been specified by the CIT. So, Ld. CIT(A) was of view that such a scenario is neither contemplated nor mandated under the statute. Ld. CIT(A) accordingly held that the period in which the Special Audit Report u/s 142(2A) needs to be submitted has to be specified by the Assessing Officer and not by the CIT. In the present case the CIT granted approval to the AO to get special Audit conducted on 28-03-2013.

6.5 Ld. CIT(A) relied on the decision of Hon'ble Supreme Court in **Anirudh Sinhji Karan Sinhjl Jadeja v. State of Gujarat [1995] 5 SCC 302**, where the Hon'ble Supreme Court 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. The jurisdictional Hon'ble High Court of Delhi decision in the case of **CIT Vs SPL'S Siddhartha Ltd.* [2012] 17 taxmann.com 138 (Delhi)** was also considered by the Id, CIT(A), where the Hon'ble Delhi High Court has held that where the Assessing Officer instead of taking approval from Joint Commissioner as per provisions of section 151, obtained approval from Commissioner and issued notice under section 148, said notice was invalid.

The relevant portion, para 8 of the above judgement is reproduced as under :

"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 authorised 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 v. ITO [1989] 176 ITR 352/45 Taxman 213 (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."

6.6 Then Id, CIT(A) has relied the jurisdictional ITAT decision in the case of **ACIT -vs.- Soul Space Projects Ltd. - ITA No. 193/Del/2015 (Order dated 03-06-2020)** wherein the Tribunal has held as under:

"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.

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 incometax 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.

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-ll and the Assessing Officer has only conveyed the approval, therefore, we hold that the extension given by the CIT, Central-ll 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.

6.7 Pertinent to mention is that this has now been upheld by the Hon'ble Delhi High Court in **PCIT Versus Soul Space Projects Ltd. (2023) 157 taxmann.com 272 (Delhi).**

6.8 We are of the considered view that when the above principles are applied to the facts of the present appeal, it is noticed that in the present case, the

satisfaction/opinion was initially recorded by the AO and then subsequently by the CIT as well. Subsequently on 28-03-2013 CIT himself is according approval to such satisfaction. Such action is not mandated in terms of Sec. 142(2A). Further in terms of Section 142(2C) the initial period for furnishing the Special Audit Report has to be specified by the AO and not by the CIT, as has happened in the instant case. Thus the findings of Id. CIT(A) are quite in accordance with law. Since due procedure as mandated under the provisions of Sec. 142(2A) & Sec. 142(2C) has not been followed in this case, the order is rightly held to be void *ab-initio* on this account.

7. We also appreciate the findings of Id. CIT(A) that in terms of proviso of Sec.142(2C), the extension of further time period of furnishing the Special Audit Report u/s 142(2A) can be done by the Assessing Officer *suo-motu* or on an application made in this behalf by the assessee. However, in the present case the extension of time period for furnishing the Special Audit Report u/s 142(2A) has been provided by the Assessing Officer on an application made by the Special Auditor in this regard. The extension has not been granted in terms of provisions of Sec. 142(2C) and therefore the extension so granted is beyond jurisdiction and is time barred. We are of considered view that there is no error in the findings of Id. CIT(A) that the statute demands that the extension can be granted either by the AO *suo-moto* or on an application made in this behalf by the assessee. Admittedly, in the present case, the AO has granted extension for

conducting Special Audit vide his letter dated 27-03-2019 addressed to the Special Auditor, M/s Sanjay Satpal & Associates. Such an action by the AO is certainly in disregard of the provisions of proviso to Section 142(2C) of the Act, and CIT(A) has committed no error in holding that this extension is vitiated and impugned assessment liable to be quashed.

8. In assessee's own case for AY 2014-15 and 2016-17 the issue has been decided by co-ordinate benches against the revenue. Ld. DR was unable to point out any distinction of facts or decision to the contrary. The aforesaid discussion in AY 2010-11 applies *pari materia* to other years before us. Thus there is no reason to interfere in the orders of ld. CIT(A), for the respective AYs, before us. The cross-objections are consequential and supportive. So need no separate adjudication on these questions of law.

9. Appeals are dismissed and CO, stand infructuous.

Order pronounced in the open court on 27.12.2024.

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 27th December, 2024.

dk

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi