

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “E” BENCH: NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.997/Del/2021

[Assessment Year : 2003-04]

ITO Ward-28(1), Room No.1214 12 th Floor, E-2 Block, Civic Centre, Dr.S.P.Mukherjee Marg, New Delhi-110002.	vs	Shri Neeraj Gupta A-64, DDA (MIG) Flats Saket, New Delhi-110017. PAN-ACTPG1245N
APPELLANT		RESPONDENT

C.O.No.-90/Del/2023

[In ITA No.997/Del/2021]

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Shri Neeraj Gupta A-64, DDA (MIG) Flats Saket, New Delhi-110017. PAN-ACTPG1245N	vs	ITO Ward-28(1), Room No.1214 12 th Floor, E-2 Block, Civic Centre, Dr.S.P.Mukherjee Marg, New Delhi-110002.
APPELLANT		RESPONDENT
Appellant by	Shri Amit Katoch, Sr. DR	
Respondent by	Shri Shailesh Kumar, CA	
Date of Hearing	17.02.2025	
Date of Pronouncement	19.02.2025	

ORDER

PER PRADIP KUMAR KEDIA, AM :

The captioned Appeal of the Revenue in ITA No.997/Del/2021 arises from the first appellate order passed by the Commissioner of Income Tax (Appeals)-32, New Delhi [“CIT(A)”] under s. 250(6) of the Income Tax Act, 1961 (“the Act”) dated 20.07.2020 which in turn emanates from the assessment order dated 08.09.2006 passed by the AO under s. 144 of the Act for A.Y. 2003-04 in question. The assessee, in turn, has also filed Cross Objection [CO No.90/Del/2023] in the Revenue’s Appeal under Section 253 of the Act.

2. The captioned Appeal by the Revenue and Cross Objection by the assessee being inter-connected, were heard together and are being disposed off by this common order.

3. When the matter was called for hearing, Ld. Counsel for the assessee at the outset adverted to the cross-objection and submitted that the CIT(A) has quashed the assessment order dated 08.09.2006 passed under s. 144 of the Act on the ground that limitation claimed to have been extended under s. 153 of the Act by the AO on the ground of reference for special audit under s. 142(2A) is not justified. Ld. Counsel pointed out that neither the opportunity mandated under s. 142(2A) of the Act has been given to the assessee nor the pre-requisites of s.142(2A) have been satisfied by the AO and thus exclusion of time attributable to illegal reference to special audit is not permissible. The assessment order passed beyond the time limit prescribed under s. 153 is thus rightly held to be bad in law by the CIT(A). The Ld. Counsel thus supported the first appellate order in this regard.

4. On inquiry from the Bench, the Ld. Sr. DR for the Revenue could not dislodge the claim of the assessee that no opportunity was given to the assessee indeed while invoking the special audit provision under s. 142(2A) of the Act. The Ld.Sr.DR however contended that such lapse is only procedural and would not vitiate the assessment order as barred by limitation.

5. It may be pertinent to extract the relevant operative para of the first appellate order deal with the issue:-

6.2. “Ground Nos.1 to 6 are related to dispute on validity of various notices and direction for special audit. I have considered the assessment order and submissions of the AR of the Appellant. In the statutory notices and direction for special audit issued by the Assessing officer, there are various anomalies. After going through all the records, it is observed that the ITR filed on 31.03.2005 was picked up for scrutiny by issuing notice u/s 143(2) dated 05.09.2005. Thereafter two

more notices were issued on 22/12/2005 and on 15/02/2006 in response to which the assessee sent adjournment requests. After this the assessee received directions dated 29/03/2006, through speed post dispatched on 30/03/2006, from AO directing him to get the special audit done U/s 142(2A) of the I.T. Act, 1961 for the assessment year 2003-04. It is also observed that no records and books were examined by the Ld. AO and further, the Ld. AO did not even make any efforts to secure independent third-party information on which he could base an opinion on the apparent complexities of the accounts and the Ld. AO waited till the fag-end of time barring assessment without issuing any show-cause notice for any specific information. The assessing officer had issued direction U/s 142(2A) on 29.03.2006 to the assessee to get his accounts audited by an Accountant without giving any pre or post decisional opportunity of hearing along with reasons as per the procedure. Further, as per the procedure, the assessing officer must take the permission of the Commissioner of Income Tax for appointing a Special Auditor and Commissioner of Income Tax are also liable to grant an opportunity of hearing before granting the approval for special audit, however all these steps were not taken and also not intimated to the assessee. The assessing officer has clearly taken the shelter of section 142(2A) to buy time to complete the assessment proceedings and has miserably failed to give the legally mandated show cause notice to the assessee. The assessing officer had further overlooked the fact that the block assessment of last more than 10 years was already completed and all the shares/debentures were duly assessed in the block assessment order. Various findings relied upon by the assessing officer also seem to be grossly erroneous and flawed. There are various anomalies in the final assessment order and some additions were not even proposed in the draft assessment order. The requested documents/information gathered by the assessing officer U/s 133(6) at the back of the assessee were not shown to the assessee until at the stage of passing the assessment order and no opportunity to cross-examine of the gathered information was afforded to the assessee, hence there is a clear violation of principal of natural justice.

6.2.1. Delhi High Court in the case of VLS Finance reported in 207 CTR 401 has expressed identical view that, in absence of any hearing by the learned Commissioner of Income-Tax before granting approval for issue of order u/s 142(2A) of the Act, the order so made u/s 142(2A) of the Act is vitiated in law. Similar view was also taken in THE INCOME TAX APPELLATE TRIBUNAL, ITA No. 6181/DEL/2015, M/s. Unitech Limited vs. DCIT, Cir.27(1) New Delhi which held that directions dated 26.03.2014 at the fag-end of time barring assessment by the learned Addl. CIT, Range-18, New Delhi for special audit under

section 142(2A) of the Act were illegal, invalid and not in accordance with the law; In *PCIT Vs Vilson Particle Board Industries Ltd* (Bombay High Court) [2020] 116 taxmann.com 12 (Bombay), the Hon'ble Court held that "AO had submitted a proposal for special audit under section 142(2A) to the administrative CIT on 22-10-2008. Pursuant thereto, the administrative CIT granted approval on 04-11-2008. The issue arose for consideration was whether AO was required to provide reasonable opportunity of hearing to the assessee before sending proposal for special audit under Section 142(21) and whether Tribunal was justified in holding that show cause notice was required to be given to assessee by AO before making the order proposing conduct of special audit under section 142(2A) and even if the administrative CIT approved the said proposal after giving opportunity to the assessee nonetheless such a course of action would be vitiated because of non-compliance to the principles of natural justice at the stage of making the proposal, thereafter declaring the assessment order to be invalid. In *Rajesh Kumar Vs. Deputy CIT 1*, Supreme Court [2006] 157 Taxman 168(SC) was confronted with the question as to whether before a proposal for special audit under Section 142(2A) of the Act was made, was there a requirement of providing pre decisional hearing to the assessee. Supreme Court took the view that an order of directing special audit entails civil consequences and therefore, a principle of natural justice was held to be implicit under Section 142(2A) of the Act. Thus, there is requirement of providing pre-decisional hearing by the Assessing Officer to the assessee before forming opinion to submit proposal for special audit. In the said case, Supreme Court also held that an order of approval by the higher authority is also not to be mechanically granted. The same should be done having regard to the materials on record and considering the explanation given by the assessee.

6.2.2. Keeping in view the facts and circumstances of the case and after going through the various hon'ble courts judgments and decision of the Hon'ble Supreme Court of India, I am of the considered view that the special auditor was appointed on 29.03.2006 just two days prior to expiry of limitation for passing the assessment order, without issuing show cause notice to the assessee and accordingly, as per the provisions of section 153 of I.T. Act, the assessment order passed on 08.09.2006 was time barred. Accordingly, it is quashed and I allow the appeal of the assessee on the legal grounds. Accordingly, ground no.1 to 6 is allowed on legal grounds."

6. On perusal of the case records, it appears that contentions were raised by the assessee before the Ld.CIT(A) on two counts:-

(i) the validity of extension of limitation for framing assessment by virtue of unlawful exercise of power conferred under s. 142(2A); and

(ii) exercise of reference under s. 142(2A) powers without any opportunity to the assessee at all.

7. The CIT(A) has addressed the issues and recorded a categorical finding that no opportunity was provided to the assessee while imposing onerous obligation of special audit under s. 142(2A) of the Act. The provision of s. 142(2A) cast explicit burden on the AO to provide opportunity before proposing special audit under s. 142(2A) of the Act. Admittedly, no opportunity has been given to the assessee. Therefore, special audit referred by the AO under s. 142(2A) suffers from the vice of incurable legal defect. This being so, the extension of time limit for completion of assessment owing to such special audit would not be available. Consequently, the time limit for completion of assessment stood time barred on 31.03.2006 as rightly concluded by the CIT(A). The assessment order framed dated 08.09.2006 is clearly non-est and bad in law. We see no error in the conclusion drawn by the CIT(A) and thus declined to interfere. In the light of such conclusion, other grounds taken on behalf of the Revenue and the assessee are thus not adjudicated upon.

8. In the result, the appeal of the Revenue is dismissed and cross objection of the assessee on the issue is allowed.

Order pronounced in the open Court on 19th February, 2025.

Sd/-

(YOGESH KUMAR US)
JUDICIAL MEMBER

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Amit Kumar, Sr.P.S

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI