(2015) 04 AHC CK 0119

In the Allahabad High Court

Case No : Writ Tax No. 305 of 2007

Ghaziabad Development Authority APPELLANT

Vs

Commissioner of Income Tax and Others RESPONDENT

Date of Decision : 13-04-2015

Acts Referred:
Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 142(2-A), 143(2)

Citation : (2015) 5 ADJ 331

Hon'ble Judges : Arun Tandon, J;Surya Prakash Kesarwani, J

Bench : Division Bench

Advocate : Dhruv Agrawal and Nikhil Agrawal, for the Appellant; B.J. Agarwal and D. Awasthi, Advocates for the Respondent

Judgement

1. Heard Shri Dhruv Agrawal, Senior Advocate assisted by Shri Nikhil Agrawal, Advocate on behalf of the assessee and Shri Dhananjaya Awasthi, Advocate on behalf of the department.

2. Petitioner before this Court namely Ghaziabad Development Authority has filed this writ petition through its Financial Controller against the order dated 18.12.2006 passed by the Additional Commissioner directing special audit under Section 142(2-A) of the Income Tax Act and appointing Bansal Gupta and Associates, Chartered Accountants (respondent No. 4) as the Special Auditor. Petitioner has also prayed for a writ of mandamus commanding the respondent officers not to proceed any further with reference to the appointment of respondent No. 4 as Special Auditor under Section 142(2-A) of the Income Tax Act.

3. From the records of the present writ petition we find that for the Assessment Year 2004-05, return was filed by the assessee on 30.10.2004 declaring NIL income. The matter was taken up for scrutiny under Section 143(2) of the Income Tax Act under notice dated 19.09.2005 fixing 28.09.2005 as the date.

4. In response to the notice Shri Vinod Kumar Mittal appeared before the Assistant Commissioner and sought adjournment. The case was adjourned to 10.03.2005 for examination of the account books and the relevant books. On the said date nobody attended the proceedings on behalf of the assessee.

5. On examination of the case records and the particulars filled with the return of income tax and the audit reports furnished in Form No. 10-B and 3CD, various discrepancies in the account books maintained by the assessee could be seen. With reference to the report in Form 10-B, six discrepancies had not been explained and which were complex in nature. These were recorded in the show cause notice dated 07.12.2006, calling upon the assessee to show cause as to why special audit under Section 142(2-A) of the Income Tax Act be not directed. The assessee was granted five days'' time to respond to the notice.

6. For the reasons best known to the assessee he did not respond to the said show cause notice. As a consequence thereto the Assistant Commissioner with due approval of the Commissioner of Income Tax, proceeded to direct Special Audit under Section 142(2-A) of the Income Tax Act. For the purpose appointed respondent No. 4 as a Chartered Accountants. It is against this order that the present writ petition has been filed.

7. At the very outset we may record that the order of Commissioner, Income Tax, Ghaziabad approving the special audit and appointment of a Chartered Accountants for the purpose has neither been brought on record nor has been under challenged in the present writ petition.

8. We further find that on the date fixed, for examination of the account books etc. nobody on behalf of the assessee appeared before the Assessing Officer, although the case was adjourned on the request of Chartered Accountants of the assessee on an earlier occasion. What we further find is that the assessee did not deem it fit and proper to respond to the notice dated 07.12.2006 wherein complex discrepancies in respect of books of account etc. were noticed by the Assessing Officer. Reasons for such non-appearance/non-response to the show cause notice have not been stated in the present writ petition.

9. In our opinion the assessee had the opportunity to raise objections in the matter of appointment of special auditor by responding to the show cause notice. He has chosen not to do so. Therefore, there is hardly any scope, under Article 226 of the Constitution of India, to permit such an assessee to question the order before the writ Court.

10. In view of the aforesaid, we do not see any good reason to interfere with the order directing special audit under Section 142(2-A) of the Income Tax Act.

11. At this stage counsel for the assessee submitted before us with reference to paragraph Nos. 21 and 34 of the counter affidavit filed on behalf of the department that special audit has only been directed for the purpose of seeking extension of the period of assessment which is legally not permissible. For the

purpose he has relied upon the Division Bench judgment of the Rajasthan High in the case of Commissioner of Income Tax v. Bajrang Textile reported in (2006) 205 CTR (Raj), 287. We find that the assessee wants to read something in the paragraphs which is not there. Even otherwise we may record that such issue can always be agitated by the assessee before the competent authority and it was for him to examine all aspects of the matter and to complete the assessment strictly in accordance with law.

12. Writ petition is dismissed.

13. Interim order, if any, stands discharged.

