
(2010) 08 P&H CK 0477

In the Punjab And Haryana At Chandigarh

Case No : Writ Petri. No"s. 4332, 6194 and 12423 of 2010

Hind Samachar Ltd.

APPELLANT

Vs

Asstt. Commissioner of Income Tax and Another

RESPONDENT

Date of Decision : 05-08-2010

Acts Referred:

Income Tax Act, 1961 — Section 142(2A), 142(2C), 153

Citation : (2011) 335 ITR 277

Hon'ble Judges : Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Judgement

Adarsh Kumar Goel, J.—This order will dispose of Civil Writ Petn. Nos. 4332, 12423 and 6194 of 2010, as the issues involved are interconnected.

2. In Civil Writ Petn. No. 4332 of 2010 filed on 8-3-2010, challenge is to the order passed by Assistant Commissioner, Jalandhar, dated 17-12-2009, Annex. P. 9, u/s 142(2A) of the Income Tax Act, 1961 (hereinafter referred to as, the Act) for the assessment year 2007-08.

3. Case of the Petitioner is that it is engaged in printing and publication of newspapers. Though the company was established as far back as in the year 1949, successors of the original founder are Sudershan Chopra, Vijay Kumar Chopra and Sudershan Chopra is running the business of the Assessee mainly at Delhi and Jaipur, while Vijay Kumar Chopra is running the business at Jalandhar and Ambala. There was a family settlement between the parties and thereafter proceedings took place before the company law board. The company law board gave directions for division of the business which were affirmed by Company Judge of this Court vide order dated 4-11-2008. The matter was thereafter carried to the Honble Supreme Court wherein order dated 19-1-2009 was passed directing the parties to maintain accounts of their respective allotted units. Accordingly, two separate sets of accounts were being maintained. During the course of assessment for the assessment year 2007-08, the assessing officer vide impugned order directed the Petitioner which represents A group to get the

accounts audited by auditor nominated by the department. The order was issued after approval by the CIT. The Petitioner was required to furnish audit report within 120 days of the said letter.

4. Grievance in the petition is that speaking order was not passed u/s 142(2A) of the Act. Such order could not be passed in absence of accounts being complex. The impugned order does not indicate how opinion as to desirability of special audit was formed. Litigation between Group A and Group B and maintaining of separate accounts did not by itself create any complexity. In the return filed by the Assessee, tax audit report, balance sheet and other documents have been duly filed.

5. On notice being issued, reply has been filed on behalf of the Respondents stating that accounts of the Assessee were found to be complex for the assessment years 2003-04 to 2006-07 and special audit was conducted which led to detection of undisclosed income of crores of rupees. The defects found in the accounts of the Assessee were the same which Justified the direction for special audit in the earlier assessment year. Adequacy of grounds for the opinion that it was necessary to order special audit, could not be gone into.

6. In Civil Writ Petn. No. 6194 of 2010 filed on 3-4-2010 by Group B of the Assessee, the same order has been challenged on almost identical grounds and is also sought to be defended on identical grounds by the counsel.

7. In Civil Writ Petn. No. 12423 of 2010 filed on 14--2010 during the pendency of earlier two writ petitions, prayer is for quashing notice dated 16-6-2010 and for declaring continuance of assessment proceedings for the assessment year 2007-08 to be illegal on account of having become time-barred. Return was filed by Group A on 29-3-2009 (sic) and by Group B on 30-10-2007. Limitation for completing the assessment u/s 153(1)(a) is two years from the end of the assessment year in question. By virtue of proviso, the period of two years has been reduced to 21 months. Thus, limitation to complete assessment was upto 31-12-2009. However, by virtue of order u/s 142(2A), period from the date of order u/s 142(2A) and ending with the last date by which the report is required to be furnished has to be excluded. The maximum period prescribed cannot exceed 180 days u/s 142(2C) of the Act. According to the Petitioner, since the assessment was not completed upto 31-12-2009 in any case, after period u/s 142(2A) is to be excluded, the limitation expired on 29-6-2010.

8. Though no notice has been issued in this writ petition, learned Counsel for the revenue has assisted the court on the issue involved in this petition also with reference to the averments in the reply already filed in other petitions. His stand is that after the notice was issued by this Court in Civil Writ Petn. No. 4332 of 2010 on 12-3-2010 and in Civil Writ Petn. No. 6194 of 2010 on 29-4-2010, the Assessee did not co-operate in compliance of order of special audit. Even though no stay was granted by this Court, the Assessee in letter Annex. P. 10 annexed to Civil Misc. No. 8029 of 2010 in Civil Writ Petn. No. 4332 of 2010, took the stand

that special audit be kept in abeyance as the writ petition was pending in which notice was issued and time taken in the litigation will get condoned.

9. The question for consideration is whether the impugned order dated 17-12-2009 is liable to be quashed on the ground that the same was not in conformity with the requirements u/s 142(2A) of the Act and whether assessment proceedings are liable to be quashed on the ground of same having become time-barred ?

10. Learned Counsel of the Petitioner submits that Section 142(2A) of the Act requires the assessing officer to be satisfied objectively about the necessity of directing special audit having regard to nature and complexity of accounts and interest of the revenue. In the present case, the assessing officer has merely directed special audit without being satisfied about the necessity to do so having regard to nature and complexity of accounts. No finding has been recorded as to what nexus direction for special audit had with the nature and complexity of accounts and interest of revenue. In support of this submission, reliance has been placed on judgments of the Honble Supreme Court in *Rajesh Kumar and Ors. v. Dy. CIT and Ors.* (2006) 157 Taxman 168 (SC) and *Sahara India (Firm), Lucknow Vs. Commissioner of Income Tax, Central-I and Another*, . It was submitted that opportunity of hearing was required to be given to the Assessee before passing of the order. Before dubbing the accounts to be complex, genuine and honest effort was required to be made to understand the accounts and to seek explanation from the Assessee. The opinion formed should be based on objective criteria. The said provision could not be resorted merely to shift responsibility of scrutinizing the accounts and to pass on the buck to the special auditor. Requirement of previous approval of the Chief CIT also showed that the power could not be exercised arbitrarily. The approval should not be mechanically given by the Chief CIT.

11. From the impugned order, we are unable to find that the requirements of Section 142(2A) of the Act have been met. The order does not show consideration of legal requirements and reasons on which the opinion may have been formed for directing special audit. Though grant of approval by the CIT has been mentioned, it has not been mentioned as to why it was considered necessary having regard to nature and complexity of accounts and interest of revenue that special audit was necessary. In the reply for the first time, it has been mentioned that special audit was necessary because of defects in accounts found during the course of special audit for the preceding assessment years 2003-04 to 2006-07. During the course of hearing, learned Counsel for the revenue has produced a file which contains a letter written to the CIT giving reasons for necessity of special audit. The fact remains that these reasons are conspicuous by their absence in the impugned order. The impugned order u/s 142(2A) of the Act thus does not meet the requirement of law.

12. In above situation, question is what is the order to be passed.

13. In our view, the impugned order will have to be quashed but we cannot stop at that. After quashing the impugned order, we have to clarify that the assessing officer will be free to pass a fresh order u/s 142(2A) of the Act, if necessary, and if permissible in accordance with law.

14. As regards the plea of limitation, we are of the view that the period from filing of the writ petition to the expected date of availability of a copy of this order i.e. from 8-3-2010 upto 16-8-2010 shall be excluded. We also clarify that Explanation I to proviso to Section 153 of the Act provides that where the period of limitation after excluding time as mentioned in Sub-sections (1), (1A), (1B), (2), (2A) and (4) is less than 60 days, the limitation shall be extended to 60 days. In this view of the matter, Civil Writ Petn. No. 12423 of 2010 is allowed to be withdrawn on the statement of learned Counsel for the Petitioner at this stage, while Civil Writ Petn. Nos. 4332 and 6194 of 2010 will stand allowed in above terms. The Assessee may appear before the assessing officer for further proceedings on 16-8-2010.