(1999) 07 CAL CK 0009

In the Calcutta High Court

Case No : G.A. No. 2095 of 1999 and APOT No. 401 of 1999 2/5 July 1999

JOINT COMMISSIONER OF INCOME TAX APPELLANT

Vs

ITC LTD. RESPONDENT

Date of Decision : 05-07-1999

Acts Referred:
Income Tax Act, 1961 — Section 142(1)

Citation : (1999) 156 CTR 61

Hon'ble Judges : Y.R. Meena, J;Y. R. Meena, J;Ranjan Kumar Mazumdar, J

Bench : Full Bench

Judgement

Y.R. MEENA, J.

These are the two connected appeals, one made by the Revenue and the other made by the assessee. The Revenue has challenged the impugned order on the ground that the learned single Judge has granted leave in terms of prayer : (1) of the writ petition, that is, the stay of operation of the order appointing special auditor. The assessee has challenged the impugned order dt. 4th May, 1999, on the ground that before issuing of notice u/s 142(1) of the Income Tax Act, 1961, the Income Tax Officer has not applied his mind, and that it is not possible to comply with the direction referred to in the said notice.

As both the appeals are connected, whether the accounts of the assessee be audited by the special auditor appointed u/s 142(2A) of the Act or whether the assessing officer should look into the accounts himself, in case of special auditor is not permitted to audit the account and the assessing officer is also not in a position to look into the accounts of all the branches when the assessee is not in a position to produce all the books of accounts maintained by all the 43 branches of the assessee, then whether it can be said that the impugned order u/s 142(2A) of the Act is without application of mind. Sub-s. QA) of s. 142 reads as under :

"(2A) If, at any stage of the proceedings before him, the assessing officer, having regard to the nature and complexity of the accounts 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 Chief CIT or CIT, direct the assessee to get the accounts audited by an accountant, as defined in the Explanation below sub-section (2) of s. 288, nominated by the Chief CIT or CIT 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."

2. There is no dispute that assessing officer with the approval of the CIT or CIT can direct the assessee that his accounts be audited by the special auditor appointed by assessing officer with the approval of the CIT or Chief CIT.

3. Learned counsel for the assessee submits that before appointment of special auditor there must be an opinion of the assessing officer that the nature and complete of the accounts is such and/or also in the interest of Revenue, it is necessary that accounts of the assessee be audited with the special auditor appointed with the approval of the CIT or Chief CIT under sub-section QA) of s. 142 of the Act. He placed reliance on the decision of this Court in a case of PEERLESS GENERAL FINANCE AND INVESTMENT CO. LTD. AND ANOTHER Vs. DEPUTY COMMISSIONER OF Income Tax AND OTHERS., and on the decision of Allahabad High Court in the case of Swadeshi Cotton Mills Company Ltd. Vs. Commissioner of Income Tax and Another, . He further, submits that after proposal by the assessing officer the notice was issued by CIT, after hearing the assessee he simply recommended the case, supporting the view of the assessing officer, to Chief CIT and the Chief CIT has not given an opportunity to the assessee, though hearing was given by the CIT. Therefore, the Chief CIT should not have given approval for appointment of special auditor under sub-section (2X of s. 142 of the Act.

He further submits that it is not possible to and nobody can comply with the requirement of the assessing officer in a notice u/s 142(1) of the Act for completion of the assessment. He also drew our attention to p. 202 of the notice issued by the Chief CIT and to p. 204 of the written submissions filed by the assessee on 12th March, 1990, before the Chief CIT. He also placed reliance on the decision of Andhra Pradesh High Court in the case of A.S. Sarma and Others Vs. Union of India, wherein the view has been taken that provisions of s. 44AB are not superfluous even after insertion of sub-section (2A) in s. 142. Sec. 44AB deals with the cases having turnover of more than 40 lakhs of rupees in business and having professional receipts of more than 10 lakhs of rupees in case of profession, while s. 142(2A) deals with the cases having less turnover than referred in s. 44AB. Therefore, he submits that when the turnover is more than 40 lakhs of rupees, no special auditor can be appointed under sub-section (2A) of s. 142 of the Act as the accounts have already been audited u/s 44AB of the Act.

4. The learned counsel for the assessee submits in case the assessee fails to produce the documents, assessment can be completed u/s 144 and there is no

need to appoint special auditor. Even in the assessment year 1993-94 special auditor was appointed and in the report he found that income disclosed by the assessee was more than what had been found by the special auditor. Though the assessing officer did not accept that report and huge additions were made and those additions were deleted subsequently, therefore, he submits no purpose win be served Dy appointment of special auditor u/s 142(2A) and the assessee will he unnecessary burdened with the fees of the special auditor that will run into lakhs of rupees.

5. On the other hand, learned counsel for the Revenue submits that considering is necessary to ascertain the true and correct profits of the assessee by looking into the accounts based on the income and expenditure of those branches. When assessee himself stated that it is not possible to comply with the requirement referred to u/s 142(1) of the Act, the assessing officer has no option but to appoint special auditor. Not only that, in the preceding year also special auditor was appointed. Initially, stay was granted but that has been vacated subsequently by the Division Bench.

When the learned trial Judge has stayed the operation of the order appointing special auditor u/s 142(2A), the assessing officer has issued fresh notice u/s 142(1) in compliance with direction of this Court that had been challenged before the trial Court. The trial Court though did not stay the operation of that notice letter dt. 20th April, 1999, but gave direction that both the parties should work out amongst themselves what documents should be produced and assessment proceeding would continue.

6. In what cases the special auditor can be appointed u/s 142(2A) the Allahabad High Court has referred the circular issued by the CBDT which reads as under :

"The Board have laid down the following guidelines for selection of cases for audit u/s 142(2A) of the Income Tax Act, 1961.

2. As regards companies, only those cases are to be referred for special audit where :

(i) there are reports of misfeasance, gross neglect or breach of duty on the part of the principal officer or director in relation to the affairs of the company, or

(ii) the company''s affairs have been the subject of a search or seizure under the Income Tax Act or been the subject of a probe under the FERA, or

(iii) the company has foreign collaboration arrangements, or

(iv) where the company''s principal is a foreign company and deduction of head office expenses, etc., have been claimed, or

(v) where the company has import/export business with a yearly turnover of more than a crore of rupees, or

(vi) where there are allegations of substantial tax evasion, or

(vii) where the Income Tax Officer has any other information necessitating special audit."

In that case, the action of the assessing officer for appointment of special auditor u/s 142(2A) has been upheld, but it was observed that after seeing the accounts the Assistant Commissioner had formed his opinion that the appointment of special auditor was a necessary.

7. In the case of Peerless General Finance & Investment Co. Ltd. (supra), the appointment of special auditor was challenged by the assessee and this Court after considering the facts that the appointment of special auditor as has been proposed by the assessing officer on the ground that there was litigation between the assessee and the Reserve Bank of India (RBI) and also between the assessee and the department. The learned trial Judge, in this case, found that the litigations had nothing to do with the assessment of income of the assessee and, therefore, that cannot be the basis for appointment of special auditor, Therefore, that order of appointment of special auditor u/s 142(2A) was set aside and quashed.

8. There is no doubt that before appointment of the special auditor there should be a ground that in the interest of Revenue and considering the ''nature and complexity'' of the accounts maintained by the assessee, the appointment of special auditor u/s 142(2A) is necessary. Thus, that depends upon the facts of each case. The law laid down is not in dispute. But the pertinent question is whether in the facts and circumstances of a particular case, the appointment of special auditor is justified or not.

Therefore, it is necessary to consider some of the relevant facts to see whether the appointment of special auditor is justified. The assessing officer has submitted his proposal to the CIT, vide, letter dt. 9th Feb., 1999, being annexure-B, wherein he has pointed out that there are some defects. The accounting systems have been violated. There was a countrywide raid conducted in 1996 by the Enforcement Directorate on different offices, factories and residences of former and present directors of the assessee and regular transactions worth 50 crores of rupees were taken note of on the basis of such search and some of the documents and transactions also covered the part of previous year relevant to assessment year under consideration.

9. The accounts pertaining to export-import transactions of Leaf Tobacco Division at Guntur was also audited by one M/s S.B. Bilimoria & Co. for the period from 1992 to 1996. In the report of M/s S.B. Bilimoria & Co., it was found that V.A.T. had affected the third party purchase of leaf tobacco, despite direct dealing with M/s I.T.C. Ltd. There was search and seizure in February, 1987, by the Central excise at the business premises and the department of M/s I.T.C. Ltd. and ultimately a duty or penalty amounting to Rs. 800 crores was imposed and as per Tribunal''s direction the assessee had made payment of Rs. 170 crores and claimed deduction. Whether such deduction can be allowed and, if so, on what

basis. For that the relevant materials are to be examined by the assessing officer. If it is not possible by him, the appointment of special auditor is the only course available to the assessing officer to find out whether such deduction can be allowed on the basis of materials available with the assessee. In the previous year relevant to the assessment year the assessee has added Rs. 81.42 crores to the plant and machinery, Rs. 2.95 crores to the motor vehicles, Rs. 14,86 to the land and Rs. 6.69 crores to the buildings. These claims should be clarified, to see whether these claims/expenditure was for the purpose of business and can be allowed under the Act, if so to what extent. The assessee-company has purchased leaf tobacco worth Rs. 66.33 crores from M/s All India Tobacco Co. Ltd. paper board worth Rs. 30.20 crores from M/s Bhadrachalam Paper Board Ltd. and made payment of Rs. 11.45 crores on account of contractual obligation. Whether the expenditures are genuine or whether the expenditures are hit by any of the provisions of the Act that can be said only when there is verification from the material on which the accounts of the assessee and its branches are prepared. The assessee-company has also received share premium of Rs. 65.55 crores. Details thereof have not been furnished.

The assessee has claimed deduction of Rs. 22.27 crores while computing the taxable income, but no proper accounts and details thereof have been furnished.

The assessee has further debited Rs. 2,579.63 crores against the excise duty, but no details or break-up of the same have been furnished. The assessee-company has claimed deduction of Rs. 21,65,67,763 u/s 43B which represents duties and taxes, but not debited in the P&L a/c. Even the documentary evidence in support of that payment has not been furnished, Similarly, the assessee has claimed Rs. 7.68 crores on scientific research. But, no details were filed. There was an addition of Rs. 40.34 crores on capital working-progress, but no details were filed.

The assessee-company has also advanced loans of Rs. 25 crores to its subsidiaries and loan of Rs. 62.68 crores to others. Some of the advances made in cash and some of the advances were made in kind. The assessee has also shown deposits from normal trade debtors to the tune of Rs. 178.16 crores during the year and with a fresh increase in deposits by Rs. 74.46 crores, no details have been filed. The contribution to provident fund and other funds have been claimed at Rs. 18.08 crores, but no details were filed. It is not possible to ascertain the exact expenditure incurred by the assessee. Rs. 34.89 crores have been claimed on account of consumption of stores and the spare parts at Rs. 47.28 crores, freight and handling charges at Rs. 67.53 crores, but no details were filed. It is not possible to ascertain whether these expenditures are for the purpose of business. Under the head "advertisement/sales promotion" the assessee has claimed Rs. 181.10 crores. Market research expenses have been claimed at Rs. 5.33 crores. Travelling and conveyance expenses have been claimed at Rs. 35.70 crores. In absence of details it is not possible to find out whether it is for the purpose of business and can be allowed under the provisions of the Act 1961.

The assessee-company has also effected export sales and under that suffered loss to the tune of Rs. 14,88,18,972.

10. The details have not been furnished on the basis of which the accounts are prepared and also the record of assessee is valueless that can''t produced. Thus, it is not possible to ascertain the true profits by the assessing officer. Therefore, there was a proposal for the appointment of special auditor u/s 142(2A) of the Act. Considering the letter of the assessing officer the CIT has issued the notice to the assessee, as to why the special auditor should not be appointed. After hearing the assessee and considering his written submissions, the CIT endorsed the view taken by the assessing officer for appointment of the special auditor, under sub-section QA) of s. 142 of the Act and recommended that matter for appointment of a special auditor to the Chief CIT. The Chief CIT has also issued the notice to the assessee on 5th March, 1999, Annexure ''L'' asking the assessee to either appear in person or through authorised representative on 12th March, 1999, and submit his objections, if any, against appointment of special auditor for the assessment year 1996-97. On 12th March, 1999, written submissions were filed questioning the authority of the Chief CIT giving approval, in addition to the objections raised in the written submissions the summary of submissions made to the Chief CIT was also annexed.

11. Dr. Pal, the learned senior counsel appearing for the assessee, has submitted that CIT instead of giving approval to proposal of the assessing officer after hearing, he sent that proposal to the Chief CIT for approval u/s 142(2A) of the Act. The Chief CIT has not given him hearing and approved the proposal of assessing officer for appointment of special auditor that should not be done. Mr. Roy Choudhury, learned counsel for the Revenue, submits that by a notice of the Chief CIT the assessee was directed to appear before him on 12th March, 1999, at 11.30 A.M. either personally or through his counsel for the purpose of submitting whether he has any objection with regard to the appointment of special auditor for the assessment year 1996-97. A person authorised by the assessee-company appeared before the Chief CIT on 12th March, 1999, and gave a written submission of the assessee to the Chief CIT. Thus, it cannot be said that no opportunity was given by the Chief CIT before approving the appointment of the special auditor as proposed by the assessing officer.

In this connection Mr. Roy Choudhury drew our attention to Annexure "N" which is at p. 204 of the petition being a letter of the company addressed to the Chief CIT dt. 11th March, 1999. It may be mentioned here that even Dr. Pal, learned counsel appearing for the assessee, has not controverted this letter.

12. On a perusal of the letter of the Chief CIT dt. 5th March, 1999, addressed to the principal officer of M/s I.T.C. Ltd. and the written submissions dt. 11th March, 1999, submitted to the Chief CIT on 12th March, 1999, it cannot be said that opportunity has not been given by the Chief CIT to the assessee regarding objection of assessee, if any, against the appointment of special auditor u/s 142(2A) of the Act.

We agree with Dr. Pal that before giving approval, opportunity should be given to the assessee whether he has any objection and if there be any, that should be considered. In this case, opportunity was given by a letter of the Chief CIT dt. 5th March, 1999, and in response to that on 12th March, 1999, the assessee submitted its written submission annexing the written submission made before the Chief CIT. It does not make any difference, the objection of assessee can be by way of oral submission or it can put those submissions in writing. It is the choice of the assessee either to make oral submission on the appointed date or give his submissions in writing to the Chief CIT.

When he has given his submissions and objection in writing to the Chief CIT on the appointed day and those submissions were considered, which is reflected from para. 2 of the order of the Chief CIT wherein it is stated that in response to the notice the assessee- company filed its written submission on 12th March, 1999, along with annexures which have been produced, it cannot be said that that has not been considered. The written submissions not only were filed in response to the notice of the Chief CIT but those were considered also. Therefore, it cannot be said that the Chief CIT has not given any opportunity to the assessee to make submissions against the order of approval for appointment of special auditor. There is therefore, no case is made out that the principles of natural justice were violated. Therefore, it cannot be said that opportunity has not been given before approval of the appointment of the special auditor by Chief CIT.

13. Dr. Pal, learned counsel for the appellant further submits that on 12th March, 1999, the Chief CIT was not available for hearing. As stated above, when the written submissions were given, no further hearing was required and no specific requirement was there in the notice for personal hearing. Even otherwise this allegation of the learned counsel for the assessee the fact either will be accepted or denied in the counter filed by the Revenue. That was not before the learned single Judge. Therefore, we have no comments on the allegation whether Chief CIT has ever promised for personal hearing or assessee insisted for personal hearing or whether personal hearing was necessary when assessee has given submissions in writing on 12th March, 1999. That will be considered by the learned trial Judge when he will dispose of the petition,

14. Dr. Pal, learned counsel for the appellant next argued that in view of the decision of Andhra Pradesh High Court in A.S. Sanna & Ors. v. Union of India (supra) special auditor can be appointed u/s 142(2A) if the turnover in case of business is less than Rs. 40 lakhs and the professional receipts are less than Rs. 10 lakhs. Therefore, when the turnover of the assessee is more in view of the decision of the Andhra Pradesh High Court, on special auditor can be appointed u/s 142(2A) of the Act. In Andhra Pradesh High Court, the issue raised that after the insertion of s. 142(2A) the provisions of s. 44AB become superfluous. The Andhra Pradesh High Court though did not accept the claim of the assessee that after sub-section (2A) of s. 142, the provision of s. 44AB became superfluous

but, however, said that both sections are applicable in different circumstances, the provisions of s. 44AB is applicable in cases where the turnover in business is more than Rs. 40 lakhs and the gross professional receipt is more than Rs. 10 lakhs and the provision of s. 142(2A) are applicable in cases of business where the turnover is less than Rs. 40 lakhs and in case of profession the gross receipt is less than Rs. 10 lakhs.

15. With respect we are not in agreement with the view taken by the Andhra Pradesh High Court. In case if it would have been the intention of the legislature that could be specified in sub-section QA) of s. 142 or they can add proviso in s. 44AB to this effect, but neither there is any such proviso nor there is such intention reflected from sub-section (2A) of s. 142 of the Act.

16. In fact this is meant for the purpose in cases where the ''nature and complexity'' of the accounts is such that it is not possible for the assessing officer to justify the correct assessment of the income and not possible for him to examine the correctness of the accounts. In that case the legislature has conferred power on the assessing officer for appointment of special auditor with the approval of CIT or Chief CIT. The interest of the assessee has been protected that no assessee should unnecessarily be harassed by the assessing officer, that is why the duty has been cast on the senior officers of the department, i.e., CIT or Chief CIT that without approval of either CIT or Chief CIT, assessing officer has no power to appoint the special auditor to look into the accounts of the assessee. Therefore, in our view, that the power conferred on the assessing officer and the approval of CIT and Chief CIT is not confined to any turnover, in business or profession. There is no limit or any bar on account of amount of receipts either in business or profession this power has been- conferred on the assessing officer to do justice with the assessee and also to protect the interest of Revenue.

17. Learned counsel for the appellant Dr. Pal further submits that though the hearing was given by the CIT but a proposal for the appointment of special auditor u/s 142(2A) has been given by the Chief CIT. We perused the relevant materials on record. There is no dispute on the facts that assessing officer has proposed for appointment of auditor under sub-section (2A) of s. 142 and submitted the matter to CIT. The CIT has given hearing and recommended the case for appointment of auditor under sub-section (2A) of s. 142 to the Chief CIT. Chief CIT has also issued a notice to assessee, if he has any objection in respect of appointment of auditor under sub-section QA) of s. 142, he can make his submissions on 12th March, 1999. The grievance of Dr. Pal is that no hearing was given to the assessee by Chief CIT, The case of the department is that the assessee had made the written submissions on 12th March, 1999, and those were considered by the Chief CIT, before giving approval for appointment of special auditor. There is no dispute also on the fact that CIT and Chief CIT both have concurrent jurisdiction to give approval in case any proposal is made by the assessing officer. Here though the CIT has not given the approval but has endorsed the view taken by the assessing officer regarding appointment of

auditor u/s 142(2A) and finally approval has been given by the Chief CIT. When CIT and Chief CIT both are competent and have concurrent jurisdiction to give approval for appointment of auditor, and if finally approval is given by the Chief CIT, after giving the reasonable opportunity to the assessee to raise his objections regarding appointment of special auditor u/s 142(2A) when both CIT and Chief CIT have the power to give approval, it can be given by either of them is the internal matter of the department who gives the approval. Either the approval is given by the CIT or Chief CIT how any right of the assessee is prejudiced, only on the ground that approval has not been given by the CIT and has been given by the Chief CIT. It is not the case of the appellant that the CIT was not in favour of the approval. When all the three authorities are in favour of the appointment of auditor, we do not find any justification to quash the order on the ground that approval has been given by the Chief CIT.

18. Dr. P9 learned counsel appearing for the assessee further submits that in pursuance of the order of the learned single Judge, the assessing officer has issued fresh notice/letter., dt. 20th April, 1999, assessee to produce the relevant papers and documents which are the basis for the accounts in all the 43 branches. Such as, P&L a/c, balance sheet, trial balances, books of accounts and bank statements of some dividends of the company referred at p. 2 of the notice and some transactions in the Leaf Tobacco Division upto 30th Nov., 1996. The material recording the pre-deposit of Rs. 170 crores during the financial year relevant to assessment year 1995-96 the details relating to loss of Rs. 14.88 crores-details recording the excise duty amount of Rs. 2,579 crores-the details of purchases worth Rs. 66 crores from the two concerns of this assessee-company and similar type of relevant records referred at p. 4 from para. 11 onwards till para. 27.

19. Learned counsel appearing for the appellant submits that it is not possible to produce the records because the record is voluminous and more than a truck-lorry load. It cannot be produced. Therefore, he objected for the requirement-of assessing officer u/s 142(1) notice in pursuance of the order of this Court dt. 5th April, 1999. The perusal of record shows that notice u/s 142(1) and 142(2) has even been issued prior to the order of this Court dt. 5th April, 1999, but as he felt impossible to scrutinise the entire record corresponding and reflected in the accounts, he proposed for the appointment of a special auditor under s, 142(2A). In the notice subsequently issued in pursuance of the order of this Court dt. 5th April, 1999, that has been challenged in the writ petition before the learned trial Judge on the ground that notice has been issued without application of mind and it is not possible for the assessee to produce all the relevant materials which is the basis for preparing all accounts in the head office as well as in all the 43 branches of the assessee in different parts of the country.

20. Thus, it is clear that the department as well as the assessee-appellant has the same view that it is not possible to the assessing officer to look into the accounts to verify whether the entries in the account were properly reflected on

the basis of genuine transactions. At the same time, statute has conferred unfettered power on the assessing officer to look into the account as to how the assessee has disclosed his income, whether the entries are genuine or not, whether the transactions are genuine or not, whether any particular expenditure can be allowed under the provisions of the Act or not, whether the deductions claim fulfil the conditions under the various provisions of the Act. For all these, it is necessary to the assessing officer to look into the accounts as well as the material on the basis of which the accounts are prepared.

In the case of this assessee, in its 43 branches all over the country, what they have received in those branches and what are the expenses of those branches, if assessing officer wants to look into that or want to verify it, how that power can be curtailed ? That power of the assessing officer that cannot be curtailed and nowhere any provision of this Act prohibits the assessing officer to verify the correctness of various entries in the accounts. Thus, the nature of this assessee''s account that he maintained the accounts in all the 43 branches separately and recast that in the head office. Whether that has been properly recast or not? Can assessing officer be stopped to verify and examine those entries ? Our answer obviously is in negative. He cannot be stopped, in case he found that there is a possibility of escapement of income and there is a possibility of bogus claims. The assessing officer has the power to verify the entries of the accounts which is based on the material with the assessee, having 43 branches all over the country. As the assessee-appellant as well as the Revenue-both are of the view that it is not possible and interest of Revenue may suffer in case the income is not properly be assessed. It is pertinent to note that in December, 1996, there was a search in offices, business premises and factories throughout the country, illegal transaction worth more than Rs. 200 crores were found, in such case the scrutiny of accounts and relevant material is all the more necessary to satisfy whether the entries made in the accounts are genuine. If it is not possible for assessing officer, in view of the nature and complexity of the accounts, the assessing officer can ask for the approval of appointment of special auditor.

21. The appointment of a special auditor is not only in the interest of Revenue. Sometime it may be in the interest of the assessee. In 1993-94, in case of this assessee, the special auditor was appointed and in his report, he found that the income disclosed by the assessee is more than the income, in fact taxable under the provisions of the Act.

The appointment of auditor is not only in the interest of the assessee and when both the counsel admits this fact that it is not possible to produce all the accounts with the relevant material and when it is not possible to the assessing officer to justify his job making the assessments without scrutiny of the accounts, the relevant material to verify the entries in the books of accounts, there is a justification for appointment of special auditor.

22. It is also brought to our notice that in the just proceeding. i.e. 1995-96, the

auditor was appointed u/s 142(2A). Initially, the stay was granted, but subsequently the stay was vacated and special auditor has proceeded with the audit of accounts for the assessment year 1995-96. Though we agree with Dr. Pal that any interlocutory order cannot be treated as precedent but at the same time, that is a fact which cannot be overlooked.

23. Considering the facts and ''nature and complexity'' of the accounts in this case, in our view, the appointment of a special auditor is justified and Revenue has a strong case in his favour for appointment of a special auditor u/s 142(2A). Accordingly, we set aside the impugned order dt. 5th April, 1999, and direct the assessing officer to proceed with the appointment of special officer, if appointment is finally made, the special auditor can proceed to audit the accounts of the assessee.

24. In the Appeal being G.A. No. 425 of 1999 as in the appeal No. 401/99, we have taken the view, the appointment of special auditor is justified. We direct the assessing officer not to insist the assessee to produce all the documents referred in his notice u/s 142(1) in pursuance of the order of this Court dt. 5th April, 1999, unless the particular evidence or document is necessary to be looked into for completion of the assessment order.

Thus, consequently, we allow the Appeal No. 401/99 and dispose of the Appeal No. 425/99 as observed above.

However, it is made clear that the assessment so made in pursuance of the report of the special auditor shall not be communicated to the assessee or the effect should not be given to that order till disposal of the petition in question pending before the learned single Judge.

Consequently, we allow Appeal No. 401 of 1999 and dispose the Appeal No. 425 of 1999 as discharged above.

All the parties are to act on an operative part of this judgment on the usual undertaking. Accounts and relevant material is all the more necessary to satisfy whether the entries made in the accounts are genuine. If it is not possible for assessing officer, in view of the nature and complexity of the accounts, the assessing officer can ask for the approval of appointment of special auditor.

21. The appointment of a special auditor is not only in the interest of Revenue. Sometime it may be in the interest of the assessee. In 1993-94, in case of this assessee, the special auditor was appointed and in his report, he found that the income disclosed by the assessee is more than the income, in fact taxable under the provisions of the Act.

The appointment of auditor is not only in the interest of the assessee and when both the counsel admits this fact that it is not possible to produce all the accounts with the relevant material and when it is not possible to the assessing officer to justify his job making the assessments without scrutiny of the accounts, the relevant material to verify the entries in the books of accounts, there is a justification for appointment of special auditor.

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