(1998) 04 DEL CK 0051

In the Delhi High Court

Case No : Civil Writ Petition No. 1580 of 1998

Ramesh Chand Industries Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 02-04-1998

Acts Referred:
Income Tax Act, 1961 — Section 142, 288

Citation : (1998) 100 TAXMAN 570

Hon'ble Judges : R.C. Lahoti, J;Mukul Mudgal, J

Bench : Division Bench

Advocate : O.S. Bajpai, for the Appellant; R.D. Jolly and Ms. Premlata Bansal, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard on the question of admission. By this petition, the petitioner seeks to lay a challenge to the initiation of special audit contemplated by sub-section (2A) of section 142 of the income tax Act, 1961 (?the Act?).

2. The petitioner had sought for supply of reasons for initiation of audit, as recorded by the respondents, which was not done. The petitioner seeks a direction to the respondents to make the reasons available and then to quash the order initiating the audit.

3. It is submitted by the learned counsel for the petitioner that in order to attract the applicability of the provision the Assessing Officer must be satisfied with the availability of the following two facts :

(i) the complexity of the accounts of the assessee;

(ii) the interest of the revenue;

4. Sub-section (2A) of section 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 Commissioner or Commissioner, direct the assessee to get the accounts audited by an accountant, as defined in the Explanation below sub-section (2) of section 288, nominated by the Chief Commissioner or Commissioner 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."

A bare reading of the provision shows that all that is required for initiation of special audit is formation of the opinion that it is necessary so to do depending on the availability of the abovesaid two facts. The provision does not use the words "reason to believe." Recording of reasons is not an essential requirement of the provision. The Assessing Officer must obtain previous approval of the Chief Commissioner or the Commissioner. The intervention of such a high ranking authority is an in-built protection to the assessee against any arbitrary or unjust exercise of the power by the Assessing Officer. It is not the case of the petitioner that such previous approval of the Chief Commissioner or the Commissioner has not been obtained. There is no allegation of mala fide. This Court would not in exercise of its writ jurisdiction sit in appeal over the formation of the opinion by the Assessing Officer.

5. The learned counsel for the petitioner has cited in case of C.B. Gautam Vs. Union of India and Others, and a Division Bench decision of the Allahabad High Court in Swadeshi Cotton Mills Company Ltd. Vs. Commissioner of Income Tax and Another, in support of his submission.

6. C.B. Gautam?s case (supra) was under Chapter XXC of the Act which provides for pre-emptive purchase of immovable property by the Government when undervalued by the parties to the transaction. The provision contemplates recording of reasons in writing as an essential step to be taken before exercising jurisdiction thereunder which is not the requirement of the provision relevant to the present petition. The Division Bench decision in Swadeshi Cotton Mills Co. Ltd.?s case (supra) also does not advance the case of the petitioner. It explains the meaning of the term ?complexity? as used in the provision and refers to the guidelines issued by the Central Board of Direct Taxes governing the exercise of discretion contemplated by sub-section (2A) abovesaid. However, the case is not an authority for the proposition that the reasons for formation of the opinion have to be recorded and made available to the assessee on being demanded.

7. The present one is also a case of search and seizure. No fault can be found with the impugned action of the respondents if they have thought it fit to initiate special audit of the accounts of the assessee if the same was required on account of the nature and complexity of the accounts of the assessee and interest of the revenue. For the foregoing reasons, no case is made out for entertaining this petition and the same is dismissed in limine.