(2003) 08 DEL CK 0098

In the Delhi High Court

Case No : C.W. No. 5001 of 2003 and C.M. No. 8776 of 2003

Usha Housing Development Co. Ltd. APPELLANT

Vs

Commissioner of Income Tax and Others RESPONDENT

Date of Decision : 19-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 142(2A)

Citation : (2004) 190 CTR 457 : (2004) 267 ITR 752 : (2004) 141 TAXMAN 11

Hon'ble Judges : Madan B. Lokur, J;D.K. Jain, J

Bench : Division Bench

Advocate : Vibhu Bhakru and Ekta Kapil, for the Appellant; R.D. Jolly, for the Respondent

Judgement

D.K. Jain, J.—An order dated February 14, 2002/February 21, 2003, passed by the Assistant Commissioner of Income Tax, Central Circle-9, New Delhi (respondent No. 2 herein), directing the petitioner to submit an audit report u/s 142(2A) of the Income Tax Act, 1961 (for short "the Act"), for the block period April 1, 1990, to February 14, 2001 (assessment year 1991-92 to the assessment year 2001-2002), is under challenge in this writ petition.

2. Since, in our view, the writ petition is liable to be dismissed on preliminary objections/grounds alone, we deem it unnecessary to state the facts, which necessitated the passing of the impugned order.

3. Firstly, in view of the provisions of Sub-section (2C) of Section 142, prescribing the time limit for furnishing of the report under Sub-section (2A), which in any case cannot exceed 180 days from the date on which the direction under Sub-section (2A) is received by the assessed, the writ petition is highly belated. The order under challenge was passed on February 21, 2003, and was admittedly served on the petitioner immediately thereafter and, Therefore, the audit report had to be submitted by the third week of August, 2003. But the writ petition was filed on August 4, 2003, when a few days were left for submission of

the report. No Explanation is forthcoming for the delay.

4. Secondly, it is brought to our notice that since no information has been furnished by the petitioner to the chartered accountant, and the time for submission of the report is about to be over, a report has already been sent by the chartered accountant to the assessed with a copy to the Assessing Officer, with the result that the present petition is otherwise rendered infructuous.

5. Moreover, a perusal of the original records, containing the proposal submitted by the Assessing Officer to the Commissioner of Income Tax and seeking his approval for ordering audit u/s 142(2A) of the Act in the Usha Group of Companies, which includes the petitioner herein, produced before us, pursuant to our directions on August 7, 2003, leaves little doubt in our mind that the Assessing Officer had sufficient material before him to record his satisfaction that having regard to the nature and complexity of the accounts of the petitioner and the interests of the Revenue, a special audit u/s 142(2A) of the Act was necessary, we find it difficult to agree with learned counsel for the petitioner that there was no application of mind on the part of the Assessing Officer as regards the nature and complexity of the accounts of the petitioner requiring a special audit and the audit was ordered just to save limitation for completing assessments for the said period. It is not within the province of judicial review to minutely analyze the materials on which the opinion of the Assessing Officer is rested to find out whether the same is sufficient for the authority concerned to come to the conclusion that the accounts of an assessed need to be subjected to special audit.

6. Relying on the decisions of the Himachal Pradesh High Court in Himachal Pradesh State Forest Corporation Ltd. Vs. Joint Commissioner of Income Tax and Another, and the Calcutta High Court in Bata India Ltd. and Another Vs. Commissioner of Income Tax and Others, , learned counsel has pleaded that an opportunity of hearing should have been granted to the petitioner before ordering a special audit. For the aforenoted view taken by us on the facts of the present case, we do not propose to dwell on the issue, though, prima facie there is no substance in the proposition.

7. For all these reasons, we decline to entertain the writ petition. The writ petition and application for interim relief, are accordingly dismissed.

