

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' DELHI
BEFORE SHRI R.P. TOLANI AND SHRI K.G. BANSAL

I.T.A. Nos. 148,149 & 150(Del)/2009
Assessment year: 2001-02, 2004-05 & 2005-06

Shri Ram Kishan Dass,
Prop. Bishan Saroop Ram Kishan,
25/75, Shakti Nagar, Delhi.

Dy. Commissioner of Income
tax, Central Cir. 10,
New Delhi.

(Appellant)

(Respondent)

Appellant by : Shri Ved Jain & Smt. Rano Jain, C.As
Respondent by: Shri Navneet Soni, CIT, DR

ORDER

PER K.G. BANSAL : AM

These three appeals of the assessee for three different years inter-alia raise common grounds to the effect that the order passed by the AO u/s 143(3) read with section 153A was barred by limitation and, therefore, the assessment is required to be quashed. The appeals were argued in a consolidated manner by the ld. counsel for the assessee and the ld. DR. Therefore, we think it fit to pass a consolidated order. Such common ground is reproduced below for the sake of ready reference:-

"2(i) On the facts and circumstances of the case, the ld. CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the notice issued u/s 153A by the AO is bad both on facts and in law and as such the

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assessment framed in consequence thereof is liable to be quashed.

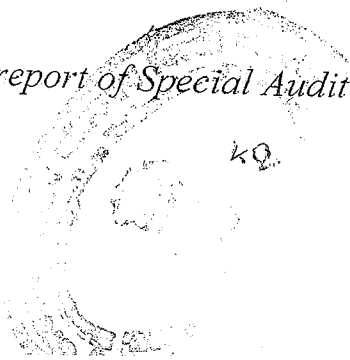
(ii) On the facts and circumstances of the case, the Id. CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the assessment framed under section 153A/143(3) being against the statutory provision of the Act and the procedure prescribed under the law, is bad and the same is liable to be quashed.

(iii) On the facts and circumstances of the case, the Id. CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the assessment order passed by the AO is beyond the limitation period prescribed under the law and as such is liable to be quashed."

2. In the course of hearing before us, the Id. counsel submitted written submissions, which also include the chronology of events as under:-

"Date of Search	07.10.2004
Last date of assessment u/s 153A as Per section 153B(i)(Proviso)	31.12.2006
Order of Special Audit	12.12.2006
Time given to file report	90 days i.e., up to 12.03.2007
Limitation as per Explanation(ii) To section 153(B)(i)	11.05.2007
Assessment order passed u/s 153A	03.08.2007

Extension given for filing report of Special Audit by AO suo-motu

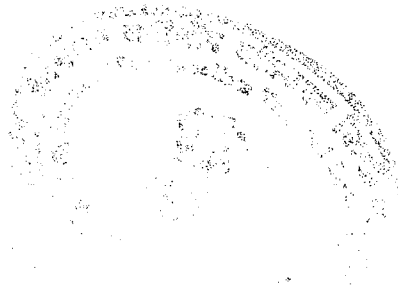


- From 12.03.07 to 20.04.07 (Letter dt. 07.03.07)
- From 20.04.07 to 20.05.07 (Letter dt. 17.04.07)
- From 20.05.07 to 24.06.07 (Letter dt. 17.05.07)"

2.1 It was submitted that the facts of the case in respect of aforesaid grounds are identical with the facts of the case of M/s Bishan Saroop Ram Kishan Agro Pvt. Ltd., decided by "A" Bench of Delhi Tribunal in ITA Nos. 3413, 3414, 3459, 3415(Del)/2008; 77,78, 76,359(Del)/2009 and 3588,3589 & 3039(Del)/2008 for assessment years 1999-2000 to 2005-06 dated 16.09.2009, in which it was held that in absence of suo motu powers of the AO to extend the period for audit under sub-section (2A) of section 142, the order of assessment was barred by limitation. Therefore, the ground stands covered by the aforesaid order.

2.2 While the learned DR disputed the aforesaid finding, it was submitted that the ground was covered by the order of the Tribunal in the case of Bishan Saroop Ram Kishan Agro Pvt. Ltd. (supra). The findings of the Tribunal are contained in paragraphs 5 and 6, which are reproduced overleaf for ready reference:-

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"5. We have considered the facts of the case and the rival submissions. From the submission of both the sides, the questions that come up for consideration are:

- (i) does the A.O. have the powers to grant any specified time as the direction of the A.O. for completing special audit u/s 142(2A), and
- (ii) whether the time period u/s 142(2A) is controlled by the provisions of Section 142(2C)?

For a better appreciation of the issue, it would be worthwhile to extract the relevant provisions as under:

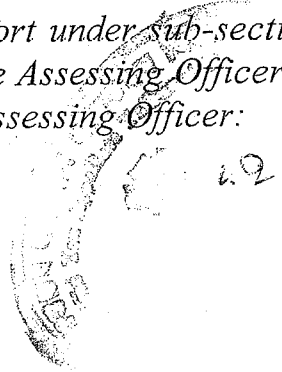
"The provisions of Section 142(2A) is as follows:

"(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:

Provided that the Assessing Officer shall not direct the assessee to get the accounts so audited unless the assessee has been given a reasonable opportunity of being heard."

"The provisions of Section 142(2C) read as follows:

"(2C) Every report under sub-section (2A) shall be furnished by the assessee to the Assessing Officer within such period as may be specified by the Assessing Officer:



Provided that the Assessing Officer may, suo motu, or on an application made in this behalf by the assessee and for any good and sufficient reason, extend the said period by such further period or periods as he thinks fit; so, however, that the aggregate of the period originally fixed and the period or periods so extended shall not, in any case, exceed one hundred and eighty days from the date on which the direction under sub-section (2A) is received by the assessee."

"The Provisions of Explanation (ii) to Section 153B read as follows:

Explanation.—In computing the period of limitation for the purposes of this section,—

- (i) x x x x x x x x.
- (ii) the period commencing from the day on which the Assessing Officer directs the assessee to his accounts audited under sub-section (2A) of section 142 and ending on the day on which the assessee is required to furnish a report of such audit under that sub-section; or
- (iii) x x x x x x x x

shall be excluded:

"The proviso to Exp. (ii) of Section 153B reads as follows:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in clause (a) or clause (b) of this sub-section available to the Assessing Officer for making an order of assessment or reassessment, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly."

"A perusal of the memorandum Explanation of the provisions in the Finance Bill 2008 regarding the amendment to the proviso to Section 142(2C) reads as follows:

L.Q.

"Granting of power to the Assessing Officer to extend the time for completion of special audit under sub-section of section 142.

Sub-section (2A) to (2D) of section 142 deal with the power of Assessing Officer to order a special audit. Such power is required to be exercised by the Assessing Officer having regard to the nature and complexity of the accounts of the assessee and the interest of the Revenue.

Sub-section (2I) of the said section specifies the period within which the audit report is to be furnished. The proviso to said sub-section empowers the Assessing Officer to extend this period of furnishing of audit report. Further, it is also provided that the aggregate of the originally fixed period and the period(s) so extended shall not exceed 180 days from the date of issuance of direction of special audit. Further, such extension can be made only when an application is made in this behalf by the assessee and there are good and sufficient reason for such extension.

It is proposed to amend the said proviso so as to also allow the Assessing Officer to extend this period of furnishing of audit report suo motu. Hence, while the Assessing Officer shall continue to have power to grant extension on an application made in this behalf by the assessee and when there are good and sufficient reasons for such extension, he can also grant such extension on his own.

*The amendment will take effect from 1st April, 2008.
{Cause 28}."*

"Circular No.1 dated 27.03.2009 Para 27 to 27.4 reads as follows:

"Direct Tax Circular No. 1 dated 27 March, 2009.

Explanatory Notes to the Provisions of the Finance Act, 2008.

1. Introduction

1.1 The Finance Act, 2008 (hereafter referred to as "the Act") as passed by the Parliament, received the assent of the President on the 10th day of May, 2008 and has been enacted as Act No. 18 of 2008. This circular explains the substance of the provisions of the Act relating to direct taxes.

27. Granting of power to the assessing officer to extend the time for completion of special audit under sub-section (2A) of section 142.
- 27.1 Sub-section (2A) to (2D) of section 142 deal with the power of Assessing Officer to order a special audit. Such power is required to be exercised by the Assessing Officer having regard to the nature and complexity of the accounts of the assessee and the interest of the revenue.
- 27.2 Sub-section (2C) of the said section specified the period within which the audit report is to be furnished. The provision to said sub-section empowers the Assessing Officer to extend this period of furnishing of audit report. Further, it is also provided that the aggregate of the originally fixed period and the period(s) so extended shall not exceed 180 days from the date of issuance of direction of special audit. Further, such extension can be made only when an application is made in this behalf by the assessee and there are good and sufficient reasons for such extension.
- 27.3 With a view to rationalize the said proviso so as to also allow the Assessing Officer to extend this period of furnishing of audit report suo motu, the said proviso has been amended. Hence, while the Assessing Officer shall continue to have power to grant extension on an application made in this behalf by the assessee and there are good and sufficient reasons for such extension, he can also grant such extension on his own.
- 27.4 Applicability has been made applicable with effect from 1st April, 2008. Hence, from this date and onwards, the Assessing Officer shall also power to extend the period of furnishing of audit report suo motu."

5.1 The dates as mentioned are not disputed. A perusal of the provisions of Section 142(2A) shows that at any stage of the proceedings before the A.O. if the A.O. is of the view that there is complexity in the accounts of the assessee, then, in the interest of

justice, he may with the prior approval of the Chief Commission or the Commissioner, direct that the assessee's accounts are to be audited by an accountant as specified under the Act. The direction for conducting special audit is subject to the assessee having been given reasonable opportunity of being heard. The reading of the provisions of Section 142(2A) categorically shows that no time limit is specified for the completion of the special audit. A reading of the provisions of Section 142(2C) shows that the report u/s 142(2A) is to be furnished within the specified period, which is to be determined by the A.O. Thus, it is noticed that Section 142(2C) specifies the time limit and such time limit is given at the discretion of the A.O. This discretion of the A.O. in granting the time limit is controlled by the proviso to Section 142(2C). The provision specifies that the A.O. can give any period in his discretion subject to a maximum of 180 days from the date on which the direction u/s 142(2A) is received by the assessee. This is because the opening words of Section 142(2C) specify that it applies to every report under sub-section (2A). A perusal of the circular No.01 dated 27.03.2009 as also the memorandum explaining to the provisions in the Finance Bill, 2008, clearly shows that the legislature as also the CBDT categorically were of the view that sub-section (2A) (2B), (2C) and (2D) of Section 142 deal with the powers of the A.O. to order a special audit fix the time limit with overall period of 180 days etc. and these provisions to be read together as complete code in these matters. In these circumstances, it cannot be held that the provisions of Section 142(2A) had a stand-alone position and was unfettered by section 142(2C).

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5.2 Further, a perusal of the proviso to Section 142(2C) shows that the A.O. did have the powers to extend the period by further period or periods as he thinks fit subject to the maximum limitation of a period of 180 days from the date on which the direction u/s 142(2A) was received by the assessee. On the facts of the present case, it is noticed that the assessee has not made any application for the extension of the period of special audit. Therefore extension which has been done vide letter dated 07.03.2007, 17.04.2007 and 17.05.2007 made on the request of the auditor could duly be taken as the suo motu action of the A.O. A perusal of the memorandum explaining the provisions of Finance bill 2008 as also the Circular No.01 dated 27.03.2008 which explains the amendment to the proviso to Section 142(2C) shows that the term "suo motu, or" had been inserted w.e.f. 01.04.2008. In these circumstances, it would have to be held that the power to suo motu extend the period for completion of the special audit was available to the A.O. only w.e.f. 01.04.2008 and before such date, the extension can be made only at the request of the assessee on an application made in this behalf by the assessee. If it is to be read otherwise, there was no reason for such amendment. The fact that the term "suo moto" has been inserted with effect from 01.04.2008 shows that before 01.04.2008, the A.O. did not have the inherent powers to extend the time limit without an application from the assessee. Further, even such extension would be controlled in view of the term "for any good & sufficient reason". Here as the period in the present case is before 01.04.2008 and as it is noticed that the assessee has not made any application for the extension of

the period given vide order for special order dated 12.12.2006, the extensions made by the A.O. vide his order dated 07.03.2007, 17.04.2007 and 17.05.2007 are without jurisdiction and consequently such extensions as made vide those letters / orders cannot be said to extend the limitation. The exclusion as provided in the Exp. (ii) to Section 153B would have to be read to be 90 days being a period between 12.12.2006 to 12.03.2007. Consequently, it would have to be held that the time period u/s 142(2A) is controlled by the provisions of Section 142(2C) and the exclusion provided in explanation (ii) to Section 158B was for the period from 12.12.2006 to 12.03.2007 and consequently the claim of the assessee that the assessment is barred by limitation, would have to be upheld and we do so.

- 5.3 *As this issue has been raised in Ground No.2(iii) of all the appeals filed by the assessee and in view of our finding as above, the said ground is held in favour of the assessee. In the circumstances, the other grounds as raised in the appeals of the assessee do not require our consideration and consequently they are not being adjudicated upon.*
- 5.4 *As the assessments have been held to be barred by limitation, the issues as raised by the revenue in its appeals also do not survive for consideration and consequently, the same are also not adjudicated upon and consequently they are treated as dismissed.*
6. *In the result, the appeals of the assessee are allowed and the appeals of the revenue are dismissed."*

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2.3 Following the aforesaid order, it is held that the assessment orders in this case are barred by limitation and, therefore, the same are cancelled.

3. In the result, the appeals are allowed.

This order was pronounced in the open court on 6th November, 2009.

(R.P. Tofani)
Judicial Member

Date of order: 6th November, 2009.
SP Satia

(K.G.Bansal)
Accountant Member

Copy of the order forwarded to:

Shri Ram Kishan Dass, Delhi.
Dy. CIT, Central Circle 10, New Delhi.
CIT(A)
CIT
The DR, ITAT, New Delhi.

Assistant Registrar.
Assistant Registrar
आयकर अपील विभाग
Income Tax Appellate Tribunal
एन सी सी, नई दिल्ली
New Delhi Branch, New Delhi

