

## **Submission of audited accounts doesn't mean AO cannot order for special audit.**

**Summary – The Allahabad HC in a recent case of U.P. Samaj Kalyan Nirman Nigam Ltd., (the Assessee) held that submission of audited accounts per se by the assessee would not disentitle the jurisdiction or authority of Assessing Officer to pass a direction for special audit. The Assessing Officer, while applying his mind need not confine himself only to books of account submitted by assessee, but can take into consideration such other documents related thereto which would be part of assessment proceedings.**

### **Facts**

- The assessee was a Government company. Its books of account were audited by the statutory auditors duly appointed by the Comptroller & Auditor General of India (CAG) as well as Accountant General (AG).
- The assessment proceedings upto the assessment year 2009-10 were completed and account books were duly accepted. However, while going through the account books as well as the reports of the CAG and the AG and the auditor's report during the assessment proceedings for the assessment year 2010-11, the Assessing Officer noticed certain discrepancies which were complex in nature and not understandable. After obtaining necessary approval from the competent authority, AO issued a show-cause notice under section 142(2A) for appointment of a special auditor for examining the books of account. Reply was tendered to the notice but the same was not found satisfactory and, as such, orders were passed for appointment of a special auditor to audit the account books of the assessee.
- The assessee filed writ petition challenging impugned order. It contended that the impugned order reflected non-application of mind as the formation of opinion of the assessing authority must be objective and not subjective satisfaction and further no opportunity was given to it as per law.

### **Held**

- There cannot be any dispute to the proposition that the competent authority under the provisions of the Act is vested with power to direct special audit, provided the conditions and requirements of section 142(2A) are satisfied.
- The provisions of this section contemplate that if at any stage of the proceedings, the Assessing Officer, having regard to the nature and complexity of accounts of the assessee and interest of the revenue, is of the opinion that it is necessary to do so, he may with the previous approval of the specified, authority, direct the assessee to get accounts audited by an accountant defined in

*Explanation* below section 288(2). The discretion vested in the Assessing Officer, thus, is a wider magnitude and, of course, has to be exercised in consonance with the provisions of the section, keeping in view the facts and circumstances of the case.

- Various case laws on the matter have clearly shown that there has to be objective consideration and application of mind by the Assessing Officer, based upon the material and proper examination of the books of account produced by the assessee, before a direction as contemplated under section 142(2A) can be issued to the assessee.
- In the instant case, during pendency of the assessment proceedings, the reply filed by the assessee was found to be unsatisfactory. After examination of the books of account and the documents, the Assessing Officer was of the opinion that it would be in the interest of revenue to direct special audit under the provisions of the Act. Before passing the direction, the Assessing Officer had issued a detailed questionnaire under section 142(1) to the assessee requiring him to furnish the details, to which the assessee has furnished the reply. Thereafter, not being satisfied with the reply so tendered by the assessee, a show-cause notice was issued to which the assessee again submitted his reply but the reply so tendered was found unsatisfactory and, as such, the Assessing Officer formed an opinion that it is necessary in interest of revenue that a proposal for special audit under section 142(2A) is being sent to Commissioner. On receipt of the said proposal, the Commissioner had approved the proposal of the Assessing Officer and remitted the same to the Assessing Officer. Thereafter, impugned order was issued for special audit.
- In these circumstances, it cannot be held that there was non-application of mind by the concerned officer before issuing the impugned direction.
- There is no merit in the contention raised by the assessee that the expression 'accounts of the assessee' can only refer to the books of account of the assessee and not the other records available before the Assessing Officer for examination or otherwise.
- The complexity of accounts of the assessee is to be determined not only by the books of account, but even by other documents whichever available in the course of an assessment and at any stage subsequent thereto may become available to the Assessing Officer.
- Submission of audited accounts *per se* would not oust the jurisdiction or authority of the Assessing Officer to pass such a direction.
- Furthermore, the proceedings under section 142(2A) is not strictly a judicial proceeding and, therefore, the elaborate reasoning is not required to be given. In the instant case, notice issued to

the assessee contained issues in brief, which the Assessing Officer thinks to be necessary and the reasons assigned therein are perfectly justified and opportunity has also been provided to the assessee prior to impugned order. Moreover, the ingredients of section 142(2A) are that the assessing authority must form an opinion with regard to the nature and complexity of the accounts, which has been done.

- Therefore , there being no merit in the writ petition the same was dismissed.