

Assessment order held invalid as special audit was directed without an opportunity of being heard to assessee

Summary – The High Court of Allahabad in a recent case of Kaka Carpets, (the Assessee) held that where Assessing Officer passed an order under section 142(2A) without giving an opportunity of hearing to assessee and without even considering detailed replies submitted by assessee in response to notice issued earlier, said order being invalid was to be set aside

Facts

- The assessee was a partnership firm engaged in manufacture and export of carpets from Bhadohi.
- The assessee filed its return of income along with a duly audited balance sheet, profit and loss account and the auditor's report.
- The Assessing Officer issued a show cause notice under section 142(2A), forming an opinion that the accounts maintained by the assessee was complex and special audit was required in the interest of revenue.
- The assessee submitted a detailed reply through its Chartered Accountant with its explanation on each of the grounds mentioned in the show cause notice.
- No further enquiries or explanation were sought by the Assessing Officer, who without passing or serving any order upon the assessee proceeded to request for approval of the Commissioner under section 142(2A).
- After obtaining the requisite approval from the Commissioner, the Assessing Officer passed an order directing the assessee to furnish audit report in accordance with provisions of section 142(2A).
- The assessee filed instant writ petition contending that the Assessing Officer passed impugned order without considering material available on record and without giving assessee an opportunity of being heard and, thus, it was liable to be set aside.

Held

- The averments of the assessee in the writ petition that none of the ingredients for exercising powers under section 142(2A) are conjointly present in the instant case, have not been denied by the respondents. The proposal for special audit sent by the Assessing Officer and filed along with counter affidavit also does not disclose the consideration of the reply of the petitioner.
- The order of approval also indicates that the Assessing Officer had sent the proposal, on which the Commissioner granted acceptance on the same day. The approval does not reflect application of mind to the facts of the case and in the reply given by the assessee. The copy of the said approval was sent by the Commissioner, to the Special auditor. The assessee was not communicated with the order passed by the Assessing Officer, nor the order of approval by the Commissioner.

- In view of above, it is opined that Assessing Officer should reconsider the issue as to whether a direction should be issued under section 142(2A) after considering the objections of the assessee and affording a reasonable opportunity of being heard, in terms of section 142(2A). It is only after the Assessing Officer reaches to a fair conclusion after considering the reply given by the assessee, and affording an opportunity of hearing, the Commissioner as approving authority will consider whether the special audit is required to be carried out for the purposes of understanding the accounts maintained by the assessee. The opinion must be formed reflecting the application of mind based on objective criteria and not on the basis of subjective satisfaction.
- In result the writ petition succeeds and is allowed. The Assessing Officer and the Commissioner as approving authority are directed, to reconsider the matter for directions for special audit under section 142(2A), in accordance with law.