

## Special Audit can be directed on basis of multiplicity of transactions, volume of trade and complexity of accounts

**Summary – The High Court of Bombay in a recent case of Sharad Kantilal Shah, (the Assessee) held that Where direction for special audit given on basis of volume of total trades executed by assessee, multiplicity of transactions, complexity of accounts and doubts about correctness of accounts, was justified**

### Facts

- The petitioner-assessee was a trader in shares dealing in capital and derivative segments. Consequent to a search action, he filed his return of income.
- The Assessing Officer directed the assessee to subject his accounts to special audit.
- In the instant writ petition, the assessee contended the following:-
  - The special audit was directed only to secure more time to pass an order of assessment.
  - No direction was given as to special audit of the accounts of assessee's wife and family members.
  - The Assessing Officer did not examine the books of account before ordering the special audit.
  - The terms of Reference indicated that the Special Auditor was also asked to prepare accounts, which was bad in law.
  - The entire direction for special audit was without jurisdiction.

### Held

#### ***Special audit has been directed only to secure more time to pass an order of assessment***

- The petitioner does not dispute that all the procedural safeguards provided in section 142(2A) viz, issue of notice after previous approval of Chief Commissioner and hearing the petitioner, have been satisfied before issuing of the impugned order.
- There is nothing in the Act which prohibits the Assessing Officer from ordering/directing the special audit after a particular date before the last date of framing an assessment. An Assessing Officer can direct a special audit as and when he does come to the conclusion that the accounts of the assessee are required to be specially audited for any one of the reasons set out in section 142(2A).

#### ***Whether not directing special audit of accounts of Petitioner's wife and family members is fatal***

- That is an irrelevant consideration while considering the necessity of special audit in the case of the petitioner. The exercise of jurisdiction under section 142(2A) by the Assessing Officer has to be

examined merely on the basis of the material available before him in respect of the assessee concerned while exercising jurisdiction to direct special audit. Nothing has been shown to us that on the basis of the material available before the Assessing Officer, the direction for special audit is perverse. Thus, this grievance is also not justified.

***Whether Assessing Officer did not examine books of account before directing special audit***

- The show cause notice as well as the impugned direction proceed on the basis that on verification of the books of account and vouchers that the issue of special audit arose. Thus, this grievance of non examination of books of account is without any substance. Moreover, after the amendment to section 142(2A) with effect from 2013, a special audit is not restricted only to complexity of the Accounts. The special audit can now be directed not only if the accounts are complicated but also if there is doubt to the correctness of the account or multiplicity of transactions or volume of transaction or specialised nature of the accounts. Moreover, the other grievance that the notice did not indicate the reasons which led him to a *prima facie* view directing a special audit stands belied by the fact that the show cause notice dated 25-7-2016 issued to the petitioner, in fact, indicated the basis for directing special audit on the basis of the volume of the total trades executed by the petitioner, multiplicity of transactions in the accounts, including the nature and complexity of the accounts and doubts about the correctness of the accounts. Therefore, this grievance is also without substance.

***Whether terms of Reference indicates that the Special Auditor has also been asked to prepare accounts and, therefore, bad in law***

- Section 142(2A) empowers the Assessing Officer while directing a special audit to furnish audit report in the prescribed form and can also seek such other particulars from the Special Auditor which he may require to complete the assessment. The Terms of Reference indicate that the examination which had to be done by the special audit was to examine the accounts keeping in view the supporting evidence. Thus, this grievance is also without any substance.

***Whether merely because assessment had been completed under section 143(3), entire direction for special audit could not be said to be without jurisdiction on ground that Assessing Officer has no jurisdiction to assess petitioner under section 153A***

- At this stage, this submission on the part of the petitioner is premature. Presently, we are only concerned with the jurisdiction of the Assessing Officer to direct a special audit. The necessary conditions to be satisfied before the special audit is directed are listed/set out in section 142(2A) and these are satisfied. Thus the direction for special audit. The issue of framing/passing an assessment order would arise only after the special audit is completed. Thus, there is no merit in this submission to challenge the direction of special audit by the impugned order.

- The satisfaction recorded by the Assessing Officer before directing a Special Audit is his opinion on the basis of the facts before him and such opinion is not shown to be perverse. The opinion reached by the Assessing Officer to direct special audit on the present facts is a reasonable and possible view.