

AO can issue direction for special audit even if he doesn't possess books of account: HC

Summary – The High Court of Gujarat in a recent case of Takshashila Realties (P.) Ltd., (the Assessee) held that While forming an opinion to get accounts audited by special auditor considering specialized nature of business activities of assessee, there need not be any books of account before Assessing Officer

Facts

- There were five partnership firms which were converted into companies. Subsequently, those companies came to be amalgamated in order to form assessee-company.
- For the relevant year, notices under section 148 were issued in the case of transferee companies. The writ petitions filed to challenge said notices were dismissed.
- Thereafter, the Assessing Officer finding that there was a complex web of transactions in the group of firms namely introduction of land by some of the partners; revaluation of lands and crediting of amounts in the current accounts of all partners; conversion of firms into companies which merged with existing company; valuation of share by discounted cash flow method and allotment of shares against the amounts outstanding as unsecured loans at unreasonable premium clubbed with multiple revaluation or properties over the years, passed an order in exercise of power under section 142(2A) directing the assessee-company to get its accounts audited for relevant year as a successor of erstwhile firms.
- The assessee filed instant petition challenging the validity of aforesaid order.

Held

- At the outset, it is required to be noted that the impugned order has been passed by the Assessing Officer of Special Audit in exercise of powers under section 142(2A). Therefore, while considering the legality and validity of the impugned order, section 142(2A) is required to be taken into consideration.
- in view of the amended section 142(2A), if at any stage of the proceedings before him, the Assessing Officer, having regard to (a) the nature and complexity of the accounts; (b) volume of the accounts; (c) doubts about the correctness of the accounts; (iv) multiplicity of transactions in the accounts; or (v) specialized nature of business activity 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 Principal Commissioner, direct the assessee to get the accounts audited by an accountant [Special Auditor]. As per the proviso to section 142(2A), before passing an order of Special Audit and prior to directing the assessee to get the accounts so audited, the Assessing Officer is required to give a reasonable opportunity of being heard to the assessee.

- In the present case, before passing the impugned orders under section 142(2A), opportunity of being heard has been duly given to the assessee and show cause notices were issued and served upon the assessee calling upon it to show cause why, for the reasons stated in the said notice, the books of account may not be subject to audit by a special auditor. It is required to be noted that in the show cause notice, reasons were specifically mentioned pointing out the necessity to get accounts audited by the Special Auditor. Thereafter, the assessee raised objections in detail, which have been disposed of by the Assessing Officer by speaking order and only thereafter, after seeking approval from the Principal Commissioner as required under the Act, the Assessing Officer passed the impugned order under section 142(2A). Therefore, as such, the procedure which is required to be followed, while passing the order under section 142(2A), has been duly followed by the Assessing Officer.
- Now so far as submission made by the assessee that the Assessing Officer cannot direct special audit under section 142 (2A) before calling for the accounts from the assessee in the assessment proceedings and without doubting the accounts and/or considering the complexity in the accounts is concerned, it is required to be noted that as per amended section 142 (2A), apart from the nature and complexity of the accounts, etc., even in case of multiplicity of transactions in the accounts or specialized nature of business activity of the assessee and the interests of the revenue, the Assessing Officer can pass an order for special audit in exercise of powers conferred under section 142(2A). Therefore, while forming an opinion to get the accounts audited by special auditor; considering the specialized nature of business activities of the assessee, there need not be any books of account before the Assessing Officer.
- In the present case, having found that there are complex issues relating to introduction of land by the partners into the firms; revaluation of land; credit of partners in capital account equal to revalued amount of land; conversion of capital account to loan account of shareholders and issues relating to issuance of equity shares against the balances of revaluation credit at an unreasonable premium, and after having been satisfied that considering the specialized nature of business activities of the assessee, the Assessing Officer has passed an order of special audit in exercise of powers under section 142(2A).
- The decision for audit of the assessee's account is backed by proper material on record and reasons recorded by the Assessing Officer. His formation of belief that looking to the multiplicity of the transactions in the accounts and specialized nature of business activities of the assessee, a special audit is called for, cannot be faulted.
- Considering the aforesaid facts and circumstances of the case and having regard to the multiplicity and specialized nature of transactions and in the interests of the revenue, when the Assessing Officer has passed the impugned order of special audit under section 142(2A), the same cannot be faulted with.
- In the result, assessee's petition is dismissed.