

Receiving special audit report within period of limitation wasn't necessary: Delhi HC

Summary – The High Court of Delhi in a recent case of AT & T Global Network Services (India) (P.) Ltd., (the Assessee) held that Clause (iv) to Explanation 1 of section 153 clearly states that period from date when Assessing Officer directs special audit till last date of furnishing such report under section 142 (2A) shall be excluded

Facts

- For the relevant assessment year, the assessee had declared taxable income and return was taken for scrutiny/regular assessment.
- The Assessing Officer vide order dated 26-12-2011 had directed the assessee to get its accounts audited under section 142(2A). Report of the special audit was received by the Assessing Officer on 22-6-2012. Thereafter, the draft assessment order was passed by the Assessing Officer on 9-8-2012, which was to be passed till 31-12-2011.
- Objections raised by the assessee to the draft assessment order were considered and decided by the Dispute Resolution Panel and, the final assessment order was passed on 17-6-2013.
- The Tribunal held that the draft assessment order dated 9-8-2012, passed by the Assessing Officer under section 144C read with section 143(3), was invalid as it was passed beyond the prescribed statutory period. Accordingly, the final assessment order dated 17-6-2013 passed by the Assessing Officer on the directions of the Dispute Resolution Panel had been held to be *void* and invalid.
- Revenue relied on clause (iv) to Explanation 1 to section 153 for exclusion of period of special audit between 26-12-2011 and 22-06-2012 and submitted that, on exclusion of this period as the time left for passing of the draft assessment order was 6 days, the Assessing Officer was entitled to pass the draft assessment order on or before 21-8-2012 in terms of first proviso of Explanation 1 to section 153.
- On appeal:

Held

- Clause (iv) of Explanation 1 to section 153 states that the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited and ending with the last date on which the assessee is required to furnish a report of such audit, shall be excluded for computing the period of limitation. Thus, clause (iv) to Explanation 1 clearly states that the period from the date when the Assessing Officer directs the special audit till the last date of furnishing such report under section 142 (2A) shall be excluded and not counted for limitation. Accordingly, the period or time taken for conduct of special audit between 26-12-2011 and 22-06-2012 has to be excluded.

- First proviso to *Explanation 1* is equally clear and categoric. Wherever after exclusion of the time or period, the period of limitation for passing of an assessment order is less than sixty days, the limitation period for passing of the assessment order shall be extended to sixty days. Accordingly, as the period for passing of the draft assessment order on report of special audit was six days, by virtue of the first proviso, it was extended to sixty days. In view of the statutory exclusion under clause (iv) to the *Explanation 1* and statutory extension *vide* first proviso, the Assessing Officer was entitled to pass the assessment order by 21-8-2012. The draft assessment order passed on 9-8-2012 was within limitation and not *void* or invalid.
- It is not necessary that the special audit report should be received within the period of limitation to avail the benefit of clause (iv) to *Explanation 1* and the first proviso to section 153, rather receipt of the special audit report beyond the original time prescribed would not matter in view of the exclusion under clause (iv) to *Explanation 1*; time or period excluded is not counted and, accordingly, the period of limitation is to be computed. Further, benefit of the first proviso cannot be denied when upon exclusion, the time left for passing an order is less than sixty days and clause (iv) to *Explanation 1* and the first proviso would certainly apply in the present case as special audit was directed by the Assessing Officer before the expiry of prescribed period and only six days were left to complete the assessment. Statutory time period is fixed by the Act. The same enactment can also provide for exclusion of period, and extension of time.
- Accordingly, the substantial question of law is answered in favour of the revenue and against the assessee. The draft assessment order was passed within the prescribed time and was not barred by limitation.