

**IN THE HIGH COURT OF DELHI****C.W. No.5001/2003 & CM No.8776/2003**

Decided on 19 August 2003

USHA HOUSING DEVELOPMENT CO. LTD.Petitioner
Through Mr Vibhu Bakhru, Adv
with Ms Ekta Kapil, Adv

VERSUS

C.I.T. & ORS.Respondents
Through: Mr R.D Jolly, Adv

CORAM:

THE HON'BLE MR.JUSTICE D.K.JAIN
THE HON'BLE MR.JUSTICE MADAN B. LOKUR

- 1 Whether reporters of local papers may be allowed to see the judgment
- 2 To be referred to the Reporter or not?
- 3 Whether the judgment should be reported in the Digest?

D.K.JAIN, J (Oral)

An order dated 14-2-2002/21-2-2003, passed by the Assistant Commissioner of Income Tax, Central Circle 9, New Delhi (respondent No 2 herein), directing the petitioner to submit an audit report under Section 142 (2A) of the Income-tax Act, 1961 (for short 'the Act') for the



block period 1 April 1990 to 14 February 2001 (Assessment year 1991-92 to the Assessment Year 2001-2002), is under challenge in this writ petition.

Since, in our view, the writ petition is liable to be dismissed on preliminary objections/grounds alone, we deem it unnecessary to state the facts, which necessitated the passing of the impugned order.

Firstly, in view of the provisions of Sub-Section (2C) of Section 142, prescribing the time limit for furnishing of the report under Sub-Section (2A), which in any case cannot exceed 180 days from the date on which direction under Sub-Section (2A) is received by the assessee, the writ petition is highly belated. The order under challenge was passed on 21 February 2003 and was admittedly served on the petitioner immediately thereafter and therefore, the audit report had to be submitted by the third week of August 2003. But the writ petition was filed on 4 August 2003, when a few days were left for submission of report. No explanation is forthcoming for the delay.

Secondly, it is brought to our notice that since no information has been furnished by the petitioner to the Chartered Accountant, and the time for submission of the report is about to be over, a report has already been sent by the Chartered Accountant to the assessee with a copy to the Assessing Officer, with the result that the present petition is otherwise



rendered infructuous

Moreover, a perusal of the original records, containing the proposal submitted by the Assessing Officer to the Commissioner of Income Tax and seeking his approval for ordering audit under Section 142 (2A) of the Act in Usha Group of Companies, which includes the petitioner herein, produced before us, pursuant to our directions on 7 August 2003, leaves little doubt in our mind that the Assessing Officer had sufficient material before him to record his satisfaction that having regard to the nature and complexity of the accounts of the petitioner and the interests of the revenue, special audit under Section 142 (2A) of the Act was necessary, we find it difficult to agree with learned counsel for the petitioner that there was no application of mind on the part of the Assessing Officer as regards the nature and complexity of the accounts of the petitioner requiring a special audit and the audit was ordered just to save limitation for completing assessments for the said period. It is not within the province of judicial review to minutely analyse the materials on which the opinion of the Assessing Officer is rested to find out whether the same is sufficient for the authority concerned to come to the conclusion that the accounts of an assessee need to be subjected to special audit.



Relying on the decisions of the Himachal Pradesh High Court in H P State Forest Corporation Ltd Vs Joint Commissioner of Income Tax & Anr (2001) 252 ITR 833, and Calcutta High Court in Bata India Ltd & Anr Vs Commissioner of Income Tax & Ors (2002) 257 ITR 622, learned counsel has pleaded that an opportunity of hearing should have been granted to the petitioner before ordering a special audit. For the afore-noted view taken by us on the facts of the present case, we do not propose to dwell on the issue, though, prima facie there is no substance in the proposition.

For all these reasons, we decline to entertain the writ petition. The writ petition and application for interim relief, are accordingly dismissed.

D.K. Jain
D.K. JAIN, J.

Madan Lokur
MADAN B. LOKUR, J

AUGUST 19, 2003

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