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% 25.11.2009

Present: Mr. Harish N. Salve, Sr. Advocate and Mr. S. Ganesh, Sr. Advocate with Mr. R. Narain, Mr. Ajay Aggarwal, Ms. Kanika Gomber, Ms. Mallika Joshi, Mr. Rajan Narain and Mr. Harsh Sahu, Advocates for the Petitioner.
Mr. N.P. Sahni, Advocate with Mr. P.C. Yadav, Advocate for the Respondent No.1 to 4.
Ms. Anjana Gosain, Advocate for Respondent No.5.

+ CAVEAT No.155/2009

* Since the Respondent has put in appearance through counsel, this caveat stands disposed of.

W.P.(C) No. 13421/2009

Vide the impugned order dated 5th November, 2009 passed by the Respondent No.1 under Section 142(2A) of the Income Tax Act, the Respondent No.1 has directed a special audit to be carried out in respect of the accounts of the Petitioner company for the financial year 2006-07, relevant to assessment year 2007-08.

Before passing this order, show cause notice dated 30th September, 2009 was served upon the Petitioner which runs into 10 pages. The Petitioner had given reply dated 6th October, 2009 to the said show cause notice refuting the averments made in the show cause notice and impressing upon the Respondent that it



was not a case of complexity in accounts etc. and, therefore special audit was required. However, we find that the impugned order dated 5th November, 2009 is a non-speaking order which does not deal with the averments made in the show cause notice or the reply given thereto by the Petitioner. One of the reasons for challenging the said order is that it is a non-speaking order.

We are of the view that when such an order directing special audit is passed, the least that is expected is that a reasoned order is passed justifying as to why such special audit was required. Another important reason for holding this view is that any such order passed is subject to judicial review and the Supreme Court in the case of *Rajesh Kumar & Ors. vs. D.C.I.T. & Ors.-(2007) 2 SCC 181*, as well as *Sahara India (Firm) vs. C.I.T.-(2008) 14 SCC 151*. has laid down the parameters/conditions which is required to be fulfilled before passing an order to appoint a Special Auditor under Section 142(2A) of the Act. It is, therefore, necessary for the officer passing such an order to give the reasons and also disclose as to how the conditions laid down by the Supreme Court in the aforesaid judgments are satisfied warranting special audit.

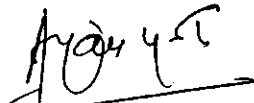
On this ground alone, we set aside the impugned order dated 5th November, 2009. It would however, be open to the



Respondent No.1 to deal with the same show cause notice and the reply given to the said show cause notice and pass speaking order thereupon.

Mr. Harish N. Salve, learned senior counsel at this stage submits that the Petitioner be provided copies of the notings. It would be open to the Petitioner to apply for the same and the Respondent shall supply copy of the notings at the expenses of the Petitioner immediately.

The writ petition is disposed of in the aforesaid terms.


A.K. SIKRI, J.


SIDDHARTH MRIDUL, J.

November 25, 2009
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