



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **(1) ITA No.1775/2010**

% **COMMISSIONER OF INCOME TAX** Date of Decision: May 27, 2011
... Appellant
 Through: Mr. Prem Lata Bansal, Sr. Advocate
 with Mr. Deepak Anad, Advocates

Versus

BISHAN SAROOP RAM KISHAN AGRO PVT. LTD. ... RESPONDENT
 Through: Mr. K.P. Mall and Ms. Kavita Jha,
 Advocates

(2) ITA No.1776/2010

% **COMMISSIONER OF INCOME TAX** **... Appellant**
 Through: Mr. Prem Lata Bansal, Sr. Advocate
 with Mr. Deepak Anad, Advocates

Versus

BISHAN SAROOP RAM KISHAN AGRO PVT. LTD. ... RESPONDENT
 Through: Mr. K.P. Mall and Ms. Kavita Jha,
 Advocates

(3) ITA No.1777/2010

% **COMMISSIONER OF INCOME TAX** **... Appellant**
 Through: Mr. Prem Lata Bansal, Sr. Advocate
 with Mr. Deepak Anad, Advocates

Versus

BISHAN SAROOP RAM KISHAN AGRO PVT. LTD. ... RESPONDENT
 Through: Mr. K.P. Mall and Ms. Kavita Jha,
 Advocates

(4) ITA No.1965/2010

% **COMMISSIONER OF INCOME TAX** **... Appellant**
 Through: Mr. Prem Lata Bansal, Sr. Advocate
 with Mr. Deepak Anad, Advocates

ITAs No.1775/ 2010, 1776/2010, 1777/2010, 1965/2010, 2032/2010, 2033/2010, 2034/2010, 2035/2010,
 2036/2010, 2037/2010, 2038/2010, 2039/2010, 2046/2010 & 2047/2010



Versus

BISHAN SAROOP RAM KISHAN AGRO PVT. LTD. ... RESPONDENT

Through: Mr. K.P. Mall and Ms. Kavita Jha,
Advocates

(5) ITA No.2032/2010

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BISHAN SAROOP RAM KISHAN AGRO PVT. LTD. ... RESPONDENT

Through: Mr. K.P. Mall and Ms. Kavita Jha,
Advocates

(6) ITA No.2033/2010

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COMMISSIONER OF INCOME TAX

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Through: Mr. Prem Lata Bansal, Sr. Advocate
with Mr. Deepak Anad, Advocates

Versus

BISHAN SAROOP RAM KISHAN AGRO PVT. LTD. ... RESPONDENT

Through: Mr. K.P. Mall and Ms. Kavita Jha,
Advocates

(7) ITA No.2034/2010

%

COMMISSIONER OF INCOME TAX

... Appellant

Through: Mr. Prem Lata Bansal, Sr. Advocate
with Mr. Deepak Anad, Advocates

Versus

BISHAN SAROOP RAM KISHAN AGRO PVT. LTD. ... RESPONDENT

Through: Mr. K.P. Mall and Ms. Kavita Jha,
Advocates

(8) ITA No.2035/2010

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ITAs No.1775/2010, 1776/2010, 1777/2010, 1965/2010, 2032/2010, 2033/2010, 2034/2010, 2035/2010,
2036/2010, 2037/2010, 2038/2010, 2039/2010, 2046/2010 & 2047/2010



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Through: Mr. K.P. Mall and Ms. Kavita Jha,
Advocates

(9) ITA No.2036/2010

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COMMISSIONER OF INCOME TAX

... Appellant

Through: Mr. Prem Lata Bansal, Sr. Advocate
with Mr. Deepak Anad, Advocates

Versus

BISHAN SAROOP RAM KISHAN AGRO PVT. LTD. ... RESPONDENT

Through: Mr. K.P. Mall and Ms. Kavita Jha,
Advocates

(10) ITA No.2037/2010

%

COMMISSIONER OF INCOME TAX

... Appellant

Through: Mr. Prem Lata Bansal, Sr. Advocate
with Mr. Deepak Anad, Advocates

Versus

BISHAN SAROOP RAM KISHAN AGRO PVT. LTD. ... RESPONDENT

Through: Mr. K.P. Mall and Ms. Kavita Jha,
Advocates

(11) ITA No.2038/2010

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Versus

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2036/2010, 2037/2010, 2038/2010, 2039/2010, 2046/2010 & 2047/2010



BISHAN SAROOP RAM KISHAN AGRO PVT. LTD. ... RESPONDENT
Through: Mr. K.P. Mall and Ms. Kavita Jha,
Advocates

(12) ITA No.2039/2010

%
COMMISSIONER OF INCOME TAX ... Appellant
Through: Mr. Prem Lata Bansal, Sr. Advocate
with Mr. Deepak Anad, Advocates

Versus

BISHAN SAROOP RAM KISHAN AGRO PVT. LTD. ... RESPONDENT
Through: Mr. K.P. Mall and Ms. Kavita Jha, Advocates

(13) ITA No.2046/2010

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COMMISSIONER OF INCOME TAX ... Appellant
Through: Mr. Prem Lata Bansal, Sr. Advocate
with Mr. Deepak Anad, Advocates

Versus

BISHAN SAROOP RAM KISHAN AGRO PVT. LTD. ... RESPONDENT
Through: Mr. K.P. Mall and Ms. Kavita Jha, Advocates

(14) ITA No.2047/2010

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COMMISSIONER OF INCOME TAX ... Appellant
Through: Mr. Prem Lata Bansal, Sr. Advocate
with Mr. Deepak Anad, Advocates

Versus

BISHAN SAROOP RAM KISHAN AGRO PVT. LTD. ... RESPONDENT
Through: Mr. K.P. Mall and Ms. Kavita Jha, Advocates

CORAM:
HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE M.L.MEHTA

1. Whether the Reporters of local papers
may be allowed to see the judgment? Yes

ITAs No.1775/ 2010, 1776/2010, 1777/2010, 1965/2010, 2032/2010, 2033/2010, 2034/2010, 2035/2010,
2036/2010, 2037/2010, 2038/2010, 2039/2010, 2046/2010 & 2047/2010



2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

M.L.MEHTA, J. (Oral)

1. For orders see ITA 1775 of 2010.


M.L.MEHTA
(JUDGE)


A.K.SIKRI
(JUDGE)

May 27, 2011
rd



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 Advocates *Ajay Vohra Anand*
8/8/11

(2) ITA No.1776/2010

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8/8/11

(4) ITA No.1965/2010

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Versus

BISHAN SAROOP RAM KISHAN AGRO PVT. LTD. ... RESPONDENT

Through: Mr. ~~K.P. Mall~~ and Ms. Kavita Jha,
Advocates *Ajay Vohra Anand*

(5) ITA No.2032/2010 *RR11*

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COMMISSIONER OF INCOME TAX ... Appellant

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BISHAN SAROOP RAM KISHAN AGRO PVT. LTD. ... RESPONDENT

Through: Mr. ~~K.P. Mall~~ and Ms. Kavita Jha,
Advocates *Ajay Vohra Anand*

(6) ITA No.2033/2010 *RR11*

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Advocates *Ajay Vohra Anand*

(7) ITA No.2034/2010 *RR11*

%

COMMISSIONER OF INCOME TAX ... Appellant

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Versus

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Through: Mr. ~~K.P. Mall~~ and Ms. Kavita Jha,
Advocates *Ajay Vohra Anand*

(8) ITA No.2035/2010 *RR11*

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ITAs No.1775/2010, 1776/2010, 1777/2010, 1965/2010, 2032/2010, 2033/2010, 2034/2010, 2035/2010,
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Advocates *Ajay Vohra* *Amal**Prjy*(9) ITA No.2036/2010

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Advocates *Ajay Vohra* *Amal**Prjy*(10) ITA No.2037/2010

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Advocates *Ajay Vohra* *Amal**Prjy*(11) ITA No.2038/2010

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(12) ITA No.2039/2010

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(13) ITA No.2046/2010

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(14) ITA No.2047/2010

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CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE M.L.MEHTA

1. Whether the Reporters of local papers

ITAs No.1775/ 2010, 1776/2010, 1771/2010, 1965/2010, 2032/2010, 2033/2010, 2034/2010, 2035/2010,
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may be allowed to see the judgment?

2. To be referred to Reporter or not?

3. Whether the judgment should be reported in the Digest?

Yes

M.L.MEHTA, J. (Oral)

1. The above 14 appeals are directed against the common order of the Income Tax Appellate Tribunal (for short, "the Tribunal") dated 18th September 2009 whereby the appeals filed by the Assessee against the order of CIT(A) were allowed and the cross appeals filed by the Revenue were dismissed. The following questions of law arose in all these appeals:

- I. Whether the Ld. ITAT erred in law in holding that the assessment order was barred by limitation?
- II. Whether the amendment to the proviso to Section 142(2C) of the Income Tax Act, 1961 with effect from 01.04.2008 was clarificatory and thus retrospective in nature?

2. The facts, as gathered from the impugned order, are that the Assessee had filed its returns for different assessment years. There was a search conducted by the Revenue on the Assessee on 7th October 2004. The last panchnama was drawn on 6th December 2004. A notice under Section 153A of the Income Tax Act (for short, "the Act") was issued upon the Assessee on 16th May, 2005. The assessee

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filed return in response to this notice. On 12th December 2006, the Assessing Officer ordered for conducting special audit as per the provisions of Section 142 (2A) of the Act and gave 90 days time i.e. up to 12th March 2007 to submit the report. The Auditor made a request to the Assessing Officer for seeking extension of time for completion of audit stating that the Assessee did not co-operate in the proceedings. Consequently, Assessing Officer extended the time from 12th March, 2007 to 20th April, 2007. The Assessing Officer again extended the time for completion of the special audit up to 20th May, 2007. The AO again, for the third time, extended the time for completion of special audit up to 5th June, 2007. The audit report under Section 142(2B) of the Act came to be submitted by the Auditor on 4th June, 2007. The AO passed the assessment order under Section 153A and 143(3) of the Act on 3rd August, 2007.

3. These appeals against the different orders of the Assessing Officer came to be disposed of by CIT(A) vide different orders. Some of the issues on merits were decided by CIT(A) against the Revenue and some against the Assessee. The issue regarding limitation of finalization of assessment under Section 153A was decided against the Revenue. The cross appeals filed by the Assessee and the Revenue against the order of CIT(A) were disposed of by the Tribunal vide impugned order only on the issue of limitation. Since the issue of limitation of finalization of assessment was decided against the

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revenue, the Tribunal did not choose to decide the other issues raised on merits.

4. The Tribunal held that the AO could not have extended the time for auditor's report on his own inasmuch as this power of the AO to extend the time of audit report suo motu under Section 142(2C) came to be inserted by way of an amendment with effect from 1st April, 2008. Consequently, he held the assessment made under Section 153A of the Act in respect of the assessment years in question to be barred by limitation. It is this impugned order that has been challenged by the Revenue by way of these appeals.

5. There is no dispute with regard to the dates. The only issue is with regard to interpretation of provisions of Section 142(2A), (2C) and 153B(1) Explanation (ii). For better understanding these Sections are reproduced hereinbelow:

142. Enquiry before assessment.-(1) *For the purpose of making an assessment under this Act, the Assessing Officer may serve on any person who has made a return under Section 115WD or Section 139 or in whose case the time allowed under sub-section (1) of section 139 for furnishing the return has expired a notice requiring him, on a date to be therein specified,-*

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[(2A) If, at any stage of the proceedings before him, the [Assessing Officer], having regard to the nature and complexity of the accounts 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

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approval of the [Chief Commissioner or Commissioner] direct the assessee to get the accounts audited by an accountant, as defined in the Explanation below sub-section (2) of section 288, nominated by the [Chief Commissioner or Commissioner] in this behalf and to furnish a report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed and such other particulars as the [Assessing Officer] may require;

[Provided that the Assessing Officer shall not direct the assessee to get the accounts so audited unless the assessee has been given a reasonable opportunity of being heard.]

[(2B) The provisions of sub-section (2A) shall have effect notwithstanding that the accounts of the assessee have been audited under any other law for the time being in force or otherwise.]

[(2C) Every report under sub-section (2A) shall be furnished by the assessee to the [Assessing Officer] within such period as may be specified by the [Assessing Officer]:

Provided that the Assessing Officer may, *Suo motu*, or on an application made in this behalf by the assessee and for any good and sufficient reason, extend the said period by such further period or periods as he thinks fit; so, however, that the aggregate of the period originally fixed and the period or periods so extended shall not, in any case, exceed one hundred and eighty days from the date on which the direction under sub-section (2A) is received by the assessee.

153B. (1) Notwithstanding anything contained in section 153, the Assessing Officer shall make an order of assessment or reassessment,—

- (a) in respect of each assessment year falling within six assessment years referred to in clause (b) of ²³[sub-section (1) of] section 153A, within a period of two years from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed;



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- (b) in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A, within a period of two years from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed :

[Provided that in case of other person referred to in section 153C, the period of limitation for making the assessment or reassessment shall be the period as referred to in clause (a) or clause (b) of this sub-section or one year from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later:]

[Provided further that in the case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on the 1st day of April, 2004 or any subsequent financial year,—

(i) the provisions of clause (a) or clause (b) of this sub-section shall have effect as if for the words "two years" the words "twenty-one months" had been substituted;

(ii) the period of limitation for making the assessment or reassessment in case of other person referred to in section 153C, shall be the period of twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed or nine months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later:]

Provided also that in case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on the 1st day of April, 2005 or any subsequent financial year and



during the course of the proceedings for the assessment or reassessment of total income, a reference under sub-section (1) of section 92CA—

(i) was made before the 1st day of June, 2007 but an order under sub-section (3) of section 92CA has not been made before such date; or

(ii) is made on or after the 1st day of June, 2007,

the period of limitation for making the assessment or reassessment in case of such other person shall, notwithstanding anything contained in clause (ii) of the second proviso, be the period of thirty-three months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed or twenty-one months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later.]

Explanation.—In computing the period of limitation for the purposes of this section,—

- (i) the period during which the assessment proceeding is stayed by an order or injunction of any court; or
- (ii) the period commencing from the day on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and ending on the day on which the assessee is required to furnish a report of such audit under that sub-section; or

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(2) The authorization referred to in clause (a) and clause (b) of sub-section (1) shall be deemed to have been executed.-

(a) in the case of search, on the conclusion of search as recorded in the last panchnama, drawn in relation to any person in whose case the warrant of authorization has been issued;

(b) in the case of requisition under Section 132A, on the actual receipt of the books of account or other documents or assets by the Authorized Officer.]



6. Section 142 provides the procedure for the enquiry that is required before making assessment. Sub-section (2A) provides for conducting special audit during the proceedings of assessment. This sub section provides that if at any stage of the proceedings, the Assessing Officer was of the opinion, having regard to the nature and complexity of the accounts of the Assessee and in the interest of revenue so to do, he may direct the Assessee to get the accounts audited by the Accountant in the manner prescribed therein. Sub section (2C) provides that every audit report under sub section (2A) is to be furnished by the Assessee to the Assessing Officer within such period as may be specified by the Assessing Officer. It was submitted by the learned counsel for the Assessee that the assessment order passed under Section 153A on 3rd August, 2007 was barred by limitation insofar as the order of special audit was made by the Assessing Officer on 12th December 2006 and the special audit was to be conducted on or before 12th March, 2007. He submitted that the Assessing Officer did not have inherent power to extend time under sub Sections (2A) or (2C) of Section 142 of the Act and the time could only be extended at the request of the Assessee and consequently the limitation as per Explanation (ii) to Section 153B(1) for the purpose of computing assessment expired on 11th May, 2007. He also submitted that the power to *suo motu* extend the period for special audit under Section 142(2A) has been provided in the proviso to section 142(2C) by ITAs No.1775/2010, 1776/2010, 1777/2010, 1965/2010, 2032/2010, 2033/2010, 2034/2010, 2035/2010, 2036/2010, 2037/2010, 2038/2010, 2039/2010, 2046/2010 & 2047/2010



the Finance Act, 2008 with effect from 1st April, 2008 and the same being prospective in nature, the AO was not empowered to extend the time for audit report of his own. The learned counsel also placed reliance upon the Memorandum explaining the provisions of finance bill, 2008 and also the circular No.1 issued by CBDT dated 27th March, 2009. The said Memorandum and Circular shall be referred to a litter later.

7. This was not in dispute that the word '*suo motu*' came to be inserted by way of an amendment with effect from 1st April, 2008. However, it was contended by learned counsel for the Revenue that the Assessing Officer had the power to extend the time of audit report under Section 142(2C) of the Act since the word "*and*" appearing before the words "*for any good and sufficient reasons*" was to be read as '*or*'. In other words, the submissions of the learned counsel was that the Assessing Officer *suo motu* had the power to direct the assessee to get audit report and also to extend the time for submission of audit report. Learned counsel relied upon cases of **Jagjit Sugar Mills Co. Ltd.vs. CIT**, 210 ITR 468 (Punjab & Haryana); **CIT v Puthuthotam Estates Ltd.** 127 ITR 481 (Madras), **P.V. Devassy v. CIT** [1972] 84 ITR 502 (Kerala) and **CIT v Gangaram Chapolia**, 103 ITR 613 (Orissa).



8. In **Jagjit Sugar Mills Co. Ltd** (supra), the Hon'ble High Court of Punjab and Haryana had treated the word "and" appearing between the words "*application made by the assessee*" and "*for any good and sufficient reasons*" under Section 142 (2C) as "or" and had held that period for submission of report by the Special Auditor is extendable by the Assessing Officer, even without an application in this regard by the assessee.

9. In case of **CIT v Puthuthotam Estates Ltd.** (supra) it was held that, "*The circumstances under which the word "and" may be construed as "or" and vice versa should be somewhat rare. Otherwise if the two are taken to be interchangeable terms, then it would result in Parliament throwing into the statute the two expressions indiscriminately and leave them to the courts to sort out the meaning. In ordinary usage "and" is conjunctive and "or" is disjunctive*".

10. In the case of **P.V. Devassy v. CIT** (supra), it was held as under:

"An assessee is required to file the return within the time allowed and in the manner prescribed in order that the Income Tax Officer may complete the assessment within the period specified in the Income Tax Act. If the return is not filed in time or, if filed in



time, it does not contain all the particulars required, it will not be possible for the Income Tax Officer to complete the assessment within the period specified in the Act. In other words, the object of the legislature in insisting upon the assessee filing the return within the time and in the manner prescribed is to enable the Income Tax Officer to complete the assessment within a period of four years as specified in the Act and that object will be frustrated unless the assessee files the return within the time allowed and in the manner prescribed. To carry out the object of the legislature, it is necessary to attach a sanction for the failure to fulfill any of the two conditions. If the object is clear, we do not think the use of the conjunctive word "and" in the sub section is conclusive. The word "and" has generally a cumulative sense, and is thus the antithesis of disjunctive "or"; but occasionally it is permissible to read "and" as "or" if the context so requires. In **Ishwar Singh Bindra v. State of U.P.**, it is observed:

"And has generally a cumulative sense, requiring the fulfillment of all the conditions that it joins together and herein it is the antithesis of or. Sometimes,

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however, even in such a connection, it is, by force of a context, reads as or. Sometimes to carry out the intention of the legislature it is found necessary to read the conjunctions 'or' and 'and' one for the other."

In Maxwell on the Interpretation of Statutes, 12th edition, at page 232, it is observed, "In ordinary usage, 'and' is conjunctive and 'or' disjunctive. But to carry out the intention of the legislature it may be necessary to read 'and' in place of the conjunction 'or' and vice versa."

11. In the case of **CIT vs. Gangaram Chapolia** (supra), it was held as under:

"(ii) The conjunctive "and" in the second clause of section 271(1)(a) should be construed as "or". Therefore, even if the return of the assessee had been filed in the manner prescribed, as it was not filed within the time allowed under section 139(1), and as such one of the two conditions prescribed in section 271(1)(a) had not been fulfilled, the assessee would be liable to penalty."



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12. It is a cardinal principle for interpreting a fiscal statute that, a taxing statute has to be construed very strictly and has to be read without amending or altering the provisions. The intention of the legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous.

13. The Supreme Court in the case of **Mathuram Aggarwal v State of Madhya Pradesh**, 8 SCC 667[1999] held that,

"In a taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. Words cannot be added to or substituted so as to give a meaning of the statute which will serve the spirit and intention of the legislature. The statute should clearly and unambiguously convey the three components of the tax law, i.e., the subject of the tax, the person who is liable to pay the tax and the rate at which the tax is

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to be paid. If there is any ambiguity regarding any of these ingredients in a taxation statute then there is no tax in law. Then it is for the legislature to do the needful in the matter."

14. In the case of **Nasiruddin and others v Sita Ram Agarwal** 2 SCC 577 (2003), it is held:

"37. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric, but is cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression "shall" or may" is not decisive for arriving a finding as to whether statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used, the courts will presume that the intention of



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the legislature was that the provisions should be mandatory in character."

15. With these principles of interpretation, we may note that the provisions as existing in sub section (2C) of the Act before 1st April, 2008 did not empower the Assessing Officer to *suo motu* extend the time for submission of audit report under sub section (2A). This is also clear from the fact that the Memorandum explaining the provisions of granting power to the Assessing Officer to extend time for completion of special audit under sub section (2A) of Section 142 mentions about the reasons in the said Memo which reads as under:

"Granting of power to the Assessing Officer to extend the time for completion of special audit under sub-section (2A) of section 142

Sub-sections (2A) to (2D) of section 142 deal with power of Assessing Officer to order a special audit. Such power is required to be exercised by the Assessing Officer having regard to the nature and complexity of the accounts of the assessee and the interest of the Revenue.

Sub-section (2C) of the said section specifies the period within which the audit report is to be furnished. The proviso to said sub-section empowers the Assessing Officer to extend this period of furnishing of audit report. Further, it is also provided that the aggregate of the originally fixed period and the period(s) so extended shall not exceed 180 days from the date of issuance of direction of special audit. Further, such extension can be made only when an application is made in this behalf by the assessee and there are good and sufficient reason for such extension.

It is proposed to amend the said proviso so as to also allow the Assessing Officer to extend this period of

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furnishing of audit report suo motu. Hence, while the Assessing Officer shall continue to have power to grant extension on an application made in this behalf by the assessee and when there are good and sufficient reasons for such extension, he can also grant such extension on his own.

The amendment will take effect from 1st April, 2008.

16. Further, the circular No.1. of CBDT dated 27th March, 2009 has also clarified on the issue of applicability of the aforesaid amendment in sub section (2C) with effect from 1st April, 2008. The said circular reads as under:-

*“Direct Tax Circular No.1 dated 27th March, 2009
Explanatory Notes to the Provisions of the Finance Act, 2008.*

1. Introduction:

1.1 The Finance Act, 2008 (hereafter referred to as the Act) as passed by the Parliament, received the assent of the President on the 10th day of May, 2008 and has been enacted as act No.18 of 2008. This circular explains the substance of the provisions of the Act relating to direct taxes.

27. Granting of power of the Assessing Officer to extend the time for completion of special audit under sub-section (2A) of section 142.

27.1 Sub-sections (2A) to (2D) of section 142 with power of Assessing Officer to order a special audit. Such power if required to be exercised by the Assessing Officer having regard to the nature and complexity of the accounts of the assessee and the interest of the revenue.

27.2 Sub-sections (2C) of the said section specifies the period within which the audit report is to be furnished. The proviso to said sub-section empowers the Assessing Officer to extend this period of furnishing of audit report. Further, it is also provided that the aggregate of the originally fixed period and the period(s) so extended shall not exceed 180 days

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from the date of issuance of direction of specific audit. Further, such extension can be made only when an application is made in this behalf by the assessee and there are good and sufficient reasons for such extension.

27.3. With a view to rationalize the said proviso so as to also allow the Assessing Officer to extend this period of furnishing of audit report suo motu, the said proviso has been amended. Hence, while the Assessing Officer shall continue to have power to grant extension on an application made in this behalf by the assessee and when there are good and sufficient reasons for such extension, he can also grant such extension on his own.

27.4 Applicability – This amendment has been made applicable with effect from 1-4-2008. Hence, from this date and onwards, the Assessing Officer shall also have power to extend the period of furnishing of audit report suo motu". (Emphasis supplied)

17. The Memo explaining the provisions of Finance Bill, 2008 and also Circular No.1 dated 27th March, 2009 of CBDT as reproduced hereinabove would clearly bring out that sub section (2A) to (2D) of Section 142 deal with the powers of the Assessing Officer to order for special audit and the same was to be exercised by him having regard to the nature and complexity of the account of the assessee and the interest of the revenue.

18. The word "and" appearing before the words "for any good and sufficient reasons" in the proviso to sub section (2C) by any stretch of interpretation could not be read as "or". The fact that the words "suo motu" have been added by way of an amendment with effect from 01.04.2008 would show the legislative intention in the proviso as

existed before the amendment which is that the Assessing Officer prior ITAs No.1775/2010, 1776/2010, 1777/2010, 1965/2010, 2032/2010, 2033/2010, 2034/2010, 2035/2010, 2036/2010, 2037/2010, 2038/2010, 2039/2010, 2046/2010 & 2047/2010



to amendment had no power to extend the period of furnishing audit report of his own.

19. It was to rationalize the said proviso that the word " suo motu" came to be added by way of amendment with effect from 1st April 2008. As per Clause 27.3 of the Circular dated 27th March, 2009 while the Assessing Officer shall continue to have the power to grant extension on an application made in this behalf by the Assessee, he could also grant extension of his own when there are good and sufficient reasons for such extension. Thus, it is noticed that sub section (2C) before the amendment did not empower the Assessing Officer to extend the time for submissions of special audit report under sub Section (2A). Further, the power of extension of time for submission of special audit report is also subject to limitation of a period of 180 days from the date on which the directions under section 142(2A) of the Act for the audit was received by the Assessee. It is an admitted fact that in the present case, the assessee had not made any application for extension of period of audit report. Therefore, the extension which was granted by the Assessing Officer on the request of the Auditor could be taken to be a suo motu action of the Assessing Officer which power, as noted above, was not available with the Assessing Officer prior to the amendment with effect from 1st April, 2008. Not only this, said power of extension was also further controlled

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in the words, "for any good and sufficient reasons". This would mean that the Assessing Officer was supposed to record reasons for granting extension on his own. Clause 27.4 of the Circular also clarifies that this amendment has been made applicable with effect from 1st April, 2008 and it is from this date onwards that the Assessing Officer shall have power to extend the period of furnishing of special audit report *suo motu*.

20. In the light of interpretation of the proviso as is existed before or after the amendment and the legislative intent behind the amendment as gathered from the memorandum and the circular noted above, we are not persuaded to agree with the interpretation as given by the Punjab and Haryana High Court in the case of **Jagjit Sugar Mills Company Limited** (supra). Further in view of our above discussion, it comes to be concluded that the Tribunal was correct in holding that the Assessment Order was barred by limitation. That being so, we answer Question No.1 in affirmative in favour of the Assessee and against the revenue.


21. In view of foregoing discussion that the amendment whereby the word 'suo motu' were inserted in sub section (2C) of Section 142 of the Act was to be applicable with effect from 1st April, 2008 only, the amendment cannot be said to be clarificatory or retrospective in

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nature. The amendment was prospective and was to be applicable with effect from 1st April, 2008 only. Accordingly, we answer Question No.2 against the revenue.

22 In view of foregoing reasons, all the above appeals merit dismissal and are hereby dismissed.


M.L. MEHTA
(JUDGE)


A.K. SIKRI
(JUDGE)

May 27, 2011

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