



\* IN THE HIGH COURT OF DELHI AT NEW DELHI

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+ W.P.(C) 1750/2011

ASHOK MALHOTRA ..... Petitioner

Through: Mr.Dinesh Agnani, Advocate

versus

COMMISSIONER, INCOME TAX AND ANR ..... Respondents

Through: Mr.Abhishek Maratha, Advocate

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

**ORDER**

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**17.03.2011**

**CM No.3711/2011(Exemption)**

Allowed, subject to all just exceptions.

◆ **WP(C) No.1750/2011 and CM No.3710/2011**

By this writ petition preferred under Article 226 of the Constitution of India, the petitioner has challenged the order dated 29.12.2010 whereby the Deputy Commissioner of Income Tax, Central Circle-3, New Delhi has directed special audit to be conducted as far as the assessee-petitioner is concerned. The said direction has been passed under Section 142(2A) of the Income Tax Act, 1961 (for short, 'the Act') with the prior approval of the



Commissioner.

2. Mr.Dinesh Agnani, learned counsel appearing for the petitioner, submitted that the attitude of the department is demonstrable from the manner in which the show cause notices have been couched and a maladroit attempt has been made to direct special audit without affording any opportunity of hearing to the petitioner.

3. To bolster the said submission, the learned counsel for the petitioner has taken us to the first show cause notice issued on 30.11.2010 on the basis of which the order dated 15.12.2010 was passed. It is submitted by learned counsel for the petitioner that the first order was issued against one Ashok Malhotra but the order dated 15.12.2010 (Annexure P-I) was issued against a number of persons.

4. It is urged by the learned counsel for the petitioner that without withdrawing the said order another show cause notice was issued on 24.12.2010 asking the petitioner to file reply on 3.12.2010. It is urged that the special audit has been directed under pressure from the Central Bureau of Investigation and the Revenue is at fault inasmuch as the first order being not legally sustainable and without withdrawing the same, the second show cause notice could not have been issued. Apart from that, it has also been submitted that there is no reflection of reason as to why the special audit has



been directed.

5. Mr. Abhishek Maratha, learned counsel appearing for the respondent, submitted that realizing the mistake in the first show cause and the order that ensued therefrom, the second show cause notice was issued. Learned counsel fairly stated that though the date mentioned in the first line of the last paragraph of the second show cause notice states 3.12.2010, but Copy to all mentions the date 27.12.2010 and the petitioner had appeared on 27.12.2010 before the competent authority. Learned counsel would also submit that sufficient reasons existed for direction of special audit as recorded in the show cause notice.

6. It is appropriate to reproduce a portion of the show cause notice:

“The summary of the total cash deposits in the respect account is as under:

Sl. No.	AY	Number of bank account	Cash deposited of Rs.
1	2003-04	10	33,19,720/-
2	2004-05	11	65,49,970/-
3	2005-06	15	1,45,33,796/-
4	2006-07	25	1,35,87,158/-
5	2007-08	18	1,26,81,540/-

7. Quite apart from the above, it is noticeable that 113 bank accounts



stood in the name of the petitioner and his relations. During investigation it has been noticed that the petitioner had invested inasmuch as 40 concerns and other aspects and facets highlighting the complicated nature of the investments, interplay etc. have been elaborately stated. We have also been apprised that the complexity of the accounts involved is perceptible and hence the direction for special audit cannot be found fault with.

8. The second ground which has really been emphasized by Mr.Dinesh Agnani, learned counsel for the petitioner, is that the second notice to show cause was issued. Per contra, Mr.Maratha would submit that it was a mistake that the notice was issued in the name of the assessee-petitioner but not to others and realizing the said mistake, the second show cause notice was issued.

9. In our considered opinion, in a case of such a magnitude, the same cannot really be found fault with. The petitioner herein cannot have any grievance because the first notice was issued in his name. It is not shown that any prejudice was caused to him. That apart, we have been apprised at the Bar that the special audit is continuing and the petitioner only woke up to challenge the order dated 14.3.2011. Thus from both the angles, we are not inclined to interfere with the order directing special audit.



10. In the result, the writ petition being devoid of merit, stands dismissed without any order as to costs.

*M. J.*  
**CHIEF JUSTICE**

*S. J. K.*  
**SANJIV KHANNA, J**

**MARCH 17, 2011**

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