



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 + **WRIT PETITION (CIVIL) NO.2363/2013**

% **Reserved on: 9th December, 2013**
Date of Decision: 28th March, 2014

DLF LTD AND ANOTHER Petitioners
 Through Mr. Ajay Vohra & Ms. Kavita Jha,
 Advocates.

versus

ADDITIONAL COMMISSIONER OF INCOME TAX & ANR.
 Respondents
 Through Mr. Sanjeev Sabharwal, Sr. Standing
 Counsel.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J.:

The petitioner is a real estate developer engaged in creation, execution and sale of residential and commercial projects. It also earns income from Special Economic Zone (SEZ) on which it had claimed deduction under Section 80-IAB of the Income Tax Act, 1961 (Act, for short).

2. For the previous year relevant to the Assessment Year 2010-11, the petitioner filed its return of income on 15th October, 2010 declaring income of Rs.474,34,24,620/- (as per the impugned order dated 25th March, 2013 the return declared income of Rs.6,52,95,98,420/-, but this aspect need not be examined and is not relevant for the purpose of the present decision).

3. As per the petitioner, for computing the said income, they had



followed Percentage of Completion Method (POCM, for short)¹ as distinct from completed contract method. The petitioner had also claimed deduction of Rs.178.63 crores under Section 80-IAB in respect of profits derived from projects in SEZ areas. The petitioner had granted loans and advances to its subsidiaries and shown interest income @ 6.5% per annum in respect of said loans and advances as received from its subsidiaries.

4. Statutory notice under Section 143(2) with a detailed questionnaire dated 1st November, 2012 was issued to the petitioner fixing the case for scrutiny assessment on 8th November, 2012, on which date the case was adjourned to 23rd November, 2012. On the said date, part details were filed but in the meanwhile another questionnaire dated 6th December, 2012 was issued. The assessee claims that it complied with the details, information and clarifications requisitioned. However, show cause notice dated 26th February, 2013 under Section 142(2A) was issued for referring the accounts for special audit and the petitioner was asked to respond. The petitioner objected by their letter dated 8th March, 2013 and protested against reference to special audit on the ground that it was unwarranted and contrary to law (the details of the objections raised and the merits of the same have been considered below). The Assessing Officer-Additional Commissioner of Income Tax, Range 10, New Delhi by the impugned order dated 25th March, 2013 directed the petitioner to get their accounts for the Financial Year 2009-10 relevant to the Assessment Year 2010-11 audited from a Chartered Accountant, who was nominated as per the provisions relating

¹ 'Percentage of Completion Method' is an accounting method in which the revenues and expenses of long-term contracts are recognized yearly as a percentage of the work completed during that year. This is the opposite of the completed contract method, which allows taxpayers to defer the reporting of any income and expenses until a long-term project is completed. The percentage of completion method of accounting is commonly used in construction projects.



to conduct of special audit under Section 142(2A) of the Act. The Special Auditor was required to submit report in Form 16 as per Rule 14A of the Income Tax Rules within sixty days from the date of receipt of the directions and the petitioner was asked to extend full and complete cooperation for completion of the special audit within the stipulated time.

5. The petitioner has challenged the said direction of special audit stating and pleading that the mandate is contrary to the statutory pre-conditions stipulated in Section 142(2A) for the following reasons:-

- (i) POCM was well recognised and accepted by the Revenue. In terms of Accounting Standard 7 and in Guidance Note 23, a methodology for revenue recognition by POCM stands elaborately provided. The Assessing Officer cannot outsource her functions to a Special Auditor for the assessee had followed POCM. It is a matter of calculation or verification. The assessee had followed this method in the four earlier assessment years and this was the fifth year.
- (ii) The Assessing Officer was not a layman and was expected to have knowledge and understanding of accounts. The Assessing Officer in the present case was in charge of corporate assesseees and competent to verify and examine the income declared by applying POCM.
- (iii) For four earlier assessment years, special audit was directed under Section 142(2A) and held. The POCM was examined and accepted in the earlier special audit reports and the Special Auditors have not pointed out any discrepancy or



inaccuracy. Reference in the fifth successive year amounts to harassment and unwarranted inconvenience. Repeated exercise was oppressive and unjustified.

- (iv) Deduction claimed and admissible under Section 80-IAB in respect of profits from SEZ units has been duly certified by a qualified Chartered Accountant in Form No. 10 CCB. Without pointing out any deficiency, inaccuracy or discrepancy, direction for special audit on the ground that the profit shown from SEZ income was higher than the profit shown from non-SEZ income was unwarranted and does not disclose live nexus.
- (v) For similar reasons, special audit was directed in the Assessment Year 2008-09 but the Special Auditor did not recommend any disallowance under Section 80 IAB of the Act. In the Assessment Year 2009-10, this issue was not referred for special audit. The Assessing Officer for Assessment Year 2008-09 had made substantial disallowance contrary to the recommendation of the Special Auditor and in the Assessment Year 2009-10 again disallowance was made without aid of the special audit report. Commissioner (Appeals) has completely deleted the disallowance made for Assessment Year 2008-09 and first appeal for Assessment Year 2009-10 was pending. Thus special audit for the said reason was unwarranted.
- (vi) Reasonable interest @ 6.5% was charged in respect of loans and advances to subsidiaries, cannot and should not be made subject matter of special audit. The petitioner had



mixed pool funds, self-generated or borrowed and the average cost of which was 6.5% and, therefore, interest @ 6.5% was charged from the subsidiaries. Issues and contentions raised on the said aspect relate to interpretation of law and application of legal principles. These aspects fall exclusively within the domain of the Assessing Officer and the special auditor cannot render assistance.

- (vii) Presumption that mixed pool funds had been used for assessee's business, whereas self-generated funds used for lending and non-business investments, applied. Reliance was placed on *East India Pharmaceutical Works Limited versus Commissioner of Income Tax*, (1997) 224 ITR 627 (SC) and *Woolcombers of India Limited versus Commissioner of Income Tax*, (1982) 134 ITR 219 (SC).
- (viii) Above issue was not part of the show cause notice and even in the impugned order there was no substantive discussion. The issue was mentioned at point No. 9 of the terms of reference. Thus, there was violation of proviso to Section 142(2A) as reasonable opportunity of hearing has been denied.
- (ix) Related party transactions have been made subject matter of reference to the Special Auditor, though this issue was not stated in the show cause notice and, therefore, reference was hit for violation of principles of natural justice incorporated in proviso to Section 142(2A) of the Act.

6. The respondents have contested the said pleas on various grounds and we shall be dealing with their submissions



while examining the contentions.

7. Section 142(2A) has been examined in several decisions of the Supreme Court and this Court. A detailed review of the said provision was undertaken and elucidated by the Supreme Court in *Sahara India (Firm) versus Commissioner of Income Tax and Another*, (2008) 300 ITR 403 (SC) and it was observed that the said provision could be invoked if the Assessing Officer forms an opinion; (i) on the nature and complexity of the accounts of the assessee and (ii) it was in the interest of Revenue to get the accounts audited by an accountant. The two requirements were conjunct and not disjunct and these were the essential pre-requisites. The object being the special audit should be directed, if it assists and succours, the Assessing Officer in framing correct and proper assessment based on the accounts maintained by the assessee, i.e., the Assessing Officer must reach a finding that the accounts of the assessee were complex and in order to protect the interest of the Revenue, recourse to the said provision should be made. The expression or word “complexity” it was observed refers to state of quality of being intricate or difficult to understand but the Supreme Court observed that what would be the complex to one, might be simple to another and, therefore, an Assessing Officer must make a genuine attempt to understand the accounts, appreciate the entries, in the event of doubt, seek explanation and then form the required opinion based upon objective criteria and not purely on the basis of subjective satisfaction. The provision did not entitle the Assessing Officer to pass the buck to the Special Auditor as it was the Assessing Officer’s responsibility to scrutinise the accounts. However, the Supreme Court rejected the contention that special audit need not be directed because audit had been conducted under Section 44AB, inter alia, observing that the two provisions had altogether



different connotations and implications. Unlike compulsory audit under Section 44AB, special audit was not limited to mere production of books or vouchers and verification thereof by the auditor but involved submission of explanations and clarifications, which might be required by the Special Auditor on various issues with relevant data, documents etc. Special audit was more or less in the nature of investigation and in some cases might even turn out to be stigmatic.

8. In *Delhi Development Authority and Another versus Union of India and Another*, (2013) 350 ITR 432 (Delhi) it was observed that detailed scrutiny of large number of entries by itself on standalone basis might not amount to or reflect complexity of accounts. Every Assessing Officer was required to scrutinise the entries and verify them but this does not require services of a Special Auditor to undertake the said exercise. Section 142(2A) was not a provision which enabled the Assessing Officer to delegate his powers and functions which he could perform, to the Special Auditor. The provision had been enacted to enable an Assessing Officer to take help of a specialist, who understood accounts and accountancy practices when the accounts were complex and the Assessing Officer affirms that he could not understand and comprehend them fully till he took the said help and assistance. Interest of the Revenue was another aspect, which had to be taken into account. A genuine attempt to understand the accounts and entries must be made and only when questions were raised with regard to accounts and entries and when the explanation offered was unsatisfactory or verification was not possible without help and assistance of the Special Auditor, action under Section 142(2A) was required.

9. At this stage, it would be important to notice an earlier decision of the Supreme Court, *Rajesh Kumar versus Deputy CIT*, (2006) 287 ITR



91 (SC) wherein it has been observed that an order under Section 142(2A) does entail civil consequences and not administrative, a view which was again reiterated in *Sahara India (Firm)* (supra). The three factors to be kept in mind by the authorities were, (i) nature of accounts, (ii) complexity of accounts and (iii) interest of revenue and opinion on the said aspects must be formed. Special audit should not be ordered for an underlined purpose which was not bonafide. It should not be ordered and approved mechanically and certainly not for unauthorised purpose of extension of limitation to complete the assessment. The petitioner in support of their contentions have referred to decisions of Calcutta High Court in *Bata India Limited and Another versus Commissioner of Income Tax and Others*, (2002) 257 ITR 622, *West Bengal State Co-operative Bank Limited versus Joint Commissioner of Income Tax and Others*, (2004) 267 ITR 345 and decision of Kerala High Court in *Muthoottu Mini Kuries versus Deputy Commissioner of Income Tax and Another*, (2001) 250 ITR 455. In these decisions, it was held that the Assessing Officer should normally have workable skill and idea of accounting because of the nature of duty entrusted to them. Assessing Officer was not a layman or one with no experience in dealing with the accounts. He was supposed to be acquainted with the method of accounting and with comprehensive knowledge with regard to matters required to be examined.

10. Aforesaid rulings when appraised and reflected, state that while examining the question of complexity in accounts, we have to apply the test of 'reasonable man' by replacing the word and qualities of a reasonable man, with the word and qualities of a reasonably competent Assessing Officer. The question of complexity of accounts has to be judged applying the yardstick or test; whether the accounts would be



complex and difficult to understand to a normal assessing officer who has basic understanding of accounts etc., without the aid, assistance and help of a special auditor. Thus due regard has to be given to nature and character of transactions, method of accounting, whether actuarial were adopted for making entries, basis and effect thereof, etc., though mere volume of entries might not be a justification by themselves as volume and complexity are somewhat different. Accounts should be intricate and difficult to understand. Every scrutiny assessment entails investigation and verification of the books of accounts, genuineness of the transactions or entries reflected in the books, computation of income etc. It is an exercise which demands expertise and a degree of skill to understand the accounts and decipher whether true and full income has been disclosed; whether there has been jugglery in the accounts or camouflage has been adopted. No undesirable assumptions should be made and a return filed is presumed to be correct, but a deep and in depth scrutiny depending upon the facts may be warranted. Section 142(2A) is an enabling provision to help and assist the Assessing Officer to complete scrutiny assessment with the help of assistance of an accountant.

11. There has been substantial expansion of scope and ambit of Special Audit under Section 142(2A) of the Act with effect from 1st June, 2013. The amended section has been widened to include volume of accounts, doubts about correctness of accounts, multiplicity of transactions in the accounts or specialised nature of business activity of an assessee. These amendments by Finance Act, 2013 with effect from 1st June, 2013, substitute the words “nature and complexity of accounts of the assessee”. We are not concerned with the said amendment in the present case as the impugned order in question directing special audit was passed on 25th March, 2013, before the amendments became



effective. We are, therefore, primarily concerned with whether or not keeping in view the nature and complexity of accounts and the interest of Revenue direction for special audit is justified for the reasons set out in the order dated 25th March, 2013. (We have not examined the constitutional validity of the amended provisions and we express no opinion on the said aspect).

12. The show cause notice issued on 26th February, 2013 is a detailed one. It mentions hearings held on various dates that the books of accounts were requisitioned, produced and examined and questionnaires, details and information were called for. On POCM calculation in the show cause notice, it was observed:-

“It has been submitted that percentage of completion method (POCM) is being adopted by you for recognition of revenue of ongoing projects. Under the POCM method, the budgeted cost of project is compared with the actual stage of completion and based upon the level of completion achieved, proportionate revenue and cost are taken to the profit and loss account. It is noteworthy that the special audit report for the A. Yrs. 2006-07, 2007-08, 2008-09 & 2009-10 contain findings that the revenue recognized from various projects under construction had not been correctly determined by you mainly on account of following discrepancies:

- (i) Increase in budgeted cost or a decrease in actual cost results in decrease in the quantum of revenue recognition.
- (ii) Variance in Budgeted IDC cost and actual IDC cost incurred during the year
- (iii) Variation in budgeted construction cost and actual construction cost incurred during the year
- (iv) Variance in actual cost of construction
- (v) Revenue recognition under the POCM method is understated.

Further observations were made by the Special Auditor for the A. Y. 2009-10 with reference to the



POCM method adopted by the assessee, in the Special Audit Report.

- (vi) You have changed the basis of apportionment of actual internal development Charges during the financial year under consideration and the ITC incurred up to 31.3.2009 have been charged to various projects on the basis of total saleable area of Phase-V which also includes the area of the projects which are yet to be launched,
- (vii) You have shown sales on budgeted sales instead on actual sales, which is not as per prescribed for recognizing revenue resulting in higher sales booked:
- (viii) Construction cost aggregating to Rs. 96,86,473/- in respect of projects covered under Phase-V and construction cost aggregating to Rs. 35,61,191/- in respect of other projects, which pertains to period under audit have been booked during the next financial year.
- (ix) You have recognized lesser profit amounting to Rs. 77,83,55,804/- in respect of following projects:- Phase-V, Cross Point, Star Tower Silokhera, Ludhiana City Court Sikander Pur, Jalandhar and Kolkatta (Residential + Commercial).

Apart from that a detailed project wise description has been recorded in the special Audit Report for the A.Y. 2006-07, 2007-08, 2008-09 and 2009-10. Wherein, the complexities involved and the discrepancies noted have been discussed threadbare for each project. Several instances are reported in the special Audit Report of earlier years where the actual expenditure incurred on the projects had been shown as Work in Progress resulting in understatement of the actual level of completion and also in understatement of revenue required to be recognized. All such factual findings can only be reached upon thorough examination and audit of the books of accounts and the related vouchers/bills, which as discussed are not only complex but also voluminous.”

13. The next paragraph records that in the regular hearing books of accounts were examined for the purpose of computing and understanding the POCM profit as worked out. By Order sheet entry dated 1st



February, 2013, the petitioner was asked to furnish the following information:

“Name of the projects	Information required
Phase-V	Area as well as EDC increased
Kolkatta	Unbooked Area reduced
Jallandhar	Area Increased
Ludhiana	Unbooked Area reduced
City Court Sikandar Pur	Increase in total area
Cross Point Unbooked Area reduced Courtyard	Land value related cost reduced”

14. Thereafter observations with regard to DLF Phase -V project, Jallandhar Project, City Court Sikandar Pur project and Courtyard project have been made. In another paragraph reference was made relating to Cross Point Project and Kolkatta Project and observations on various entries were highlighted. Thereafter method of accounting on issue of stock to the contractors stands elucidated and observed that on the basis of the entries, there was difficulty in understanding the accounts. These were multiple transactions in relation to sale of plots and development cost with sister concerns. Transactions relating to land purchases were routed through various related group concerns which were very intricate and complex. Project at Indore, Kakanad and Begur were referred to. Assessing Officer noted that it appeared that different revenue recognition methods had been adopted. Lastly, reference was made to the special audit reports for the earlier years and detailed working of each project undertaken in the earlier years had resulted in additions. Books of accounts and related bills and vouchers were not only complex but voluminous as there were large numbers of ongoing projects.



15. In response, the petitioner assessee has submitted that consistently the petitioner was following the policy of accounting construction costs only when bills were approved and verified and thereupon final liability became crystalised or due for payment. Entry with regard to purchases of stocks was made not upon receipt of material but after the inspection and when the material was accepted. On the question of Internal Development Charges (IDC), it was stated that saleable area at Phase V Gurgaon stood increased and this was the cause for confusion and errors made in the special audit report for the last year. Several factual assertions made by the Assessing Officer were disputed, on the questions relating to submissions of reply or part replies/explanation, sale of construction material, bills, vouchers in respect of Cross Point and Kolkatta Projects and material issued note and material receipt note. The petitioner claimed that entries in the books of account including stock register, were explained to the Assessing Officer. With regard to the observations on land purchases through various related concerns, it was stated that this was not complex and the observation made by the Assessing officer was vague, ambiguous and confused and was driven by focused intent to subject the accounts for special audit. However, interestingly, the petitioner has themselves stated as under:-

“Further, the details of additions made by the Assessing Officer based on the recommendations of the Special Auditors and relief allowed by the CIT(Appeals) for earlier years four years, where special audit was ordered, are as under:-

Assessment Year Allowed (Rs./Crores)	Addition made by the AO on POCM Issue (Rs./Crores)	Relief by CIT(A)
2006-07	325.40	203.78
2007-08	33.99	33.99
2008-09	42.92	



42.92

2009-10

77.83 Appeal pending with CIT(A)

Your kind attention is drawn to the special audit report for the AY 2009-10, wherein the special auditor has recommended an addition of Rs.77.83 Crores under POCM. In this regard, it may please be noted that the assessee company itself had worked out an addition of Rs.120.62 Crores on the lines of Special Auditor's working for the A. Y. 2008-09.

This working was filed vide assessee's reply dated 08.12.2011 in response to certain queries raised by the then Assessing Officer vide Order Sheet entries dated 24.11.2011 with regard to working of POCM revenue. It is a different matter that the learned Assessing Officer decided to go with the findings of the Special Auditor even though the same was prejudicial to the interest of revenue.”

16. The aforesaid observations to our mind show that substantial additions have been made on POCM issue earlier. Assessee may have succeeded before CIT (Appeals) in the assessment year 2007-08 and 2008-09, but further appeals were pending. With regard to Assessment year 2006-07, addition of more than Rs.120 crores stands sustained in the first appeal. The Petitioner has made inquisitive observations with regard to assessment year 2009-10 as it was indicated that the Petitioner had made addition of Rs. 120.62 crores on the lines of the Special Auditor's working for the assessment year 2008-09.

17. We have referred to the aforesaid reply to show cause that the POCM working itself was examined in the special audits in the earlier years and was subject to scrutiny by the special auditor. At another place, in the said reply the petitioner has made the following statement:

“It is rather misleading that the observations of the Special Auditors, on POCM in AN. 2006-07 to A.Y. 2009-10 have been referred to without mentioning the fate of their findings before the CIT(A) i.e. first Appellate Authority. The table below bears testimony to this:



F.Y. proposed by Special Auditor (Rs./Crores)	Addition	Addition made by Assessing Officer (Rs./Crores)	Addition deleted by Commissioner of Income Tax (Appeals)
2006-07	1215.44	1015.99	851.22
2007-08	291.71	181.84	174.03
2008-09	160.72	1256.00	1243.64

It is further stated in the objections as :

“It may also be noted, from the table above, that despite the fact that the additions made in the A.Y.rs 2006-07 to 2009-10 as a result of Special Audit have been mostly deleted vet on the same issues, the Ld. Assessing Officers have been repeatedly resorting to Special Audit u/s 142(2A). It is a matter of record that all the issues which could warrant Special Audit have been dealt with in the very first year of Special Audit i.e. A.Y. 2006-07.”

18. Thus what is apparent that the matter of computation of income by applying POCM has been subject matter of debate and opposite positions have been taken and adopted by the Revenue and the petitioner. As noticed above, the petitioner, in respect of Phase V, Gurgaon project has stated that during the assessment year 2009-10, the saleable area had increased due to increased permissible height in the building from 25,34,775 sq. ft. to 37,65,972 in respect of one building and 12,49,200 sq. ft. to 19,25,500 sq. ft. in respect of second building. This necessarily would involve reworking of the entire project costs including reduced budget costs of all components etc. like EDC, IDC, construction cost, etc. This is also discernible from the reply filed by the petitioner in which they have disputed the calculations made by the special auditors in the last assessment year.

19. Referring to the reply of the petitioner, the Assessing Officer in



paragraph 18.1 of the impugned order has observed that during the assessment proceedings on number of instances or entries, queries were raised and 4 or 5 persons were required to clarify the facts. The ledger account did not contain narration therefore scrutiny of the entries had become cumbersome and difficult.

20. On the question of loans and advances to the subsidiaries, the petitioner had submitted that the loans and advances to the subsidiaries should not and would not affect interest payments in the hands of the holding company. We are not primarily concerned with the legal submissions in the present case because the legal principle applicable depends upon facts which have to be verified and ascertained. The petitioner in response to the show cause notice had stated that the petitioner had own funds to the extent of Rs.12,830 crores and had borrowed funds to the extent of Rs.12,638 crores during the year in question. The petitioner has granted loans and advances to the extent of Rs.10,14,344.97 lacs to the subsidiary companies @ 6.5% per annum which as per the petitioner was the borrowing costs. It was claimed that in view of the aforesaid position, the petitioner was not evading tax as the transactions were tax and revenue neutral. The Assessing Officer has observed that it has to be shown and established that the charging of interest @ 6.5% was a revenue neutral exercise. This could be only ascertained after all entries were examined by the special auditor. On the question of commercial expediency, it has been observed in the impugned order that it would come into play when the actual picture was ascertained i.e. extending of loan to the subsidiary and charging of interest was thoroughly examined.

21. With regard to the profit from SEZ and non-SEZ projects it was noted that profit of Rs.1,78,63.73 lacs has been declared on SEZ



income/turnover of Rs.2,38,31.36 lacs and profit of Rs.6,57,01.92 lacs has been declared on non-SEZ income/turnover of Rs.24,19,20.81 lacs. The order records that the petitioner was required to submit comparative detail with regard to expenditure in SEZ and non-SEZ income projects but this was not filed. The affairs of the company, therefore, were not transparent and required audit.

22. SEZ and non-SEZ income figures mentioned by the Assessing Officer were contested in the reply. Discrepancies were alleged. Reference was made to the earlier reports of the statutory auditor and the fact that in the special audit reports no adverse inference was drawn in respect of deduction under Section 80IAB. Further provisions of Section 142(2A) were not invoked for the assessment year 2009-10 in regard to SEZ accounts. At the same time, the petitioner has stated:

“Your goodself will appreciate that the profit margin of the SEZ project has to be on higher side as compared to other non-SEZ projects for the simple reason that there is no element of sale of land in the SEZ income. In non-SEZ projects land cost is a major component, where in SEZ Project land is not subject matter of sale as mentioned earlier. The land notified as per the provisions of Special Economic Zones Act, 2005 cannot be sold.”

23. In the impugned order, the Assessing Officer on this aspect has remarked:

“18.7 The assessee had raised the objection that the amount in respect of profit had been taken as Rs. 17863.73 lacs is, actually the profit shown in return of income is Rs. 17861.74 lacs. In his reply dated 28.12.2012 on page no 178 assessee has furnished the details of profit and loss account in respect of SEZ Division. The income including land lease income is Rs. 238,55.58 lacs while under schedule 15 sales and other income has been shown as income revenue from development charges Rs. 23,831.37. The difference is



due to income from land lease income. Further the assessee has raised an objection that during the course of assessment proceedings no query with respect to SEZ deduction was raised. In this regard it is stated that query can be raised at any point of time before the completion of the assessment in the interest of the revenue and it is not prerogative of the assessee to challenge the same. Further assessee was given opportunity to reply to this query, hence this objection cannot be entertained.

18.8 Assessee has raised use of word 'Transparent'. In this regard it is stated that non transparency in the maintenance of books of accounts leads to complexity both in terms of examination and determination of revenue realization. Without prejudice it is further stated that the Income Tax Act does not prevent the Assessing Officer from examining the form No IOCC13.”

24. We do not find any merit in the contention raised by the petitioner that related party transactions or reasonableness of interest paid to the petitioner on loans and advances by its subsidiary was an issue which was never raised in the show cause notice and therefore, there was violation of principles of natural justice. This question was specifically raised in the show cause notice and answer or reply was called for. Even if the said aspect was not independently examined by raising a written question in the assessment proceedings, it is apparent that the Assessing Officer had applied his mind to the said aspect. On the question of related parties' transaction, we have quoted the observations made by the Assessing Officer to the effect that there were number of transactions between the petitioner and related companies. The petitioner had stated that till 25th February, 2013, ten hearings were held before the Assessing Officer and 78 queries were raised through questionnaire/order sheet/verbally. The claim of the petitioner was that he has complied with all the queries. Thus it is accepted and admitted position that detailed queries in writing and orally were raised. This shows due application of



mind and focus on the issues and aspects that arose for consideration. The said facts are indicative of the assessing officer's conduct in trying to understand the accounts and whether true and correct income had been disclosed. The aforesaid submissions of the petitioner, therefore, do not appeal to us.

25. In view of the aforesaid discussion, we are satisfied that in the present case the Assessing Officer had applied his mind to various aspects like nature of accounts, method of maintaining accounts, entries recorded etc. and reached the conclusion that the accounts were complex and it was in the interest of the Revenue that special audit under Section 142 (2A) of the Act, should be directed. No doubt in the past also special audit was directed but the Assessing Officer has not directed special audit in the present assessment year without examining the accounts for the year in question, the entries made, peculiarity involved etc. Special audit has not been directed for getting over the limitation or in routine.

26. Powers under Section 142(2A) have to be exercised in terms of the legislative provisions. The object and purpose behind the legislation is to facilitate investigation and proper determination of the tax liability. The importance and relevancy of the legislation cannot be underestimated and it is a power available with the Assessing Officer to aid and assist him. Accounts should be accurate and provide real time record of the financial transactions of the assessee. Preparation of accounts is the work of the accountant on the payrolls or employed by the assessee. In order to ensure reliability and accuracy, enterprises resort to internal audit and an external audit which can be a statutory audit. Internal audits are normally conducted in house generally by acquainted or qualified accountants. Statutory audit is compulsory under



the Companies Act, 1956 or when stipulated by the Act and accounts have to be audited by a qualified Chartered Accountant. Chartered Accountants are not ordinary accountants but specialists who have successfully undergone academic study and have extensive practical experience and trained for the said work. Curriculum requires articleship under a mentor who is himself a Chartered Accountant with some years of experience. As opposed to an ordinary accountant, a Chartered Accountant with his experience and academic background is in a better position to investigate, examine and scrutinize entries and records of financial transactions. Calibre and competence of Chartered Accountants is of a high degree and should not and cannot be equated with the capability of an ordinary accountant or a normal person having knowledge or acquainted with accounts. Off late there has been demand for increased public scrutiny of accounts, inspite of statutory audit. Enron and other cases abroad and Satyam's case in India have highlighted the need and necessity to have controls and system of checks, perhaps even beyond scope of traditional audit. Financial statements and accounts are being increasingly exiguously examined to rule out possibility of wrong doings, cover up or evasion of taxes. Financial statements and accounts are coming under increasing scrutiny and investigation. A Chartered Accountant is a financial investigator and prober, is required to be curious, tenacious and well conversant to identify and unearth frauds, misreporting and wrong claims in the accounts.

27. The aforesaid observations should not be construed as a general expression or opinion, that every account or statement of income must be viewed with suspicion, distrust and scepticism. The past instances are mere warnings, for closer and more indepth scrutiny. It is also a fact that



the business transactions have become more complicated and accounting entries more complex than ever before. This may be one of the causes why possibly the frauds could not be detected in some cases. Indeed such cases have made the audit work more comprehensive, intrusive and investigative. Ethical managements may at times regard such enquiries as an unwarranted intrusion or a hounding approach. Section 142(2A) does not permit fishing or roving inquiry approach or a witch hunt but is a regulated provision which accepts the need and necessity of the Assessing Officer to take help of an expert accountant i.e. a Chartered Accountant, a person who is academically qualified and has practical experience to understand accounts and unearth tax evasion or furnishing of inaccurate particulars etc. The provision balances the right of the Revenue with the inconvenience which the assessee may face. Assessing Officers are not Chartered Accountants and when required and permissible, therefore, can take help and assistance from the qualified specialists to complete the assessment and determine the taxable income of an assessee.

28. In view of the aforesaid we do not find any merit in the present Writ Petition. Stay order is vacated and the assessment proceedings will continue as per law. There will be no order as to costs.

-sd-

(SANJIV KHANNA)
JUDGE

-sd-

(SANJEEV SACHDEVA)
JUDGE

MARCH 28, 2014
VKR/kkb