

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 4691 of 2017****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH****Sd/-****and****HONOURABLE MR.JUSTICE B.N. KARIA****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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TAKSHASHILA REALTIES PVT LTD....Petitioner(s)

Versus

**DEPUTY COMMISSIONER OF INCOME TAX CIRCLE-4(1)(2) &
2....Respondent(s)**

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Appearance:

**MR JP SHAH, SR. ADVOCATE with MR MANISH J SHAH, ADVOCATE for the
Petitioner(s) No. 1**

MR NITIN K MEHTA, ADVOCATE for the Respondent(s) No. 2

NOTICE SERVED BY DS for the Respondent(s) No. 1 , 3

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CORAM: HONOURABLE MR.JUSTICE M.R. SHAH**and****HONOURABLE MR.JUSTICE B.N. KARIA****Date : 09/06/2017****CAV JUDGMENT****(PER : HONOURABLE MR.JUSTICE M.R. SHAH)**

[1.0] By way of this petition under Article 226 of the Constitution of India, the petitioner – assessee – Takshashila Realities Pvt. Ltd. (formerly known as Takshashila Gruh Nirman Pvt. Ltd.) has prayed for an

appropriate writ, direction and order to quash and set aside the impugned order dated 28.12.2016 passed by the Assessing Officer under Section 142(2A) of the Income Tax Act, 1961 (hereinafter referred to as “IT Act”), by which in exercise of powers under Section 142(2A) of the IT Act, the Assessing Officer has directed the assessee to get the accounts for AY 2014-15 audited through Special Auditor.

[2.0] The facts leading to the present Special Civil Applications, in nutshell, are as under :

[2.1] That, in the case of *erstwhile* firms viz., M/s. Chanakya Infracon Private Limited; M/s. Chanakya Buildcon [P] Limited; M/s. Takshashila Realities Private Limited; M/s. Youngstar Infracon [P] Limited and Takshashila Properties [P] Limited, the assessment proceedings for A.Y 2010-2011 were completed. That, pursuant to an order dated 22nd March 2011 passed by the High Court of Gujarat in Company Application No. 263 of 2011, five companies viz., M/s. Chanakya Buildcon Private Limited; M/s. Chanakya Infracon Private Limited; M/s. Takshashila Properties Private Limited; M/s. Takshashila Realities Limited and M/s. Youngstar Infracon Private Limited came to be amalgamated with Takshashila Gruh Nirman Private Limited. Messrs. Takshashila Gruh Nirman Private Limited is subsequently named as M/s. Takshashila Realities Limited. It appears that in case of transferee companies viz., M/s. Takshashila Gruh Nirman Private Limited; M/s. Chanakya Buildcon Private Limited; M/s. Chanakya Infracon Private Limited and M/s. Youngstar Infrastructure Private Limited, reassessment proceedings came to be initiated for A.Y 2010-2011. Notices under Section 148 of the IT Act came to be issued and served upon the respective assesseees. The aforesaid transferee companies-original assesseees preferred Special Civil Applications No. 13971 of 2016; 14018

of 2016; 14071 of 2016 and 14794 of 2016 before this Court challenging Notices under Section 148 of the Act and the reassessment proceedings. That, by a detailed judgment and order dated 5th December 2016, Division Bench of this Court, dismissed the said Special Civil Applications.

[2.2] That thereafter, the petitioner herein-Takshashila Realities Private Limited has been served with a Notice under Section 142(2A) of the IT Act and the petitioner, as the successor of firms *viz.*, M/s. Chanakya Buildcon Private Limited; M/s. Chanakya Infracon Private Limited; M/s. Takshashila Properties Private Limited and M/s. Youngstar Infracon Private Limited was called upon to show cause why an order for special audit under Section 142(2A) of the IT Act may not be passed. In the show cause notice, it was noted that the conversion of five firms into companies, after revaluation of land, merger of five companies with M/s. Takshashila Gruh Nirman Private Limited; later with issue of equity shares against the balance of revaluation credits at a premium; valuation of shares as Discounted Cash Flow method by estimating cash flows and adopting a random discounted rate for valuation, there is a complex web of transactions in the group of firms namely introduction of land by some of the partners; revaluation of lands and crediting of amounts in the current accounts of all partners; conversion of firms into companies which merged with existing Company; valuation of share by discounted cash flow method and allotment of shares against the amounts outstanding as unsecured loans at unreasonable premium, clubbed with multiple revaluation or properties over the years, starting from 2008 to 2013 in various entities involves application of provisions of the Companies Act, application of Accounting Standards and examination of provisions of capital gains in the hands of various partners, firms and directors is involved, and therefore, having regard to the nature and

complexity of the accounts, volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts, or specialized nature of transaction in the cases which finally of the assessee, and the interest of the Revenue, the accounts are required to be got audited by a Special Auditor from the point of view of taxation of capital gains and accounting of stock-in-trade at each stage of transfer so that there is no loss to the Revenue out of the complex web of transactions involved.

At this stage it is required to be noted that similar notices were issued for AY 2010-11 and after considering the objections submitted by the very petitioner and after obtaining the approval from the Principal Commissioner, the Assessing Officer passed an order of Special Audit under Section 142(2A) of the IT Act, which was the subject matter of Special Civil Application No.2920/2017 and by a detailed judgment and order the Division Bench of this Court has dismissed the said Special Civil Application confirming the order passed by the Assessing Officer of Special Audit for AY 2010-11. The dispute in the present petition is with respect to the special audit for AY 2014-15.

[2.3] That, the petitioner-assessee filed its objections, which came to be disposed of by the Assessing Officer. That thereafter, the Assessing Officer sent a proposal to the Principal Commissioner of Income-tax, Ahmedabad IV for its approval. That the said Principal Commissioner of Income-tax granted his approval and appointed respondent no. 3 as a Special Auditor. Thereafter, by two communications, the petitioner has been called upon to get the accounts audited for AY 2014-2015, as the successor of viz., M/s. Chanakya Infracon Private Limited; M/s. Youngstar Infracon Private Limited; M/s. Chanakya Buildcon Private Limited and M/s. Takshashila Properties Private Limited by the Special Auditor.

[3.0] Feeling aggrieved and dissatisfied by the impugned order passed by the respondent no. 1-Assessing Officer passed under Section 142(2A) of the IT Act, the assessee has preferred the present Special Civil Application.

[4.0] Shri J.P. Shah, learned Senior Advocate appearing on behalf of the petitioner has vehemently submitted that the impugned order passed in exercise of powers under Section 142(2A) of the IT Act appointing Special Auditor is absolutely bad, illegal and contrary to the provisions of section 142(2A) of the IT Act.

[4.1] It is further submitted by Shri Shah, learned Senior Advocate appearing on behalf of the petitioner that in the present case the petitioner submitted return of income for AY 2014-15 along with the Statutory Audit Report and Tax Audit Report. That the assessment for AY 2014-15 started with a notice under Section 142(1) of the IT Act dated 30.03.2016 by the Assessing Officer and the petitioner gave a reply thereto. It is submitted that thereafter various correspondences between the petitioner and the Assessing Officer took place and the last compliance was by letter dated 19.12.2016. It is submitted that after the petitioner's letter dated 19.12.2016, suddenly, the Assessing Officer issued a notice under Section 142(2A) of the IT Act dated 21.12.2016. It is submitted that the show-cause notice dated 21.12.2016 was in respect of account for AY 2014-15, the assessment of which was getting time barred on 31.12.2016. It is submitted that thereafter by a letter dated 27.12.2016, the petitioner objected to the proposal of Special Audit under Section 142(2A) of the IT Act. That the Assessing Officer rejected the objections vide communication dated 28.12.2016. It is submitted that simultaneously the petitioner also received a letter dated 28.12.2016 directing the petitioner to get its accounts for AY 2014-15

audited by a Special Auditor. It is submitted that in the show-cause notice as well as the impugned order except repeating the language used in section 142(2A) of the IT Act, no other reasons have been assigned. It is submitted that even the accounts were not examined by the Assessing Officer and therefore, the Assessing Officer cannot form an opinion without calling for the record and before examining the account that the accounts are complex and correctness thereof is doubtful and thus interest of the Revenue is compromised if the special audit is not ordered. It is submitted that therefore, the impugned order under Section 142(2A) of the IT Act is absolutely illegal and bad in law which requires to be quashed and set aside.

[4.2] It is vehemently submitted by Shri Shah, learned Senior Advocate for the petitioner that the language used in Section 142(2A) of the IT Act is that, *the Assessing Officer, having regard to the nature and complexity of the accounts, &... may pass an order for special audit*. It is submitted that in view of the aforesaid language of the Section, the Assessing Officer cannot direct special audit under Section 142(2A) before calling for the accounts from the petitioner in the assessment proceedings.

[4.3] It is further submitted that even otherwise, the Assessing Officer could not have formed an opinion without calling for the record and before examining the accounts that the accounts are complex and correctness thereof is doubtful, and thus, interest of the Revenue is compromised, if special audit is not called for. It is submitted that therefore, before calling for the accounts from the petitioner in the assessment proceedings, the Assessing Officer without even doubting correctness of the accounts could not have passed an order for special audit under Section 142(2A) of the IT Act. In support of his above submissions, Shri Shah, learned Senior Advocate for the petitioner has

relied upon the following decisions *viz.*,

[i] Delhi Development Authority & Anr.

v.

Union of India & Anr.,

[2013] 350 ITR 432 [Delhi];

[ii] Peerless General Finance & Investment Co. Ltd.

v.

Deputy Commissioner of Income-tax & Ors.

[1999] 236 ITR 671 [Calcutta];

[iii] Muthoottu Mini Kuries

v.

Deputy Commissioner of Income-tax & Anr.

[2001] 250 ITR 455 [Kerala];

[iv] West Bengal State Cooperative Bank Ltd.

v.

Joint Commissioner of Income-tax & Ors.

[2004] 267 ITR 345.

[4.4] It is further submitted by Shri Shah, learned Senior Advocate appearing for the petitioner that as such the original assessment was subjected to scrutiny assessment under Section 143(3) of the IT Act, and therefore also, there was no need for special audit of the accounts. It is further submitted by Shri Shah, learned Senior Advocate that the reasons, or most of the events on which the Assessing Officer has placed reliance upon for forming an opinion for directing special audit under Section 142(2A) of the IT Act have not at all occurred in AY 2014-2015, and thus, the foundation of forming an opinion itself is not sustainable, making the direction and approval bad in law. It is further submitted by Shri Shah, learned Senior Advocate that even the Principal Commissioner of Income-tax has accorded approval in mechanical manner and it does not reflect any proper application of mind by the said Commissioner in according the approval. It is submitted that the Principal Commissioner, while granting the approval, is required to

apply his mind and he is not required to act mechanically. In support of his above submissions, Shri Shah, learned Senior Advocate for the petitioner has relied upon decision of *Hon'ble* Supreme Court in the case of **Sahara India [Firm] v. Commissioner of Income-Tax & Anr.**, reported in **[2008] 300 ITR 403 [SC]** as well as a decision of Delhi High Court in case of **DLF Commercial Projects Corporation & Anr. vs. Assistant Commissioner of Income Tax & Ors.**, reported in **[2013] 357 ITR 211 [Delhi]**. It is further submitted by Shri Shah, learned Senior Advocate for the petitioner that even otherwise, the directions for which special audit is ordered are mainly questions of law, which are required to be considered by the Assessing Officer, and therefore, for such accounts are not required to be got audited through Special Auditor. It is submitted that therefore also, the impugned order under Section 142(2A) of the IT Act deserve to be quashed and set-aside.

[4.5] It is further submitted by Shri Shah, learned Senior Advocate appearing on behalf of the petitioner that in the present case as the conditions mentioned in section 142(2A) of the IT Act for ordering special audit are not satisfied, it is requested to quash and set aside the impugned order.

[4.6] Now, so far as the order passed by this Court in Special Civil Application No.2920/2017 and other petitions in case of very assessee but for earlier years is concerned, it is submitted by Shri Shah, learned Senior Advocate appearing on behalf of the petitioner that the said decision shall not be applicable to the facts of the case on hand for AY 2014-15 as in the year 2014-15, there were only 4 to 5 entries and transactions with respect to booking of the flats and therefore, for AY 2014-15, there is no necessity of special audit.

Making above submissions and relying upon above decisions it is

requested to allow the present petition.

[5.0] Present petition is vehemently opposed by Shri Nitin Mehta, learned Advocate appearing on behalf of the Revenue.

[5.1] An affidavit-in-reply is filed on behalf of the Assessing Officer in the petition.

[5.2] Shri Mehta, learned Advocate appearing for the Revenue has vehemently submitted that in the facts and circumstances of the case, more particularly for the reasons stated in the show cause notice and being satisfied that a case is made out for special audit under Section 142(2A) of the IT Act and only thereafter, the Assessing Officer has passed the impugned orders of special audit under Section 142(2A) of the IT Act and that too after getting the approval from the Principal Commissioner of Income-tax, Ahmedabad IV.

[5.3] It is further submitted by Shri Mehta, learned Advocate appearing for the Revenue that the impugned order for special audit under Section 142(2A) of the IT Act is absolutely in consonance with the provisions of Section 142(2A) of the IT Act. It is submitted that at the time when the notice was issued by the Assessing Officer calling upon the assessee to show cause why the accounts for AY 2014-2015 may not be got audited through the Special Auditor, the re-assessment proceedings were pending before the Assessing Officer, which were in the form of notice under Section 148 of the IT Act. It is submitted that Section 142(2A) of the IT Act confers power upon the Assessing Officer to order the accounts audited through Special Auditor, if at any stage of proceedings before him, *the Assessing Officer, having regard to the nature and complexity of the accounts, &...&* is of the opinion that it is necessary to so to do. It is submitted that therefore during the re-assessment proceeding,

the Assessing Officer has thought it fit and having satisfied that it is necessary to so to do, has passed the Order under Section 142(2A) of the IT Act, and therefore, the same is absolutely in consonance with the provisions of the Act.

[5.4] It is further submitted by Shri Mehta, learned counsel for the Revenue that as per Section 142(2A) of the IT Act, apart from the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee and in the interest of the Revenue, if the Assessing Officer is of the opinion that it is necessary so to do, he may, with the previous approval of the Principal Commissioner, direct the assessee to get the accounts audited by an Accountant [Special Auditor]. It is submitted that in the present case, having found that looking to the multiplicity of transactions in the accounts and specialized nature of business activities of the assessee and in the interest of Revenue, it is necessary to get the accounts of the assessee audited by Special Auditor, the Assessing Officer has rightly passed an order under Sec.142(2A) of the IT Act.

[5.5] It is further submitted by Shri Mehta, learned Advocate for the Revenue that in the present case, the complex issues involved in the erstwhile firms and the companies before conversion and amalgamation. It is further submitted that even there are complex issues and multiplicity of transactions in the accounts of the assessee in relation to introduction of land and revaluation of the same over a period of time; successions/ conversion of firms to a company, treatment of capital account of partners as loan, valuation of land at unreasonable premium and other issues, and therefore, accounts of the assessee are required to be audited by special auditor in the interest of the Revenue.

[5.6] It is further submitted that there was conversion of four firms *viz.*, [i] Chanakya Infrastructure; [ii] Chanakya Buildcon; [iii] Takshshila Gruh Nirman; [iv] Yongstar Infrastructure into the four companies *ie.*, Chanakya Infracon Private Limited; Chanakya Buildcon Private Limited; Youngstar Infracon Private Limited and Takshishila Properties Private Limited and later merger of one more company Takshshila Realities Private Limited with four above mentioned companies into the Transferee company *ie.*, Takshshila Gruh Nirman Private Limited. The order of five companies merging into Takshshila Realities Private Limited was passed on 10th May 2012 by the High Court of Gujarat in Financial Year 2012-2013, relevant to Assessment Year 2013-2014. There is a complex web of transactions in the group of firms and the conversion of firms into companies and their amalgamation/merger thereafter. The issues relate to introduction of land by partners into the firms, revaluation of land, credit of partners capital account equal to the revalued amount of land, conversion of capital account to loan account of shareholders and issue relating to issue of equity shares against the balances of revaluation credits at a premium. The above issues are clubbed with multiple revaluation of properties over the years, starting from 2008 to 2013 and also includes the fact of valuation of shares by discounted cash flow method and allotment of shares against the amounts outstanding as unsecured loans at unreasonable premium. It is submitted that therefore, in the facts and circumstances of the case, the Assessing Officer is justified in passing the impugned order under Section 142 [2A] of the Act.

[5.7] It is further submitted by Shri Nitin Mehta, learned counsel for the Revenue that in the facts and circumstances of the case, it cannot be said that the Principal Commissioner of Income-tax has not applied his mind

and/or that there is non application of mind on the part of the Principal Commissioner of Income-tax in granting approval. It is submitted that against the show cause notice, objections were raised by the petitioners and the order disposing of the objections were placed before the Principal Commissioner of Income-tax with other materials and only thereafter, after considering the above material, the Principal Commissioner has accorded the approval.

[6.0] Now, so far as reliance placed upon a decision of Kerala High Court in the case of *Muthoottu Mini Kuries* [Supra] by the learned counsel for the petitioner, in support of his submissions that unless and until the books of account are before the Assessing Officer and after verification of the books of account, the Assessing Officer is of the opinion that there is a complexity in the account and/or he doubts the correctness of the accounts and then and then only the Assessing Officer can pass an order under Section 142(2A) of the IT Act is concerned, it is submitted by Shri Nitin Mehta, learned counsel for the Revenue that the said decision has been rendered prior to amendment in Section 142(2A) of the IT Act. It is submitted that after the amendment in Section 142(2A) of the IT Act, *apart from the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the account*, if the Assessing Officer is of the opinion that *having regard to the specialized nature of business activities of the assessee and in the interest of Revenue*, the Assessing Officer may pass an order under Section 142(2A) of the IT Act. It is submitted that with respect to specialized nature of business activities of the assessee, there need not be any books of account before the Assessing Officer at the stage of passing of the order under Section 142(2A) of the IT Act.

[6.1] It is further submitted by Shri Mehta, learned Advocate appearing

on behalf of the Revenue that in the case of the very petitioner for earlier years i.e. 2010-11 onwards and with respect to the very transactions / conversions, the Assessing Officer passed the orders under Section 142(2A) of the IT Act which were the subject matter of Special Civil Application No.2920/2017 and other allied petitions and by a detailed judgment and order the Division Bench of this Court had dismissed the said petitions. It is submitted that the present year under consideration i.e. AY 2014-15 is the subsequent year and the consequential effect of earlier transactions/conversions are required to be considered in detail and therefore, for which and considering the multiplicity of transactions, the Assessing Officer has rightly thought it fit to get the accounts even for 2014-15 audited by a Special Auditor.

Making above submissions and relying upon recent decision of Division Bench of this Court in the case of **Ulhas Securities Private Limited v. Deputy Commissioner of Income-Tax** [Special Civil Application No. 1266 of 2017] in which the Division Bench of this Court has considered the amended Section 142([2A) of the IT Act, it is requested to dismiss the present petition.

[7.0] In reply to the above, Shri Shah, learned Senior Advocate for the petitioner has submitted that the decision of Division Bench of this Court in case of *Ulhas Securities Private Limited* [Supra] shall not be applicable to the facts of the case on hand. It is submitted that in the case before the Division Bench, it was a case wherein requisitioned material comprising 40,000 papers in 42 gunny bags were collected during the search and seizure operation which were required to be verified and scrutinized, and therefore, there might be a justification for special audit under Section 142(2A) of the IT Act. It is submitted that therefore, the decision in the case of *Ulhas Securities Private Limited* [Supra] shall not be applicable to the facts of the case on hand.

[8.0] Heard respective counsels appearing for the petitioner as well as Revenue at length.

[8.1] At the outset, it is required to be noted that the *impugned* orders have been passed by the Assessing Officer of Special Audit in exercise of powers under Section 142(2A) of the IT Act. Therefore, while considering the legality and validity of the *impugned* orders passed under Section 142(2A) of the IT Act, 142(2A) of the IT Act is required to be referred to and considered, which read as under :-

“**142(2A)** If, at any stage of the proceedings before him, the Assessing Officer, having regard to the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialised nature of business activity 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 approval of the Principal Chief Commissioner or Chief Commissioner or Principal 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 Principal Chief Commissioner or Chief Commissioner or Principal 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.”

[8.2] Thus, considering the amended Section 142(2A) of the IT Act, if at any stage of the proceedings before him, the Assessing Officer, having regard to [a] the nature and complexity of the accounts; [b] volume of the accounts; [c] doubts about the correctness of the accounts; [iv] multiplicity of transactions in the accounts; or [v] specialized nature of business activity 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 approval of the Principal Commissioner of Income-tax, direct the assessee to get the accounts audited by an accountant [Special Auditor]. As per the *proviso* to Section 142(2A) of the IT Act, before passing an order of Special Audit and prior to directing the assessee to get the accounts so audited, the Assessing Officer is required to give a reasonable opportunity of being heard to the assessee.

[8.3] In the present case, before passing the *impugned* Orders under Section 142(2A) of the IT Act, opportunity of being heard has been duly given to the assessee and show cause notices were issued and served upon the petitioner calling upon the petitioner to show cause why, for the reasons stated in the said notice, the books of account may not be subject to audit by a special auditor. It is required to be noted that in the show cause notice, reasons were specifically mentioned pointing out the necessity to get accounts audited by the Special Auditor. That thereafter, the petitioner-assessee raised objections in detail, which have been disposed of by the Assessing Officer by speaking order and only thereafter, after seeking approval from the Principal Commissioner of Income-tax; as required under the Act, the Assessing Officer passed the *impugned* orders under Section 142(2A) of the IT Act. Therefore, as such, the procedure which is required to be followed, while passing the order under Section 142(2A) of the IT Act, has been duly followed by the Assessing Officer.

[8.4] In so far as the submissions on behalf of the petitioner that in the present case, Notice under Section 148 of the IT Act for AY 2014-2015 was issued on 21st December 2016 and immediately after five days only, Notice under Section 142(2A) of the IT Act was given, and therefore, the *impugned* Order under Section 142(2A) of the IT Act is bad in law, as no

opportunity has been given as per the decision of *Hon'ble* Supreme Court in the case of *GKN Driveshafts [India] Limited* [Supra] is concerned, it is required to be noted that the objections raised against the re-assessment proceedings/notice under Section 148 of the IT Act is altogether a different proceeding. The notice under Section 148 of the IT Act and the objections to be raised against the re-assessment are altogether a different and distinct proceedings then the Order under Section 142(2A) of the IT Act. What is required to be considered while passing an order under Section 142(2A) of the IT Act, at the time order under Section 142(2A) of the IT Act, any proceedings are pending before the Assessing Officer or not ? Notice under Section 148 of the IT Act *ie.*, re-assessment proceedings can be said to be the proceedings pending before the Assessing Officer, and therefore, if at that stage of proceedings [in the present case, re-assessment proceedings before him], the Assessing Officer, having regard to the multiplicity of transactions in the account or specialized nature of the business activities of the assessee and the interest of the Revenue, is of the opinion that it is necessary to so to do, he may pass an order under Section 142(2A) of the IT Act; subject to compliance with the procedure, as required under Section 142(2A) of the IT Act. Therefore, in the facts and circumstances of the case, it cannot be said that the *impugned* order is contrary to Section 142(2A) of the IT Act.

[8.5] Now so far as submission made on behalf of the petitioner that the Assessing Officer cannot direct special audit under Section 142(2A) of the IT Act before calling for the accounts from the petitioner in the assessment proceedings and without doubting the accounts and/or considering the complexity in the accounts is concerned, it is required to be noted that as per amended Section 142(2A) of the IT Act, apart from the nature and complexity of the accounts, etc., even in case of

multiplicity of transactions in the accounts or specialized nature of business activity of the assessee and in the interests of the Revenue, the Assessing Officer can pass an order for special audit in exercise of powers conferred under Section 142(2A) of the IT Act. Therefore, while forming an opinion to get the accounts audited by special auditor; considering the specialized nature of business activities of the assessee, there need not be any books of account before the Assessing Officer. In the present case, having found that there are complex issues relating to introduction of land by the partners into the firms; revaluation of land; credit of partners in capital account equal to revalued amount of land; conversion of capital account to loan account of shareholders and issues relating to issuance of equity shares against the balances of revaluation credits at an unreasonable premium, and after having been satisfied that considering the specialized nature of business activities of the assessee, the Assessing Officer has passed an order of special audit in exercise of powers under Section 142(2A) of the IT Act.

[8.6] We see that the decision for audit of the assessee's account is backed by proper material on record and reasons recorded by the Assessing Officer. His formation of belief that looking to the multiplicity of the transactions in the accounts and specialized nature of business activities of the assessee, a special audit is called for, and therefore, it cannot be faulted.

[8.7] At this stage, it is required to be noted that the following material weighed with the Assessing Officer, while forming an opinion that there is necessity for accounts of the assessee audited by Special Auditor.

“That, the 5 Companies, which have amalgamated with Takshashila Gruh Nirman Pvt. Ltd., have their beginning as partnership firms, which were already doing the real estate and construction business and were executing various projects like Takshashila Residency at Naroda

Dehgam Road, Takshshila Colonials at Maninagar and Takshshila Habitat at Vastral, apart from hotel and commercial projects. Hotel projects with shops were earlier executed by Chanakya Buildcon, later by Chanakya Buildcon Pvt. Ltd. and now after amalgamation the present Takshshila Gruh Nirman Pvt. Ltd. has completed project and entered into sale agreement. Chanakya Infrastructure commenced construction of Takshshila Habitat and in the middle of the construction, the firm was converted into Company viz., Chanakya Infracon Pvt. Ltd. under chapter IX of Company Act. Now, the Chanakya Infracon Pvt. Ltd. has been amalgamated with Takshshila Gruh Nirman Pvt. Ltd. Similar is the case with Takshshila Gruh Nirman, a firm converted into company Takshshila Properties Pvt Ltd and amalgamated with Takshshila Gruh Nirman Pvt. Ltd. The 80IB project Takshshila Colonials, for which approval was granted by Local Authority to erstwhile firm and stock-in-trade/CWIP has changed hands and the 80IB deduction is being claimed in the present Takshshila Gruh Nirman Pvt. Ltd. (Takshshila Realities Ltd.)

That, at the time of formation or at the later date some of the partners brought land into the firms as their capital contribution. Before conversation to companies, the firms got the lands available in the books revalued and the amounts were credited in the current capital accounts of the partners. Consequent to amalgamation, the Company has issued and allotted 6,00,000 equity shares at a fair price of Rs. 10/- and a premium Rs. 390/- per share against the unsecured balances of Rs. 24 Crores, treating the same as share application money and share premium. The fair market value of shares has been arrived by the company on 'Discounted Cash Flow (DCF) method. The basis for free cash flow to equity is randomly taken by the company.

Conversation of 5 firms into companies, after revaluation of lands, merger of 5 companies with Takshshila Gruh Nirman Pvt. Ltd. Later with issue of equity shares against the balances of revaluation credits at a premium. Valuation of shares as Discounted Cash Flow method by estimating cash flows and adopting a random discounted rate for valuation. There is complex web of transactions in the group of firms namely introduction of land by some of the partners, revaluation of lands and crediting of amounts in the current accounts of all partners, conversion of firms

in to companies which merged with the existing company, valuation of share by discounted cash flow method and allotment of shares against the amounts outstanding as unsecured loans at unreasonable premium, clubbed with multiple revaluation or properties over the years starting from 2008 to 2013 in various entities involves application of provisions of the Companies Act, application of Accounting Standards and examination of provisions of capital gains in the hands of various partners, firms and directions is involved. Having regard to the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of transaction in the cases which finally of the assessee, and the interests of the revenue, am of the opinion that it is necessary to get the accounts audited by a Special Auditor from the point of view of taxation of capital gains and accounting of stock-in-trade at each stage of transfer so that there is no loss to the revenue out of the complex web of transactions involved.”

[9.0] Considering the aforesaid facts and circumstances of the case and having regard to the multiplicity and specialized nature of transactions and in the interests of the Revenue, when the Assessing Officer has passed the *impugned* orders of special audit under Section 142(2A) of the IT Act, the same cannot be faulted with.

[9.1] At this stage, decision of Delhi High Court in the case of **DLF Limited & Anr. vs. Additional Commissioner of Income-tax & Anr.**, reported in [366] ITR 390 [Delhi] is required to be referred to and considered. In the said decision, Delhi High Court has considered scope, ambit and powers of the Assessing Officer, while passing order under Section 142 of the IT Act. In the said decision, it is observed that Section 142(2A) of the IT Act is an enabling provision to help and assist the Assessing Officer to complete the scrutiny assessment with the assistance of an accountant. In paragraphs 10, 11, 26 & 27 of decision, Delhi High Court has observed as under :-

“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 WPC 2363/2013 Page 8 of 21 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 WPC 2363/2013 Page 9 of 21 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).

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 WPC 2363/2013 Page 19 of 21 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 article-ship 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 Satyams 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 WPC 2363/2013 Page 20 of 21 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.”

At this stage it is required to be noted that whatever the objections were raised by the petitioner vide objections dated 27.12.2016, have been dealt with by the Assessing Officer while disposing the objections on 28.12.2016. At this stage it is required to be noted that in the objection dated 27.12.2016 as such the petitioner raised the objection for AY 2010-11. Nothing is on record that any other further objections were raised for AY 2014-15.

At this stage it is also required to be noted that in the objections the petitioner never pointed out that there is no consequential effect of the previous transactions in the year under consideration. It is the case on behalf of the Revenue / Department that effect of earlier transactions / conversions in the earlier years would have a direct bearing for AY 2014-15 also. Under the circumstances, after giving fullest opportunity to the petitioner and after dealing with the objections raised by the petitioner and thereafter having obtained the approval from the Principal Commissioner who has granted the approval after considering the material on record and thereafter when the Assessing Officer has passed the order of Special Audit considering the specialised

nature of the business activities of the assessee and the multiplicity of transactions, it cannot be said that the Assessing Officer has committed any error. Now, so far as the submission on behalf of the petitioner that along with the return of income for AY 2014-15, the petitioner submitted the Special Audit Report and the Tax Audit Report and therefore, there is no further requirement of Special Audit is concerned, at this stage it is required to be noted that considering section 142(2B) of the IT Act irrespective of the fact whether the assessee has got the accounts audited by the Auditor, the Assessing Officer can pass an order of Special Audit. Under the circumstances, merely because the assessee along with the return of income submitted a Statutory Audit Report and Tax Audit Report, considering section 142(2B) of the IT Act, the order of Special Audit under Section 142(2A) of the IT Act cannot be said to be invalid.

[10.0] In view of the above and for the reasons stated hereinabove, more particularly considering the scope and ambit of Section 142(2A) of the IT Act, it cannot be said that in the facts and circumstances of the case, the respondent has committed any error and/or any illegality while passing the order under Section 142(2A) of the IT Act. Under the circumstances, the present *writ* petition deserves to be dismissed and is accordingly dismissed. Notice is discharged. No costs.

Sd/-
(M.R. SHAH, J.)

Sd/-
(B.N. KARIA, J.)

Ajay