

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 7618 of 2021****With****R/SPECIAL CIVIL APPLICATION NO. 7620 of 2021****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS. JUSTICE BELA M. TRIVEDI****Sd/-****and****HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	YES
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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DISHMAN INFRASTRUCTURE LIMITED

Versus

THE ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE
(2)

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Appearance:

MR SN SOPARKAR, LD. SR. ADVOCATE WITH MRS SWATI SOPARKAR(870) for the Petitioner(s) No. 1
MR MR BHATT, LD. STANDING COUNSEL WITH MRS MAUNA M BHATT(174) for the Respondent(s) No. 1

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CORAM: HONOURABLE MS. JUSTICE BELA M. TRIVEDI
and

HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI**Date : 19/08/2021****CAV JUDGMENT
(PER : HONOURABLE MS. JUSTICE BELA M. TRIVEDI)**

1 Both the petitions, being inter-connected with each other, involving similar questions of law and facts, were heard together finally at the admission stage with the consent of the learned Advocates for the parties, and hence are being decided by this common judgement.

2 Initially, the petitioners in both the petitions had challenged the order dated 8.4.2021 passed by the respondent, disposing of the objections raised by the respective petitioners against the proposed referral for special audit within the meaning of Section 142(2A) of the Income Tax Act, 1961 (hereinafter referred to as the "said Act"), and had also challenged the impugned directions given by the respondent to the petitioners vide the communication dated 22.4.2021 under the said provisions. To be precise, following prayers were sought in both the petitions:-

7. ... that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, direction or order and be pleased to:

(a) quash and set aside the impugned order dated 8.4.2021 at Annexure-A to this petition;

(b) quash and set aside the impugned directions of 22.4.2021 at Annexure-A to this petition;

(c) pending the admission, hearing and final disposal of this petition, to stay implementation and operation of the notices at Annexure-A to this petition;"

3 However, at the time of hearing, the learned Sr. Advocate Mr. S. N. Soparkar did not press for the challenge to the impugned order dated 8.4.2021 and confined himself to the challenge to the impugned directions dated 22.4.2021. The Court, therefore, while issuing "notice" to the respondent in both the petitions, had passed the following order on 14.6.2021:-

"1. The Petitioner by way of present petition has sought to challenge the impugned order dated 8.4.2021 at Annexure-A as well as the impugned directions dated 22.4.2021, which are also part of Annexure-A.

2. After arguing for some time, learned Senior Advocate Mr. S.N.Soparkar for the petitioner confines himself to the challenge to the

impugned directions dated 22.4.2021 (Annexure-A) and does not press for the challenge to the impugned order dated 8.4.2021 (Annexure-A).

3. Issue Notice as regards the challenge to the impugned directions dated 22.4.2021 (Annexure-A), returnable on 28.6.2021.

4. In the meantime, it is needless to say that the Special Auditor shall confine himself to the scope of Section 142 (2A) of the Income Tax Act read with Rule 14A and Form 6B of the Income Tax Rules."

4 In view of the above order, the prayer contained in Paragraph 7(a) with regard to the challenge to the impugned order dated 8.4.2021 has stood rejected, as not pressed for in both the petitions. As regards the remaining challenge to the impugned directions dated 22.4.2021, the factual matrix as stated in the Special Civil Application No.7618 of 2021 is taken into consideration for the sake of convenience.

4.1 The petitioner is a limited Company of which most of its shareholders are citizens of India. The petitioner is in the business of development of Special Economic Zone (SEZ) at Village Bhamsara, Kalyanghadh, and Ghangad, Near Bagodara. On 19.12.2019 and on

subsequent dates, a search/seizure and survey actions were conducted in "Dishman Group" and voluminous data/materials/documents were seized from the various premises, including the residential premises of the petitioner. Consequent to the search action, the proceedings under Section 153A of the Act have been initiated in case of the petitioner - assessee.

4.2 On 23.2.2021 the respondent issued a notice under Section 142(1) of the said Act, calling upon the petitioner to furnish the details as mentioned therein. According to the petitioner, since the respondent had called for the numerous details spanning across 10 years and since Covid-19 Pandemic situation was prevailing, the petitioner took time to compile all the details and submit the same.

4.3 On 19.3.2021, the respondent issued a notice under Section 142(2A) of the said Act and also supplied the Satisfaction Note drawn for referring the case for an independent

audit. The petitioner objected to the said notice and sought the copies of the statements of Bharatbhai Padia and Chiragbhai Thakkar and also sought personal hearing vide the letters dated 27.3.2021 and 30.3.2021.

4.4 The petitioner was communicated vide letter dated 31.3.2021 to collect the requisite statements on 1.4.2021. The petitioner was also granted an opportunity of hearing by fixing the hearing on 5.4.2021, however, petitioner neither collected the statements, nor remained present for personal hearing.

4.5 The petitioner instead challenged the said notice dated 19.3.2021 before this Court by filing a petition being SCA No.6033 of 2021, which subsequently came to be withdrawn as per the order dated 5.4.2021.

4.6 On 5.4.2021, the petitioner intimated the respondent that the copies of the statements were not provided. On 6.4.2021 the petitioner was provided with the copies of the

statements of Mr.Bharat Padiya and Mr.Chirag Thakkar. On 7.4.2021, the petitioner wrote a letter, seeking copies of the seized material from Mr.Rajiv Shah and the findings of the Investigation Wing.

4.7 The respondent after considering the objections of the petitioner contained in the letter dated 27.3.2021 passed the impugned order on 8.4.2021 disposing of the said objections. Thereafter, the respondent issued the impugned directions on 22.3.2021 under Section 142(2A) of the said Act.

5 Both the petitions containing almost identical facts have been resisted by the respondent by filing the affidavits-in-reply, to which the respective petitioners have filed their affidavit-in-rejoinder.

6 During course of the arguments, the learned Sr. Advocate Mr.Soparkar for the petitioners in both the petitions made the following submissions:-

6.1 The Assessing Officer before making the reference under Section 142(2A), is required to peruse the accounts, make a genuine and honest attempt to understand the accounts, appreciate the entries made therein and in the event of any doubt, seek explanation from the assessee. If the Assessing Officer is still not able to understand, then he may make reference to the special auditor, after providing an opportunity of hearing to the assessee, as observed by the Supreme Court in case **Sahara India (Firm) Vs. Commissioner of Income-tax & Anr., reported in 300 ITR 403.** However, in the present case, the respondent had not undertaken any of such exercises and sought voluminous account and data from the petitioners on 23.2.2021.

6.2 The show-cause notices under Section 142(2A) were issued on 19.3.2021 to the petitioners in utter disregard of the provisions contained in Section 142(2A), delegating his adjudicatory function to the auditor.

6.3 As held by the Supreme Court in case of **Rajesh Kumar & Ors., Vs. Deputy Commissioner of Income-tax & Ors., reported in 287 ITR 91 (SC)**, the assessment proceedings are part of a judicial process and are not administrative in nature. The opinion of the Assessing Officer is required to be based on an objective criteria and not on subjective satisfaction, as held by the Supreme Court in case of **Sahara India (Firm) Vs. Commissioner of Income-tax & Anr., (supra)**.

6.4 The special auditor cannot go into and examine the legal issues or question regarding the taxability, which otherwise is required to be done by the Assessing Officer himself. However, in the instant case, the respondent has delegated upon the auditor, the investigation into the affairs of the petitioners, including the social functions, analysis of the seized documents and forming an adjudicatory opinion of the impact and the consequences of the same, not only on the income of the petitioners for the current

year, but for the other years and other laws and other assessees. In this regard, reliance is placed on the decisions of the Delhi High Court and Calcutta High Court.

6.5 An appraisal report was made by the investigating team after a search, to the concerned Assessing Officer and such report encompassed complete and thorough analysis done on the seized documents by the investigating team, and therefore, the Assessing Officer had sufficient assistance to understand the seized documents. Therefore, the delegation of the work of both - the investigating officer as well as of the Assessing Officer upon the Special Auditor is bad and illegal.

6.6 As regards the voluminous 50 TB of data and 22000 plus loose papers found during the search operation, it is submitted that during the post-search investigation proceedings, personal hearings were granted and exhaustive submissions were filed by the petitioners. On the basis of the same, the DDIT(Inv), Unit

1(3), Ahmedabad had quantified the undisclosed income to the tune of Rs.3,959 crore, as reflected in the satisfaction note of the respondent. However, disregarding the said report, the respondent again intends to repeat the same exercise.

6.7 The respondent cannot make a reference under Section 142(2A) solely "in the interest of revenue". The condition of interest of revenue is a joint condition with any one of the previous conditions.

6.8 Many queries raised in the terms of reference have no bearing on the seized documents but are related to the assessment of the income as such. As observed in case of **Principal Commissioner of Income-tax Vs. Saumya Construction (P) Limited, reported in (2016) 387 ITR 529 (Gujarat)**, the assessments pursuant to search and seizure have to be limited to only incriminating materials found during the search, and no normal additions can be made in the assessment, by making a roving inquiry.

6.9 In case of **Vodafone Mobile Services Limited Vs. Dy. Commissioner of Income Tax (W.P. (c) No.4081/2016)**, it has been held that the special auditor must confine himself to the accounts. The special auditor has limited scope and is not an adjudicator.

6.10 As regards the issue of international transactions, the respondent has already referred the issues of international transactions to the Transfer Pricing department on 13.4.2021 and now in the impugned directions again has referred the issues of cross border transactions to the special auditor.

6.11 The information which refers to the violation of section 269SS/T or disallowability of expenses under Section 37(1) is already certified by the Tax Auditor and verified by the Assessing Officer during the assessment proceedings which are completed till A.Y. 2015-16.

6.12 As regards the applicability of other

laws, the auditor is not expected to do roving and fishing inquiries and he cannot be expected to do the work of the Assessing Officer. The said work has to be done by the respondent Assessing Officer himself by examining the legal position and decided in accordance with law.

7 *Per contra*, the learned Sr. Standing Counsel Mr.M.R. Bhatt for the respondent made the following submissions:-

7.1 The petitioners having not challenged the orders dated 8.4.2021 disposing of the objections of the respective petitioners against the proposed referral for special audit under Section 142(2A) of the Act, the Court is required to examine the challenge to directions dated 22.4.2021 only.

7.2 Section 142(1)(ii) and (iii) entitles the Assessing Officer to call upon the assessee to produce such account or document as the Assessing Officer may require or to give information as the Assessing Officer may

require.

7.3 Section 142(2), (2A) also requires the assessee to furnish a report of such audit in the prescribed form (Form 6B) setting forth such particulars as may be prescribed and such other particulars as may be required by the Assessing Officer.

7.4 Form 6B is in three parts. The first part requires the special auditor to examine balance sheet, profit and loss account etc., the second part requires the special auditor to obtain all the information necessary for the purpose of audit, and the third part requires the opinion of the special auditor. It is submitted that the report by the special auditor in the form 6B is not restricted to the Annexure stated in the said form but would also contain such other particulars as were required by the Assessing Officer. This can also be culled out from the guidance notes of tax audit, issued by the institute of Chartered Accountant.

7.5 Insofar as the terms of reference are concerned, for each and every direction, respondent has offered comments in tabular form, in an excel sheet, separately filed. The directions issued by the Assessing Officer are strictly in consonance with Section 142(2A) read with Form 6B.

7.6 The arguments made by the petitioner during the course of hearing essentially pertained to the order dated 8.4.2021 directing the special audit, which as such has not been pressed into service as per the order passed by the Court on 14.6.2021.

7.7 The respondent has issued the impugned directions under Section 142(2A) after issuing summons to the assessee under Section 142(1), after pursuing the record available, after recording the satisfaction, after considering and disposing of the objections raised by the petitioner.

7.8 During the search proceedings several documents and digital evidence in the form of

hard drives, mobile data, laptop data and other storage device were found and seized from the petitioner's premises, including the residential premises. The total volume of digital data runs into more than 50 plus HD drives of 1 TB each i.e. more than 50 TB size data. There is SAP software data also seized from the petitioners' premises. The loose material seized by the department during the course of search proceedings runs into more than 22000 pages. Hence, from the said seized material, it was gathered that the petitioner was running an organized activity of providing accommodation entries along with the other unaccounted transactions resulting into tax evasion.

7.9 Placing reliance on the affidavit-in-reply, filed on behalf of the respondent, it has been submitted that the petitioners were involved in providing accommodation entries, money laundering, as there were transactions with almost 290 parties having no business relations with the petitioners for giving

loans and advances. There were complex issues relating to the accommodation entries with around 300 people involving an amount of about Rs.1,500 crore. There were bogus claims of expenditure, higher income shown through inflated sales and commission income, sale of unaccounted scraps, transactions with foreign subsidiaries and the sales routed through them without availing any actual services, etc.

7.10 The petitioners being in the business of specialized activity of developing the molecules on behalf of third parties, and the technology transfer getting involved into the transactions required specialized skill and knowledge.

7.11 As regards the correctness of books of accounts, it was found from the impounded material that numerous transactions reflected in the bank statements were recorded in some other names. The said facts were duly accepted by Shri Harshil Dalal, Group CFO of the assessee company during the course of recording his statement.

7.12 Thus, the ingredients of Section 142(2A) with regard to the nature and complexity, volume, doubts about the correctness and multiplicity of transactions being found in existence and since it was in the interest of revenue, the special audit has been directed after complying with the requirement of principles of natural justice. Reliance is placed on the decisions in case of **Ulhas Securities (P) Ltd. Vs. DCIT, reported in 393 ITR 514 (Guj)**, in case **Cama Hotels Ltd. Vs. Samir Vakil for His Successor DCIT (OSD) & Anr., reported in 418 ITR 109** and in case of **Tehmul Burjor Sethna Vs. ACIT, reported in 418 ITR 596.**

7.13 As per the proviso to Section 142(2C), the special auditor is required to give his report within 180 days, however, due to absolute non-cooperation by the petitioner - assessee coupled with voluminous record as referred, and taking note of Supreme Court's decision in case of **VLS Finance Ltd. & Anr. Vs. CIT & Anr., reported in (2016) 384 ITR 1**

(SC), the period during which the petition remained pending be excluded for the purpose of calculating the limitation.

8 At the outset, it may be noted that though there is voluminous record produced and lengthy arguments advanced by the learned Advocates for the parties, the issue involved in the present petitions runs in a very narrow compass. As stated earlier, the petitioners had initially challenged the legality and validity of the order dated 8.4.2021 disposing of the objections raised against the proposed referral for special audit and also challenged the legality of the directions issued under Section 142(2A) of the said Act vide the order dated 22.4.2021, however, at the initial hearing of the petitions on 14.6.2021, the learned Sr. Advocate Mr.Soparkar for the petitioners in both the petitions had confined himself to the challenge to the impugned directions dated 22.4.2021 and had not pressed for the challenge to the impugned order dated 8.4.2021. Ergo, the Court is required to examine the legality of the

impugned directions dated 22.4.2021 only, whereby the respondent has directed the petitioners to get their books of accounts audited by the Accountant nominated by the Principal, CIT (Central-1), Ahmedabad, and directed the nominated Accountant to submit the report as per Rule 14A of the Income-Tax Rules in the prescribed Form No.6B, and further directed the nominated Accountant to go through the XLV issues/points mentioned therein. The petitioners have been directed to submit the report of the Accountant within 90 days from the date of the said directions. It may be pertinent to note that the necessary corollary of not challenging the order dated 8.4.2021 would be that the petitioners in both the petitions do not challenge the powers of the respondent to pass the order for special audit as contemplated under Section 142(2A) of the said Act, nor do they challenge the decision-making process followed by the respondent while passing the said order dated 8.4.2021.

9 In the backdrop of the aforesaid, and for

the better appreciation of the rival contentions raised by the learned Advocates for the parties, it would be germane to reproduce the relevant provisions contained in Section 142(2A) of the Act, the Rule 14A of the Income-Tax Rules, as also the Form No.6B annexed to the Rules:-

"Inquiry before assessment.

142. (1) xxx

(2) xxx

(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.

Rule 14A

Form of audit report under section 142(2A)

14A The report of audit of the accounts of an

assessee which is required to be furnished under sub-section (2A) of section 142 shall be in Form No.6B

FORM 6B

FORM NO. 6B

[See rule 14A]

Audit report under section 142(2A) of the Income -tax Act, 1961

I/We have examined the balance sheet of[name and address of the assessee] Permanent Account No..... as atand the profit and loss account for the year ended on that date which are in agreement with the books of account maintained at the head office at and branches at

I/We have obtained all the information and explanations which to the best of * my/our knowledge and belief were necessary for the purposes of the audit. In * my/our opinion, proper books of account have been kept by the head office and the branches of the assessee visited by * me/us so far as appears from * my/our examination of books, and proper returns adequate for the purposes of audit have been received from branches not visited by * me/us subject to the comments given below :

.....
.....
.....

In * my/our opinion and to the best of * my/our information and according to explanations given to * me/us, the said accounts give a true and fair view. -

(i) in the case of the balance sheet, of the state of the abovenamed assessee's affairs as at, and

(ii) in the case of the profit and loss account, of the profit or loss of the abovenamed assessee for the accounting year ending on

The prescribed particulars and such other particulars as were required by the Assessing Officer by his order No..... dated are annexed hereto. In * my/our opinion and to the best of * my/our information and according to explanations given to * me/us, these are true and correct.

Place ..
Date ...

Signed
Accountant **

Notes :

- 1.*Delete whichever is not applicable.
- 2.**This report has to be given by the accountant nominated

by the Chief Commissioner or Commissioner of Income-tax under section 142(2A)

3. Where any of the matters stated in this report is answered in the negative or with a qualification, the report shall state the reasons therefor.

ANNEXURE

Statement of particulars

1. Books of account maintained
2. Method of accounting employed. Indicate whether there is any change from the method of accounting employed in the immediately preceding previous year
3. (i) Method of valuation of opening and closing stock of
 - (a) Raw materials
 - (b) Stores
 - (c) Work-in-progress
 - (d) Stock-in-trade
 (ii) State whether there is any change in the method of valuation of any of the aforesaid items as compared to the method employed in the immediately preceding previous year
 (iii) If the answer to (ii) above is in the affirmative, specify the amount by which the profit or loss for the year has been affected by such change
4. In respect of items manufactured full quantitative details of raw materials and finished products as indicated below: Raw materials

- (a) Opening stock
- (b) Purchases during the year
- (c) Consumption during the year
- (d) Sales during the year
- (e) Closing stock
- (f) Yield of finished products
- (g) Percentage of yield
- (h) Shortage

Finished products

- (a) Opening stock
- (b) Purchases during the year
- (c) Quantity manufactured during the year
- (d) Sales during the year
- (e) Closing stock at the end of the year
- (f) Shortage and percentage thereof

Notes :

1. Separate quantitative details on the above lines should be given in respect of by-products, if any.
2. Where the assessee is a dealer in goods, quantitative details on the above lines should be given in respect of the goods dealt in?
5. (i) Has the assessee conducted physical verification of raw materials, stores and finished products, or the goods dealt in?
 (ii) Details of discrepancies, if any
6. (a) Amount of expenditure incurred by the assessee in

respect of :

- (i) Advertisement
- (ii) Maintenance of accommodation in the nature of guest house
- (iii) Travelling
- (iv) Entertainment [including the amount of entertainment allowance paid to any employee or other person]
- (b) Whether the expenditure incurred by the assessee in respect of any of the items referred to in (a) above exceeds the amount admissible under the Income-tax Act/Rules? If so, give details.

7. Where the assessee is a firm, details of payments by way of interest, salary, bonus, commission or remuneration to the partners of the firm

8. Where the assessee is a company, give details of-

- (i) Any expenditure which has resulted directly or indirectly in the provision of any remuneration, benefit or amenity to (a) a director ; (b) a person who has a substantial interest in the company ; and (c) a relative of the director or of such person
- (ii) Any expenditure or allowance in respect of assets of the company used wholly or partly for the purposes or benefit of any of the persons referred to in (i) above [state whether any such person is an employee of the assessee or not]

9. Details of amounts not deductible under section 40A :

- (a) Particulars of payments which appear to be excessive or unreasonable in terms of section 40A(2) (a)
- (b) Particulars of payments in excess of Rs. 2,500 * made otherwise than by a crossed cheque or draft - section 40A(3)
- (c) Particulars of expenditure or allowance in excess of the limits specified in section 40A(5) (c) **
- (d) Particulars of expenditure incurred by way of fees and salary to an ex-employee in excess of Rs. 60,000 - section 40A(6) **
- (e) Provisions for payment of gratuity not allowable - section 40A(7)
- (f) Where the assessee is a company, the amount of interest on deposits not allowable under section 40A(8) †

10. Whether any amount is borrowed on a hundi from, or any amount due thereon (including interest on the amount borrowed) is repaid to, any person otherwise than through an account payee cheque? If so, give details.

11. (a) Particulars of proforma credits/drawback/refund of duties of customs or excise or both/refund of sales tax. Whether they have been credited to the profit and loss account? (b) Particulars of expenditure/income of any earlier year debited/credited to the profit and loss account of the relevant previous year (c) Particulars of any liability of a contingent nature debited to the profit and loss account

12. Particulars of each loan taken by the assessee (other than any loan taken from a bank or financial institution) in the following form : (i) Name, address and permanent account number of the lender Printed from (ii) Whether amount

borrowed on hundi? (iii) Whether loan account squared up during the year? (iv) Maximum amount outstanding at any time during the year and rate of interest paid (v) Details of security including collateral security offered, if any (vi) Name and address of the guarantor, if any

13. Particulars of each loan/overdraft taken from a bank or financial institution in the following form : (i) Maximum amount outstanding at any time during the year (ii) Details of security including collateral security offered, if any (iii) Name and address of the guarantor, if any

14. Whether the assessee has deducted tax at source and paid the amount so deducted to the credit of the Central Government in accordance with the provisions of Chapter XVIIB? If not, give details of defaults committed

15. (a) Details of taxes, duties, etc., paid by the assessee during the previous year

(b) Whether any discrepancy has been noticed in the respective dates of payments and the entries in the books of account? If so, give particulars thereof."

10 Now, adverting to the first and foremost submission of the learned Sr. Advocate Mr.Soparkar that the impugned directions given by the respondent Assessing Officer are bad in law as the respondent has delegated upon the special auditor the work, which he himself is required to do and which otherwise is in the nature of investigation, it may be noted that the observations made by a three-Judge Bench of the Supreme Court in case of **Sahara India (Firm) Vs. Commissioner of Income-tax & Anr.** (supra) clinch the issue. In the said case, the Supreme Court has elaborately discussed the scope of Section 142(2A), while dealing with the issue as

to whether in every case, where the Assessing officer issues a direction under Section 142(2A) of the IT Act, 1961, the assessee has to be heard before such an order is passed? In the said case, the Supreme Court while agreeing with the decision of the Two-Judge Bench in case of **Rajesh Kumar Vs. DCIT** (Supra) held that the exercise of power under Section 142(2A) of the said Act leads to serious civil consequences, and therefore, even in absence of express provision for affording an opportunity of pre-decisional hearing to an assessee, and in absence of any express provision in Section 142(2A) barring the giving of reasonable opportunity to an assessee, the requirement of observance of principles of natural justice is to be read into the said provision. The observations made in the said case of **Sahara India (Firm)** with regard to the consequences that would follow to the order of special audit passed in exercise of the powers conferred under Section 142(2A) being relevant, they deserve to be reproduced and the same read as under:-

"21. In the light of the aforementioned legal position, we are in respectful agreement with the decision of this Court in *Rajesh Kumar (supra)* that an order under [Section 142 \(2A\)](#) does entail civil consequences. At this juncture, it would be relevant to take note of the insertion of proviso to [Section 142 \(2D\)](#) with effect from 1st June, 2007. The proviso provides that the expenses of the auditor appointed in terms of the said provision shall, henceforth, be paid by the Central Government. In view of the said amendment, it can be argued that the main plank of the judgment in *Rajesh Kumar (supra)* to the effect that direction under [Section 142 \(2A\)](#) entails civil consequences because the assessee has to pay substantial fee to the special auditor is knocked off. True it is that the payment of auditor's fee is a major civil consequence, but it cannot be said to be the sole civil or evil consequence flowing from directions under [Section 142 \(2A\)](#). We are convinced that special audit has an altogether different connotation and implications from the audit under [Section 44AB](#). Unlike the compulsory audit under [Section 44AB](#), it is not limited to mere production of the books and vouchers before an auditor and verification thereof. It would involve submission of explanation and clarification which may be required by the special auditor on various issues with relevant data, document etc., which, in the normal course, an assessee is required to explain before the Assessing Officer. Therefore, special audit is more or less in the nature of an investigation and in some cases may even turn out to be stigmatic. We are, therefore, of the view that even after the obligation to pay auditor's fees and incidental expenses has been taken over by the Central Government, civil consequences would still ensue on the passing of an order for special audit."

11 Thus, the Supreme Court has categorically observed that unlike compulsory audit under

Section 44AB, the special audit under Section 142(2A) is not limited to mere production of the books and vouchers before an auditor and verification thereof. It would involve submission of explanation and clarification, which may be required by the special auditor on various issues with relevant data, documents etc., which in normal course an assessee is required to explain before the assessing officer. Therefore, the special audit is more or less in the nature of an investigation and in some cases may even turn out to be stigmatic. Thus, the special auditor may not only be required to do the work which the Assessing Officer would do in normal course but may also be required to do the work which could be in the nature of investigation.

12 It may further be noted that Section 142(2A) was amended w.e.f. 1.6.2013, whereby the words "the nature and complexity of the accounts, volume of accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized

nature on business activities of the assessee, and", have been substituted for the words "the nature and complexity of the accounts of the assessee". The Division Bench of this Court in case of **Tehmul Burjor Shethna Vs. ACIT (supra)**, considering the said amendment, has observed the following -

"17. At this juncture, it may be germane to refer to the explanatory notes to the provisions of the Finance Act, 2013 issued by the Central Board of Direct Taxes vide Circular No.03/2014 dated 24th January, 2013, which to the extent the same are relevant for the present purpose, read thus:

"35. Direction for special audit under sub-section (2A) of section 142

35.1 Sub-section (2A) of section 142 of the Income-tax Act, before its amendment by the Act, inter-alia, provided that if at any stage of the proceedings, 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 approval of the Chief Commissioner or Commissioner, direct the assessee to get his accounts audited by an accountant and to furnish a report of such audit in the prescribed form. The expression "nature and complexity of the accounts" has been interpreted in a very restrictive manner by various courts.

35.2 Sub-section (2A) of section 142 has been amended to provide that 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 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 Chief Commissioner or the Commissioner, direct the assessee to get his accounts audited by an accountant and to furnish a report of such audit in the prescribed form.

35.3 Applicability: - This amendment takes effect from 1st June, 2013."

18. Thus, it is the restrictive interpretation of the expression "nature and complexity of the accounts" by various courts that has occasioned the amendment, evidently, therefore, the intention of the legislature was to widen the scope and ambit of sub-section (2A) of section 142 of the Act. The scope and ambit of sub-section (2A) of section 142 of the Act has, therefore, become wider upon its amendment with effect from 1 st June, 2013 and cannot be construed in the same restrictive manner as it was prior to its amendment.

19. As noted hereinabove, sub-section (2A) of section 142 of the Act can be invoked 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. Thus, four contingencies in which section 142(2A) of the Act can be invoked, relate to accounts.

20. The question that then arises for consideration is what meaning has to be assigned to the expression "accounts". The expression "account" has been defined in the Black's Law Dictionary to mean thus: "A detailed statement of the mutual demands in the nature of debit and credit between parties, arising out of contracts or some fiduciary relation. A statement in writing, of debits and credits, or of receipts and payments, a list of items of debits and credits, with their respective dates. A statement of pecuniary transactions; a record or course of business dealings with parties; a list or statement of monetary transactions, payable, accounts receivable, etc. in most cases showing a

balance or result of comparison between items of an opposite nature". In P. Ramanatha Aiyar's Law Lexicon, "account" has inter alia been defined to mean: (i) a statement of moneys received and paid with calculation and balance, (ii) a formal record of debts and credits relating to the person named or caption placed at the head of the ledger account, (iii) computation, and (iv) a statement of fact or occurrence. Thus, the expression "account" also takes within its ambit a statement of pecuniary transactions, a record or course of dealings with parties as well as computation. The expression "accounts" cannot be read to mean 'books of account' which are statutorily required to be maintained by certain classes of assessee, but has to be given a wider meaning.

21. It is the case of the petitioner that he does not maintain any personal books of account as he is statutorily not required to maintain the same. In effect and substance, therefore, the petitioner seeks to equate the expression "accounts" with "books or books of account" as contemplated under section 2(12A) of the Act. However, as rightly submitted by the learned counsel for the respondents, the expression used in the subsection is "accounts" and not "books of account", and had the legislature so intended, it would have employed the expression "books of account" instead of "accounts".

22. In CBI v. V.C. Shukla (supra), the Supreme Court though dealing with a case relating to section 34 of the Indian Evidence Act, had occasion to construe the scope and ambit of the expression "account". The Court held thus: "20. Mr Sibal, the learned counsel for the Jains, did not dispute that the spiral notebooks and the small pads are "books" within the meaning of Section 34. He, however, strongly disputed the admissibility of those books in evidence under the aforesaid section on the ground that they were neither books of account nor were they regularly kept in the course of business. He submitted that at best it could be said that those books were memoranda kept by a person for his own benefit. According to Mr Sibal, in business parlance "account" means a formal statement of money transactions between parties arising out of contractual or fiduciary relationship. Since the books in question did not reflect any such relationship and, on the

contrary, only contained entries of monies received from one set of persons and payment thereof to another set of persons it could not be said, by any stretch of imagination that they were books of account, argued Mr Sibal. He next contended that even if it was assumed for argument's sake that the above books were books of account relating to a business still they would not be admissible under Section 34 as they were not regularly kept. It was urged by him that the words "regularly kept" mean that the entries in the books were contemporaneously made at the time the transactions took place but a cursory glance of the books would show that the entries were made therein long after the purported transactions took place. In support of his contentions he also relied upon the dictionary meanings of the words "account" and "regularly kept". 21. The word "account" has been defined in Words and Phrases, Permanent Edn., Vol. I-A at pp. 336 to 338 to mean (i) a claim or demand by one person against another creating a debtor-creditor relation; (ii) a formal statement in detail of transactions between two parties arising out of contracts or some fiduciary relation. At p. 343 of the same book the word has also been defined to mean the preparation of record or statement of transactions or the like; a statement and explanation of one's administration or conduct in money affairs; a statement or record of financial transactions, a reckoning or computation; a registry of pecuniary transactions or a reckoning of money transactions; a written or printed statement of business dealing or debits and credits; or a certain class of them. It is thus seen that while the former definitions give the word "account" a restrictive meaning the latter give it a comprehensive meaning. Similarly is the above word defined, both restrictively and expansively, in Black's Law Dictionary (Sixth Edn.) to mean: "A detailed statement of the mutual demands in the nature of debit and credit between parties, arising out of contracts or some fiduciary relation. A statement in writing, of debits and credits, or of receipts and payments; a list of items of debits and credits, with their respective dates. A statement of pecuniary transactions; a record or course of business dealings between parties; a list of statement of monetary transactions, such as payments, losses, sales, debits, credits, accounts payable, accounts receivable, etc., in most cases showing a balance

or result of comparison between items of an opposite nature."

22. Mr Altaf Ahmed relied upon the wider definition of the word "account" as mentioned above to contend that MR 71/91 fulfils the requirements of "account" as it records a statement of monetary transactions – such as receipts and payments – duly reckoned. Mr Sibal on the other hand urged that business accounts must necessarily mean only those accounts which record transactions between two parties, arising out of a contract or some fiduciary relations (a meaning accepted by the High Court). He submitted, relying upon the definition of "memorandum" as appearing in Words and Phrases, that MR 71/91 could at best be described as a memorandum of some transactions kept by a person for his own benefit to look into the same if and when the occasion would arise. 23. From the above definitions of "account" it is evident that if it has to be narrowly construed to mean a formal statement of transactions between two parties including debtor-creditor relation and arising out of contract, or some fiduciary relations, undoubtedly the book MR 71/91, would not come within the purview of Section 34. Conversely, if the word "account" is to be given wider meaning to include a record of financial transactions properly reckoned the above book would Page 68 of 94 Downloaded on : Mon Aug 09 15:46:58 IST 2021 C/SCA/6632/2019 JUDGMENT attract the definition of "book of account". 24. It cannot be gainsaid that the words "account", "books of account", "business" and "regularly kept" appearing in Section 34 are of general import. Necessarily, therefore, such words must receive a general construction unless there is something in the Act itself, such as the subject-matter with which the Act is dealing, or the context in which the words are used, to show the intention of the legislature that they must be given a restrictive meaning. Thus, if the word "account" is to be given a wider meaning, it would include a record of financial transactions and not merely a formal statement of transactions.

23. It has been oft repeated by the learned counsel for the petitioner that the petitioner being an individual, is not under any statutory obligation to maintain any books of account and has not been maintaining any books of account and

that in the absence of any accounts, the question of complexity in the accounts does not arise and hence, it is not permissible for the Assessing Officer to invoke the said provision. It has also been contended that even if the amended provision talks of audit for specialised nature of business activities of assessee, the prerequisite condition of maintenance of books of account as per statutory requirement is a must. Besides, the petitioner has consistently taken a stand in the proceedings under section 153A of the Act and pursuant to the notice for referring the matter for special audit that he does not maintain books of account. However, a perusal of the statement of the petitioner as recorded under section 132(4) of the Act, a copy whereof has been annexed by the petitioner along with his affidavit-in-rejoinder, shows that at item No.12, the following question has been posed to the petitioner: "Please state where do you maintain and keep your books of accounts?" In reply to which, the petitioner has stated "All the books of accounts are maintained in TALLY program as is available at my office at 304, Akanksha Building, Opp. Vadilal House, Navrangpura, Ahmedabad." At item No.18, the question put to the petitioner is: "During the course of search action under section 132 of the I.T. Act, 1961, cash of Rs.7,14,700/- has been found from your residence. Please furnish whether the same has been reflected in your regular books of accounts?" In response thereto, the petitioner's answer is: "I do acknowledge that during the course of search action under section 132 of the I.T. Act, 1961, cash of Rs.7,14,700/- has been found from my residence. In this regard, I want to state that this cash is duly reflected in my books of accounts and in fact as date i.e. on 29.11.2016 I am having a cash balance of Rs.2 crores less approx. Rs.40 to 50 lakhs deposited in bank. Therefore, the same is duly reflected in my books of account." Thus, in his statement under section 132(4) of the Act, the petitioner has referred to his books of account; whereas subsequently, he has taken a stand that he does not maintain books of account.

24. Be that as it may, assuming that the petitioner does not maintain books of account as he is statutorily not mandated to do so, does it mean that merely by dint of this reason, subsection (2A) of section 142 of the Act cannot

be invoked in his case? In the opinion of this court, such an intention cannot be attributed to the legislature while enacting the amended subsection (2A) of section 142 of the Act. As noted hereinabove, the sub-section came to be amended because of the restrictive meaning assigned to it by the court. The legislature, therefore, obviously intended to give it a wider meaning.

25 to 29 xxx

30. Besides, as pointed out by the learned counsel for the revenue, reference to special audit can also be made having regard to the specialised nature of the business activity of the assessee. In this case, the Assessing Officer is of the opinion that the petitioner is involved in the business of providing accommodation entries and money laundering. While such business may not be legal, even then it is a specialised business activity and the Assessing Officer may not have the wherewithal to decipher the documentary evidence. Under the circumstances, when the Assessing Officer finds that having regard to the specialised nature of business activities of the assessee, the accounts are required to be audited by an accountant as contemplated under sub-section (2A) of section 142 of the Act, it is permissible for the Assessing Officer to do so. Therefore, even if for the sake of argument the petitioner's contention that as he is not required to maintain accounts statutorily the question of complexity and volume of accounts would not arise were to be accepted, even then the petition would fail on the count that a direction to get the accounts audited by an accountant can also be given if the Assessing Officer having regard to the specialised nature of business of the petitioner is of the opinion that it is necessary to do so."

13 Having regard to the amended provision of
Section 142(2A) in the light of the afore-stated

observations, there remains no shadow of doubt that the Assessing Officer can exercise the powers under Section 142(2A) by directing the assessee to get his accounts audited by a special auditor, if in his opinion it is necessary to do so considering not only the nature, complexity, volume or correctness of the accounts but also considering the specialized nature of business activity of the assessee. As such, Section 142(2A) as amended w.e.f. 1.6.2013, could be broadly divided into three parts;

(i) 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,

(ii) direct the assessee to get the accounts audited by an accountant, as defined in the Explanation below subsection (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;

(iii) 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.

14 The first part of Section 142(2A) empowers the Assessing officer to direct the assessee to

get his accounts audited by a nominated accountant, under the circumstances mentioned therein; the second part pertains to the manner in which such report and other particulars as may be prescribed or as the assessing officer may require should be furnished ; and the third part obliges the assessing officer to give a reasonable opportunity of being heard to the assessee before directing him to get the accounts so audited. Now, the second part can further be divided into two parts namely; (i) the assessing officer may direct the assessee to furnish a report of such audit in the prescribed form duly signed and verified by such accountant; and (ii) setting forth such particulars as may be prescribed and other particulars as the assessing officer may require. The prescribed form mentioned in the said provision is the Form No.6B as stated in Rule 14A of the said Rules, which requires that the report of the audit of the accounts of the assessee required to be furnished under Section 142(2A) shall be in Form No.6B.

15 The Form No.6B reproduced earlier, for the proper understanding may also be divided into three parts. The first part of the Form requires the auditor to examine the balance sheet and profit and loss account, etc., and to obtain the information and explanation necessary for the purpose of the audit. The second part pertains to the opinion of the auditor on the information and explanation given to him by the assessee and the third part pertains to the furnishing of the prescribed particulars and other particulars as were required by the assessing officer. For the purpose of furnishing prescribed particulars, there is an Annexure below the said Form No.6B, i.e. the statement of particulars.

16 So far as the facts of the present case are concerned, the Court is not required to deal with the first and third part of Sub-Section (2A) of Section 142, inasmuch as the petitioners have not challenged the orders dated 8.4.2021 disposing of their respective objections raised against the proposed referral for special audit.

Thus, the orders rejecting the objections of the petitioners with regard to the nature and complexity of the accounts, volume of accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts, or specialized nature of business activities of the assessee and with regard to the interest of the revenue, having not been challenged, the decision making process also remain unchallenged. Even otherwise, the petitioners were afforded the opportunity of hearing by the respondent by issuing the show-cause notices dated 19.3.2021 and also by supplying the note of satisfaction recorded for referring the case to an independent auditor. The said show-cause notices were sought to be challenged by the petitioners by filing the Special Civil Application No.6033 of 2021, and Special Civil Application No.5940 of 2021 respectively but in vain. Thereafter, the petitioners raised objections vide letter dated 27.3.2021 and the said objections came to be rejected vide order dated 8.4.2021, which have become final.

17 As regards the challenge to the terms of reference dated 22.4.2021, the learned Sr. Advocate Mr.S.N. Soparkar for the petitioners has pressed into service the Annexure to the Form No.6B prescribed under Rule 14A of the said Rules to submit that the respondent - Assessing officer had to confine himself to the said statement of particulars prescribed in the said Annexure. We are afraid, such submission limiting the powers of the Assessing officer to call for only those particulars which are prescribed in the said Annexure to Form No.6B, would be in derogation of the very purpose and intent of the provisions contained in Section 142(2A) of the said Act and cannot be accepted. When Section 142(2A) itself empowers the Assessing Officer to direct the assessee to get the accounts audited by the nominated accountant and to furnish the audit report in the prescribed form, setting forth the prescribed particulars and the other particulars as the Assessing Officer may require, and when the last paragraph of the Form No.6B, also requires the nominated accountant to furnish such prescribed

and other particulars as the Assessing Officer may require, his powers to call for the particulars can not be restricted to only those particulars as are stated in the Annexure i.e. the statement of particulars annexed to the said Form No.6B. The legislature having used the two phrases i.e. "such particulars as may be prescribed" and "such other particulars as the Assessing officer may require", in Section 142(2A), it would mean that the Assessing officer could ask the Accountant to set forth in his report the prescribed particulars as well as the other particulars as he may require considering the facts and circumstances of the case. If the submission of Mr.Soparkar that only those particulars could be furnished as are prescribed in the statement of particulars contained in the annexure to the Form 6B is accepted, the words "and such other particulars as the assessing officer may require" in Section 142(2A) would become redundant and otiose.

18 Even in the case of **Sahara India (Firm)** (supra) relied upon by Mr.Soparkar, it has been

clearly observed while considering the consequences which would follow to the order of special audit that the special audit is not limited to the production of the books and vouchers before the auditor and verification thereof. It would involve submission of explanation and clarification which may be required by the special auditor on various issues with relevant data, documents etc. It is more or less in the nature of an investigation. If the incriminating material seized during the search operations required some further information or particulars, the Assessing Officer can certainly direct the special auditor to examine the same and call for the explanation of the assessee as may be necessary to do.

19 This takes us to the next submission of Mr.Soparkar to the effect that the assessment proceedings being part of judicial process and not an administrative in nature, the Assessing officer cannot delegate his judicial functions to the Auditor. According to him, the special auditor cannot go into and examine the legal

issues as has been directed by the respondent in some of the questions. In this regard, Mr.Soparkar has relied upon the observations made by the Delhi High Court in case of **Delhi Development Authority & Anr. Vs. Union of India & Anr., reported in 350 ITR 432.** The relevant observations contained in paragraph 24 thereof read as under:-

"24. We have referred to the aforesaid note in detail for two reasons. Firstly, the note reveals that the Assessing Officer felt that the case required detailed scrutiny or monitoring, verification of entries, which were substantial in number. Detailed scrutiny of large number of entries by itself, on standalone basis, will not amount to complexity of accounts. The accounts do not become complex because merely there are large number of entries, e.g., a petrol pump may have substantial sales, to thousands of customers daily at prices fixed under law/Rules, but this by itself will not be the accounts complex. Similarly, an Assessing Officer is required to scrutinize the entries and verify them, but this does not require services of a special auditor or a Chartered Accountant to undertake the said exercise. [Section 142\(2A\)](#) is not a provision by which the Assessing Officer delegates his powers and functions, which he can perform to the special auditor. The said provision has been enacted to enable the Assessing Officer to take help of a specialist, who understands accounts and accounting practices to examine the accounts when they are complex and the Assessing Officer feels that he cannot understand them and comprehend them fully,

till he has help and assistance of a special auditor. Interest of the Revenue being the other consideration. In the present case, the Revenue has not submitted that test check of entries was undertaken, but anomalies or mistakes were detected. For proceeding further, and to compute the taxable income, help and assistance of an accounting expert was required. Secondly, we notice that the Assessing Officer felt that special auditor is required for determining and deciding certain legal issues, i.e., nature and character of Nazul I and Nazul II land, payments received and the treatment of the said payments, receipts or expenditure in the books for the purposes of taxation. The special auditor cannot go into and examine the said legal issue or question regarding taxability. This has to be determined and decided by the Assessing Officer."

20 It may be noted that the aforesaid decision was rendered by the Delhi High Court considering the Section 142(2A) as it stood prior to its amendment in 2013. After the amendment on 1.6.2013, the scope of Section 142(2A) has been widened, whereunder, the Assessing officer is empowered to direct the assessee to get the accounts audited by a nominated accountant, having regard to not only the nature and complexity of the accounts, but also to the volume of the accounts, doubts about the correctness of the accounts, multiplicity of the transactions in the accounts or specialized

nature of business activities of the assessee coupled with the interest of the revenue and furnish a report of such audit in the prescribed form, setting forth the prescribed particulars and such other particulars as he i.e. the Assessing Officer may require. There cannot be any disagreement to the proposition that the assessment proceedings are in the nature of *quasi* judicial proceedings and not administrative proceeding, and therefore, it is the Assessing officer, who has to decide the legal issues or questions involved in the case, nonetheless the Assessing officer cannot be restrained from calling for the particulars which may involve legal issues. There may be certain particulars or queries, involving legal issues, like the particulars with regard to the cash-credit under Section 68, unexplained investments under Section 69, unexplained money under Section 69A, amount of investments not fully disclosed in the books of accounts under Section 69B, unexplained expenditure etc. under Section 69C, amount borrowed or repaid on hundies under Section 69D etc. which the

Assessing Officer may require the special auditor to look into them and opine. Even the prescribed particulars contained in the Annexure to the Form No.6B permit the auditor to call for the details of the issues like the amounts not deductible under Section 40A of the Act, the particulars of the loans taken by the assessee, the particulars as to whether the assessee has deducted the tax at source in accordance with the provisions of Chapter-XVII-B of the Act or not etc. These are some of the instances stated in the Form 6B itself, which indicate that the Assessing officer can call for the opinion of the special auditor with regard to the issues, including the legal issues. As stated earlier, the final decision on all the issues has to be taken by the Assessing officer, being a quasi judicial authority, nonetheless, he can not be restrained from calling for the opinion of the special auditor on the particulars which he may require having regard to the facts and circumstances of the case, which even otherwise is permissible under Section 142(2A) read with the Form 6B prescribed under Rule 14A of the

Rules.

21 Of course, there could not be any roving or fishing inquiry under the guise of special audit, however, whether a particular term of reference could be termed as a roving or fishing inquiry or not would be a highly disputed question of fact. Apart from the fact that the learned Sr. Advocate Mr. M. R. Bhatt for the Revenue has furnished in the Excel Format the comments of the respondent justifying each of the directions issued by the respondent - Assessing Officer in the impugned order, this Court exercising an extraordinary jurisdiction under Article 226 of the Constitution of India cannot be expected to examine each and every question contained in the impugned directions, and opine as to which part of which question is required to be construed as a roving or fishing inquiry for being discarded. Even otherwise as transpiring from the show-cause notice dated 19.3.2021 along with the satisfaction note drawn by the Assessing officer and the order dated 8.4.2021, voluminous material was seized during

the course of search proceedings and post search proceedings, by the DDIT, INB Unit-1(Ahmedabad), conducted at various premises of Dishman Group including the residential premises of the petitioners. It was detected from the seized material that the key persons of Dishman Group identified were Shri Janmejay Vyas, Chairman; his son Shri Arpit Vyas, Global CMD, Shri Bharat Padiya, Executive Director and Shri Harshil Dalal, Global CFO of the Group, and Smt. Deohooti Vyas and the said persons were connected with each other through various companies, firms/LLPs in a web-manner and that the said group had unaccounted transactions to the tune of Rs.3949 crore. The seized material included voluminous record running into 50 plus HD drive of 1 TB each i.e. more than 50 TB plus SAP software data and loose material running into more than 22000 papers. The seized material including the loose paper files contained the details of about 76 properties i.e. plots at various places purchased by the petitioners. There were bogus claims of expenditures, higher income shown through inflated sales and

commission income, sale of unaccounted scraps, transactions with foreign subsidiaries and the sales routed through them without availing actual services, over and above the following bogus and unaccounted transactions pertaining to the Dishman Group -

Sr. No.	Nature of Transactions	Amount involved (in Crores)
1	Undisclosed seized assets	04
2	Bogus Loans & advances (Debit)	795
3	Bogus Loans & advances (Credit)	671
4	Bogus Trading Purchases	38
5	Bogus Capex	25
6	Bogus Raw Material Purchases	02
7	Bogus Sales	53
8	Bogus Commission Income	105
9	Unsubstantiated claim of Goodwill depreciation	959
10	Unaccounted scrap sale	04
11	On money in plot sale: DishmanGroup	03
	Total	2659

22 The respondent - Assessing officer after going through the said material seized during the search operations and after following the due procedure of giving reasonable opportunity

of hearing to the petitioners and after obtaining necessary approval of the Principal Commissioner of the Income Tax as contemplated in Sub-section (2A) of Section 142 has directed the respective petitioners vide the impugned directions to get their accounts audited by the nominated accountant, and to furnish the report in the prescribed form, also setting forth the requisite particulars as prescribed in the questionnaire. Such directions could neither be said to be arbitrary, illegal nor beyond the scope of the said provision. It is neither permissible to the Court exercising the jurisdiction under Article 226 of the Constitution to enter into the disputed questions of facts, nor is it possible for the Court to analyse each and every direction and come to the conclusion whether it is bad in law or not. The submission of Mr.Soparkar that if some of the questions, which seem to be bad in law cannot be segregated, the entire impugned order containing the directions be quashed and set aside, also cannot be accepted.

23 It is axiomatic that when an authority has a jurisdiction to pass an order, the exercise of jurisdiction in wrongful manner in certain cases even though held to be illegal, would not necessarily render the order a nullity. All irregular or erroneous or illegal orders cannot be held to be null and void. The Supreme Court in case of **Deepak Agro Foods Vs. State of Rajasthan & Ors., reported in (2008) 7 SCC 748** drawing a fine distinction between the orders which are null and void and the orders which are irregular, wrong or illegal, has observed as under:-

"17.All irregular or erroneous or even illegal orders cannot be held to be null and void as there is a fine distinction between the orders which are null and void and orders which are irregular, wrong or illegal. Where an authority making order lacks inherent jurisdiction, such order would be without jurisdiction, null, non est and void ab initio as defect of jurisdiction of an authority goes to the root of the matter and strikes at its very authority to pass any order and such a defect cannot be cured even by consent of the parties. (See: Kiran Singh & Ors. Vs. Chaman Paswan & Ors.1). However, exercise of jurisdiction in a wrongful manner cannot result in a nullity - it is an illegality, capable of being cured in a duly constituted legal proceedings."

24 In the instant case, as set out herein above the Assessing Officer does have the

jurisdiction to give directions for a special audit under Section 142(2A). Even the impugned directions also do not suffer from any illegality or infirmity. In any case, even if two-three queries out of forty five queries are found to be unwarranted, as sought to be submitted by Mr.Soparkar, the entire order giving directions can not be set aside treating it to be a nullity. In that view of the matter, both the petitions being devoid of merits deserve to be dismissed.

25 At this stage, the request made by the learned Sr. Advocate Mr.M. R. Bhatt for the respondent to exclude the period during which the present petition remained pending in the High Court after issuance of the notice i.e. from 14.6.2020 till this date, deserves to be considered for the purpose of Section 142(2C) of the Act. The Supreme Court in case of **VLS Finance Ltd. & Anr. Vs. CIT & Anr.** (supra), dealing with similar issue observed as under:-

"23. We, therefore, agree with the High Court that the special audit was an integral step towards

assessment proceedings. The argument of the appellants that the writ petition of the appellant was ultimately allowed and the Court had quashed the order directing special audit would mean that no special audit was needed and, therefore, it was not open to the respondent to wait for special audit, may not be a valid argument to the issue that is being dealt with. The assessing officer had, after going through the matter, formed an opinion that there was a need for special audit and the report of special audit was necessary for carrying out the assessment. Once such an opinion was formed, naturally, the assessing officer would not proceed with the assessment till the time the special audit report is received, inasmuch as in his opinion, report of the special audit was necessary. Take a situation where the order of special audit is not challenged. The assessing officer would naturally wait for this report before proceeding further. Order of special audit followed by conducting special audit and report thereof, thus, become part of assessment proceedings. If the order directing special audit is challenged and an interim order is granted staying the making of a special report, the assessing officer would not proceed with the assessment in the absence of the audit as he thought, in his wisdom, that special audit report is needed. That would be the normal and natural approach of the assessing officer at that time. It is stated at the cost of repetition that in the estimation of the assessing officer special audit was essential for passing proper assessment order. If the court, while undertaking judicial review of such an order of the assessing officer directing special audit ultimately holds that such an order is wrong (for whatever reason) that event happens at a later date and would not mean that the benefit of exclusion of the period during which there was a stay order is not to be given to the Revenue. Explanation 1 which permits exclusion of such a time is not dependent upon the final outcome of the proceedings in which interim stay was granted."

26 Applying the ratio of the afore-stated judgement to the facts of the present petitions, it is directed that the period during which both the petitions remained pending i.e. from the

date of issuance of notice on 14.6.2021 till the date of pronouncement of judgement, shall be excluded while counting the period prescribed in the proviso to Sub-section (2C) of Section 142 of the said Act. Subject to the said direction, the petitions are dismissed.

27 At the request of the learned Sr. Advocate Mr.Soparkar, the interim relief granted vide order dated 14.6.2021 in both petitions is extended till 7.9.2021, with a view to enable the petitioners to approach the higher forum.

Sd/-
(BELA M. TRIVEDI, J)

Sd/-
(A. C. JOSHI, J)

V.V.P. PODUVAL