IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 12TH DAY OF FEBRUARY 2018

BEFORE

THE HON'BLE Dr.JUSTICE VINEET KOTHARI

WRIT PETITION No.2009 OF 2018 (T-RES)

Between:

M/s.Habitat Shelters Private Limited
A Company incorporated under the
Companies Act, 1956, and having its
Corporate Office at Unit No.8, West
Gate Point, R.V.Road, No.77,
Basavanagudi 560004.
Represented by its Director
Mr.Sunil R. Bajaj. ...Petitioner

(By:Mr.Anirudha R.J. Nayak, Advocate)

And:

1. The Pr. Commissioner of Income Tax
Bangalore-3, Bangalore 560003.

2. The Additional CIT
Range – 3(1), Bangalore 560 001.

3. The Income Tax Officer
Ward-3(1)(3), 2nd Floor,
BMTC Building, 80 feet road,
Koramangala,Bangalore 560095. ...Respondents

This Writ Petition is filed under Articles 226 & 227 of the Constitution of India praying to quash the order dated 19.12.2017 and 28.12.2017 in Annexure-H and H1 as being contrary to the provisions of Sec.142(2A) of the Income Tax

Act, 1961 and being violative of the principles of natural justice and untenable in law and etc.

This W.P. coming on for Orders this day, the Court made the following:-

ORDER

Mr.Anirudha R.J. Nayak, Advocate for Petitioner.

The petitioner–**M/s.Habitat Shelters Private Limited** has filed this Writ Petition aggrieved by the directions of holding a Special Audit by the respondent-Income Tax Department under **Section 142(2A)** of the **Income Tax Act, 1961 (Act)** vide impugned Communication **Annexure-H** dated **28.12.2017** for the Assessment Year **2015–2016** while undertaking the assessment proceedings of the petitioner assessee for the said assessment year.

2. The writ petitioner has contended before this Court through Mr.Anirudha R.J.Nayak, that the respondent Authority did not comply with the principles of natural justice in the present case and without considering the objections raised by the petitioner

against such Special Audit under **Section 142(2A)** of the Act, vide **Annexure-G** dated **19.12.2017,** which was submitted through an e-mail at 6.25 p.m. on 19.12.2017, the impugned order **Annexure-H** dated **28.12.2017,** without mentioning any time thereon was sent to the petitioner communicating the reasons for directing the Special Audit of Books of Accounts of the petitioner assessee for the Assessment Year **2015 – 2016.**

3. The learned counsel for the petitioner has also contended before the Court that the assessment in question for the Assessment Year **2015–2016** was getting time barred on **31.12.2017** and therefore, just to buy more time, the respondent Authority has taken recourse to directing the Special Audit under **Section 142(2A)** of the Act, which will unnecessarily further prolong the assessment proceedings. He has also submitted before the Court that the petitioner was

paying the Presumptive Tax under the relevant provisions of the Act and therefore could not be subjected to this Special Audit.

4. Having heard the learned counsel for the petitioner, this Court is of the opinion that the reasons assigned by the respondent Authority in **Annexure-H1** dated **19.12.2017**, which are quoted below cannot be held to be irrelevant for the purpose of directing Special Audit under **Section 142(2A)** of the Act. The said reasons, ***prima facie,*** indicate that the petitioner assessee had adopted different accounting practices for different projects of real estate undertaken by it, viz., Indiranagar Project and Safari Quest Project. The reasons contained in paras-2 to 5 are quoted below for ready reference:-

> *"2. You have stated your objections to the proposed reference of your case for Special Audit stating that you have placed on record details/information/ documents in support of the numbers in the financials. Further, it is also*

stated that revenue recognised for the FY 2014-15 has been made percentage completion method.

3. Your attention is invited to the hearing session on 7/12/2017 wherein, the ***Managing Director Mr.Deepak Lulla attended.*** *In response to revenue recognised of Rs.2,15,60,000/- under percentage completion method, he stated it was actually closing stock and that the same was wrongly considered as revenue. Regarding the* ***Indiranagar Project,*** *it was seen that* ***no agreements were entered (sic.) into,*** *but only a sale deed was available and an amount of Rs.2,91,000 was shown* ***as revenue under percentage completion method with no basis.***

4. In the ***Safari Quest project,*** *prima facie, the JDA was entered into only on 14/5/2015 (FY 2015-16) relevant to AY 2016-17, however an amount of Rs.60,00,000 has been shown as revenue.* ***Advances have been received but no agreements to this effect were made.***

5. There is a profit from sale of completed flats of Rs.21,00,000. A sale deed *dated 4/2/2015 is submitted, but no purchase deed is furnished to compute the actual gains."*

*In view of the above, it is seen that the Company has entered into **multiple agreements some of which were oral agreements and some interpreted as agreements and a sale deed registered subsequently**. Though the details pertained to **three ventures,** the **accounting of the same is complex** as also involving **multiplicity of agreements and understanding.** Hence, your objections are not acceptable.*

5. Therefore, the aforesaid portions of the said communication, ***prima facie***, indicates that to understand the complex treatment of multiplicity of agreements entered into by the petitioner for different projects, the Income Tax Authority directed a Special Audit for better clarity of the picture of Books of Accounts maintained by the petitioner during the said period, which are supposed to be consistent and on uniform method, so that a consistent view about the taxability of income arising or accruing to the petitioner

assessee for the said year could be taken and income subjected to taxation. The relevant provisions of **Section 142(2A)** of the Act are quoted below for ready reference:-

> ***"142. Inquiry before assessment.***
>
> *(1) xxxx*
>
> *(2) xxxx*
>
> ***(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 specialized nature of business activity of the assesssee,* ***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.***

6. This Court does not find any force in the contentions raised at the bar that there was a breach of principles of natural justice in the present case. Even though the objections to the Proposition Notice for Special Audit were submitted by the assessee on **19.12.2017** and on the same day, the Communication aforesaid, **Annexure-H1** dated **19.12.2017** came to be issued, it cannot be said that the objections raised by the assessee were not considered by the respondent Authority. The petitioner assessee was heard before the said Authority during the course of assessment proceedings and a hearing on **7.12.2017** also took place

in this regard before the said Assessing Authority, where the Managing Director of the petitioner Company Mr.Deepak Lulla attended the proceedings, which appears from the aforesaid quoted portion of the Communication **Annexure-H1** dated **19.12.2017.** The final directions for the said purpose **Annexure-H** dated **28.12.2017** also refers to the e-mail of the petitioner – assessee stated in its objections dated 19.12.2017.

7. Obviously, this Court cannot go into the sufficiency of reasons assigned by the Assessing Authority for directing such Special Audit. Only if there were no reasons assigned and objections of the petitioner assessee were not considered, perhaps, the breach of principles of natural justice, as required under **Section 142(2A)** of the Act and Proviso thereto could be so contended by the assessee, but from the record, it does not appear to be either absence of an

opportunity of hearing altogether or the absence of any reasons at all.

8. Thus, this Court cannot draw any inference of breach of principles of natural justice or arbitrariness in the impugned order passed by the respondent Authority. Accordingly, the requirement of Section **142(2A)** of the said Act cannot be said to have been not complied by the respondent Authority. The same requires no interference under **Article 226** of the Constitution of India. Therefore, the Writ Petition is liable to be dismissed and is accordingly dismissed. No costs.

A copy of this order be sent to the respondents.

Sd/-
JUDGE

VGR