

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'G', NEW DELHI**

Before Ms. Sushma Chowla, Vice President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 193/Del/2015 : Asstt. Year : 2007-08

ITA No. 1849/Del/2015 : Asstt. Year : 2008-09

ACIT, Central Circle-15, New Delhi-110055	Vs	Soul Space Projects Ltd., E-23/B-1, Extn. MCIE, Mathura Road, New Delhi-110044
(APPELLANT)		(RESPONDENT)
PAN No. AAJCS7736F		

CO No. 271/Del/2015 : Asstt. Year : 2007-08

CO No. 284/Del/2015 : Asstt. Year : 2008-09

Soul Space Projects Ltd., E-23/B-1, Extn. MCIE, Mathura Road, New Delhi-110044	Vs	ACIT, Central Circle-15, New Delhi-110055
(APPELLANT)		(RESPONDENT)
PAN No. AAJCS7736F		

Assessee by : Sh. Rohit Jain, Adv.

Revenue by : Sh. H. K. Choudhary, CIT DR

Date of Hearing: 12.03.2020

Date of Pronouncement: 03.06.2020

ORDER

Per Dr. B.R.R. Kumar, Accountant Member:

The present appeals and Cross Objections have been filed by the revenue and assessee against the orders of Id. CIT (A)-III, New Delhi dated 14.10.2014 for the assessment year 2007-08 and the order of Id. CIT (A)-29, New Delhi dated 21.01.2015 for the assessment year 2008-09.

2. In ITA No. 193/Del/2015, following grounds have been raised by the revenue:

"1. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in deleting the addition of Rs. 43,341/- out of total addition of Rs. 47,601/- made on account of disallowance u/s 40(A)(3) of the I.T. Act.

2. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in deleting the addition of Rs. 43,46,874/- (including disallowance of Rs. 13,67,240/- in respect of which the CIT(A) has also directed the AO to decide assessee) made on this issue after giving reasonable opportunity of hearing the account disallowance u/s 40(a)(ia) of the I.T. Act.

3. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in deleting the addition of Rs. 7,24,395/- made on account of disallowance u/s 40(a)(ia) of the I.T. Act.

4. The Ld. Commissioner of Income Tax (Appeals) has erred in facts in deleting the addition of Rs. 30,64,438/- made disallowance u/s 14A read with rule 8D.

5. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in deleting the addition of Rs. 1,27,13,360/- made on account of disallowance of brokerage expenses.

6. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in deleting the addition of Rs. 1,71,979/- made on account of disallowance of expenses u/s 40A(2)(b) of the I.T. Act.

7. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in deleting the addition of Rs. 2,20,060/- made on account of disallowance of depreciation.

8. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in deleting the addition of Rs. 96,45,844/- made on account Bikaner Project."

3. In ITA No. 1849/Del/2015, following grounds have been raised by the revenue:

"The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in deleting the addition of Rs.3,53,169/- out of total addition of Rs. 4,94,161/-

made on account of disallowance u/s 40(A)(3) of the I.T. Act.

2. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in deleting the addition of Rs. 38,65,870/- out of total addition of Rs. 48,73,752/- made on account of disallowance of prior period expenditure.

3. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in deleting the addition of Rs.55,73,597/- out of total addition of Rs. 1,46,77,246/- made on account of disallowance u/s 40(a)(ia) of the I.T. Act.

4. The Id. Commissioner of Income Tax (Appeals) has also erred in law as well as on facts in deleting the addition of Rs. 83,98,877/- out of total addition of Rs. 1,46,77,246/- made on account of disallowance u/s 40(a)(ia) of the I.T. Act.

5. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in deleting the addition of Rs. 3,49,82,627/- made on account of profit from Bikaner Project.

6. The Ld. Commissioner of Income Tax (Appeals) has also erred in law as well as on facts in deleting the addition of Rs. 72,17,751/- made on account of profit from Mohali Project.

7. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in deleting the addition of Rs. 4,48,156/- made on account of depreciation disallowance.

8. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in deleting the addition of Rs. 43,03,908/- made on account of disallowance of proportionate interest expenses.

9. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in deleting the addition of Rs. 2,05,750/'- made on account of disallowance of brokerage expenses.

10. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in deleting the addition of

Rs. 2,86,594/- made on account of disallowance of expenses u/s 40A(2)(b) of the I.T. Act."

4. In CO No. 271/Del/2015, the assessee has raised the following grounds:

"1. That the additions/disallowance made by the Assessing Officer by passing the assessment order under Section 153A r.w.s. 143(3) are illegal, bad in law & without jurisdiction.

2. That on the facts and circumstances of the case, the CIT(A) erred in not quashing the order dated 10.08.2010 passed by the assessing officer under section 153A as barred by limitation since the same had been passed beyond time limit specified under section 153B(1) of the Income Tax Act, 1961 ('the Act') inasmuch as:

a) the audit conducted by the special auditor under section 142(2A) of the Act was not required because the assessing officer did not point out any complexity in the books of accounts of the appellant before issuing any such directions; and

b) in any case, the extended time period allowed to the special auditor for furnishing audit report could not be excluded in terms of clause (ii) of Explanation under section 153B since such extension having been granted by the CIT, instead of the assessing officer as required under section 142(2C) of the Act was invalid in law.

3. That the CIT(A) erred on the facts and circumstances of the case in not appreciating that various disallowances/ additions made by the assessing officer (separately challenged infra) were beyond jurisdiction and scope of assessment under section 153 A of the Act since the same were not based on any incriminating materials/documents found in the course of search.

Without prejudice:

Re: Disallowance under section 40A (3) of the Act

4. That the CIT(A) erred on facts and in law in upholding disallowance of Rs. 4,260/-, 20% of Rs.21,300/- being expense paid in cash by the appellant due to business exigencies and holding the same to have been paid in contravention of provision of section 40A(3) of the Act.

Re: Disallowance under section 40(a)(ia)

5. That the CIT(A) erred on facts and in law in directing the assessing officer to verify and allow expense of Rs.13,67,240/-

disallowed under section 40(a)(ia) of the Act without appreciating that all the necessary documents/ information relevant for examination were already placed on record by the appellant before the CIT(A).

5.1 That without prejudice, in view of decision of various authorities, provisions of section 40 (a) (ia) are not applicable on such expenditure which were not payable (not outstanding) as on the last day of financial year, therefore, to this extent, the Id. CIT(A) erred in not excluding such expenditure outside the preview of Section 40 (a) (ia). Reliance is placed upon CIT Vs. Vector Shipping Services (P) Ltd. 357 ITR 642 (ALLAHBAD) (SLP of the Department has been dismissed by Hon'ble Apex Court vide order dated 02.07.2014

5.2 That without prejudice, out of total expenditure Rs.9,65,53,346/-, only Rs. 46,96,235/- have been claimed as deduction and balance have been transferred to work in progress, therefore not claimed as a deduction, thus only 4.86% of the total expenditure are claimed as deduction. Consequently at the most, only 4.86% of such expenditure which ultimately stands hold being incurred in violation of section 40(a) (ia) can be disallowed.

Re: Addition of assumed, presumed and deemed assessable profits from Bikaner project.

6. That the CIT(A) erred on facts and in law in not accepting method of accounting and accounting policies adopted by the appellant in respect of Bikaner project accounting for recognizing the revenue and cost thereof.

6.1 That the CIT(A) erred on facts and in law in upholding without any basis and justification for presuming the sale value of the Bikaner Land as Rs. 201.61/- per sq. feet (Estimated) against the actual sale value for the plot to plot evidenced by proper, authentic and legal documents, wherein no defect/deficiencies/ in correctness have been found.

7. Re: Disallowance under section 14A/ r.8D

That the CIT(A) erred on the facts and in law in upholding addition of Rs.2,93,635/-under provision of section 14A/r.8D of the Act.

Re: Interest under section 234A/B of the Act

8. That the assessing officer erred on facts and in law in charging/ computing interest under sections 234A & 234B of the Act.

5. In CO No. 284/Del/2015, the assessee has raised the following grounds:

"1. That the additions/disallowance made by the Assessing Officer by passing the assessment order under Section 143(3) are illegal, bad in law & without jurisdiction.

2. That on the facts and circumstances of the case, the CIT(A) erred in not quashing the order dated 10.08.2010 passed by the assessing officer under section 153A as barred by limitation since the same had been passed beyond time limit specified under section 153B(1) of the Income Tax Act, 1961 ('the Act') inasmuch as:

a) the audit conducted by the special auditor under section 142(2A) of the Act was not required because the assessing officer did not point out any complexity in the books of accounts of the appellant before issuing any such directions; and

b) in any case, the extended time period allowed to the special auditor for furnishing audit report could not be excluded in terms of clause (ii) of Explanation under section 153B since such extension having been granted by the CIT, instead of the assessing officer as required under section 142(2C) of the Act was invalid in law.

Without prejudice:

Re: Disallowance under section 40A (3) of the Act

3. That the CIT(A) erred on facts and in law in upholding disallowance of Rs. 1,40,992/-, 100% of Rs. 1,40,992/- being expense paid in cash by the appellant holding the same to have been paid in contravention of provision of section 40A(3) of the Act.

Re: Addition of Prior Period Expenses

4. That the CIT(A) erred on the facts and in law in upholding addition of Rs. 10,07,882/- made on account of disallowance of prior period expenditure.

4.1 That without prejudice, in view of explanation filed, none of the expenditure are in nature of prior period expenses, therefore, cannot be added on that ground.

Re: Disallowance under section 40(a)(ia)

5. That the CIT(A) erred on facts and in law in directing the assessing officer to verify and allow expense of Rs.4,95,396/-

disallowed under section 40(a)(ia) of the Act without appreciating that all the necessary documents/ information relevant for examination were already placed on record by the appellant before the CIT(A).

5.1 That without prejudice, in view of decision of various authorities, provisions of section 40 (a) (ia) are not applicable on such expenditure which were not payable (not outstanding) as on the last day of financial year, therefore, to this extent, the Id. CIT(A) erred in not excluding such expenditure outside the preview of Section 40 (a) (ia).Reliance is placed upon CIT Vs. Vector Shipping Services (P) Ltd. 357 ITR 642 (ALLAHBAD) (S.LP of the Department has been dismissed by Hon'ble Appex Court vide order dated 02.07.2014)

5.2 That without prejudice, out of total expenditure Rs.40,78,60,092/-, only Rs. 15,97,52,489/- have been claimed as deduction and balance have been transferred to work in progress, therefore not claimed as a deduction, thus only 39.16% of the total expenditure are claimed as deduction. Consequently at the most, only 39.16% of such expenditure which ultimately stands hold being incurred in violation of section 40(a) (ia) can be disallowed.

Re: Addition of assumed, presumed and deemed assessable profits from Bikaner and Mohali Projects.

6. That the CIT(A) erred on facts and in law in not accepting method of accounting and accounting policies adopted by the appellant in respect of Bikaner and Mohali projects accounting for recognizing the revenue and cost thereof.

6.1 That the CIT(A) erred on facts and in law in upholding without any basis and justification for presuming the sale value of the Bikaner Land as Rs. 201.61/- per sq. feet (Estimated) against the actual sale value for the plot to plot evidenced by proper, authentic and legal documents, wherein no defect/deficiencies/ in correctness have been found.

Re: Interest under section 234B of the Act

7. That the assessing officer erred on facts and in law in charging/ computing interest under sections 234B of the Act.”

6. At the outset, the assessee has raised a legal ground during the hearing that the extension of time given by the Commissioner of Income Tax, Central-II in getting the books audited u/s 142(2A) of the Income Tax Act, 1961 was illegal thus vitiating the proceedings thereof.

7. The detailed facts of case as taken up from records and submission are as under:

7.1 A search and seizure operation was carried on the assessee on 19.02.2008 and consequently, notice under section 153A was issued. During the assessment proceedings, the AO arrived to an opinion, that having regard to the nature and complexity of the accounts of the assessee and in the interest of revenue, it was necessary to get the accounts audited by an Accountant, as provided in section 142(2A).

7.2 Prior to arriving at this conclusion, the AO issued a detailed letter dated 27.11.2009 requiring the assessee to show cause as to why the accounts should not be got audited under section 142(2A) by an Accountant. The assessee raised objections to the aforesaid show cause notice and the AO vide his office letter dated 08.12.2009 rejected the assessee's objections and later on, with the approval of the CIT, Central-II ordered for special audit in accordance with the provisions of Section 142(2A). During the course of special audit, the special auditors requested for grant of additional time to submit its report on the ground that the assessee was not co-operating with them and there was a delay on the part of the assessee to furnish details and information required for conducting special audit. The request was acceded to and special audit report was received by the AO from the special auditors in his office on 11.06.2010.

8. The relevant important points are:

- The Special Audit U/s. 142 (2A) was directed vide CIT Central - II, New Delhi, letter dtd. 15.12.2009.
- It was to be completed within 120 days i.e. upto 14.04.2010.
- The special auditor found unable to complete the job within the allowed time.
- The Special Auditor vide letter dtd. 25.03.2010 requested for extension of time.
- This request was forwarded by the AO to CIT, Central - II, New Delhi.
- Vide his letter dtd. 13.04.2010, granted the extension for a further period of 60 days i.e. upto 13.06.2010.
- The special audit report (SAR) has been furnished to the AO on 11.06.2010.

9. The issue before us is to examine whether the action of the Id. CIT, Central-II for granting extension for the further period is legally valid or not.

10. The Id. AR referred to the provision below Section 142(2C) and argued that it is the Assessing Officer who can grant the extension of period for completion of audit but not the CIT, Central-II. He referred to the provisions of the Act which are as under before resting his detailed arguments:

"Provided that the [Assessing] Officer may, [suo motu, or] on an application made in this behalf by the assessee and for any good and sufficient reason, extend the said period by such further period or periods as he thinks fit; so, however, that the aggregate of the period originally fixed and the period or periods so extended shall not, in any case, exceed one hundred and eighty days from the date on which the direction under sub-section (2A) is received by the assessee."

11. Against the arguments, the Id. CIT DR, made submissions and argued the case at length. For the sake of convenience and completeness, the submissions of the Id. CIT DR in the written form consisting of differentiation of the case laws quoted by the AR, case laws supported by the revenue, letter dated 11.02.2020 of ACIT- Central Circle-15 with regard to the events, letter dated 13.04.2010 of DCIT, Central Circle-17 are reproduced as under:

"Sub: Written Submission in the above case- reg.

All these appeals are filed by the Department and the assessee has filed cross objection.

The assessee has raised legal ground through cross objection that the extension of time getting the books audited u/s 142(2A) of the Act was granted by the Commissioner of Income Tax (Central) where as the extension of time for audit u/s 142(2A) was to be given by the assessing officer as per the first proviso below section 142(2C).

A. Ld. AR relied on the following decision in support of the argument that approval from higher incompetent authority is improper:-

- 1. CIT v. SPL's Siddhartha Ltd. : 345 ITR 223 (Del.)*
- 2. Ghanshyam K. Khabrani v. ACIT : 346 ITR 443 (Bom.)*
- 3. CIT v. Soyuz Industrial Resources Ltd. : [2015] 232 Taxman 414 (Del. HC)*
- 4. Yum Restaurants Asia Pte Ltd. v. DDIT : 397 ITR 639 (Del.)*

Submission

All these decisions are on the subject of reopening of assessment u/s 147 and the authority who should be satisfied for on the reasons recorded by the assessing officer. Therefore, these decisions are in respect of satisfaction for initiation of reassessment proceedings. None of the decision is related for extension of time period of audit of books of accounts, where the initiatives of assessment proceedings are not

challenged. Therefore, these cases are distinguishable on the facts of the case.

B. Ld. AR relied on the following decisions on the argument that power vested in an authority by statute to be exercised strictly by such authority.

5. CIT v. Anjum M.H. Ghaswala: 252ITR 1 (SC)

6. CIT v. Ellevinator of India Ltd.: 256 ITR 1 (Del. HC) (FB)

7. Dr. Nalini Mahajan v. DIT: 252 ITR 123 (Del. HC)

My Submission on these case laws are as under:-

a) Anjuman M.H. Ghaswala:- This case related to Power of Settlement Commission Vs. CBDT for waiver of interest u/s 234A, 234B & 234C of IT Act.

b) Kelvinator of India Ltd:- Issue of change of opinion for the reason to believe escapement of income.

c) Dr. Nalini Mahajan:- These issue was exercising power to issue authorization u/s 132 by Additional Direction.

In all these cases, the jurisdiction was challenged on the basis of either initiation of assessment or search authorization or level of interest which is distinguishable on the facts of the case, which is only extension of time period for audit u/s 142(2A).

C. Ld. AR argued that exercise of statutory power of an authority at the discretion of another authority vitiates the proceedings.

11.The Purtabpore Co. Ltd. v. Cane Commissioner of Bihar and others: 1969(1)

12.Commissioner of Police, Bombay v. Gordhandas Bhanji: AIR 1952 SC 16

13.Anirudhsinji Karansinhji Jadeja and Another v. State of Gujarat: (1995)5 SCC 302

14.State of U.P. & others v. Maharaja Dharamander Prasad Singh & others: (1989)2 SCC 505

My submission are as under:-

a) *The Purtabpore Co. Ltd. (Cited Supra)*

The issue was for quasi judicial power of commission v. Chief Minister. The facts in present case are entirely different.

b) *Gordhandas Bhauji (Cited Supra)*

The issue was the power of commission vis-a vis the interference of the government. These facts are clearly distinguished in the present case.

c) *Anirudh Sinhji Jadeja (Cited Supra)*

The issue was the power of DSP for prior approval for recording information about commission of offence u/s Terrorist & Disruptive Activities (Prevention) Act, 1987. The facts are clearly distinguishable.

d) *Maharaja Dharamander Prasad Singh & Others.*

The issue was related to permission for development of land by private part under U.P. Urban Planning Development Act, 1973. These facts are not applicable in the present case.

D. Ld. AR finally relied on the decision of Hon'ble ITAT, Pune bench in the case of ITO (Central), Kolhapur Vs. Vision Particle Board Industries Ltd. (2017) 88 Ta.xmann.com 889 which has been approved by the Hon'ble Bombay High Court is relying in Sahara Vs. CIT decision of Hon'ble Supreme Court.

Submission

Issue in the case of vision particle Board Industries Ltd. was before sending the proposal of approval to CIT, the assessing officer should give opportunity of being heard the assessee compulsorily. Hon'ble ITAT after relying on the decision of Hon'ble Supreme Court in the case of Sahara India & Rajesh Khanna in Para 40 & 41 of the order held that without opportunity given by assessing officer if proposal for audit was sent to CIT,

then the special audit is invalid and the assessment was held to be time barred as the period of extension of time for special audit was not available.

In present case, there is no issue of opportunity not given by the assessing officer before sending the proposal for getting special audit before CIT. In fact the assessee has not challenged the initial approval u/s 142(2A). Therefore, the requirement of section 142(2A) of providing opportunity to the assessee by the assessing officer has been satisfied.

The issue is of extension of time period for submission of audit report as per proviso below section 142(2C) of IT Act which is not covered by the decision of Hon'ble ITAT, Pune in the case of particular Board Industries Ltd. Cited Supra.

The relevant explanation is reproduced as under:-

"Provided that the Assessing Officer may, suo moto or on an application made in this behalf by the assessee and for any good and sufficient reason, extend the said period by such further period or periods as he thinks fit; so, however, that the aggregate of the period originally fixed and the period or periods so extended shall not, in any case, exceed one hundred and eighty days from the date on which the direction under sub-section(2A) is received by the assessee."

The requirement of application of proviso can be summarized as under:-

- 1. The assessing officer can extend the time period for audit u/s 142(2A) either suo moto or an application made by the assessee.*
- 2. The assessing officer has for good and sufficient reason can extend period for audit.*

In present case the facts are as under:-

1. *The assessing officer has received the request from special auditor for extension of time to complete audit u/s 142(2A) which was account of delay on the part of the assessee.*
2. *The assessing officer was satisfied on the reason submitted by the special auditor and recommended for extension to CIT as there were other cases having inter-group transaction for special audit and extension was granted by CIT(C)-II, New Delhi.*
3. *CIT(C)-II, New Delhi has conveyed the extension.*

These facts can be seen from letter of the assessing officer dated 11.02.2020(Enclosed)

A perusal of the above facts reveals that issue of providing opportunity to the assessee for the extension of time period is not the requirement of law.

The only condition in the satisfaction the Assessing Officer for extending the time. The assessing officer in present case has applied his mind and found the case suitable for extension as can be seen from the letter of the assessing officer dated 11.02.2020. Therefore, conditions for extending the time period under the above proviso is met expect the grant of extension by CIT for administrative reason on account of special audit pending in other group cases.

Therefore, it is submitted that since on substantial basis the requirement of proviso has been met, just on account of only administrative approval of CIT for sectioning the extension should not vitiate the extension of time for special audit.

Without prejudice to above submission it may be mentioned that CIT is the approving authority for special audit u/s 142(2A) and therefore his involvement for extension of time as per proviso is inherent.”

12. The information received by the revenue during the arguments with regard to the granting of permission in connection with the extension of the period for audit is as under:

OFFICE OF THE
ASSTT. COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE-15, NEW DELHI
Room No. 245, ARA Centre, E-2, Jhandewalan Extn.,
New Delhi - 110055.

F. No. ACIT/CC-15/2019-20/1605

Dated: 11.02.2020

To
The Commissioner of Income Tax(DR),
G-Bench, ITAT, 7th Floor,
Lok Nayak Bhawan, Khan Market, New Delhi.

Sir,
Subject: Second appeal in the case of ACIT Vs Soul Space Projects Ltd., ITA No.193/Del/2015 for A.Y.2007-08, 1849/Del/2015 for A.Y.2008-09 and 4352/Del/2015 for A.Y. 2009-10 - matter reg.

Ref: F.No. CIT/DR/ITAT/G-Bench/2019-20/195 dated 27.01.2020.

Kindly refer to the above noted subject.

2. On perusal of assessment and special audit records in the case of Soul Space Projects Ltd, it is found that M/s Dinesh Mehta & Co., Special Auditor appointed in the case of Soul Space Projects Ltd., has filed an application on 08.04.2010 related to extension of time for furnishing the special audit report. Accordingly, the then AO has forwarded a letter to Ld. CIT, Central - II, New Delhi on 08.04.2010 regarding extension of special audit in this case and stated as under:-

"2. M/s Dinesh Mehta & Co. has filed a request vide letter dated 25.03.2010 for granting extension of time for a further period of two months for submission of the aforesaid report because there is delay on the part of assessee to furnish details and information required by the auditors as per annexure appended by the auditors with the aforesaid letter (Copy of letter with enclosures is enclosed for ready reference).

3. *In this connection, it is also informed that the auditors M/s Sanjay Satpal & Associates appointed for special audit in the case of the flagship company for the group i.e. M/s B .L. Kashyap & Sons Ltd. ha also requested for extension of time for further 2 months for the similar reasons. The application filed by M/s Sanjay Satpal & Associates has already been forwarded to your good self on 07.04.2010 for favourable consideration. Since, M/s Soul Space Projects Ltd. has large numbers of intergroup transactions with M/s B. L. Kashyap & Sons Ltd., it is necessary that both the auditors should work in close cooperation with each other and should exchange one other's finding before reaching any conclusion. Hence, it is recommended that the extension of time may also be granted to M/s Dinesh Mehta & Co. if extension of time is granted by your good self to M/s Sanjay Satpal & Associates."*

3. *Further, the Ld.CIT, Central-11, New Delhi, vide letter No.CIT/(C)-II/10-11/24 dated 12.04.2010 has conveyed the extension of 60 days for the purpose of furnishing the audit report and directed "No further extension will be allowed and the auditors may be asked to adhere to the extended time limit for the purpose". Accordingly, the assessing officer vide letter F.No.DCIT-CC-17/Special Audit/2010-11/40 dated 13.04.2010 has informed that the extension of further 60 days granted to the Special Auditors M/s Dinesh Mehta & Co., Chartered Accountants, for furnishing the audit report u/s 142(2A) in the case and also requested to the assessee to provide the requisite information immediately under information to the undersigned so the special audit may be completed in a smooth manner.*

4. *On perusal of relevant records, it is ascertained that the Assessing Officer has applied his mind in the letter dated 08.04.2010 therein he has given the reasons for extension for furnish the special audit report. Consequently, the Ld.CIT has considered the facts (application of mind of AO) and directed to the AO to convey the extension of 60 days for the purpose of furnishing the special audit u/s 142(2A). Therefore, it is clear that the extension of period u/s 142(2C) was granted by the AO after applying his mind, not by the Ld. CIT, Central-II and the Ld. CIT, Central-II has only directed to the AO to convey the extension of period to the Special Auditors. The above referred letters are also enclosed herewith for ready reference."*

13. The order of the DCIT, Central Circle-17, which is an important document to determine whether the provisions of Section 142(2C) are followed or not.

F.No. DCIT-CC-17/Special Audit/2010-11/40

*Office of the
Deputy Commissioner of Income Tax
Central Circle -17,
Room No. 353, ARA Centre,
Jhandewalan Extension, New Delhi
Phone No. 23593441
Date: 13/04/2010*

*To,
The Principal Officer,
M/s Soul Space Projects Ltd.
A-21/B-1 Extn., Mohan Co-operative Industrial Area,
Mathura Road, New Delhi*

*Sub: In the matter of M/s Soul Space Projects Ltd. - Assessment
Year 2006-07 to 2008-09 - Special Audit under section 142(2A) of
the Income Tax Act, 1961... regarding*

*Sir,
Please refer to the above.*

*In this connection you are hereby informed that the Commissioner of Income
Tax (Central) - II, New Delhi vide his office letter F.No. CIT/(C)-11/10-11/24
dated 12/04/2010 has granted extension of 60 days to the special auditors M/s
Dinesh Mehta & Co., Chartered Accountants, for furnishing the audit report u/s
142(2A) in your case.*

please acknowledge the receipt of this letter,

*Sd/-
Yours faithfully,
(B.L. Sharma)
Deputy Commissioner of Income Tax,
Central Circle - 17, New Delhi*

14. Heard the arguments of both the parties and perused the material available on record.

15. The case laws quoted by the Id. AR as rebutted by the Id. DR have been closely perused while the Id. DR argued that the relevance of the case laws with regard to the Sections for which the case laws emanated, the Id. AR stressed on the ratio of the case laws as to the statutory

discretion of the powers of the various authorities. The Id. DR's contention was that the "administrative approval" of the CIT for sanctioning extension of the period should not vitiate the conduct of special audit. It was argued that the letter of the CIT, Central-II should construed only as an administrative direction whereas the real extension has been granted by the DCIT, Central Circle-17 vide letter dated 13.04.2010. It was also argued that while approval of the CIT, is required for ordering fresh audit u/s 142(2A), no such approval for extension it is not required. It is the administrative permission sought by the DCIT for the CIT, hence the action cannot be said to be illegal.

The undisputed facts are,

1. The assessing officer has received the request from special auditor for extension of time to complete audit u/s 142(2A) which was account of delay on the part of the assessee.
2. The assessing officer was satisfied on the reason submitted by the special auditor and recommended for extension to CIT as there were other cases having inter-group transaction for special audit and extension was granted by CIT(C)-II, New Delhi.
3. CIT(C)-II, New Delhi has conveyed the extension.
4. The AO conveyed the granting of extension of 60 days by the CIT, Central-II to the assessee.

16. The Sec, 142 (2A) provides that the directions for special audit shall be given by the Assessing officer, with the previous approval of Chief Commissioner or Commissioner. In this case, there is no dispute that these directions have been given. Thus, the legislature clearly intended that initial direction shall be with the approval and after examination of the subject matter by the higher after prior approval of CIT, Central - II, New Delhi. Thereafter, proviso below Sec. 142 (2C) provides for the procedure for giving extension for completing the special

audit task. It clearly provides that the Assessing Officer shall extend the said time period if the conditions as mentioned in the said proviso stands satisfied. Thus, while initial direction is to be given with the approval of CCIT / CIT, however, for extension, it is only the Assessing Officer who has to take a decision for extension. It is to be specifically pointed out that in Sec. 142 (2A) law mandates the prior approval of CCIT/ CIT, while in the proviso below Sec. 142 (2C), while to grant extension, the sole power is vested with the Assessing Officer. The statute u/s 142(2A) provides for special audit with the previous approval of the CIT is intended with an objective that the subject matter stands examined by the higher and more experienced officers so that it may not bring unnecessary work and equity to the assessed. Once the issue u/s 142(2A) stands examined by the higher authorities, thereafter, for the issue of extension u/s 142(2C), there is no need for the higher authorities to be involved and the law provided the circumstances, on existence of which, this decision has been left over to be taken by the concerned Assessing Officer.

17. In the present case, the extension has been given by CIT and not by the Assessing Officer, vide letter dtd. 13.04.2010, as under:-

"In this connection you are hereby informed that the Commissioner of Income Tax (Central) - II, New Delhi vide his office letter F.No. CIT/(C)-II/10-11/24 dated 12/04/2010 has granted extension of 60 days to the special auditors M/s. Sanjay Satpal & Associates, Chartered Accountants, for furnishing the audit report u/s. 142 (2A) in your case."

18. We have carefully gone through the entire events and the verbatim of the letters. We also tried to dwell whether the intention of the Assessing Officer is to "extend the period" or conveying the "approval of

the CIT". While it may be an administrative phenomenon to intimate, inform the CIT about the fact of the special audit party appointed seeking extension, but statutorily that power is vested with the Assessing Officer. On going through the established judgment, it cannot be disputed that the statutory powers vested with one specified authority cannot be exercised by another authority unless and until the statute provides for the same. And we find that the extension has not been given by the Assessing Officer

19. The powers and the jurisdiction of the various authorities to implement the Income Tax Act stands clearly defined in the statute. For example, the power to approve the accounts audited u/s 142(2A) lies with CIT/PCIT/CCIT or PCCIT. The powers u/s 144A are to be exercised by the Joint Commissioner or Additional Commissioner. The powers u/s 251 are specific to the Commissioner (Appeals). Similarly, the powers u/s 263 and 264 are to be exercised by the PCIT/CIT. Further, in exercise of the powers conferred under clause (a) of sub-section (2) of section 119 of Income-tax Act, 1961, Central Board of Direct Taxes, may direct that the Chief Commissioner of Income-tax and Director General of Income-tax may reduce or waive interest charged under section 234A or section 234B. Further to mention, while levy of the penalty u/s 271AAB is the power of the Assessing Officer, the provisions u/s 274(2) mandates that the prior approval of the JCIT is required before levy of such penalty. Thus, we find that the statute has accorded implementation of the various provisions to specified authorities which cannot be interchanged.

20. A power which has been given to a specified authority has to be discharged only by him. Substitution of that officer/authority by any other officer, may be of higher rank, cannot validate the said order/action. The extension could have been valid only if it had been given by

the Assessing Officer after due application of mind and after examining the existence of circumstances as provided in proviso below Sec. 142 (2C), since, it has to be given only by competent authority. In this case, the extension has not been given by the Assessing Officer but by the CIT, Central-II and the Assessing Officer has only conveyed the approval, therefore, we hold that the extension given by the CIT, Central-II is beyond the powers vested as per the statute and accordingly the assessment completed after the due date is held to be *void ab initio*.

21. Since, the order has been held to be invalid *ab initio*, any adjudication on the other grounds would only be academic in nature and hence not resorted to.

22. Before parting, we would like to keep on record our appreciations to the Id. CIT DR, Sh. H.K. Choudhary and the AR, Sh. Rohit Jain for their radiant arguments.

23. In the result, the appeals of the revenue are dismissed and the Cross Objections of the assessee are allowed.

Order Pronounced in the Open Court on 03/06/2020.

Sd/-

(Sushma Chowla)
VICE PRESIDENT

Sd/-

(Dr. B.R.R. Kumar)
ACCOUNTANT MEMBER

Dated: 03/06/2020

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR