

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 22.11.2018
Pronounced on: 06.12.2018

+ **W.P.(C) 2591/2013**
PATANJALI AYURVEDA LTD

..... Petitioner

Through: Mr.Ajay Vohra, Sr.Advocate with
Ms.Kavita Jha & Mr.Vaibhav
Kulkarni, Advocates

versus

DEPUTY COMMISSIONER OF INCOME-TAX AND ANR

..... Respondents

Through: Mr.Asheesh Jain, Sr.Std.Counsel for
Income Tax with Mr.Dushyant Sarna,
Advocate

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

S. RAVINDRA BHAT, J.

1. In this writ petition, the decision of the respondent income tax department (hereafter called “the revenue”) to initiate special audit of the petitioner/assessee for the assessment year (AY) 2010-2011 has been challenged. The assessee seeks quashing of the order of 28.03.2013.

2. The petitioner had filed its income tax returns on 09.07.2011. It was picked up for scrutiny and notices for assessments, seeking information and documents were issued by the Assessing Officer (AO). On 13.03.2013, the revenue issued a show cause notice asking it to respond why special audit, for the said AY should not be carried out,

under Section 142 (2A). The petitioner resisted the show cause notice, in its reply dated 20.03.2013, contending that there were no complexities in its accounts, and that the proposal outlining the nine points on which special audit was proposed, had been adequately explained during course of the assessment proceedings; it is alleged that on 21.003.2013, the revenue issued another show cause notice, on identical grounds, which was again resisted. Ultimately, the impugned order of 28.03.2013, directing special audit, was issued.

3. The impugned order, directing special audit, *inter alia*, states as follows:

9.1 *As per Para no 2 of Significant Accounting policies the inventory have been valued as under: -*

- a) *Raw material, packing material is valued at cost price excluding allowable VAT based on FIFO method as per AS-2*
- b) *Work in progress is valued at selling price of equivalent productions units calculated on the basis on % of completion reduced by cross profit margin and packing material cost*
- c) *Finished goods (manufactured) is valued at sales value reduced by gross margin*
- d) *Finished goods (Traded) is valued at purchase price or net realizable value whichever -is less. From the perusal of the above it may be observed that the assessee company is following AS-2 in respect of valuation of Raw material and Finished goods (traded). However, in case of Work in*

progress and Finished goods (manufactured) the assessee is not following AS -2. As such the method of valuation of the inventory valuation is not in accordance with statutory guidelines. As such income shown by the assessee as per profit and loss account is not in accordance with section 145 and 145A of the Income Tax Act. As such special audit is required to determine the correct taxable income as per profit and gains from business and profession.

- 9.2 *The assessee company valued Work in progress at selling price of equivalent productions units calculated on the basis on % of completion reduced by gross profit margin and packing material cost. The determination of equivalent production units as well as percentage of completion of work in progress for valuation involves complexity.*
- 9.3 *As per Para no 16 of the notes to the accounts Debtors and creditors Balances are as per books of accounts and as such the transaction entered into the books of accounts in respect of sale, purchase and expenses and creditors and debtors are subject to confirmation. In view of the above the income shown as per profit and loss account are not reliable. As such special auditor is required to determine the correct taxable income*
- 9.4 *The assessee company has entered into substantial amount of transaction with related parties / concerns which have significant influence in respect of sale, purchase, investment in The determination of arm's length involves complexity, shares as well as expenses.*
- 9.5 *After examination of cash book, it was found that the assessee company is maintaining accounts of*

imp rest with various persons. On 28.01.2013 the assessee company was asked to file the details of such imprest accounts and also to show cause that while maintaining the accounts on the mercantile, basis, why the imprest accounting (cash basis) was followed. The assessee submitted details of imprest accounts in the names of various persons on 11.02.2013 but could not justify the maintenance of such a large number of imprest accounts. In this connection the assessee replied that the distance among all the three units from each other is 14-55 km. So, looking to the distances between the three units, it is necessary for the company maintain imprest account. However, the assessee failed to justify the effect of the various imprest-accounts on the method Of-accounting and the complexity in the accounts.

- 9.6 *Cash flow statement filed with reply dated 24.09 2012 has been perused and it is found that the same is not in commensuration with Accounting Standard-3 (revised) issued by ICAI. When confronted the assessee company filed its revised Cash Flow Statement on 11.02.2013, made as per AS-3 (revised) issued- by ICAI. The auditors in their report have mentioned that the balance sheet, profit and loss account and cash flow statement dealt with this report are in agreement with the books which is not correct in view of revised cash flow statement filed and in view of revised statement of cash flow the financial results of the assessee company cannot be accepted as true and correct and audit under section 44AB is also not considered reliable in view of discrepancies which gives rise to complexity of accounts as whole of the transactions of cash are required to be examined and verified in view of revised cash flow statement submitted. In this connection assessee submitted that with regard to the view of the assessing officer*

regarding the treatment of dividend paid in the cash flow statement the assessee/ auditor changed the cash flow statement and furnished revised cash flow statement. As such it is clear {hat the assessee admitted the discrepancy in the cash flow statement forming part of the audit report and its impact on the truth of the accounts as well as the audit report and its reliability.

9.7 *The assessee company has claimed deduction under section 801C of the Income Tax Act, 1961 for the first time for assessment year 2010-11. It has been perused from computation of income that the amount of exemption claimed under section 801C differs in both original and revised return. It is beyond imagination of understanding that as to how the assessee company computed two different amount of deduction for claiming deduction under section 801C when there as audited books of accounts. This shows that the books of account are not completed and correctly maintained in normal course of business activities of the assessee company and financial results cannot be relied upon. In this connection assessee submitted general reply regarding the revision of the claim of deduction: The same have to be re-examined and audited to arrive at correct amount of income and exemption available to the assessee company.*

9.8 *In the course of assessment proceedings and from the details filed correct income of the assessee company cannot be deduced. Income of the assessee company for this very purpose is not determinable due to complex nature of accounts kept by the assessee company. In view of the facts stated herein above, it is reasonable to hold that the accounts are complex involving voluminous transactions and true reflection of books of accounts are not co relatable in audited accounts-*

Therefore, with a view to thrash out the various issues, the undersigned is of the opinion that the accounts of the Patanjali Ayurveda Ltd. are required to be subjected to special audit u/s 142(2A) of the Act in interest of revenue.

9.9 The assessee company was required to produce books of accounts and other relevant ledger accounts and documents to satisfy the queries raised by this office but as required under the provisions of law the same could not be produced to the satisfaction of this office so as to determine correct and true income of the assessee company for the assessment year 2010-11. It is significant to mention here that during the assessment proceedings for the assessment year 2009-10, certain additions were made on certain issues at random basis for which a proposal under section 263 has been submitted to your good self-seeking cancellation of the assessment on grounds mentioned therein. Similar issues are arising during the assessment year 2010-11 and in the absence of complete information and details correct income of the assessee company cannot be determined. Information sought for from the assessee is voluminous and complex in view of clarifications sought for by this office as evident from reply filed on 15-01-2013 (copy enclosed) in which reply to about 35% queries was not filed and whatever information was filed that was not fully supported with vouchers and relevant documents.

9.10 Unit wise books of account and relevant records are not produced. As the assessee company has claimed deduction under section 8010 for the first time since start of its business operations, it is required to produce separate audit report for each unit which is not produced along with balance sheet and profit and loss account separately for each

unit. From available details the same cannot be computed correctly.

9.11 The assessee company is also involved in trading activity through trading concerns. In view of voluminous trading activities and manufacturing operations the accounting system is complex and it is not easy to ascertain from trading and manufacturing activities and also to compute amount of deduction available to the assessee company under section 801C of the Act. The transactions of trading and manufacturing activities are Intricate. and are not easy to conclude in view of deduction allowable under section 80IC to assessee with the records produced before this office.

9.12 Funds raised on account of various secured loans and subscription by way of share capital have been utilized in acquiring fixed assets and installation of other units of the company. Nexus of investments in fixed assets is not correlated with receipt of funds. Pre-operative expenses during the period of installation of these units on account of interest, administrative and other expenses are not quantified for capitalization of during the financial year 2009-10 relevant to the assessment year 2010-11 In this connection assessee submitted that there is also a possibility that assets are acquired at credit and the corresponding amount was paid later on and nexus •of investment in fixed assets is directly correlated with receipts of fund. However, the assessee failed to provide the working as well as complexity involved in the working of capital and revenue part of the interest component.

9.13 Date of start of operation is also important in view of claim of the assessee under section 801C for the first time during assessment year 2010-11. For

allowing deduction under section 801C date of Stan of manufacturing activities at the manufacturing unit is important. The assessee company was incorporated on 13-01-2006 and started setting up and installation of its units thereafter. It is therefore, important to know about all the facts since inception of the company as to when each unit was set up and started operation for manufacturing activities so as to examine the genuineness and correctness of claim of the assessee under section 801C of the Act for the first time during assessment year 2010-11. In this connection assessee submitted that general reply without any corroborative evidence regarding the date of operation of activity by various different units without corroborative evidence increase the complexity of the accounts.

9.14 *In the course -or assessment proceedings the- assessee was offered ample opportunity for filing the desired and required information which is evident from the date of issue of first questionnaire on 31-03-2012 and thereafter a specific questionnaire on 04-09-2012 in which information on various issues was called for. Since then the assessee company has not been submitting complete information even after seeking, various adjournments and did not produce complete books of account and relevant documents to examine the genuineness of expenses debited to the books of account and also to arrive at correct and true income of the assessee company for the assessment year 2010-11.*

4. It is argued by Mr. Ajay Vohra, learned senior counsel on behalf of the petitioner that scrutiny and notice under Section 143(2) dated 07.09.2011 was served on the assessee and thereafter two questionnaires dated 31.07.2012 and 04.09.2012 were issued; they

were duly and adequately responded. The hearings were time to time attended and the questionnaires were properly replied. The books of accounts were also produced in the course of hearing along with supporting vouchers. The accounts were duly audited by a qualified Chartered Accountant, tax audit report along with all annexures were also filed in the course of hearing, the profit & loss account, balance sheet was properly drawn and were in agreement with the books of accounts on the basis of which true profit can be ascertained, the balance sheet can be perused in respect of share capital and loans and advances received, short term and long term investments made on the basis of which a fair assessment order can be passed. The assessee's authorized representative were cooperative in the course of hearing and were at all times available to AO for clarifying, explaining the queries and to file necessary information and documents. In such a situation, a proposal for Special Audit u/s 142(2A) is unwarranted; the AO therefore took scrutiny through special auditor as an easy route to escape his primary duty to examine the books and the returns and complete the assessments, in time.

5. As regards the question of inquiry into the imprest accounts, it is argued that the assessee has separate units, which are at a distance of about 14-15 km; looking at the distances it is necessary for the company to designate certain employees for incurring day to day petty cash expenses at respective units. For having strict internal control on its activities, the company maintains imprest with its employees to make payment at location of units in petty amounts. These employees

submit bills / details of expenses regularly and their accounts are credited with the bills/vouchers submitted which at last become nil or some balance remains in their name. The practice of maintaining Imprest A/C makes the accounting system easier and simpler and enables the company to have strong control over its day to day expenses. As the three units of the company are situated at distant locations, hence to decentralize the payment of petty amount, this method is adopted. It is usual in all the companies to opt such method. It was submitted that merely because a company is having Imprest A/C for different units does not makes its accounting system complex, rather it enables the company to have strong control on the transactions. The copy of account of all the imprest A/C were submitted and all the transactions therein have been explained and the same are supported with the requisite bills and vouchers. These accounts were also test checked from the books of accounts produced on 11.02.2013 and no defect was stated, which is also on record. It is argued that the assessee follows cash accounting for this purpose; which was explained to the AO during the proceedings. Given these, there was no complexity warranting special audit on this point.

6. It is pointed out that the reply given by the assessee to the AO's queries are consonant with Accounting Standard-3 (Revised) issued by ICA. In the Cash Flow Statement, dividend paid by the company was shown under Operating Activities in order to assist users to determine the ability of the company to pay dividend out of operating cash flows. The company wants that users of its financial statements to be aware

about the fact that the company has ample amount of operational cash inflows and it has the ability to pay of the dividend declared out of such operational cash inflows. It is argued that the revenue's view that dividend paid should be reflected in the cash flow statement, was taken note of and a revised statement was issued on 11.03.2013; this did not mean that the documents it had did not so reflect the correct state of accounts. As long as the Profit and Loss statement, Balance sheet and other documents are correctly shown, the mere detail of alleged inaccurate reflection in the cash flow statement could not have impelled the revenue to issue an order calling for special audit.

7. On the issue of Section 80IC, it is argued that the assessee has claimed deduction under that provision for the first time for AY 2010-11. After discovering that there are some errors of omission/wrong statement in the original return, the assessee has filed the valid revised return within the time limit. Out of the errors in the original return, one of the errors was the amount of deduction to be claimed under Section 80 IC. Hence, the same was rectified while revising the return. The amount of deduction claimed u/s 80 IC in the original return and the revised return was ₹25,67,39,812 and ₹25,70,76,380 respectively and the same was corrected through revised return. The complexity of accounts cannot be equated with the doubts which have merely been created without making honest attempt to go through the submissions made by the assessee from time to time in response to the questionnaire. The last date was fixed on 18.02.2013 and on this day there was strike; this did not mean that the genuineness of the accounts

could not have been examined in the normal manner during the assessment proceedings.

8. It is submitted that the report in Form IOCCB in respect of Section 80 IC was of the company as a whole and unit wise information are available in the report. The report submitted for 80 IC on 15.01.2013 which is a part of the record with the department was not seen. The Unit wise Balance Sheet and Profit & Loss A/C have been duly submitted in Annexure No. E-33/1, E-33/2, E-33/3 and E-33/4 with the reply submitted by the company on 15.01.2013. The revenue's inability or failure to take note of this information could not be masked by it under the cloak of "complexity" of accounts.

9. It was emphasized that the power to direct special audit cannot be exercised lightly and the AO has to seek authorization in this regard; the considerations being that the nature and complexity of the materials calls for special audit. Counsel relied upon the ruling in *Sahara India v Union of India* 2008 (300) ITR 403; *Delhi Development Authority v Union of India* 350 ITR 452 (Del) . It was argued that in *Peerless General Finance and Investment Co Ltd v Dy CIT* (236 ITR 671), the Calcutta High Court held that the Commissioner, before granting approval must have before him the materials on the basis of which an opinion has been formed. A prior approval can be granted only when the materials for appointment of the extraordinary procedure are required to be taken by the AO. The AO has to place all the materials before the CIT to show that he intends to take recourse to the said provision having regard to the nature and complexity of the

accounts of the assessee and the interests of the revenue. Reliance was also placed on the ruling in *Swadeshi Cotton Mills Co Ltd v Commissioner of Income Tax* (171 ITR 634), where the Allahabad High Court held that special audit should not be directed after a cursory look at the accounts. There should be an honest attempt to understand the accounts of the assessee.

10. Mr. Asheesh Jain, learned counsel for the revenue, submitted that the AO was justified in directing special audit. It was noticed that the assessee was maintaining accounts of imprest with various persons. Accordingly, on 28.01.2013 assessee was specifically asked to furnish details of such imprest accounts and also to show cause that while maintaining the accounts on the mercantile basis, why for the imprest accounting, cash basis was followed. In response, the assessee submitted details of imprest accounts in the names of various persons. However, it failed to justify the maintenance of such a large number of accounts, accordingly it was observed that in the return of income the assessee company had mentioned the system of accounting followed as cash whereas the Tax Audit Report mentioned it to be mercantile. It was argued that the cash flow statement filed with reply dated 24.09.2012 was considered and it was discerned not to be commensurate with Accounting Standard-3 (revised) issued by ICAI. When confronted the assessee company filed its revised Cash Flow Statement on 11.02.2013, made as per Accounting Standard 3 (revised) issued by ICAI. The auditors in their report mentioned that the balance sheet, profit and loss account and cash flow statement dealt

with this report are in agreement with the books which are not correct in view of revised cash flow statement filed. In view of revised statement of cash flow, the financial results of the assessee company cannot be accepted as true and correct and audit under section 44AB is also not considered reliable in view of these discrepancies which give rise to complexity of accounts, the whole of the transactions of cash are required to be examined and verified in view of revised cash flow submitted.

11. It was next urged that the assessee claimed benefit of Section 80 IC of the Income Tax Act, 1961 for the first time for AY 2010-11. The computation of income filed showed that the amount of exemption claimed under section 80IC differs in both original and revised return. It is beyond imagination or understanding that as to how the assessee company computed two different amounts of deduction for claiming deduction under section 80 IC when there are audited books of accounts. This shows that the books of account are not completed and correctly maintained in normal course of business activities of the assessee company and financial results cannot be relied upon. They have to be examined and audited to arrive at correct amount of income and exemption available to the assessee company. Since the assessee had claimed this exemption for the first time since start of its operation, its genuineness also needed to be examined in view of business activities carried on in respect of trading and manufacturing which is a cumbersome process.

12. It was also pointed out by Mr. Jain that in the original return of income the assessee company declared income under normal provisions to the tune of ₹ 285769730/- and in revised return the same has been reduced substantially to ₹ 19084670/-. Complete details and explanation has not been filed in the course of assessment proceedings and from the details filed correct income of the assessee company cannot be deduced. Income of the assessee company for this very purpose is not determinable due to complex nature of accounts kept by it.

Analysis and Conclusions

13. The relevant statutory provisions governing the special audit are incorporated in Section 142 of the Income Tax Act which is titled "inquiry before assessment". Sub-sections (2A), (2B), (2C), (2D), (3) & (4) are relevant in this behalf. They are as under:-

"(2A) If, at any stage of the proceedings before him, 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 previous approval of the Chief 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 Chief Commissioner or Commissioner in this behalf and to furnish a report of such audit in the prescribed form⁷ 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.] (2B) The provisions of sub-section (2A) shall have effect notwithstanding that the accounts of the assessee have been audited under any other law for the time being in force or otherwise. (2C) Every report under sub-section (2A) shall be furnished by the assessee to the Assessing Officer within such period as may be specified by the Assessing Officer:

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.

(2D) The expenses of, and incidental to, any audit under sub-section (2A) (including the remuneration of the accountant) shall be determined by the Chief Commissioner or Commissioner (which determination shall be final) and paid by the assessee and in default of such payment, shall be recoverable from the assessee in the manner provided in Chapter XVIID for the recovery of arrears of tax:

[Provided that where any direction for audit under sub-section (2A) is issued by the Assessing Officer on or after the 1st day of June, 2007, the expenses of, and incidental to, such audit (including the remuneration of the Accountant) shall be determined by the Chief Commissioner or Commissioner in accordance with such guidelines as may be prescribed_ and the expenses so determined shall be paid by the Central Government.] (3) The assessee shall, except where the assessment is made under Section 144, be given an opportunity of being heard in respect of any material gathered on the basis of any

inquiry under sub-section (2) or any audit under sub-section (2A) and proposed to be utilised for the purpose of the assessment.

(4) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year."

14. The relevant principles governing the applicability of the provisions have been set out in the judgment of the Supreme Court in *Sahara* (supra):

*"... 6. A bare perusal of the provisions of Sub-section 2A of the Act would show that the opinion of the Assessing Officer that it is necessary to get the accounts of assessee audited by an Accountant has to be formed only by having regard to: (i) the nature and complexity of the accounts of the assessee; and (ii) the interests of the revenue. The word "and" signifies conjunction and not disjunction. In other words, the twin conditions of "nature and complexity of the accounts" and "the interests of the revenue" are the prerequisites for exercise of power under Section 142 (2A) of the Act. Undoubtedly, the object behind enacting the said provision is to assist the Assessing Officer in framing a correct and proper assessment based on the accounts maintained by the assessee and when he finds the accounts of the assessee to be complex, in order to protect the interests of the revenue, recourse to the said provision can be had. The word "complexity" used in Section 142 (2A) is not defined or explained in the Act. As observed in *Swadeshi Cotton Mills Co. Ltd. v. C.I.T.* [1988]171ITR634 (All) it is a*

nebulous word. Its dictionary meaning is: "The state or quality of being intricate or complex or that is difficult to understand. However, all that is difficult to understand should not be regarded as complex. What is complex to one may be simple to another. It depends upon one's level of understanding or comprehension. Sometimes, what appears to be complex on the face of it may not be really so if one tries to understand it carefully." Thus, before dubbing the accounts to be complex or difficult to understand, there has to be a genuine and honest attempt on the part of the Assessing Officer to understand accounts maintained by the assessee; appreciate the entries made therein and in the event of any doubt, seek explanation from the assessee. But opinion required to be formed by the Assessing Officer for exercise of power under the said provision must be based on objective criteria and not on the basis of subjective satisfaction. There is no gainsaying that recourse to the said provision cannot be had by the Assessing Officer merely to shift his responsibility of scrutinizing the accounts of an assessee and pass on the buck to the special auditor. Similarly, the requirement of previous approval of the Chief Commissioner or the Commissioner in terms of the said provision being an inbuilt protection against any arbitrary or unjust exercise of power by the Assessing Officer, casts a very heavy duty on the said high ranking authority to see to it that the requirement of the previous approval, envisaged in the Section is not turned into an empty ritual. Needless to emphasise that before granting approval, the Chief Commissioner or the Commissioner, as the case may be, must have before him the material on the basis whereof an opinion in this behalf has been formed by the Assessing Officer. The approval must reflect the application of mind to the facts of the case."

15. The provisions of sub-section Section 142 (2A) require the Assessing Officer to form an opinion that having regard to the nature and complexity of the accounts of the assessee and the interests of the

revenue, it is necessary to get the accounts audited by a special auditor nominated by the CIT or the CCIT. The proviso makes it incumbent upon the AO to give the assessee a reasonable opportunity of being heard before special audit is directed. The direction to conduct special audit has to be, under the sub-section, given with the previous approval of the CIT or CCIT. It is thus the Assessing Officer who is to form the opinion and not for anyone else. The approval to be granted by the CIT or the CCIT, as held by the Supreme Court in the case of *Sahara India (Firm) (supra)* is a safeguard against arbitrary or unjust exercise of power by the AO and therefore a heavy duty is cast on the high ranking authority to see that the approval is not granted mechanically; he has to examine the material on the basis of which an opinion for conducting special audit was formed by the Assessing Officer.

16. In the case before us, the A.O. has taken the view that there is complexity in the accounts of the assessee. He has referred to the three segments or sources of revenue of the petitioner and has held that it is required to identify the method and the relevant accounting standard applicable for recognition of income from these revenues and also to ascertain the correctness of the income recognized. The order passed under Section 142 (2A) on 28.03.2013 contains a detailed discussion as to the complexity of the accounts. The profit and loss account, balance sheet and the computation of the income were before the A.O. It cannot be disputed that the profit and loss account and the balance sheet fit the description of "accounts". The complexity arising out of such accounts is the difficulty in allocating the expenses incurred by

the petitioner given the manner in which it chose to supply information to the AO, during the inquiry, in a piecemeal fashion. Nor is the court persuaded to agree with the learned counsel that AS-3 did not apply and that the accounting practise adopted was correct or that it foreclosed inquiry. The linchpin of the assessee's argument is that the AO's indolence or inability to exert himself to inquire diligently cannot result in a special audit. Undoubtedly, the AO has a duty to apply his (or her) mind and not fall back upon the provision of special audit in all routine cases. However, when the AO does feel that information is not forthcoming in a timely manner (as appears to have occurred in this case) her choices are limited – to let go of the stage of inquiry, and complete the assessment, or, disallow what is considered appropriate. The AO quite correctly felt that the latter course would not be appropriate; he therefore, ordered special audit, which was quite reasonable, especially in regard to the imprest account for which details of expenses incurred had not been furnished. That amount was sizeable. Also, with respect to the benefit of Section 80 IC and the revision of returns, was an aspect which could not have been given a light treatment, but needed inquiry, if the AO felt it to be so.

17. In view of the above observations, this court is of the opinion that far from the case showing non-application of mind, the AO has carefully outlined what were the salient aspects in the accounts and returns of the assessee that needed to be looked into and made the impugned order directing special audit. The assessee has not alleged any *mala fides*. In view of these reasons, the court is of the opinion that

the writ petition has no merit. Consequently, the interim orders which operated for these last 5 years are vacated. The assessee is directed to co-operate with the Special Auditor. The period during which the interim order operated shall be excluded for the purpose of calculation the period for completion of such special audit. The writ petition is dismissed, but subject to the above observations. There shall be no order on costs.

S. RAVINDRA BHAT
(JUDGE)

PRATEEK JALAN
(JUDGE)

DECEMBER 06, 2018