

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “ए”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH ‘A’, CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SHRI SANJAY GARG, JUDICIAL MEMBER
AND SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA Nos.696 to 698/Chd/2013

निर्धारण वर्ष / Assessment Year : 2003-04 to 2005-06

M/s Chet Ram Ravi Kumar, 101, New Grain Market, Muktsar.	बनाम	The D.C.I.T., Central Circle-III, Ludhiana.
स्थायी लेखा सं./PAN NO: AABFC6298B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Ashwani Kumar, CA &
Shri Aditya Kumar, CA

राजस्व की ओर से/ Revenue by : Smt.C.Chandrakanta, CIT

सुनवाई की तारीख/Date of Hearing : 25.08.2021

उद्घोषणा की तारीख/Date of Pronouncement : 04.10.2021

(Hearing through webex)

आदेश/ORDER

Per Annapurna Gupta, Accountant Member:

All the above appeals have been preferred by the same assessee against separate orders of the Learned Commissioner of Income Tax (Appeals)-1, Ludhiana [(in short the ‘Ld. CIT(A)] all dated 25.03.2013 relating to assessment years 2003-04 to 2005-06 respectively, passed

u/s 250(6) of the of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

It was common ground that identical issue was involved in all the above appeals, hence, the same were taken up together for hearing and are being decided by a common order for the sake of convenience.

2. Ld.Counsel for the assessee pointed out that identical grounds had been raised in all the appeals which read as under:

"1. That the Ld. Commissioner of Income Tax (Appeals) gravely erred in upholding assessment made u/s 153A read with section 143(3) which was otherwise time barred in as much as the very reference u/s 142(2A) was unwarranted against law and facts on the file.

2. The assessment framed on the basis of audit report u/s 142(2A) deserves to be quashed in as much as the special auditor has travelled beyond the provisions of section 142(2A) for the purpose of conducting the audit."

3. Referring to the above, the Ld.Counsel for the assessee stated that in all the three appeals a common solitary ground was being pressed relating to the assessment order being time barred, having been passed in the extended time limit on account of reference made for conducting special

audit u/s 142(2A) of the Act, which reference was not in accordance with law. As for the other ground, the Ld.Counsel for the assessee stated that he was not pressing the same before us.

4. With respect to ground being argued, the Ld.Counsel for the assessee stated that the issue raised therein stood covered in favour of the assessee by the decision of the ITAT in the case of Sunder Mal Satpal Vs. DCIT in ITA Nos.154 to 157/Chd/2013 vide order dated 15.06.2018. The Ld.Counsel for the assessee pointed out that the facts in the case of M/s Sunder Mal Satpal (supra) were identical to the case of the assessee. He stated that the assessee had been subjected to search proceedings u/s 132 of the Act on 24.10.2007 and during search certain incriminating documents relating to M/s Sunder Mal Satpal, who was a sister concern of the assessee, were found and seized. Accordingly proceedings u/s 153C of the Act were initiated and assessment completed on M/s Sunder Mal Satpal. He contended that during assessment proceedings of both the assessee and M/s Sunder Mal, a reference for special audit u/s 142(2A) of the Act was made by a common letter and the reasons for making the reference was identical. Our attention was drawn to the letter of the AO dated 13.01.2010 directing the assessee and M/s Sunder Mal

Satpal to get their accounts audited u/s 142(2A) of the Act, placed at Paper Book page Nos.8 and 9 as under:

"No.ACIT/CC-III/Ldh/489

Office of the

*Asstt. Commissioner of Income Tax
Central Circle-III, Ludhiana.*

Dated Ludhiana the 13.01.2010

To

*Shri Ravi Kumar Bansal c/o
M/s Chet Ram Ravi Kumar,
2-New Grain Market, Muktsar.*

Sir,

Sub:- Regarding Special audit u/s 142(2A) of Income Tax Act, 1961 in the cases of M/s Chet Ram Ravi Kumar, M/s Sunder Mal Sat Pal & Sh.Ravi Kumar Bansal of Muktsar.

The Commissioner of Income Tax (Central), Ludhiana Vide Order No.CIT(C)/Ldh/(JB/09-10/ 4166 dated 23/12/2009 the following cases have been approved for special audit and appointed of M/s P.C.Goyal & Company, 62 New Lajpat Nagar, Pakhowal Road, Ludhiana for this purposes.

<u>S.No.</u>	<u>Name of the assessee</u>	<u>Astt. Year</u>
1.	<i>M/s Chet Ram Ravi Kumar,101 New Grain Market ,Muktsar</i>	<i>2002-02 to 2007-08</i>
2.	<i>Sh.Ravi Kumar Bansal c/o above.</i>	<i>2002-03 to 2008-09</i>
3.	<i>M/s Sunder Mal Sat Pal, 101, New Grain Market, Muktsar</i>	<i>2002-03 to 2008-09</i>

The purpose of the special audit is:-

- i) To translate the books found from Mahajani to English.*
- ii) To bifurcate the transactions recorded in the kacha cash book so as to clarify whether they pertain to M/s Chet Ram Ravi Kumar or Sunder Mal Sat Pal.*
- iii) To bifurcate the accounted transaction from unaccounted transaction to arrive at a definite conclusion and also reconcile the regular books of accounts with these seized books.*
- iv) Reconciliation of the promotes with the regular books of account to bifurcate the accounted for pronotes from the unaccounted ones and to work out the interest income earned on these advances and also to check the source of investment made in these advances, on yearly basis from Asstt.Year 2002-03 to Asstt.Year 2008-09.*
- v) To redraw the balance sheet, P&L a/c from A.Y.2002-03 to 2008-09 so as to arrive at a true and correct income.*
- vi) To check the loose papers found and reconcile them with*

the assessee regular books of account.

You are again requested to cooperate with M/s P.C.Goyal & Company, 62-New Lajpat Nagar, Pakhowal Road, Ludhiana for the purpose of special audit immediately, so that the necessary audit may be done in time and the special audit report is submitted to the undersigned by 31/03/2010.

Sd/-

Yours faithfully,

(Dr.D.S.SIDHU)

*Asstt. Commissioner of Income Tax,
Central Circle-III, Ludhiana*

5. The Ld.Counsel for the assessee pointed out that in the case of M/s Sunder Msal Satpal, the ITAT had held the reference of the AO u/s 142(2A) of the Act as not in accordance with law and accordingly the assessment order passed was held to be barred by limitation since the extended period taken under the guise of special audit could not have been counted. Our attention was drawn to the order in the case of M/s Sunder Mal Satpal (supra), placed at Paper Book page Nos. 31 to 44. The Ld.Counsel for the assessee thereafter pointed out that subsequently the Department had filed a Miscellaneous Application in the said order before the ITAT raising the contention that the ITAT did not have the jurisdiction to adjudicate the validity of the order for special audit, basing its contention on the decision of the Hon'ble Supreme Court in the case of Sahara India (Firm) Vs. CIT (2008) 169 Taxman 328 (SC). He pointed out that the said Miscellaneous Application was also dismissed by the ITAT vide its order in M.A.Nos.6 to

9/Chd/2019 dated 19.03.2021. Copy of the order was placed before us. The contents of the same from para 2 to 5 are as under:

"2. The recall is being sought for identical reasons in all the four Miscellaneous Applications, being that the ITAT had acted beyond its jurisdiction while adjudicating the validity of the reference made by the AO for special audit as per the provisions of section 142(2A) of the Income Tax Act, 1961 (in short 'the Act') in the impugned appeals. The Revenue, for the said proposition, has relied upon the decision of the Hon'ble Apex Court in the case of Rajesh Kumar Vs. DCIT (2006) 157 Taxman 168 (SC) and Sahara India (Firm) Vs. CIT (2008) 169 Taxman 328 (SC).

3. During the course of hearing before us it was pointed out at bar to the Ld. DR that the Hon'ble Delhi High Court, in the case of Consulting Engineering Services Private Limited Vs. ITAT & Another in WP(C)7734/2017 dated 01.09.2017, on being seized with the identical issue whether the challenge to the order u/s 142(2A) could be raised before the ITAT in view of the decision of the Hon'ble Apex Court in Sahara India (Firm) Vs. CIT (supra), had held that the observation made in that decision was in the peculiar facts of that case and was not meant to be a general observation applicable across the board for all cases. That at para 9 of the order the Hon'ble High Court had categorically held that the ITAT ought to have entertained the additional grounds pertaining to the validity of reference made u/s 142(2A) of the Act.

4. The Ld. DR, after going through the aforesaid order, fairly agreed that the issue had been considered as above by the Hon'ble High Court in the aforesaid decision.

5. In view of the above, we do not find any merit in the Miscellaneous Applications filed by

the Revenue since the adjudication of the reference to special audit by the ITAT has been held to be well within its jurisdiction by the Hon'ble High Court of Delhi in the case of Consulting Engineering Services Private Limited Vs. ITAT & Another (supra), that too after considering the decision of the Hon'ble Apex Court in Sahara India(supra). Therefore, with regard to the same, there is no mistake in the order of the ITAT."

6. The Ld.Counsel for the assessee, therefore, stated that the issue in the impugned cases stood squarely covered in favour of the assessee by the order of the ITAT in the case of M/s Sunder Mal Satpal (supra).

7. The Ld. DR, on the other hand, vehemently contested the stand of the Ld.Counsel for the assessee. The primary contention being that the ITAT had no jurisdiction to decide the validity of the order for special audit and she relied heavily on the order of the Hon'ble Apex Court in the case of Rajesh Kumar Vs. DCIT (2006) 157 Taxman 168 (SC) for the said purpose. Besides the above, she was unable to controvert the fact brought to our notice by the Ld.Counsel for the assessee that the reference to special audit in the impugned case was for identical purposes as in the case of Sunder Mal Satpal (supra) vide a common letter of the AO as reproduced above.

8. We have heard both the parties. We have also gone through the order of the ITAT in the case of M/s Sunder Mal

Satpal (supra), the order of the AO directing special audit as brought to our notice by the Ld.Counsel for the assessee and also the order passed by the ITAT in Miscellaneous Application filed by the Revenue in the ITAT order passed in the case of M/s Sunder Mal Satpal (supra).

9. On going through the contents of the above, there is no doubt that vis a vis the issue before us of validity of reference made by AO for special audit u/s 142(2A) of the Act, the facts and circumstances of the present case are identical to that in the case of M/s Sunder Mal Satpal (supra). We have noted from the letter of the AO directing special audit(P.B 8-9), that the reference in the impugned case was made along with that for M/s Sunder Mal Satpal (supra), for identical reasons, which reasons were found to be insufficient for directing a special audit ,by the ITAT in the case of M/s Sunder Mal Satpal. It was so held noting that there was no complexity in the accounts pointed out by the AO while making the reference, which was a prerequisite for making reference for special audit.

10. The Revenue has been unable to controvert the aforestated facts. The issue therefore stands squarely covered by the order of the ITAT in the case of Sunder Mal Satpal (supra).

11. The Revenues contention questioning the jurisdiction of the ITAT to adjudicate the validity of the reference for special audit u/s 142(2A) of the Act, admittedly also stands rejected in the said case, in the order of the ITAT passed in miscellaneous Application filed by the Revenue. The Ld.CIT(DR) has sought to distinguish the same by relying on the order of the apex court in the case of Rajesh Kumar Vs. DCIT (2008)169 Taxman 328(SC).

12. We do not find any merit in the same. As noted above this contention of the Revenue raised by way of a Miscellaneous application in the case of Sunder Mal Satpal (supra) already stands dismissed by the ITAT. All the same, addressing the specific reference by the Ld.DR to the decision of the apex court in the case of Rajesh Kumar (supra), we find that, taking note of the said decision this argument of the Revenue has been dismissed by the ITAT in various decisions. It has been held that though order directing special audit is otherwise not appealable but while challenging the assessment order as being barred by limitation, the validity of the order directing special audit u/s 142(2A) can be challenged, albeit for this limited purpose alone. It has been held that for coming to a conclusion that the assessment order is barred by limitation, all aspects integral to the process and ultimate

completion of assessment can be challenged and considered for deciding the same. The relevant decisions are:

Unitech Limited Vs ACIT in ITA No.5180 /Del/2013 dated 08.04.2016:

“Furthermore, the judgments relied upon by the revenue also do not lead us to take different view of the matter. The first judgment relied upon is the case of Rajesh Kumar and Ors v CIT (supra). In this case the Hon'ble Court has held in para 34 that the order of assessment can be subject matter of an appeal; and not, a direction issued u/s 142(2A) of the Act. In this appeal there is no challenge to the directions u/s 142(2A) of the Act. The challenge is that order of assessment is barred by limitation which is a valid contention supported by the judgment of Hon'ble Supreme Court in the case of Sahara India (Firm) v CIT (supra). The challenging to the validity of order u/s 142(2A) of the Act is confined to the extent that order is barred by limitation and not to the extent of refunding the fees or any other consequence flowing out of the order u/s 142(2A) of the Act. Further observation of Hon'ble Court that principles of natural justice are required to be complied with has also been reaffirmed in the case of Sahara India (Firm) (supra). The judgment of AT&T Communication Services India (P) Ltd. v CIT (supra) is on facts and has no application to the case of appellant company. Also the judgment in the case of DLF Ltd. v Addl. CIT (supra), has no application as hereto none of the contentions raised before us have been decided to the contrary. The learned counsel for the revenue has not been able to point out any material so as to arrive at different view of the matter.”

Consulting Engineering Services India Pvt. Limited vs ACIT (2019) 198 TTJ 0121 (Del):

“17. The quarrel before us is as to whether the assessment order framed u/s 143(3) is passed within the period of limitation period prescribed under the Act or not. In our considered opinion, for coming to such a conclusion, we can examine whether the order passed u/s 142(2A) of the Act is in accordance with law or not. It is true that the order passed u/s 142(2A) of the Act is not appealable but when an assessment order is challenged, then the different aspects,

which are integral to the process and ultimate completion of the amount can be challenged in appeal and since the ground before us is challenged for assessment being barred by limitation, we are well within our rights to consider all material aspects which were considered while framing the assessment order u/s 143(3) of the Act.”

13. Further as noted in the order passed by the coordinate bench of ITAT in Miscellaneous Application filed in the case of Sunder Mal Satpal (supra) the Hon'ble Delhi High Court in the case of Consulting Engineering Services Private Limited Vs. ITAT & Another in WP(C)7734/2017 dated 01.09.2017, has categorically held that it is well within the jurisdiction of the ITAT to entertain the grounds relating to validity of reference to special audit, after noting that the observation to the contrary by the apex court in the case of Sahara India (supra) was specific to those cases.

14. The distinction therefore sought to be made by the Revenue, from the decision of the ITAT in the MA in the case of Sunder Mal Satpal (supra), we hold is of no relevance.

15. In view of the above since undisputedly the issue raised before us, of the assessment order passed being barred by limitation on account of an invalid reference made for special audit, arises in the background of facts which are identical to that in the case of M/s Sunder Mal Satpal,

it stands covered by the decision of the ITAT in the said case, following which we hold that the reference for special audit in the present cases, u/s 142(A) of the Act, is invalid and the assessment orders so passed in the extended time are held to be barred by limitation.

16. In the result, all the captioned appeals of the assessee are allowed.

Order pronounced on 4th October, 2021.

Sd/-

संजय गर्ग

(SANJAY GARG)

न्यायकि सदस्य/Judicial Member

दिनांक /Dated: 4th October, 2021

रती

Sd/-

अन्नपूर्णा गुप्ता

(ANNAPURNA GUPTA)

लेखा सदस्य/Accountant Member

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar