

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1134 OF 2016

Sharad Kantilal Shah

..Petitioner

Versus

Deputy Commissioner of Income Tax,
Central Circle 8(3) & Ors.

..Respondents

.....

Mr.Firoz Andhyarujina, Senior Advocate with Mr.Manek Andhyarujina
I/b. Mr.Sameer Dalal for Petitioner.

Mr.Anil C. Singh, Additional Solicitor General with Mr.Suresh Kumar with
Ms.Indrayani Deshmukh and Mr.Amogh Singh for Respondents.

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**CORAM: M. S. SANKLECHA &
S.C. GUPTE, JJ.**

DATE : 14 SEPTEMBER 2016

P.C. :

This petition under Article 226 of the Constitution of India challenges the order dated 10 March 2016 passed by the Assessing Officer under Section 142(2A) of the Income-tax Act, 1961 (the Act). The impugned order dated 10 March 2016 directs the Petitioner to subject its accounts to special audit for the Assessment Years 2008-09 to 2014-15.

2. The Petitioner is a trader in shares dealing in capital and derivative segments. The Petitioner has consequent to a search action of Section 132 of the Act, filed its return of income under Section 153A of the Act for Assessment Years 2008-09 to 2013-14 and under Section

139(1) for Assessment Year 2014-15. The last date to complete the assessment under Section 153A of the Act is 31 March 2016. The impugned order dated 10 March 2016 has admittedly been passed after issuing a notice and hearing the Petitioner.

3. However, the grievance of the Petitioner is that the impugned order is without jurisdiction for the following reasons :-

(i) It is merely a ploy to extend time to complete assessment as time would otherwise expire on 31 March 2016;

(ii) No special audit has been ordered / directed in respect of the Petitioner's wife and his other family members on identical facts;

(iii) The Assessing Officer has without examination of the accounts come to the conclusion that it is complex and / or voluminous requiring special audit. Nor the reasons calling for special audit put to the Petitioner in the notice issued to him;

(iv) The terms of Reference for special audit reflected in the impugned order, indicates that it is not in the nature of audit but in the nature of preparation of accounts; and

(v) The assessment proposed under Section 153A would itself not be sustainable for the Assessment Years 2008-09, 2009-10 and 2010-11 as the regular assessments have already been completed under Section 143(3) of the Act. This in view of the decision of this Court in **CIT vs.**

Continental Warehousing Corporation, Nhava Sheva Ltd.¹

4. Before considering the grievance of the Petitioner, it must be recorded that the Petitioner does not dispute that all the procedural safeguards provided in Section 142(2A) of the Act, viz., issue of notice after previous approval of Chief Commissioner and hearing the Petitioner, have been satisfied before issuing of the impugned order.

5. As for the first grievance of the Petitioner that the special audit has been directed only to secure more time to pass an order of assessment is concerned, we find there is nothing in the Act which prohibits the Assessing Officer from ordering / directing the special audit after a particular date before the last date of framing an assessment. An Assessing Officer can direct a special audit as and when he does come to the conclusion that the accounts of the assessee are required to be specially audited for any one of the reasons set out in Section 142(2A) of the Act. Thus, this grievance is not sustainable.

6. So far as second grievance with regard to not directing the special audit of the accounts of the Petitioner's wife and family members is concerned, we find that is an irrelevant consideration while considering the necessity of special audit in the case of the Petitioner. The exercise of jurisdiction under Section 142(2A) of the Act by the Assessing Officer has to be examined merely on the basis of the material available before him in respect of the assessee concerned while exercising jurisdiction to direct special audit. Nothing has been shown to us that on the basis of the material available before the Assessing Officer, the direction for special

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audit is perverse. Thus, this grievance is also not justified.

7. As far as the third grievance of the Petitioner is that the Assessing Officer did not examine the books of accounts before ordering / directing the special audit is concerned, on facts we find that the show cause notice as well as the impugned direction proceed on the basis that on verification of the books of accounts and vouchers that the issue of special audit arose. Thus, this grievance of non-examination of books of account is without any substance. Moreover after the amendment to Section 142(2A) of the Act with effect from 2013, a special audit is not restricted only to complexity of the Accounts. The special audit can now be directed not only if the accounts are complicated but also if there is doubt to the correctness of the account or multiplicity of transactions or volume of transaction or specialised nature of the accounts. Moreover the other grievance that the notice did not indicate the reasons which led him to a *prima facie* view directing a special audit stands belied by the fact that the show cause notice dated 25 July 2016 issued to the Petitioner, in fact, indicated the basis for directing special audit on the basis of the volume of the total trades executed by the Petitioner, multiplicity of transactions in the accounts, including the nature and complexity of the accounts and doubts about the correctness of the accounts. Therefore, this grievance is also without substance.

8. The fourth grievance of the Petitioner is that the terms of Reference indicates that the Special Auditor has also been asked to prepare accounts and therefore bad in law, is unjustified. Section 142(2A) of the Act empowers the Assessing Officer while directing a special audit

to furnish audit report in the prescribed form and can also seek such other particulars from the Special Auditor which he may require to complete the assessment. The Terms of Reference indicate that the examination which had to be done by the special audit was to examine the accounts keeping in view the supporting evidence. Thus, this grievance is also without any substance.

9. The last submission on behalf of the Petitioner is that the entire direction for special audit is without jurisdiction as the Assessing Officer has no jurisdiction to assess the Petitioner under Section 153(A) of the Act in respect of three of the assessment years concerned as the assessment for those years had been completed under Section 143(3) of the Act. At this stage, this submission on the part of the Petitioner is premature. Presently, we are only concerned with the jurisdiction of the Assessing Officer to direct a special audit. The necessary conditions to be satisfied before the special audit is directed are listed / set out in Section 142(2A) of the Act and these are satisfied. Thus the direction for special audit. The issue of framing / passing an assessment order would arise only after the special audit is completed. Thus there is no merit in this submission to challenge the direction of special audit by the impugned order.

10. We find that the impugned order dated 10 March 2016 directing a special audit is not without jurisdiction. The procedural safeguards of notice, approval of the Chief Commissioner and hearing have undisputedly been complied with. Besides, the satisfaction recorded by the Assessing Officer before directing a Special Audit is his opinion on

the basis of the facts before him and such opinion is not shown to be perverse. We are not a court of appeal to substitute the opinion of the Assessing Officer to exercise power under Section 142(2A) of the Act by our opinion to the contrary. We find that the opinion reached by the Assessing Officer to direct special audit on the present facts is a reasonable and possible view.

11. In the above view, there is no merit in the challenge by the Petitioner to the impugned direction dated 10 March 2016 of the Assessing Officer for special audit.

12. Accordingly, the petition is dismissed. No order as to costs.

(S.C. GUPTE, J.)

(M. S. SANKLECHA, J.)