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

\+ W.P.(C) 2243/2013, CM APPL. 4271/2013

HERO MOTOCORP LTD AND ANR

..... Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with Ms. Kavita Jha and Ms. Roopali Gupta, Advs.

Versus

ADDITIONAL COMMISSIONER OF INCOME-TAX AND ANR

..... Respondent

Through: Mr. Rahul Chaudhary, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 23.01.2017

In these proceedings the Assessee has challenged the issuance of order under Section 142(2A) of the Income Tax Act, 1961 ('the Act') whereby the Revenue has appointed a Special Auditor.

2. It is contended that the Assessee had objected to the appointment of the Special Auditor when served with the notice by the Revenue. However, the Assessing Officer (AO) considered the objections and in a reasoned order rejected the Assessee's objections. The learned counsel submits, at the very outset, that even though the Special Auditor in the present case was proposed for Assessment Year (AY) 2009-10, for subsequent years, i.e., for the AYs 2010-11, 2011-12 and 2012-13, no Special Auditor was, in fact, proposed and the AO proceeded to examine all the matters and made final

assessment orders in respect of these very issues. It is stated that this specifically constitutes no ground for the Court to hold that the impugned order is unwarranted.

3. The learned counsel took the Court through the final order rejecting the Assessee's objections and contended that the A.O. had proposed to make an open reference in several matters covered broadly in about 7 to 8 heads. It is submitted that the AO had appointed Special Auditor under Section 142(2A) of the Act for the AYs 2007-08 and 2008-09, and had the benefit of the completed assessments made in these years.

4. The learned counsel for the respondent submitted that this Court should not exercise its discretionary jurisdiction and interfere with the order directing the appointment of the Special Auditor. It is emphasized that the Assessee was given a final opportunity to represent against the proposal which it availed and that no fault can be found with the order rejecting the objections. As to the submission of the Assessee that the A.O. could have benefited from the orders, an approach generally indicated from the previous orders where special audits were in fact conducted and for subsequent years in respect of which no special audits was in fact ordered, the counsel stated that facts and circumstances of each assessment have to be examined on their own stand and the discretion exercised by the A.O. has to be seen in its own term. The A.O.'s lack of expertise or inability to discern the complexities or some of the issues especially relating to claims of expenditure, on account of the use of the SAP software, was a genuine ground. In the circumstances, that for some

issues, the A.O. was able to complete the assessment with the aid of the Special Auditor, is not a relevant factor especially given that on such issues the matter has not attained finality.

5. The Assessee's objection with respect to the appointment of the Special Auditor in these proceedings are twofold; firstly that for previous years, i.e., for the AYs 2007-08 and 2008-09, Special Audits were directed and that they went into the accounts. According to the assessee, the nature of these accounts, the heads of expenditure and the treatment indicated in the books did not vary at all and have not undergone any radical change for the concerned AY. In the circumstances, the A.O. ordinarily should be deemed to have benefited from the report of the Special Auditor for the previous years. The Special Auditor choosing to ignore a direction afforded, cannot legitimise the exercise of power once again under Section 142(2A) of the Act. More fundamentally, the second ground urged by the Assessee – concededly this was urged when it approached this Court in the first instance, was that for the latter assessment years, i.e., AYs 2010-11 and 2011-12, the A.O. proceeded to make final orders on the merits and conclude the appropriate treatment for the claims of expenditure and the increase in the books. This according to the Assessee meant that the A.O. did not find himself either quipped or daunted in any manner by the nature of the fact and documents presented to him.

6. In the opinion of the Court, the latter argument of the Assessee has some credibility and merit. The Revenue does not urge that there was any radical change in the business or accounting practices of the

Assessee, for any of these AYs. Given the fact that the A.O. had appointed a Special Auditor for the previous two years, i.e., for AYs 2007-08 and 2008-09, its argument that those reports should have provided some guidelines to the A.O. and a considerable guide for the examination of the Assessee's returns is meritless. More vitally, the Court is of the opinion that in the latter years, the A.O. did not feel constrained by the books of accounts and the other materials furnished along with the returns to proceed and make additions for complete assessments in accordance with law with the aid of Special Auditor. If such were the case, at least for A.Y. 2009-2010, the Court sees no impediment in the nature of the books – in the absence of any assertion by the Revenue that they were raised differently for the given A.Y.

7. For these reasons we are of the opinion that the impugned order dated 28.03.2013 appointing the Special Auditor to examine the assessee's accounts cannot sustain. It is hereby quashed. The petition is allowed in the above terms.

8. Order dasti.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

JANUARY 23, 2017/acm