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

\+ W.P.(C) 3336/2015 AND CM APPL. 26607/2018

INDUS TOWERS LIMITED ..... Petitioner

Through Mr. Deepak Chopra, Mr. Harpreet S. Ajmani, Ms. Manasvini Bajpai and Mr. Gajendra Maheshwari, Advs.

versus

COMMISSIONER OF INCOME TAX-IV & ORS...... Respondents

Through Mr. Zoheb Hossain, Sr. Standing Counsel with Mr. Deepak Anand, Jr. Standing Counsel and Mr. Deepak Garg, Addl. CIT, Range 12, New Delhi and Mr. Neeraj Gupta, Dy. CIT, Circle 12(1), New Delhi for R-1 & 2.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% **09.07.2018**

Petitioner challenges appointment of the third respondent as special auditor for AY 2010-11.

When these proceedings were initiated and the Court took cognizance by issuing notice, the petitioner's complaints to the Institute of Chartered Accountants against the said third respondent were pending. The allegations levelled against the special auditor *inter alia* were that he conducted the special audit for AY 2011-12 in a complete biased and prejudicial manner and even returned findings beyond the points of reference. It is not disputed now that the third respondent was cleared of the charges and the complaints were rejected.

The petitioner submits that the impugned order – which lays out about 50 issues as points of reference to the special auditor, virtually allowed the third respondent to give findings on certain points. It is urged that given the previous year's experience of the special audit report for AY 2011-2012 (which spans 555 pages), the third respondent is unlikely to conform to the points of reference for which the third respondent has been asked to return findings and bound to be prejudicial. The points of reference in the present case – at least some of them, if seen in isolation, would indicate that the Assessing Officer (AO) has virtually tasked the special auditor to examine the position in law and also return findings. It is to be understood that a special auditor is appointed in those cases where Section 142(2A) enables the revenue to get its such functions carried out by a third party/agency - given the complexity of accounts. In these circumstances, the opinion of the auditor has to be couched in some language, preferably, as neutral as possible. However, it is not always possible for anyone to answer the points of reference with respect to verification of specific claims in the abstract. The opinion (which the petitioner complains are findings) inevitably would be processed as such – given the limitation of language. Of course, those conclusions or "findings" are not conclusive since the jurisdiction to pronounce on them after considering the assessee's view, is exclusively that of AO. This Court has also been apprised of the previous order made in WP(C) 3928/2015 which had impugned the special auditor report under Section 142 for AY 2011-12 and ruled as follows :

> *"We are of the opinion that having regard to the law declared by Delhi Development Authority Vs. UOI 350 ITR 432, the observations or findings, if any, in the Special Auditor's report should not be treated as conclusive in any manner whatsoever by the Assessing Officer. Equally, all rights and contentions of the assessee, to make submissions on all aspects which it may be required to shed light by the AO are kept open. The AO shall not, in any manner, be influenced by the Special Auditor's objections or suggested findings in this regard.*
>
> *The application is accordingly disposed off."*

For the above reasons, the Court is of the opinion that there is no infirmity in the impugned order. The third respondent, in the circumstances, is directed not to return findings or indicate the opinion beyond the points of reference or those arise naturally from it.

By previous orders in WP(C) 239/2014 (in the case of the present petitioner), a direction was issued as follows :

> *"1. The problem has arisen because the transferor companies namely (1) Bharti Infratel Ventures Ltd., (2) Vodafone Infrastructure Ltd. and (3) Idea Cellular Towers Infrastructure Ltd. have amalgamated and merged into the petitioner company by virtue of a scheme which has been sanctioned by the learned Company Judge of this court by an order dated 18.04.2013 wherein the appointed date was 01.04.2009. It is, therefore, clear that prior to 01.04.2009 the transferor companies had separate existence. However, on and from 01.04.2009 the said three transferor companies ceased to have any existence inasmuch as they were amalgamated and merged into the petitioner. The consequence of this would be*

that the income-tax assessments insofar as the transferor companies are concerned would relate to the period ending on 31.03.2009. For the period commencing on 01.04.2009 onwards, it would be only the petitioner company which would be assessable as a tax payer entity for the purposes of income tax under the Income-tax Act, 1961.

2. As a consequence of this, it is evident that all assessment proceedings with regard to the transferor companies for the period 01.04.2009 onwards translating to assessment years 2010-11 onwards would be non est inasmuch as those companies ceased to exist on 31.03.2009. All their tax liabilities have been transferred to the petitioner by way of the sanctioned scheme for the period beginning 01.04.2009 onwards. For the assessment years prior to assessment year 2010-11, the sanction of the scheme would not defeat the right of the Income-tax Department to take appropriate recourse for recovery of any previous liabilities of the transferor companies or the transferee company."

The revenue shall take into consideration and would be bound by the said order dated 14.05.2015 in WP(C) 239/2014.

In the light of the above direction, it is hereby directed that the assessment shall be completed for the said years within the period indicated, after the receipt of the special audit report.

Writ petition is disposed off in the above terms.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JULY 09, 2018

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