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

\+ W.P.(C) 10485/2009

K.G.SOMANI & CO. .....Petitioner

Through: Mr.Rajiv Talwar and Mr.Pushkar Karni Sinha, Advocates

versus

UOI & ORS. .....Respondents

Through: Mr.Indruj Singh Rai, SSC with Mr.Sanjeev Menon, JSC, Mr.Rahul Singh, JSC with Mr.Anmol Jagga and Mr.Gaurav Kumar, Advocates

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

O R D E R

% **07.04.2025**

1. The present petition has been filed under Article 226/227 of the Constitution in the context of a communication dated 26.04.2006 vide which, the office of Dy. Commissioner of Income Tax, Central Circle-17, New Delhi appointed the petitioner as the Special Auditor under Section 142(2A) of the Income Tax Act, 1961 (hereinafter, '*IT Act*') in relation to group cases of *M/s Saraswati Trading Company*.

2. Learned counsel for the petitioner submits that the petitioner duly carried out the special audit and submitted its audit report vide forwarding letter dated 01.08.2006. The petitioner, vide its letter dated 08.08.2006, also furnished an estimate of fee based on unrevised 'scale of fee' as recommended by Institute of Chartered Accountants of India (hereinafter, '*ICAI*'). Learned counsel further submits that at the relevant time, the payment of professional fee was the liability of the assessee. It is the case of

the petitioner that subsequently, w.e.f. 12.05.2006, the 'scale of fee' came to be revised by ICAI. The respondents while considering the estimate of fee vide its order dated 08.06.2007 passed under Section 142(2D) of the IT Act determined the audit fee at Rs.1,50,000/-. It is stated that though the petitioner sent various communications, however, no opportunity was granted prior to the passing of the impugned order. Strangely, an opportunity of hearing was rather granted on 14.01.2008, i.e., after the passing of the impugned order.

After some arguments, learned counsel for the petitioner submits that at this stage, without prejudice to its rights and contentions to assail the impugned order on merits, he would confine his prayer to prayer (b) of the petition. In other words, he submits that the impugned order be set aside and the respondent be directed to pass order afresh after giving an opportunity of hearing to the petitioner. Petitioner also seeks liberty to challenge the same, if need so arises.

3. Learned SSC for the respondents submits that before passing the impugned order, not only the representation of the petitioner but also of the assessee were taken into consideration. He, however, does not question the fact that no opportunity was granted before passing of the impugned order.

4. During the course of submissions, learned counsel for the petitioner has also referred to the decisions in P.N. Misra v. Union of India, reported as **(2005) 272 ITR 482** and Dhanesh Gupta and Co. v. CIT, reported as **(2010) 327 ITR 246** to submit that while directing payment of special fee in a similar case of special audit, this Court had taken into consideration the prescribed fee scale as approved by the ICAI.

5. A perusal of the impugned order would show that the respondents, while coming to the conclusion that the estimate of fee submitted by the petitioner was exaggerated, has not given any basis for determining the audit fee at Rs.1,50,000/- only. Considering that presently, the petitioner has confined its prayer to only prayer (b) and keeping in view the import of the aforesaid decisions in P.N. Misra *(Supra)* and Dhanesh Gupta *(Supra)*, the impugned order being passed in the teeth of principles of natural justice inasmuch as an opportunity of hearing was granted post passing of the impugned order, the impugned order is set aside with the directions that the opportunity of hearing be now granted to the present petitioner as well as to the assessee before passing an appropriate order. Let the fresh order be passed within a period of three months from today.

6. Needless to state that all the rights and contentions are left open to be urged, if so required.

7. In view of the above, the present petition is disposed of.

MANOJ KUMAR OHRI, J

APRIL 7, 2025

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