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

\+ ITA 377/2025

PR. COMMISSIONER OF INCOME TAX -10 .....Appellant

Through: Mr. Gaurav Gupta, SSC, Mr. Shivendra Singh and Mr. Yojit Pareek, JSCs and Mr. Surya Jindal, Adv.

versus

NEERAJ GUPTA .....Respondent

Through: Mr. Arjun Pant and Mr. Shashvat Jain, Advs.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR

O R D E R

% **27.04.2026**

1. The instant appeal is directed against order dated 19.02.2025, passed by the Income Tax Appellate Tribunal, Delhi 'E' Bench, New Delhi (ITAT) (*hereinafter referred to as 'the Tribunal'*) in ITA No. 997/Del/2021.

2. On 09.02.2026, the following questions were framed:-

> *"i. Whether in the facts and circumstances of the case, the Tribunal was legally correct in holding that an opportunity of hearing was required to be given to the assessee before ordering for special audit under Section 142(2A) of the Income Tax Act, 1961.*
> *ii. In case the answer of the first question is affirmative, whether the Tribunal was justified in quashing the assessment order outrightly or*

> *was it supposed to remand the matter back to the Assessing Officer and directing him to proceed from the stage of appointing special auditor (after providing opportunity of hearing) and passing assessment order thereafter?"*

3. Mr. Gaurav Gupta, learned Senior Standing Counsel for the appellant submitted that the Tribunal has wrongly affirmed the order of the Commissioner of Income Tax (Appeals)-32, New Delhi (*hereinafter referred to as CIT(A)*) dated 20.07.2020, by which he had set aside the order of the Assessing Officer (AO) dated 29.03.2006, whereby a special auditor under Section 142(2A) of the Income Tax Act, 1961 (*hereinafter referred to as 'the Act of 1961'*)was appointed and held the assessment order dated 08.09.2006 to be time barred.

4. He further argued that the Tribunal was not justified in holding that since an opportunity of hearing was not accorded to the assessee-respondent before the appointment of a special auditor, the order of the AO in appointing a special auditor was bad in law.

5. He further submitted that if the Tribunal was of the view that the special auditor was wrongly appointed, then it ought to have remanded the matter back to the AO from the stage of appointment of a special auditor.

6. Learned counsel for the respondent on the other hand submitted that the CIT(A) vide its order dated 20.07.2020 had held that the action on the part of the AO in appointing special auditor on the verge of the completion of assessment proceedings on 29.03.2006 was only with the view to circumvent limitation period and save the assessment proceedings from getting time-barred.

7. He submitted that having said so, the CIT(A) has even decided the appeal of the respondent-assessee on merit and has directed to delete all the additions made by the AO, after undertaking exercise of appreciation of evidence and gave cogent reasons in its order.

8. Regardless to the above submissions, learned counsel for the respondent argued that the special auditor ought not to have been appointed by the AO without affording any opportunity of hearing to the respondent-assessee.

9. He further argued that there was nothing special in the transactions carried out by the respondent-assessee, which required an audit by a special auditor and therefore, the finding recorded by the Tribunal that the special auditor had wrongly been appointed is correct in the eye of law.

10. Having heard learned counsel for the parties, we are of the view that even if the Tribunal was of the opinion that the special auditor was wrongly appointed, it ought to have either remanded the matter back to the AO or should have decided the appeal on merit, as had been done by the CIT(A).

11. In the facts of the case in hands are taken into consideration, it transpires that the AO had appointed a special auditor on 29.03.2006, without issuing any notice to the respondent-assessee.

12. True it is that by that time, the provision of Section 142(2A) of the Act of 1961 had not been amended and as per the statutory scheme back then, the AO might be legally correct in doing so. But in light of various judicial pronouncements, the AO could not have done so, without hearing the respondent-assessee. The AO was forced not to inform the petitioner because immediately after 48 hours i.e. on 31.03.2006, the limitations for completing assessment was getting over.

13. Such being the position, if the Tribunal was of the view that the special auditor was wrongly appointed, it ought to have remanded the matter back to the AO to ignore the report of the special auditor and frame assessment on the basis of the material which he had in possession on 29.03.2006.

14. But the more important aspect of the matter is, that the impugned action was taken on 29.03.2006, that too for AY 2003-04 whereafter, not only the special auditor was appointed, the AO had passed the assessment order on 08.09.2006 considering the report given by the special auditor.

15. We are therefore of the view that the subsequent development and events of the present matter ought not to have been ignored by the Tribunal and it ought to have decided the appeal on merit rather than setting aside the order appointing special auditor and assessment order itself on the ground of limitation.

16. According to us, for procedural lacunae or breach, the assessment or legitimate revenue to which the exchequer is entitled to, cannot be given a complete go bye.

17. The consequence of the order of the Tribunal is, that the income of the respondent-assessee which was assessed at Rs.6,62,95,139/- by way of the assessment order dated 08.09.2006 has completely gone to winds and the legitimate revenue which the Government of India could have had even without special auditor being appointed, has gone out of the tax net.

18. The case before us is required to be considered from another perspective as well. If the respondent-assessee was so aggrieved by the appointment of a special auditor by the AO vide order dated 29.03.2006, he ought to have challenged the same by way of taking his plea before a

Constitution Court (High Court or Supreme Court), which perhaps would have stayed the effect and operation of the order dated 29.03.2006 or would have stayed further proceedings, due to which at least the limitation block for reassessment would have seized.

19. In view of the discussion foregoing, we are of the view that though question no. (i.) deserves to be answered in affirmative and in favour of the respondent-assessee but when we advert to question no. (ii.), we feel that the Tribunal was not justified in quashing the assessment order outrightly.

20. We therefore, set aside the impugned order dated 19.02.2025 passed by the Tribunal in ITA No. 997/Del/2021 and restore the appeal back to the dockets of the Tribunal for deciding the appeal on other grounds raised by the AO.

21. The appeal is disposed of accordingly.

DINESH MEHTA, J

VINOD KUMAR, J

APRIL 27, 2026/*cd*