

**HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU**

OWP No. : 172/2009
CMP No. : 210/2009
Caveat no.: 1258/2008

Date of Decision:05.06.2009

Jammu Development Authority Vs. U.O.I & Ors.

Coram:

Mr. Justice J.P.Singh, Judge.

Appearing counsel:

For The Petitioner(s) : Mr. Adarsh Sharma, Advocate.
For Respondent(s) : Mr. D.S.Thakur, Advocate.

i) Whether to be reported in Press/Journal/Media : Yes/No

ii) Whether to be reported in Digest/Journal : Yes/No

Exercising power under Section 142 (2A) of the Income Tax Act, 1961, hereinafter to be referred as the 'Act', the Assistant Commissioner of Income Tax, Circle-1, Jammu, vide his order No. ACIT/Cir-1/JMU/590 dated 26-12-2008, directed Special Audit of the accounts of the petitioner-Jammu Development Authority, by M/s Gupta-Gupta and Associates, 142/3, Trikuta Nagar Jammu, nominated as such, by the Commissioner of Income Tax, Jammu and Kashmir, Jammu.

Before passing aforementioned order, the Assistant Commissioner had issued a show cause notice to the Petitioner-Authority, *inter alia*, indicating that on the Asset side of the

Balance Sheet of the petitioner-Authority, it had been shown that the work in respect of Division nos-1 and 2 amounting to Rs.65,03,39,219/- was in progress, but neither the nature of the Asset had been explained nor had it been shown as to how this asset had been brought up. The sources of the funds utilized for the construction of the asset, too, had not been disclosed by the Authority. The notice further indicated that on the asset side of the Balance Sheet, the Petitioner-Authority had shown total Fixed Asset of the value of Rs.11,29,30,536/- on which the depreciation had been claimed at Rs.40,64,004/-, but as per the Schedule of Fixed asset, filed by the Jammu Development Authority on 15-12-2008, through its counsel, the total value had been shown at Rs.108,34,82,381/- which figure would not tally with the figures given in the Balance Sheet. The Balance Sheet and the Schedule of Fixed Asset filed by the petitioner's counsel indicated that none of the plots of land available with the Authority, had been accounted for, in the Balance Sheet.

The accounts furnished by the Petitioner-Authority along with the return of Income Tax, including the Tax Audit Report, had been found incomplete and unreliable by the Assistant Commissioner of Income Tax which, according to him, had disabled determination of the correct taxable income/loss of the Jammu Development Authority for the accounting year 2006-2007. The Authority had been further informed, by the show cause notice aforementioned, that it had failed to justify as to how had it shown Bahu Plaza Shopping Complex in the Schedule of its

Fixed Assets whereas premium was shown to have been received for it from different persons to whom it had been leased out as per the lease Agreements executed with the Authority.

It was, *inter alia*, on the basis of the aforementioned factors that the Assistant Commissioner of Income tax had come to the conclusion that the accounts furnished by the Petitioner-Authority along with the Income Tax Return, were incomplete, complex and unreliable disabling determination of the true and correct income of the Petitioner-Authority, which warranted Special Audit of the Authority's accounts by a Chartered Accountant as defined in explanation below *Sub Section 2 of Section 288* of the Income Tax Act.

The Jammu Development Authority filed its response to the show cause notice on 22.12.2008 which having not been accepted, resulted in issuance of order dated 26.12.2008 by the Assistant Commissioner of Income Tax, Jammu, aggrieved whereby the Petitioner-Authority has approached this Court by this writ petition seeking quashing of the Assistant Commissioner's order.

It is, *inter alia*, pleaded by the Petitioner-Authority that the Assistant Commissioner has erred in issuing the impugned order without considering the Petitioner-Authority's response to the show cause notice, in the spirit contemplated by law, thereby violating the principles of natural justice in directing Special Audit of its accounts, contrary to the spirit of the first Proviso to Section 142 (2A) of the Act. The issuance of show cause notice by the

Assistant Commissioner was a mere formality to facilitate the Special Audit of the petitioner's accounts which was not otherwise warranted in the facts and circumstances of the case when nothing had been hidden by the Authority in its accounts and the Balance Sheets made available by the Authority to the Assistant Commissioner, says the Petitioner-Authority's learned counsel.

According to the Petitioner-Authority, respondent no.3 had issued the impugned order showing extra ordinary hurry to proceed under section 142 (2A) of the Income Tax Act and the Commissioner of Income Tax, too, had approved respondent no. 3's action proceeding in a mechanical fashion.

Petitioner's learned counsel Mr. Adarsh Sharma, reiterating the petitioner's pleas in the writ petition, referred to, *Sahara India Vs Commissioner of Income Tax and another, reported as 2008 (216) CTR (SC 303)* to urge that respondent no.3 had acted illegally in passing the impugned order without affording requisite hearing to the Authority which the law contemplates because Special Audit of accounts of an assessee entails civil consequences. Consideration of the case and Authority's objections to the action proposed under section 142 (2A) of the Income Tax Act, 1961, has been criticized as subjective, whereas, as contemplated by law, it was required to be objective.

Appearing for the Revenue, Mr. D.S.Thakur, produced the records indicating as to how the Commissioner of Income Tax, Jammu and Kashmir, Jammu, and Assistant Commissioner of Income Tax, had considered the case and objections filed by the

Petitioner-Authority to the show cause notice, before directing Special Audit of the Petitioner-Authority's accounts. Learned counsel submitted that the respondents' had, on finding the Petitioner-Authority's accounts incomplete, complex and unreliable, taken objective and conscious decision, to direct Special Audit of petitioner's accounts and that the order impugned in the writ petition did not suffer from any illegality or irregularity.

I have considered the submissions of learned counsel for the parties, perused the records produced by the counsel for the Revenue containing the show cause notice, the reply of the Petitioner-Authority and the orders passed by respondent nos. 2 & 3.

Perusal of the show cause notice issued by respondent no.2 and the reply filed by the petitioner through Sudhir K. Arora and Company, its Chartered Accountant, reveals that the Petitioner-Authority had not furnished requisite reply to the queries raised in the show cause notice.

Whereas paragraph No. 2.2 of the show cause notice has not at all been adverted to by the Petitioner-Authority in its response to the show cause notice, the Authority's response, to other paragraphs of the show cause notice, too, appears to be evasive, not dealing with the issues raised in the notice.

The decision of Assistant Commissioner to direct Special Audit, has been considered, in detail, by the Commissioner of Income Tax before coming to the conclusion that the petitioner Assessee had failed to explain the complexity in the accounts

pointed out by the Assessing Officer in the show cause notice. It has further been found by the Commissioner that the issues raised by the Assessee Officer in respect of the accounts, Assets and income accrued thereon and the issue of recognition of income as per the accounting standards, prescribed by the Institution of Chartered Accountants of India, had remained unanswered by the Petitioner-Authority in its response to the show cause notice.

After going through the records of the respondents, I do not find any merit in petitioner's counsel's contention that the respondent had not considered Authority's response to the show cause notice and had hurriedly issued the order directing the Special Audit.

Both the officers of Income Tax Department have, taken an objective decision as warranted under law after considering petitioner's response to the show cause notice.

Petitioner has not placed any material on records, on the basis whereof the decision taken by the respondents may be faulted.

No ground for interference in the order impugned in the writ petition has, thus, been made out by the Petitioner-Authority.

Found to be without merit, this writ petition is, accordingly, dismissed.

(J. P. Singh)
Judge

Jammu
05.06.2009
Sunita

