

**(2013) 04 AHC CK 0286****Allahabad High Court****Case No:** Misc. Bench No. 3279 of 2013

U.P. Projects Corporation Ltd.

APPELLANT

Vs

CIT

RESPONDENT

**Date of Decision:** April 22, 2013**Hon'ble Judges:** Saeed-uz-zaman Siddiqi, J; Rajiv Sharma, J**Bench:** Division Bench**Final Decision:** Dismissed**Judgement**

1. Heard Mr. Pradeep Agrawal, learned Counsel for the petitioner and Mr. D.D. Chopra, learned Counsel for the opposite parties.
2. The petitioner is a company with the entire shares owned by the Central Government and the State of Uttar Pradesh registered under the Companies Act, 1956 and the administrative and financial control vests with the State of UP. and the Board of Directors consists all the Government Officers. The books of account of the Corporation are audited by the Statutory Auditors duly appointed by the Comptroller & Auditor General of India as well as Accountant General, U.P. All legal compliance are done and the accounts were audited by the Chartered Accountant for the financial year ending on 31.3.2010 relevant to the Assessment Year 2010-11 and on the basis of the said audited accounts, the report was submitted as per provisions of the income tax Act.
3. Admittedly, the petitioner is filing its Income Tax Returns regularly from the time it came into existence in 1976 alongwith the audited balance sheet, profit and loss account and the audit report. The assessment proceedings upto the assessment year 2008-09 were completed and account books were duly accepted but while going through the account books as well as the reports of the Comptroller & Auditor General of India and the Accountant General and the auditors report submitted by Asija & Associates, during the assessment proceedings for the Assessment Year 2010-11, the Assessment Officer noticed certain discrepancies which are complex in nature and not understandable and as such, the Assessing Authority after obtaining

necessary approval from the competent authority, issued a show cause notice u/s 142(2)(A) for appointment of a Special Auditor for examining the books of account to which reply was tendered, but the reply so tendered was not found satisfactory and as such, orders were passed for appointment of a Special Auditor to audit the accounts books of the petitioner by M/s. Mahendra Kumar Satya & Company, Chartered Accountants, 4th Floor, Sri Ram Tower, Ashok marg, Lucknow, which in turn is directed to furnish a report of such audit in the prescribed form duly signed and verified by the Chartered Accountant. Being aggrieved by the said order, the instant writ petition has been filed.

4. Learned Counsel for the petitioner submits that the accounts which are maintained are not complex or understandable. There is no basis for justification to get the same audited in exercise of the powers conferred u/s 142(2A) of the Act. Next he submitted that the impugned order dated 28.3.2013 passed under the aforesaid provisions of the Act is totally non-application of mind, in view of the fact the formation of opinion of the Assessing Authority must be objective and not subjective satisfaction.

5. In support of his submissions, Mr. Pradeep Agarwal has relied upon the cases of Delhi Development Authority and Another Vs. UOI and Another, , Rajesh Kumar and Others Vs. D.Commissioner of Income Tax and Others, and Sahara India (Firm), Lucknow Vs. Commissioner of Income Tax, Central-I and Another, .

6. Mr. D.D. Chopra, learned Counsel for the opposite parties submits that the Assessing Authority had examined the account books during the course of examination. It is noticed that the labour charges, which were paid to various agencies, namely, Gupta Construction Works, Siddharth Enterprises, Lucky Construction, Arti Construction Co. and Alok Singh Bhaduria were only handmade vouchers, without supporting bills. He has drawn our attention towards the discrepancies pointed out by the Comptroller and Auditor General of India, which read as under:-

1. Balance Sheet-Reserves & Surplus Rs. 68.02 Crore Reference is invited to para No. 3.3 of the CAGs Audit Report No. 4 Commercial for the year ended 31-3-2010, Government of Uttar Pradesh. It was pointed out therein that during the years 2005-06 to 2007-08, the Company treated an amount of Rs. 23.68 crore being interest on Governments funds as the Corporations income in violation of Government Orders.

In compliance to the above paragraph, the Company changed its accounting policy from 2009-10 and treated an amount Rs. 29.31 crore of interest earned during 2009-10 on Governments fund as liability.

The Company should have changed its accounting policy from 2005-06. This has resulted in overstatement of reserves and surplus and understatement of current liabilities and provisions by Rs. 23.68 crore. Non-credit of the interest income of

prior years to the Government has impacted the calculation of the net work of the company too leading to over credit of interest income in the current years account also.

## 2. Other Liabilities-Other Liabilities Rs. 80.02 crore

This is understated by Rs. 3.03 crore on account of non-provision of liabilities towards encashment of Earned leave of regular staff at increased rates on account of implementation of recommendations of fifth Pay Commission to its employees with effect from 1-7-2009 as approved by its Board of Directors in its meeting held on 4-7-2010 and paid to the LIC of India on 5-8-2010 under Group Leave Encashment Policy. Since the facts were known to the management before finalization of accounts in June, 2011, provision for this liability should have been made in the books of account as required in the provisions contained in AS-4. This has also resulted into overstatement of profit for the year by Rs. 3.03 crore.

## 3. Sundry Debtors Rs. 7.69 crore

This is overstated by Rs. 41.52 lakh due to non-provision of doubtful debts pertaining to dues outstanding against U.P. Bhumi Sudhar Nigam Ltd. amounting Rs. 41.52 lakh not acknowledged by the latter. This has also resulted in understatement of provision for doubtful debts and overstatement of profits for the year by corresponding amount.

Mr. D.D. Chopra, learned Counsel further submits that the discrepancies pointed out by the Comptroller & Auditor General of India find place in the Directors report. Even the auditors while auditing books reported as under:-

### (c) Non-compliance of Accounting Standards

Non compliance of Accounting Standards is as under

#### AS-7: Accounting For Construction Contracts (revised)

The Corporation is not disclosing the following compliances although required as per the disclosure requirements of the Accounting Standard 7:-

(i) While checking of accounting for different Work in Progress at the close of the year, we have noticed that physical stage and status of work(s) have not been considered at all and the Work in Progress has been accounted for on the basis of financial figures in the books of account i.e. expenditure incurred plus percentage of proportionate profit as compared to total contract value less safety reserves.

7. Therefore, it cannot be said that the accounts are not complex in nature and accordingly, proceedings u/s 142(2A) of the income tax Act have been initiated and finally, the impugned order has been passed for appointment of a Special Auditor. In support of his submissions, he has relied upon the cases of U.P. State Industrial Development Corpn. Ltd. Vs. Chief Commissioner of Income Tax, , Uttarakhand

Welfare Society Vs. Commissioner of Income Tax and Others, and Rajesh Kumar Prop Surya Trading Vs. Dy Commissioner of Income Tax, . Thus, the writ petition is liable to be dismissed.

8. In the instant case, the discrepancies in the account books have already been pointed out by the Comptroller and Auditor General as well as in the Auditors report and further on perusal of the accounts, the Assessing Authority has come to the conclusion that the accounts are complex and difficult to understand. The Assessing Authority before passing the impugned order for appointment of Special Auditor has made genuine attempt to understand the accounts so maintained.

9. In the case of Delhi Development Authority (supra) relied upon by the petitioners Counsel, the Apex Court while dealing with the provisions of section 142(2A) of the Income Tax Act has held that it is not open for the Assessing Authority for referring the matter to the Special Auditor, where legal issues are involved, as such, nature and character of land, payments received and the treatment of the payments receipts or expenditure in the books for the purpose of taxation. The special auditor cannot go into and examine the legal issue or question regarding the taxability.

10. In Rajesh Kumar (supra), two sets of accounts were maintained by the assessee and it is only on the basis of the aforesaid facts, provisions of section 142(2A) were invoked and as such, the Apex Court has held that merely for maintaining two sets of accounts will not arrive at a conclusion that the accounts so maintained are difficult to understand.

11. In Sahara India (Firm) (supra), the Apex Court held that no notice was issued while referring the matter to the Special Auditor and as such, there is a violation of principle of natural justice.

12. The facts of the aforesaid cases are not applicable in the instant case, insofar as discrepancies in maintaining the accounts have been pointed by the Comptroller & Auditor General of India. Further, the ingredients of section 142(2A) of the Act are that the Assessing Authority must form an opinion with regard to the nature and complexity of the accounts. Therefore, the case laws relied upon by the petitioners counsel are not applicable in the instant case.

13. With regard to the satisfaction of the Assessing Authority, while referring the matter u/s 142(2A) of the Act, it is not only the books of account, but even by other documents which are available during the course of an assessment and at any stage subsequent thereto may become available to the assessing officer. To give a narrow meaning to the expression accounts so as to confine it to the books of account would amount to giving an interpretation which would completely defeat the very object of the section.

14. Further, it is settled principle of law that while exercising its jurisdiction under Article 226 of the Constitution of India, the High Court does not sit as a Court of

appeal and a patent illegality or lack of inherent jurisdiction in passing the impugned action/letter would be a limited ground for invoking the jurisdiction. In view of these facts, the impugned order does not suffer from illegality or infirmity.

Accordingly, the writ petition is dismissed.