

HIGH COURT OF DELHI**Bench: Justice Rajiv Shakdher and Justice Girish Kathpalia****Date of Decision: 11 December 2023****ITA 455/2022**

P.R. COMMISSIONER OF
INCOME TAX CENTRAL-02 Appellant

versus

B.L. KASHYAP AND SONS LTD. Respondent

ITA 465/2022**ITA 466/2022****ITA 469/2022**

PRINCIPAL COMMISSIONER OF
INCOME TAX, CENTRAL CIRCLE-02Appellant

versus

M/S B.L. KASHYAP AND SONS LTD. Respondent

ITA 470/2022

PRINCIPAL COMMISSIONER
OF INCOME TAX, CENTRAL CIRCLE-17Appellant

Versus

M/S B.L. KASHYAP AND SONS LTD. Respondent

Legislation:

Section 44AB, 142(2C), 142(2A), 136 of the Income Tax Act,
1961

Chartered Accountants Act, 1949

Subject:

Income Tax Appeals - Assailing the common order passed by the
Income Tax Appellate Tribunal for various Assessment Years -
Interpretation of the powers of the Assessing Officer to extend
time for audit reports and the role of the Commissioner of Income
Tax in the process.

Headnotes:

Income Tax Appeals - Assailing the common order passed by the Income Tax Appellate Tribunal for various Assessment Years - Substantial questions of law framed for consideration - Whether Assessing Officer granted extension of time under Section 142(2C) of the Income Tax Act, 1961? - Whether the power of extension of time can be exercised by an authority superior to the Assessing Officer? - Whether the act of the Assessing Officer is in conformity with the intent and purpose of the Act? - Decision in ITAs 526/2023 and 568/2023 answered in favor of the respondent/assessee, holding that the power to extend the timeframe solely rests with the Assessing Officer and cannot be delegated to the Commissioner of Income Tax (CIT) - Appeal disposed of in favor of the assessee. [Para 1-7]

Representing Advocates:

Mr. Sanjeev Menon (Standing Counsel) for the appellant/revenue
Mr. Rohit Jain, Mr. Abhishek Singhvi, Mr. Deepesh Jain, and Mr. Aniket D. Agrawal (Advocates) for the respondent/assessee

RAJIV SHAKDHER, J.:

1. Via the above-captioned appeals, the appellant/revenue seeks to assail the common order dated 30.09.2020 [in short, “impugned order”] passed by the Income Tax Appellate Tribunal [in short, “Tribunal”]. These appeals concern the following Assessment Years (AYs):

ITA No.	AY
ITA 465/2022	2005-06
ITA 466/2022	2004-05
ITA 455/2022	2006-07
ITA 469/2022	2007-08
ITA 470/2022	2008-09

2. ITA 455/2022 was admitted on 16.11.2022, while ITAs 465/2022, 466/2022, 469/2022 and 470/2022 were admitted on 21.11.2022. The following substantial questions of law were framed for consideration by this Court in all five appeals:

“(A) Whether, in the present case, the Assessing Officer has granted extension of time under the proviso to Section 142(2C) of the Income Tax Act, 1961 (The Act)?”

“(B) Whether the power of extension of time under the proviso to Section 142(2C) of [the] Act is procedural/administrative in nature and can be exercised by an authority superior to the Assessing Officer?”

(C) *Whether without prejudice to the above, in light of [the] provision of Section 292B of the Act, can the act of the Assessing Officer not be said to be in substance and effect in conformity with or according to the intent and purpose of the Act, and hence valid and sustainable in law?"*

3. It is relevant to note at this stage that the Tribunal, *via* the order impugned, disposed of not only the appeals filed by the appellant/revenue *vis-à-vis* the five A.Y.s referred to hereinabove [i.e., A.Y.s 2004-05 and 2008-09], but also dealt with appeals concerning A.Y.s 2002-03 and 2003-04. The decision concerning these A.Y.s, i.e., AY 2002-03 and 2003-04, is not assailed before us.

4. Besides this, *via* a separate order dated 03.06.2020, the Tribunal has dealt with the issues which arise for consideration in the instant appeal, *albeit* concerning a group company, namely, Soul Space Projects Ltd [in short, "SSPL"].

4.1 The order of the Tribunal concerning SSPL has been challenged *via* ITAs 526/2023 and 568/2023. These appeals were admitted on 14.09.2023 and 09.10.2023, respectively, when the following substantial question of law was framed for consideration by this Court:
"(i) Whether the extension given to the Chartered Accountant appointed under the provisions of Section 142(2A) of the Income Tax Act, 1961 [in short, "Act"] for submission of the audit report was in consonance with the proviso appended to Section 142(2C) of the Act?"

4.2 *Via* order dated 11.07.2023, we *inter alia* noted the following:

"The moot question which arises for consideration, both in ITA 455/2022 and the above-captioned appeals is: whether the Commissioner of Income Tax (GIT) could have extended the time for submission of audit report. The proviso to Section 142(20) of the Income Tax Act, 1961 [in short, "the Act"] refers to the Assessing Officer (AO)."

4.3 As is evident, the three questions of law framed in the instant appeals veer around the issue captured at the proceedings held on 11.07.2023.

5. Thus, having regard to the aforesaid, counsel for the parties agreed that the decision the Court would take *vis-à-vis* the appeals *qua* SSPL, concerning the question of law framed, would also apply to appeals filed by the appellant/revenue in matters concerning BLK.

6. The relevant parts of the judgment dated 11.12.2023 rendered in ITA 526/2023 and 568/2023 is set forth hereafter:

“16. Therefore, we are required to construe based on the construction of the provisions at hand, i.e., sub-section (2A), (2C) and the proviso appended to Section 142(2C), whether the power conferred on the AO can be exercised by an authority other than the AO. The answer to this poser, in our opinion, lies in ascertaining the authority in which the legislature has invested statutory discretion. As long as the authority retains the power to exercise the discretion vested in it by the statute, no fault can be found if it employs ministerial means in effectuating the exercise of discretionary power by the authority in which such power is reposed. In sum, the discretionary power invested in the specified authority should be exercised by that authority alone and none else, even if it causes administrative inconvenience, except in those cases where it is reasonably inferred to be a delegable power. [See

Administrative Law (10th Edition) H.W.R. Wade & C.F. Farsyth, Page 259-260.]

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20. ...since the legislature vested the discretion to extend the timeframe solely in the AO, he could not have abdicated that function and confined his role to only making a recommendation to the CIT. The CIT had no role in extending the timeframe as the AO was in seisin of the assessment proceedings.

*21. As has been correctly submitted on behalf of the respondent/assessee, the decision taken to get an audit conducted under Section 142(2A) of the Act is a step in the process of assessment proceedings and, therefore, is clearly not an administrative power; as the appointment of a special auditor entails civil consequences. In this context, the following observations made in **Rajesh Kumar’s** case are extracted hereafter: “24. If an assessee files a return the same is not presumed to be incorrect. When the assessing officer, however, intends to pass an order of assessment, he may take recourse to such steps including the one of asking the assessee to disclose documents which are in his power or possession. He may also ask third parties to produce documents. [Section 136](#) of the Act by reason of a legal fiction makes an assessment proceeding, a judicial proceeding. The assessment proceeding, therefore, is a part of judicial process. When a statutory power is exercised by the assessing authority in exercise of its judicial function which is detrimental to the assessee, the same is not and cannot be administrative in nature. It *stricto sensu* is also not quasi judicial. By way of example, although it may not be very apposite, we may state that orders passed under Order XII of the Code of Civil Procedure by a court cannot be held to be administrative in nature. They are judicial orders and subject to the order which may be passed by higher courts in regard thereto. Indisputably, the prejudice of the assessee, if an order is passed under [Section 142\(2A\)](#) of the Act, is apparent on the face of the statutory provision. He has to undergo the process of further accounting despite the fact that his accounts have been audited by a qualified auditor in terms of [Section 44AB](#) of the Act. An auditor is a professional person. He has to function independently. He is not an employee of the assessee. In case of a misconduct, he may*

become liable to be proceeded against by a statutory authority under the [Chartered Accountants Act, 1949](#).”

22. We may note that the decision relied upon on behalf of the appellant/revenue in the matter of **Yum Restaurant** has been disapproved in **Rajesh Kumar’s** case. Furthermore, the judgment in **Rajesh Kumar’s** case has been reaffirmed by the Supreme Court in the **Sahara India Firm** case [See para 20], with some moderation with regard to the Court’s exposition concerning the scope and impact of Section 136 of the Act.

23. Notwithstanding the observation made in this behalf, the Court in **Sahara India** has emphasized that because there are civil consequences, the distinction between quasi-judicial and administrative functions is obliterated. The following observations bear this out:

“22. ... It is the civil consequence which obliterates the distinction between quasi judicial and administrative function. Moreover, with the growth of the administrative law, the old distinction between a judicial act and an administrative act has withered away. Therefore, it hardly needs reiteration that even a purely administrative order which entails civil consequences, must be consistent with the rules of natural justice. (Also see: *Mrs. Maneka Gandhi Vs. Union of India & Anr.* and *S.L. Kapoor Vs. Jagmohan & Ors.* . As already noted above, the expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non pecuniary damages. Anything which affects a citizen in his civil life comes under its wide umbrella. Accordingly, we reject the argument and hold that since an order under [Section 142 \(2A\)](#) does entail civil consequences, the rule *audi alteram partem* is required to be observed.”

24. Given that the initial exercise of the power has been explicated as one that is not administrative, the CIT(A) could not have extended the time based on the recommendation of the AO. However, the enunciation of this legal principle does not derogate from our observation above that since the discretionary power was vested in the AO (which was non-delegable), it could not have been exercised by the CIT, irrespective of the nature of the power.

25. Thus, for the preceding reasons, the question of law, as framed, is answered against the revenue and in favour of the assessee. The appeal is disposed of in the aforesaid terms.”

7. Accordingly, for the reasons recorded in the judgment rendered in ITAs 526/2023 and 568/2023, the questions of law, as framed, are answered against the appellant/revenue and in favour of the respondent/assessee. The appeals are disposed of, in the aforesaid terms.

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