

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2023
(Arising out of SLP(Civil) No. 1904 of 2022)

RAJIV GANDHI PROUDYOGIKI APPELLANT
VISHWAVIDYALAYA

VERSUS

UNION OF INDIA AND OTHERS RESPONDENTS

O R D E R

Leave granted.

The learned Additional Solicitor General, who appears on behalf of the respondents, waives service of notice and the right to file reply.

The appellant-assessee, Rajiv Gandhi Proudtyogiki Vishwavidyalaya, which is a university set up by the State of Madhya Pradesh, has filed the present appeal taking exception to the order dated 11.11.2021 passed by the High Court of Madhya Pradesh at Jabalpur, whereby the Writ Petition No. 22483/2021 filed by them challenging the notice issued by the chartered accountant for undertaking special audit for the assessment year 2018-19 under Section 142(2A) of the Income Tax Act, 1961 ('1961 Act') has been rejected.

It is the case of the appellant that they were never served with any order under Section 142(2A) of the 1961 Act. This fact, however, was overlooked by the High Court on the ground that the

order need not be passed, and only hearing is required. We do not agree with the said reasoning.

During the course of hearing before us, the learned Additional Solicitor General accepts that the order under Section 142(2A) of the 1961 Act was never communicated or even uploaded on the portal. He, however, submits that the written order was placed in the order sheet file.

Be that as it may, the order is required to be communicated to the appellant-assessee, so as to know the reasons, and, if required, the assessee can choose to exercise the option to challenge the order. This is fundamental.

However, it is stated before us that assessment order has not been passed and has become barred by time. There is ambiguity whether the special audit has been filed before the assessing officer. Even if filed, the special audit report would be of no avail, as no assessment order can be now passed.

In the aforesaid factual background, we dispose of the present appeal with a direction that the purported order dated 19.04.2021, directing special audit under Section 142(2A) of the 1961 Act will not be given effect to and will be treated as not passed, as it was never communicated to the appellant-assessee. Further, with the consent of the learned counsel for the appellant-assessee, we extend the time for passing the assessment order till 31.12.2023.

If the assessing officer desires special audit under Section 142(2A) of the 1961 Act, he can either rely upon the earlier notice or issue a fresh notice. In case the assessing officer relies upon the earlier notice, it will be so indicated and communicated to the

appellant-assessee. In either case, hearing as per law will be given. Thereafter an order under Section 142(2A) of the 1961 Act if passed, will be communicated to the appellant-assessee, who will be at liberty to challenge the order in accordance with law. If any special audit is directed or ordered to be conducted, the date 31.12.2023 will get extended as per the provisions of the 1961 Act.

The appeal is allowed and disposed of in the above terms, with no order as to costs.

Pending application(s), if any, shall stand disposed of.

..... J.
(SANJIV KHANNA)

..... J.
(M.M.SUNDRESH)

NEW DELHI;
JANUARY 13, 2023.
ps

ITEM NO.20

COURT NO.7

SECTION IV-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 1904/2022

(Arising out of impugned final judgment and order dated 11-11-2021 in WP No. 22483/2021 passed by the High Court Of M.P Principal Seat At Jabalpur)

RAJIV GANDHI PROUDYOGIKI VISHWAVIDYALAYA

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IA No.17807/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.17809/2022-EXEMPTION FROM FILING O.T. and IA No.19341/2022-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No.17808/2022-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ ANNEXURES)

Date : 13-01-2023 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE M.M. SUNDRESH

For Petitioner(s)

Mr. Sumit Nema, Sr. Adv.

Mr. Harsh Parashar, AOR

Mr. Piyush Parashar, Adv.

Mr. Gagan Tiwari, Adv.

Mr. Chanakya Sharma, Adv.

Ms. Chetna Bhargava, Adv.

For Respondent(s)

Mr. Balbir Singh, A.S.G.

Mr. Arijit Prasad, Sr. Adv.

Mr. Rajan Kumar Choursia, Adv.

Mrs. Alka Agarwal, Adv.

Ms. Monica Benjamin, Adv.

Mr. Raj Bahadur Yadav, AOR

UPON hearing the counsel, the Court made the following
O R D E R

Leave granted.

The appeal is allowed and disposed of in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(POOJA SHARMA)
COURT MASTER (SH)

(R.S. NARAYANAN)
COURT MASTER (NSH)

(Signed order is placed on the file.)