

Swadeshi Polytex Ltd.

Vs

Income-Tax Officer, Ghaziabad.

(V. D. Tulzapurkar, V. B. Eradi, D. P. Modan JJ)

28.07.1983

### JUDGMENT

We have heard counsel on both sides. Having regard to the facts and circumstances obtaining in this case, it is difficult to sustain the judgment and order of the High Court, particularly when the High Court has observed that "on the record as it stands it is not possible to hold that there was any collusion" between the appellant and the chartered accountant nominated by the Commissioner of Income-tax. The High Court has further observed that, though nothing of the kind could be suggested, "it is obvious that the reason set forward by the chartered accountant (pendency of Company Petition No. 21 of 1976\*, under s. 397, etc.) for declining to audit the petitioner's (appellant's) accounts is patently frivolous". But if, for a frivolous reason, the chartered accountant declines to undertake the audit of the appellant's accounts, obviously the appellant could not be held responsible. There is no default no failure to comply with the direction issued under s. 142(2A) on the part of the appellant-company so as to attract the provisions of s. 144(b) of the I. T. Act, 1961. In all the circumstances of the case, we set aside the impugned judgment of the High Court as well as the "best judgment" assessment made by the then ITO, Special Ward, Ghaziabad, for the assessment year 1974-75.

However, we feel that a fresh audit of the appellant-company's accounts for the concerned year under s. 142(2A) of the I. T. Act, 1961, should be undertaken before the final assessment is made. Since the Company Petition No. 21 of 1976\*, under s. 397, etc., of the Companies Act, 1956, is now disposed of, we direct the concerned Commissioner of Income-tax to nominate within one month from today either the same chartered accountant or any other to undertake such audit and upon receipt of the auditor's report, the ITO will proceed to make the assessment in accordance with law after hearing the assessee and finalise the same within six months from the date of report by him.

The counsel for the appellant-company has given an undertaking to this court which is hereby recorded, that no question of bar of limitation will be raised by the assessee in respect of the fresh assessment to be made as above and we have passed our order on the basis of the undertaking given by the counsel for the appellant-company.

No order as to costs throughout.

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