

\$~17

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgement delivered on: 28th February, 2017*

+ **W.P.(C) No.12305/2015**

RAKESH RAJ AND ASSOCIATES Petitioner
Through: Dr. Rakesh Gupta, Mr. Somit Agarwal
and Ms. Monika Ghai, Advocates.

Versus

COMMISSIONER OF INCOME TAX,
CENTRAL-II, & ANR. Respondents
Through: Mr. Ashok K. Manchanda and
Mr. Raghvendra K. Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral):-

1. This petition under Article 226 of the Constitution of India seeks quashing/modification of an order dated 07.11.2014 passed by the respondent No.1/Commissioner of Income Tax, Central-II under Section 142(2D) of the Income Tax Act, 1961 (hereinafter to be referred as 'the Act') read with Rule 14B of the eponymous Rules of 1962.

2. The petitioner was engaged by the respondents to conduct a special audit for seven years i.e. Assessment Years (AY) 2005-06 to 2011-12 of the auditee company/ M/s Micromax Informatics Limited. Its report was submitted in three volumes and an addition of over ₹720 crores was made to the returns of the auditee/ assessee. It is not in dispute that the report was termed as 'very good' by the Assessing Officer (AO).

3. For their professional services, the petitioner submitted a bill to the respondents detailing 1078 hours as having been spent by its team at the client's place i.e. the auditee/ M/s Micromax Informatics Limited. Additionally, 237 hours were billed for time spent by the audit team at the petitioner's office. The attendance sheets of the audit team specifying the number of hours spent, duly counter-signed by the Chief Finance Officer of the auditee were submitted in terms of the Notification No.20/2008 dated 05.02.2008, which prescribes the guidelines for the purposes of determining expenses for audit under Rule 14B of the Income Tax Rules, 1962. A total bill for ₹1,10,81,505/- inclusive of service tax of ₹12,19,005/- was raised. This amount was not paid since the AO was of the view that the total of 1315 man hours multiplied by the maximum prescribed average rate of ₹7,500/- per hour was not justified. He reasoned that all the members of the team not being qualified personnel, some being semi qualified personnel, the billing could not have been at the maximum prescribed rate. Furthermore, he was of the view that time must have been spent on lunch, refreshments etc, which should have been proportionately discounted from the bill. Accordingly, 85% of the billed hours were considered by him as reasonable. Resultantly, 709 hours were allowed and computed at an average rate of ₹4,000/- per hour. An order for payment of ₹28,36,000/- plus service tax as applicable was passed in favour of the petitioner by the Commissioner of Income Tax. The petitioners have disputed the computation and consequential order. However, pending the adjudication of their dispute, they had agreed to accept the aforesaid amount without prejudice to their rights and contentions.

4. The petitioners contend that insofar as 1078 man hours were certified by the clients/auditee, there was no plausible reason for respondent No.1 to restrict it to only 709 hours. Furthermore, 237 hours were spent at the office of the petitioner in analysing, compiling and preparing the three voluminous report (compiled in three volumes). The petitioner contends that spending 9 to 10 hours on an average basis is not extraordinary and clubbing all the billed hours to be payable at an average rate of ₹4,000/- is unreasonable and unjustified. The petitioner relies upon an order dated 27.07.2016 passed in its favour apropos its special audit of M/s.Naftogaz India Pvt. Ltd. under Section 142(2D) of the Act., wherein remuneration was claimed for 268 hours at ₹6,000/- per hour but 205.65 hours were accepted by the Revenue at an average rate of ₹5,000/- per hour.

5. The relevant portion of the impugned order dated 07.11.2014 read as follows:-

“4. Special Audit has been conducted under the guidance of Sh. Dinesh Aggarwal & Sh. Neeraj Arora partners in the firm and experience of 27 years & 5 years respectively and assisted by Sh. Kuldeep Singh, CA, Sh. Abhishek Singhla, CA with a combined experience of 3 years only. However, the claim of rate of Rs.7500/- in respect of the assistants and semi qualified assistants appears to be on much higher side. The biodata of the audit team was furnished vide their letter dated 06.01.2014.

5.1 With regard to the rates, the A.O. has submitted that "the quality of the audit report in my opinion is "very good. As per provisions of section 142(2D) read with Rule 14B, the remuneration payable to the Auditor shall be Rs.3750/- per hour to Rs. 7500/- per hour. However, considering the quality of report, which is adjudged as

'very good', I am of the considered view that the man hour rate can be estimated at Rs.4,000/- per hour."

5.2 About the number of man hours involved in audit work, the A.O. has submitted that 'from the perusal of bills submitted by the auditor, it has been noticed that auditors have spent 1070 hours in tax payer's premises and 237 hours in their own office. They have not taken into account the time spent on lunches, refreshments etc., which should have been discounted from bill. The bills submitted are on estimated basis only. It is also a fact that special auditing is a team work lead by one of the main partner. Accordingly, I am of the considered view that the man hours for which team was wholly and exclusively working for audit work can reasonably be estimated at 85% of the time spent by the main partner and all other persons are assisting him in completing the audit work. So the estimated time is computed at 709 hours (i.e. 85% of 834 hours.)"

6. The Assessing Officer has also not submitted any basis of estimation of man hours apart from the bills submitted by the Special Auditor which was verified by the assessee company. Separate register regarding the deployment of man power is also not maintained which shows that only one team was doing the special audit and the time keeping cannot be precisely ascertained. The audit also involved common areas of work in respect of various assessment years. The excel sheet shows that 1078 hours were spent in the assessee's company office and 237 hours at the special auditor's office. The average group hours shown per day are 9 to 10 hours which also appears to be on higher side. Hence, in my considered view the man hours are on a much higher side. Accordingly, I am in agreement with A.O. about working of estimation of time for completing the audit work at 709 hours (i.e. 85% of 834 hours)."

6. Having considered the submissions made by the learned counsel for

the parties, the Court is of the view that spending 9 to 10 hours a day for a special audit would include the time spent on basic necessities, food and refreshments etc. Unlike employees, professionals do spend 9 to 10 hours a day on their work, even at odd hours, and attend to their basic necessities in the remaining hours of the day. Exclusion of such necessary recess for consumption of food and refreshment, etc. for a person to render quality work is illogical. In any case, the billing is not for 24 hours a day but for a part thereof. Therefore, to assume that the time billed was not exclusively for the professional work is without basis and untenable. Chartered Accountants are not automatons who, without having access to food or being able to attend to all other necessities, would churn out good quality reports after analysing voluminous records. It is noteworthy that the quality of the report has been assessed as 'very good' by the AO. An addition of over ₹720 crores has been made to the income tax of the auditee. The work was rendered by the petitioner's four partners, Chartered Accountants and other personnel i.e. by qualified assistants and semi-qualified assistants, however, the impugned order questions the billing only on the basis of their experience and number of years in the profession and not on the quality of the work. This reasoning is questionable. Notably, the work experience of the partners ranges from 3 to 27 years while the range permissible billing rate is between ₹3,500/- to ₹7,500/- and the rate of sitting could have been correspondingly adjusted as per their regular sitting hours or accepted degree of competence; instead it has arbitrarily been reduced to an average rate of ₹4,000/- per hour. The disallowance of certain hours based on the assumption that the auditors would have spent some time on lunches, refreshments etc. is erroneous. If such disallowance is permitted then the

corollary argument would be that some members of the audit team or the entire team was not adequately focussed on the special audit. This kind of reasoning assumes thought-control or thought-intensity monitoring. Such nature of control is neither envisaged under the Rules nor is it reasonable. What the Revenue is to assess in such circumstances is whether the special audit report was (i) within time, (ii) of the desired quality (iii) the billing is commensurate to the nature of inquiry and the quantum of the records to be looked into; etc. If the audit report is of good quality and inter alia, authored by a qualified professional having a fair number of years of experience then he/she may well be entitled to ask for the highest prescribed billing rate. The Revenue should have kept in mind the rate of ₹ 5000/- per hour accepted for the petitioner in the special audit for ***M/s.Naftogaz India Pvt. Ltd.*** (*supra*).

7. In the circumstances, the Court is of the view that the bill submitted by the petitioner needs a fresh look. Accordingly, the impugned order dated 07.11.2014 is hereby set aside. The Commissioner of Income Tax (Central-II), Delhi is hereby directed to re-determine the fee payable to the petitioner in light of the above observations and directions.

8. The writ petition is disposed off in the above terms.

NAJMI WAZIRI, J.

S. RAVINDRA BHAT, J.

FEBRUARY 28, 2017/sb