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

\# **CNR No. DLHC010350492007**

\+ W.P.(C) 4297/2007

S.C.SEHGAL .....Petitioner

Through: None.

versus

UOI& ORS. .....Respondents

Through: Mr. Shoumendu Mukherji, SPC with Ms. Megha Sharma, Mr. Aniruddha Ghosh and Ms. Kaveri, Advocates for UOI.
Mr. Ruchir Bhatia, SSC with Mr. Pratyaksh Gupta, Mr. Anant Kann, JSCs and Ms. L. Mahapatra, Advocate.

**CORAM:**
**HON'BLE MR. JUSTICE DINESH MEHTA**
**HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA**

**O R D E R**

**% 31.07.2026**

1. Nobody appears on behalf of the petitioner despite service of the notice of hearing issued vide order dated 25.02.2026.

2. By way of the present writ petition, the petitioner has challenged the order dated 30.03.2006, whereby the Assessing Officer has passed an order to get the petitioner's account audited by appointment of a Special Auditor in exercise of powers under Section 142(2A) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act of 1961').

3. The notices in this case were issued on 30.05.2007, however, without

any stay. Subsequently, on 04.03.2008, a Division Bench of this Court had observed thus:

> *"On 21st August, 2007 a last opportunity was granted to the Respondent to file a counter affidavit.*
>
> *On 16th January, 2008 again a last opportunity was granted to the Respondent to file a counter affidavit.*
>
> *The office report is that counter affidavit has not yet been filed.*
>
> *Learned counsel for the Petitioner says that he has also not received the copy of the counter affidavit.*
>
> *Under the circumstances, we issue Rule D.B.*
>
> ***CM No.8050/2007***
>
> *No reply has been filed to the application for interim relief. Under the circumstances we stay the recovery of the amount of fees of the auditor under Section 142(2A) of the Income Tax Act, 1961 since it is stated that fee of the auditor is more than Rs.20 lacs.*
>
> *We make it clear that the special auditor may recover the amount from the Income Tax Department but whether the amount has to be recovered from the Petitioner or not, will be decided at the time of final hearing of the writ petition.*
>
> *Learned counsel for the Petitioner prays for a stay of recovery of the demand arising out of the assessment order dated 20th November, 2006. It is not clear from the record whether the Petitioner has approached the statutory authorities for any such relief. The Petitioner in this regard may file an appropriate application giving the full facts.*
>
> *CM stands disposed of."*

4. It is, therefore, clear that the audit of the petitioner has been carried out and the petition, for all practical purposes, has been rendered infructuous. So far as the payment of audit fee of Rs. 20 Lacs is concerned, as an interim direction, the Division Bench had directed the Central Government/Income Tax Department to pay the fee, while keeping this issue open to be decided at the time of final hearing. In this regard, we take note of the proviso to

sub-section (2D) of Section 142 of the Act of 1961 which has been inserted with effect from 01.06.2007, according to which the fee of the auditor is required to be borne by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as prescribed by the Government.

5. However, since the auditor in the present case was appointed prior to 01.06.2007, hence, the legal position as to whether the cost would be borne by the petitioner company or the Commissioner of Income Tax requires to be examined.

6. Having regard to the fact that despite service of notice, the assessee has not turned up and keeping in mind the spirit of the amendment brought in the Act of 1961, coupled with the fact that the audit was got done pursuant to the order passed by the Assessing Officer, we hereby close the proceedings, while observing that the cost of audit fee shall be borne by the Union of India.

7. The writ petition, therefore, stands disposed of, accordingly.

**DINESH MEHTA, J.**

**RAJNEESH KUMAR GUPTA, J.**

**JULY 31, 2026/**_MR_