REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 3211 of 2019
(Arising out of SLP (C) No 2810 of 2012)

The Commissioner of Income Tax, New Delhi …Appellant(s)

VERSUS

Ram Kishan Dass …Respondent(s)

WITH

Civil Appeal No(s). 3214, 3212, 3213, 3228, 3230, 3215, 3229, 3216, 3219, 3220, 3217, 3221, 3218, 3222, 3223, 3225, 3226, 3224, 3227 of 2019 @SLP (C) No. 6082, 2808, 2811, 27681, 36495, 6680, 36496, 7573, 8761, 9463, 7660, 9720, 8512, 10191, 10190, 12026, 12027, 11869, 16130 of 2012, Civil Appeal No 2951 of 2012, Civil Appeal Nos.4334, 4599, 5305 of 2017, Civil Appeal Nos.3231, 3232, 3233 of 2019 @ SLP (C) Nos 10248, 10247, 17500 of 2017 and Civil Appeal No 7076 of 2017

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J.

1 Leave granted in the Special Leave Petitions.

2 This batch of appeals involves the interpretation of a cluster of provisions of

the Income Tax Act 1961[1], particularly Section 142(2C). A Division Bench of the Delhi High Court by its judgment dated 27 May 2011 dismissed a batch of appeals filed by the Revenue against an order dated 18 September 2009 of the Income Tax Appellate Tribunal[2]. The Tribunal came to the conclusion that prior to the insertion of the expression "*suo motu"* with effect from 1 April 2008 in Section 142(2C), the assessing officer had no jurisdiction to extend time for the submission of the report of an auditor appointed under sub section (2A), of his own accord. As a consequence, it was held that the assessment which was made under Section 153A, in respect of the assessment years in question, was barred by limitation.

3 In the present batch of cases, the submission of the assessees is that the assessing officer had no jurisdiction or authority under Section 142 (2C), as it stood prior to 1 April 2008, to extend time for the submission of the audit report of the auditor appointed under the provisions of sub section (2A). In essence, the submission is that the assessing officer was authorized to extend time (not exceeding 180 days) from the date on which a direction under sub section (2A) was received by the assessee, only on an application made by the assessee and for any good and sufficient reason. If the assessee made no application, the assessing officer would have no jurisdiction – according to the assessees – to extend time.

1 "IT Act 1961"
2 "Tribunal"

4 The Revenue adopted a contrary position, submitting that even before 1 April 2008, the jurisdiction of the assessing officer to extend time for the submission of the audit report was not confined to a situation in which the assessee had made an application for extension. Consequently, the incorporation of a provision for a *suo motu* exercise of power by the assessing officer, with effect from 1 April 2008 by the Finance Act, 2008[3], was only intended to remove an ambiguity and was clarificatory in nature.

5 Section 142(2A) as it stood at the material time, provided as follows:

> "(2A) – If, at any stage of the proceedings before him, the Assessing Officer, having regard to the nature and complexity of the accounts of the assessee and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of the Chief Commissioner of Commissioner, direct the assessee to get the accounts audited by an accountant, as defined in the *Explanation* below sub-section (2) of section 288, nominated by the Chief Commissioner or Commissioner in this behalf and to furnish a report of such audit in the prescribed form - duly signed and verified by such accountant and setting forth such particulars as may prescribed and such other particulars as the Assessing Officer may require:
> **Provided** that the Assessing Officer shall not direct the assessee to get the accounts so audited unless the assessee has been given a reasonable opportunity of being heard."

Sub section (2C) of Section 142 was in the following terms:

> "(2C) Every report under sub-section (2A) shall be furnished by the assessee to the Assessing Officer within such period as may be specified by the Assessing Officer:
> **Provided** that the Assessing Officer may, on an application made in this behalf by the assessee and for any good and sufficient reason, extend the said period by such further period or periods as he thinks fit; so, however, that the aggregate of the period originally fixed and the period or periods so extended shall not, in any case, exceed one hundred and eighty days from the date on which the direction under sub-section (2A) is received by the assessee."

6 Consequent to the Finance Act, sub section (2C) was amended to read as

3 "Finance Act"

follows:

> "(2C) Every report under sub-section (2A) shall be furnished by the assessee to the Assessing Officer within such period as may be specified by the Assessing Officer:
>
> **Provided** that the – Assessing Officer may, suo motu, or on an application made in this behalf by the assessee and for any good and sufficient reason, extend the said period by such further period or periods as he thinks fit; so, however, that the aggregate of the period originally fixed and the period or periods so extended shall not, in any case, exceed one hundred and eighty days from the date on which the direction under sub-section (2A) is received by the assessee."

7 Section 153B prescribes time limits for the completion of assessments under Section 153A. Explanation (ii), as it stood at the material time, provided that in computing the period of limitation for the purposes of the Section, "the period commencing from the day on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of Section 142 and ending on the day on which the assesse is required to furnish a report of such audit under that sub-section" shall be excluded. While issuing a direction under sub section (2A) of Section 142, the assessing officer was vested with the authority to require the assessee to furnish a report of the audit in the prescribed form, signed and verified by the accountant, and setting forth such particulars as may be prescribed and as may be required by him. The substantive part of sub section (2C) mandates that the report under sub section (2A) shall be furnished by the assessee to the assessing officer within the period that is specified by the assessing officer under the proviso, as it stood prior to its amendment by the Finance Act. The assessing officer was further empowered, on an application made by the assessee and for any good and sufficient reason, to extend the period further, subject to the stipulation that it shall

not exceed an aggregate of 180 days from the date on which the direction under sub section (2A) has been received by the assessee.

8 The crucial words which fall for interpretation are “On an application made in this behalf by the assessee and for any good and sufficient reason…”

9 Simply stated, the contention of the assessees is that the above words indicate that the assessing officer may extend the period, which has been specified under the substantive part of sub section (2C), only on an application made by the assessee and for good and sufficient reason. Contrariwise, according to the Revenue, the assessing officer, who issues a direction to the assessee under sub section (2A) to get his accounts audited, is vested with the authority to specify the period for the submission of the report, and within the overall limit of 180 days it is open to the assessing officer to extend the time which has been fixed in the first instance. The Revenue posits that the authority conferred upon the assessing officer to extend time, on an application made by the assessee, does not take away the authority of the assessing officer, who has prescribed the time for the submission of the report in the first instance, to extend time without an application for extension being made by the assessee, subject to the overall ceiling of 180 days. In the submission of the Revenue, the expression “and for any good and sufficient reason” must be construed logically to mean “or for any good and sufficient reason”.

10 The submission which has been urged on behalf of the assessees is sought to be buttressed by adverting to the legislative intent behind the insertion of the term “*suo motu”* in the provisions of Section 142(2C) by the Finance Act. Circular No

1/2009 dated 27 March 2009 contains the following explanation for the amendments made to Section 142(2C):

> "**27. Granting of power to the Assessing Officer to extend the time for completion of special audit under sub-section (2A) of section 142**
>
> 27.1 Sub-sections (2A) to (2D) of section 142 deal with power of Assessing Officer to order a special audit. Such power is required to be exercised by the Assessing Officer having regard to the nature and complexity of the accounts of the assessee and the interest of the revenue.
>
> 27.2 Sub-section (2C) of the said section specifies the period within which the audit reports is to be furnished. The proviso to said sub-section empowers the Assessing Officer to extend this period of furnishing of audit report. Further, it is also provided that the aggregate of the originally fixed period and the period(s) so extended shall not exceed 180 days from the date of issuance of direction of special audit. Further, such extension can be made only when an application is made in this behalf by the assessee and there are good and sufficient reasons for such extension.
>
> 27.3 With a view to rationalise the said proviso so as to also allow the Assessing Officer to extend this period of furnishing of audit report *suo motu,* the said proviso has been amended. Hence, while the Assessing Officer shall continue to have power to grant extension on an application made in this behalf by the assessee and when there are good and sufficient reasons for such extension, he can also grant such extension on his own.
>
> 27.4 *Applicability* – This amendment has been made applicable with effect from 1-4-2008. Hence, from this date and onwards, the Assessing Officer shall also have power to extend the period of furnishing of audit report *suo motu.*"

11 The Notes on clauses to the Finance Bill, 2008 contain the following explanation:

> "Clause 28 seeks to amend section 142 of the Income-tax Act, which relates to enquiry before assessment.
>
> Sub-sections (2A) to (2D) of the said section deal with power of Assessing Officer to order special audit, where the nature and complexity of the accounts requires such audit, to seek the assistance of a chartered accountant.
>
> Sub-section (2C) of the said section specifies the period within which the audit report is to be furnished. The Proviso to the said sub-section provides that the Assessing Officer may extend the

said period of furnishing of audit report, on an application made in this behalf, by the assessee and for any good and sufficient reason.

It is proposed to amend the said proviso so as to provide that the Assessing Officer may, suo motu, or on an application made in this behalf by the assessee, and for any good and sufficient reason, extend the said period by such further period or periods as he thinks fit.

This amendment will take effect from 1st April, 2008."

The Memorandum accompanying the Finance Act similarly provides:

"**Granting of power to the Assessing Officer to extend the time for completion of special audit under sub-section (2A) of section 142**

Sub-sections (2A) to (2D) of section 142 deal with power of Assessing Officer to order a special audit. Such power is required to be exercised by the Assessing Officer having regard to the nature and complexity of the accounts of the assessee and the interest of the revenue.

Sub-section (2C) of the said section specifies the period within which the audit report is to be furnished. The proviso to said sub-section empowers the Assessing Officer to extend this period of furnishing of audit report. Further, it is also provided that the aggregate of the originally fixed period and the period(s) so extended shall not exceed 180 days from the date of issuance of direction of special audit. Further, such extension can be made only when an application is made in this behalf by the assessee and there are good and sufficient reasons for such extension.

It is proposed to amend the said proviso so as to also allow the Assessing Officer to extend this period of furnishing of audit report *suo motu*. Hence, while the Assessing Officer shall continue to have power to grant extension on an application made in this behalf by the assessee and when there are good and sufficient reasons for such extension, he can also grant such extension on his own.

The amendment will take effect from 1st April, 2008."

12 In the context of the above background, it has been submitted that the purpose of the amendment was to "<u>also</u> allow the assessing officer to extend the

period for furnishing of an audit report, *suo motu".* The amendment to Section 142(2C) preserves the jurisdiction of the assessing officer to grant an extension on an application made by the assessee and for any good and sufficient reasons. In addition, the amendment allows the assessing officer to extend the period *suo motu.* The amendment having taken effect from 1 April 2008, it has been urged on behalf of the assessees that this power was not vested in the assessing officer prior to that date. Moreover, learned counsel appearing on behalf of the assessee urged that:

(i) The consequence of the exercise of the jurisdiction to extend time for submission of the audit report under the proviso to sub section (2C) is the extension of the period of limitation for the completion of an assessment under Explanation (ii) to Section 153B. This is indicative of the fact that the provision for extension is not procedural in nature;

(ii) The consequence of the failure of the assessee to comply with the direction of submitting the audit report by the date prescribed by the assessing officer is that under Section 144(1)(b), **the assessing officer is empowered to frame a best judgment assessment**;

(iii) The expression in Explanation (ii) to Section 153B "ending on the date on which the assesse is required to furnish a report of such audit" signifies the end of the period of exclusion of time for the framing of an assessment under Section 153B;

(iv) Section 142(2C) must consequently be interpreted in the context of the provisions of Sections 153B and 144; and

(v) The expression '**and'** in the substantive part of Section 142(2A) has been held to be conjunctive by the decision of this Court in **Sahara India (Firm),**

Lucknow v **Commissioner of Income Tax, Central-I**[4]. The expression 'and' in the proviso to sub-section 2C must be given the same meaning.

13 On the other hand, it has been submitted on behalf of the Revenue that:

(i) In construing the proviso to Section 142(2C), it is primarily the language of the statutory provision which must be construed;

(ii) The amendment to sub section (2C) was necessitated by reason of the ambiguity in the provision as it stood prior to 1 April 2008;

(iii) The legislature having stepped in to remove an ambiguity, the amendment brought about by the Finance Act must necessarily be regarded as clarificatory in nature; and

(iv) The amendment is purely procedural and must be retrospective in character.

14 The rival submissions now fall for consideration.

15 Sub-section (2A) of Section 142 empowers the assessing officer to direct the assessee to get the accounts audited by an accountant, on the formation of an opinion that the conditions specified in the provision for recourse to the power are fulfilled. The power to order an audit is vested with the assessing officer. As a necessary incident of this power, sub-section (2C) imposes an obligation on the assessee to furnish the report to the assessing officer within the period which is specified by the assessing officer. The substantive part of sub-section (2C) places an obligation on the assessee to comply with the time schedule which is prescribed by the assessing officer. The overall ceiling of time appears in the proviso to sub-section (2C), which mandates that the aggregate of the time fixed and the extended period cannot exceed 180 days, after which there can be no further extension of

4 (2008) 14 SCC 151

time.

16 The submission of the assessee would have this Court interpret the proviso to mean that the assessing officer can extend the period which was originally fixed only on the request of the assessee. Besides leading to absurd consequences, such a construction of the proviso is patently contrary to its language, purpose and intendment.

17 The proviso was intended to deal with a situation where an assessee, for valid reasons, may not be able to furnish the audit report within the period that was fixed by the assessing officer. The enactment of the proviso was necessary to give a remedy to an assessee who, for genuine reasons, is unable to comply with the direction issued in the first instance by the assessing officer. Hence, the proviso stipulates that for good and sufficient reason, the assessing officer may extend time on an application submitted by the assessee. The “good and sufficient reason” requirement is intended to ensure that an extension of time cannot be demanded by the assessee as a matter of right. Indeed, the use of the expression ‘may’ indicates that whether or not time should be extended is discretionary. The discretion is intimated to the Assessing officer.

18 In determining whether the power to extend time vests in the assessing officer in a situation where the assessee has not made an application for extension, it is well to remember that under the substantive part of sub-section (2C), the assessing officer can fix time for the submission of the audit report. Subject to an overall limit of 180 days, the assessing officer is fully clothed with the authority to determine the

time within which the audit report should be submitted. For instance, the assessing officer may in a given case consider the grant of 90 days as adequate for the completion of the exercise. Though the assessing officer has the power, in the first instance, to fix an even longer period subject to the overall ceiling of time, she may fix a particular period within the limit. To then postulate that while the assessing officer could in the first instance have fixed a longer time limit but, having fixed a limit of time, is precluded from extending time thereafter would be an absurd course of interpretation. The assessing officer while fixing time in the first instance will do so on an estimate of the reasonable time which is likely to be taken in completing the exercise and submitting an audit report. The exigencies of the situation may however require an extension of time for genuine reasons or, as the statute calls it, “for any good and sufficient reason”.

19 There are two ways of looking at the situation. Firstly, the proviso to sub-section (2C) creates a remedy for an assessee to apply for extension where, for a good and sufficient reason, the audit report could not be submitted. Otherwise, the assessee may face a penalty under Section 271 apart from being subjected to a best judgment assessment under Section 144. By extending time at the behest of the assessee, the assessing officer allows the original order calling for an audit report to be duly implemented. The creation of a remedy under the proviso in favour of the assessee cannot be construed to detract from the authority which vests in the assessing officer, who has specified the time limit for the submission of an audit report in the first instance, to extend time without an application by the assessee. To hold otherwise, and to construe the proviso to sub-section (2C) as foreclosing the

authority of the assessing officer to extend time without a request by the assessee, would lead to an absurd consequence. The assessee would then be in control of whether or not to seek an extension of time, where the audit report has not been finalized. Even if the auditor, for genuine reasons (not bearing on the default of the assessee), was unable to comply with the time schedule, having regard to the nature or complexity of the accounts, the assessee would then have a sole and unrestricted power to determine whether an extension should be sought. Not seeking an extension would in effect defeat the underlying purpose and object of directing the assessee to obtain a report of an auditor under sub-section (2A). The legislature could not have intended this consequence. An interpretation which would defeat the purpose underlying sub-section (2A) must be avoided. The assessing officer who has fixed the time in the first instance must necessarily, as an incident of the authority to fix time, be entitled to extend time without an application by the assessee. While extending time, the assessing officer will be subject to the overall ceiling of time fixed under the proviso to sub section 2C.

20 Secondly, the alternate construction of the proviso is that the expression "and for any good and sufficient reason" should be read to mean "or for any good and sufficient reason". As a matter of statutory interpretation, it is well settled that the expression "and" can in a given context be read as "or" (see in this context **Ishwar Singh Bindra** v **State of UP**[5]). This submission was opposed on behalf of the assessees by urging that in the context of sub-section (2A), it has been held by this Court in **Sahara India (Firm), Lucknow** v **CIT** (supra) that the word "and" is used in

5 (1969) 1 SCR 219 = AIR 1968 SC 1450

the conjunctive sense. Undoubtedly the expression “and” in sub-section (2A) has been held to the conjunctive, while delineating the circumstances on the basis of which an opinion can be arrived at by the assessing officer. This would not necessarily furnish an index to how the expression “and” in the proviso to sub-section (2C) should be construed. The interpretation of the expression must be based on the context in which it is used. In the proviso to sub-section (2C), the expression “and” is used in connection with the grant of an extension of time and not in the context of the formation of an opinion for ordering a special audit. The power is of a procedural nature.

21 The learned counsel for the assessees sought to urge that the legislative history surrounding the amendment to the proviso to sub-section (2C) by the Finance Act would indicate that the amendment was intended to be prospective with effect from 1 April 2008 and, that prior to this date, the assessing officer had no jurisdiction to grant an extension of time, save on the application by the assessee. Circular 1/2009 dated 27 March 2009 indicates that the amendment was brought about “with a view to rationalize the said proviso”. Learned counsel argued that the expression in Circular 1/2009 that the amendment was to also allow the assessing officer to extend the period for furnishing of the audit report *suo motu*, indicates that such a power did not exist prior to the amendment. The submission cannot be accepted. The mere fact that the amendment has been made with effect from 1 April 2008 does not detract from it being clarificatory in nature or that it was designed to obviate an ambiguity. In Justice GP Singh’s **Principles of Statutory Interpretation**[6]

6 11th Edition (2008)

the issue of whether a statutory provision is retrospective has been analysed thus:

> ""The presumption against retrospective operation is not applicable to declaratory statutes. As stated in *Craies* and approved by the Supreme Court: 'For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word "declared" as well as the word "enacted".' But the use of the words 'it is declared' is not conclusive that the Act is declaratory for these words may, at times, be used to introduce new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. **An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act.** It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language 'shall be deemed always to have meant' or 'shall be deemed never to have included' is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect …."
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> (emphasis supplied)

The above extract was cited by this Court in **Commissioner of Income Tax-1, Ahmedabad v Gold Coin Health Food Pvt Ltd**[7]. A Constitution Bench of this Court also cited the above extract with approval in **Commissioner of Income Tax (Central – I)** v **Vatika Township (P) Ltd.**[8].

22 The Notes on Clauses as well as the Memorandum to the Finance Act do not

7 2008 (9) SCC 622
8 [2014] 31 ITR 466 (SC); 2015 1 SCC 1

indicate a contrary hypothesis. The reason for the introduction of the amendment arose because of the element of ambiguity inherent in the erstwhile position as it stood before 1 April 2008. The ambiguity was precisely on the question as to whether the assessing officer was precluded from granting an extension of time of his own accord merely because the assessee was permitted to apply for an extension. Since the purpose of the amendment was to remove this ambiguity, we are clearly of the view that by the Finance Act, Parliament essentially clarified the position as it existed prior to the amendment.

23 Moreover, there exists a presumption of retrospective application in regard to amendments which are of a procedural nature. This position was stated in **Maxwell on The Interpretation of Statutes**[9]:

> "The general principle, however, seems to be that alterations in procedure are retrospective, unless there be some good reason against it."

In **Commissioner of Income Tax (Central – I)** v **Vatika Township (P) Ltd.** (supra), this Court held thus:

> "30. We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different**. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators' object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective…**

9 11th Edition, Sweet and Maxwell (1962) at pg 217

> 31… Thus, the rule against retrospective operation is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by outweighing factors."
>
> (emphasis supplied)

24 We find no substance in the submission urged on behalf of the assessees that to adopt an interpretation which we have placed on the provisions of Section 142(2C) would enable the assessing officer to extend the period of limitation for making an assessment under Section 153B. Explanation (iii) to Section 153B(1), as it stood at the material time, provided for the exclusion of the period commencing from the date on which the assessing officer had directed the assessee to get his accounts audited under sub-section (2A) of Section 142 and ending on the day on which the assesee is required to furnish a report under that sub-section. The day on which the assessee is required to furnish a report of the audit under sub-section (2A) marks the culmination of the period of exclusion for the purpose of limitation. Where the assessing officer had extended the time, the period, commencing from the date on which the audit was ordered and ending with the date on which the assessee is required to furnish a report, would be excluded in computing the period of limitation for framing the assessment under Section 153B. The principle governing the exclusion of time remains the same. The act on which the exclusion culminates is the date which the assessing officer fixes originally, or on extension for submission of the report.

25 The issue as to whether the amendment which has been brought about by the legislature is intended to be clarificatory or to remove an ambiguity in the law must depend upon the context. The Court would have due regard to (i) the general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what power that the legislature contemplated (See **Zile Singh** v **State of Haryana**[10]). The decision in **Sedco Forex International Drill Inc.** v **Commissioner of Income Tax**[11] on which learned counsel for the assesses relied involved a substitution of the Explanation to Section 9(1)(ii) of the IT Act, 1961 with effect from 1 April 2000. A two Judge Bench of this Court held that given the legislative history of Section 9(1)(ii), it can only be assumed that it was deliberately introduced with effect from 1 April 2000 and was therefore intended to be prospective. This was also so construed by the CBDT, and in the explanatory notes to the provisions of the Finance Act, 1999. As we have indicated, interpretation is a matter of determining the path on the basis of statutory context and legislative history. In taking the view that we have, we have also taken note of the fact that the same view was adopted by several High Courts. Among them are (i) the Punjab and Haryana High Court in **Jagatjit Sugar Mills Co Ltd** v **Commissioner of Income Tax**[12]; (ii) the Kerala High Court in **Commissioner of Income Tax, Cochin** v **Popular Automobiles**[13]; and (iii) the Allahabad High Court in **Ghaziabad**

10 (2004) 8 SCC 1
11 [2005] 279 ITR 310 (SC); (2005) 12 SCC 717
12 (1994) 74 Taxman 8 (Pun.&Har.); [1994] 210 ITR 468
13 (2011) 333 ITR 308

Development Authority v **Commissioner of Income Tax, Ghaziabad (UP)**[14]. The decision of the Kerala High Court in **Popular** Automobiles (supra) is the subject matter of Civil Appeal No 2951 of 2012 in these proceedings.

26 For the reasons we have adduced, we have come to the conclusion that the provisions of Section 142(2C) of the Income Tax Act 1961, as they stood prior to the amendment which was enacted with effect from 1 April 2008 by the Finance Act, 2008 did not preclude the exercise of jurisdiction and authority by the assessing officer to extend time for the submission of the audit report directed under sub-section (2A), without an application by the assessee. We hold and declare that the amendment was intended to remove an ambiguity and is clarificatory in nature. As a consequence of our decision, we specifically overrule the judgment of a Division Bench of the Delhi High Court in **Commissioner of Income Tax** v **Bishan Swaroop Ram Kishan Agro Pvt. Ltd.**[15] dated 27 May 2011.

27 Accordingly, Civil Appeals @ SLP (C) Nos 6082, 7573, 8761 and C.A. No. 2951 of 2012 are restored to the file of the Commissioner of Income Tax (Appeals) for decision on merits. Civil Appeals @ SLP(C) Nos 2808, 2811, 36496, 6680, 36495, 11869, 12026, 12027, 10191, 10190, 9720, 8512, 2810, 7660, 9463, 16130, 27681 of 2012; Civil Appeal Nos 4599, 4334, 7076 of 2017; Civil Appeals @ SLP(C) Nos 17500, 10248, 10247 of 2017 and C.A. No. 5305 of 2017 are restored to the file of the Income Tax Appellate Tribunal for decision on merits.

14 (2011) 12 Taxman.com 334 (Allahabad); 2011 SCC On Line All 1151
15 [2011] 203 TAXMAN 326 (Delhi) – ITA No. 1775/2010 - 2011 SCC Online Del 2463

28 There shall be no order as to costs.

.....J
[Dr Dhananjaya Y Chandrachud]

.....J
[Hemant Gupta]

New Delhi;
March 26, 2019