IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 12656 of 2014

With

SPECIAL CIVIL APPLICATION NO. 12571 of 2014

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS.JUSTICE HARSHA DEVANI

and

HONOURABLE MS JUSTICE SONIA GOKANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ALL GUJARAT FEDERATION OF TAX CONSULTANTS....Petitioner(s)

Versus

CENTRAL BOARD OF DIRECT TAXES....Respondent(s)

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Appearance:

MR SN SOPARKAR, SR. ADVOCATE with MR MANISH K KAJI, ADVOCATE for the Petitioner

MR.PARTH CONTRACTOR, ADVOCATE for the Petitioner
MR MR BHATT, SR. ADVOCATE with MRS. MAUNA BHATT with MR VIJAY PATEL for the Respondent
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CORAM: **HONOURABLE MS.JUSTICE HARSHA DEVANI**
and
HONOURABLE MS JUSTICE SONIA GOKANI

Date : 22/09/2014

ORAL JUDGMENT
(PER : HONOURABLE MS JUSTICE SONIA GOKANI)

1. Both the petitions raise identical questions of law and facts and therefore, are being disposed of with this common judgment.

2. Rule. Mrs. Mauna Bhatt, learned senior standing counsel waives service of notice of rule for and on behalf of the respondent.

3. Considering the urgency of the issue raised in both these petitions, we have heard both the sides for the final disposal of the petitions and factual details for the purpose of adjudication mentioned in Special Civil Application No.12656 of 2014 are being regarded.

4. The petitioner is a trust formed and registered in accordance with the provisions of the Bombay Public Trust Act, 1950 and its members are various professionals from Gujarat engaged in the field of practicing taxation. One of the objectives of the trust is to represent the issues faced by the members before the concerned authorities and seek the

resolution thereof. The respondent is the Central Board of Direct Taxes (hereinafter referred to as “the CBDT”), which is responsible for the enforcement of the provisions of the Income Tax Act, 1961 and the Rules framed being the Income Tax Rules, 1962 (hereinafter referred to as “the Act” and “the Rules).

5. The dispute revolves around non-extension of the period of filing of the Income Tax Return (hereinafter referred to as “the ITR”) beyond the period of 30th September, 2014 while exercising the powers conferred under section 119 of the Act by the respondent CBDT while extending such period for the purpose of furnishing the Tax Audit Report (hereinafter referred to as “the TAR”) to be filed under section 44AB of the Act to 30th November, 2014.

6. A return of income is required to be furnished on or before the due date prescribed under the provision of law by all those whom these provisions are applicable.

7. Requirement of compulsory audit of accounts of previous year for certain class of assessees by obtaining or furnishing Tax Audit Reports came to be introduced from the year 1985. This was to act as preliminary screening by proper presentation of accounts for better administration of tax law. Such report is to be filed either before the filing of income tax return or along with the same as section 44AB of the Act provides that the specified date for getting the books of accounts audited and for obtaining and furnishing the audit report in the prescribed form in relation to the accounts of the assessees of the previous year relevant to the assessment year is the due date for furnishing the return of income under sub-section (1) of Section 139 of the Act.

8. In the year 2013, filing of such Tax Audit Report was

made electronically with the technological advancement.

9. The respondent is averred to have made random and frequent alterations and modifications during the year for 12 times nearly in the utilities which are essential for e-filing of the tax audit reports. Such report is mandatorily required to be filed by the assessees in accordance with section 44AB read with section 6G of the Rules. This rule provides for filling up of Forms No.3CA, 3CB and 3CD in case of different assessees.

9(i) It emerges from the pleading that vide Notification No.33 of 2014 dated 25th July, 2014 the respondent overhauled the Forms No.3CA, 3CB and 3CD and such forms subsequently have been made far more comprehensive, making it more onerous for the Tax Consultants / Chartered Accountants to verify and provide the details in relation to the assessees. It is also further averred that the respondents, pursuant to the amendment in the Forms No.3CA,3CB and 3CD, failed to make available the amendment in the utility software until 21st August, 2014, thereby creating a 'Black out' of a period for almost a month making it impossible to effectuate the tax return and filing TAR electronically for this entire period. Consequently this chaos and confusion led to making of various representations to the respondent.

9(ii) Somewhat detailed reference of such representation may be needed at this stage wherein, it is urged inter alia that from the assessment year 2013-2014 onwards vide notification dated 1st May, 2013 utility software for e-filing of the tax audit report was introduced in the month of July, 2013. Such utility underwent changes for nearly 12 times on account of several representations made by the professionals and the assessees. Apart from other issues raised in this representation, it was

predominantly emphasized *inter alia* that with the advent of new utility, the new form of 3CD included very minute and additional details and major shift is made in giving enhanced responsibilities to the Tax professionals. It is also averred that it would become extremely difficult and prejudicial to the professionals as well as the assessees, and therefore, it would be desirable to postpone the use of new utility for the next assessment year by allowing sufficient time for understanding the requirements demanded for.

10. It appears that pursuant to such representations the CBDT, in exercise of powers conferred by section 119 of the Act, extended the due date for obtaining and furnishing the report of audit under section 44AB of the Act for the assessment year 2014-15, in case of those assessees who are not required to furnish the report under section 92E of the Act from 30th day of September, 2014 to 30th day of November, 2014 with a clarification that the tax audit report under section 44AB of the Act filed during the period from 1st April, 2014 to 24th July, 2014 in the pre-revised formats shall be treated as a valid TAR furnished under section 44AB of the Act.

11. It is the principal grievance of the petitioners herein that vide the notification dated 20th August,2014, the time for filing TAR is extended to 30th November, 2014 but correspondingly non-extension of the due date for filing ITR has led to the situation where such extension has virtually resulted into not allowing the actual benefits to flow. Thus, the present action of the respondent of extending time of filing of TAR without extending the period of ITR is averred to be causing enormous hardship, giving rise to the cause of filing these petitions.

11 (i) Accordingly, in both the petitions, the prayers sought for are as follows:-

> "a. that this Hon'ble Court may be pleased to issue a writ of mandamus, or any other appropriate writ, order or direction, directing that the respondents hence-forth, make any alterations in Forms and Utilities or changes in tax compliance requirements, applicable from the A.Y. Subsequent to the A.Y. In which such alterations are introduced;
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> b. that this Hon'ble Court may be pleased to issue a writ of certiorari,or any other appropriate writ, order or direction holding the impugned Notification as being illegal, inasmuch as it promotes the filing of ITR without the mandatorily required TAR;
>
> c. that the Hon'ble Court may be pleased to issue a writ of mandamus, or any other appropriate writ, order or direction, directing the Respondent, in the typical set of facts, to extend the due-date for filing the ITR to 30.11.2014, i.e. the due-date for filing of the TAR, provided by the impugned Notification;
>
> d. that in the event where this Hon'ble Court is not inclined to grant the reliefs as prayed for in paragraph (c) above, the Hon'ble Court may be pleased to issue a writ of mandamus, or any other appropriate writ, order or direction, directing the Respondent, in the typical set of facts, to extend the due-date of filing the ITR, at least by the number of days for which a "black-out" prevailed;
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> e. that this Hon'ble Court may be pleased to grant interim/ ad-interim reliefs in terms of prayer clause above;
>
> f. for costs of this petition and orders thereon; and
>
> g. for such further and other reliefs, as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case."

12. We have heard learned advocate Mr. Parth Contractor in Special Civil Application No.12571 of 2014, who has made his

submissions extensively and strenuously by meticulously emphasizing on various provisions of law. He urged forcefully that this non-extension of the period for filing of ITR has caused serious disparity between different assesses. The same has resulted into not only very genuine hardship to the tax payers, but also, created genuine difficulties on the part of the professionals, some of whom also fall in this bracket of assesses. He also has urged that every assessee will be subjected to undergo the inexplicable hardship by putting the cart before the horse. It was also pointed out from various provisions of the law that far greater responsibility, now in the changed circumstances is levied on the professionals which will be difficult to be met with, unless the period is correspondingly extended. It is urged that the representations made subsequent to such notification issued under section 119 dated 20th August, 2014 has not been answered. He further urged that it is extremely important that ITR and TAR go hand in hand and It is inconceivable that one can be separated from the other and therefore also, it was quite legitimate to expect that with the extension of due date for furnishing TAR, extension of due date in filing return of income would follow the suit.

13. Mr. S. N. Soparkar, learned Senior Advocate appearing with the learned advocate Mr. Manish Kaji for and on behalf of the petitioner All Gujarat Federation of Tax Consultants has emphasized the consequences that would follow on account of delay in filing the return of income on account of non-extension of the period. It is urged strenuously by the learned counsel that the need for extension had happened because of the issue which had cropped up on account of the change in utility software midway the process. He urged that it was expected of the CBDT to act more pragmatically, and therefore, any

request on the part of the professionals to extend the period of filing of TAR would also amount to seeking extension for the purpose of filing of the return (ITR). The action on the part of the authority of non-extension of due date for filing return of income is absolutely illogical and unpalatable, learned counsel added. According to him, some of the serious fall out of such action are that (I) no revised return under sections 139(4) and (5) would be permissible, if there is a delay in filing the return of income, (ii) carried forward losses would also not be permissible, (iii) deduction under Chapter VIA of the Act would also not be available (iv) the availability of benefits under sections 10A(8), 10AA and 10B of the Act also would be lost and (v) it would be difficult to avail the benefit under section 115GB(iv) made under the provisions.

13.1 It is further urged by the learned senior counsel that theoretically furnishing of the TAR and the ITR may not have been provided simultaneously in wake of such extension, but, for all practical purposes, it would be simply impossible for the professionals to act and the assessees to file the return of income if such dates is not made harmonious. There are intricate issues to be examined at the level of professionals so as to ensure that the correct income is revealed and proper details are presented which are faultless and again, correct figures for the purpose of assessing the taxable income would be sine qua non. If the returns are filed without the benefit of the TAR, multiplicity of proceedings only are being invited. Learned counsel also distinguished between the audit report and tax audit report to make good his point that based on audit report alone, filing up tax return may be difficult.

14. Per contra, Mr. M. R. Bhatt, learned senior counsel

appearing with Mrs. Mauna Bhatt initially had sought for the adjournment on the ground that there was no instruction available from the CBDT. Considering the urgency of the matter, subsequently, the communication received by the learned counsel from the CBDT in the form of comments offered by such authority in writ petition No.5990 of 2014 in case of ***Mahesh Kumar & Company Vs. Union of India and anr*** before the Delhi High Court have been pressed into service for the purpose of consideration in the present petition. These comments are treated as the response of the respondent wherein it has contended inter alia that by virtue of the Finance Act, 2007, sections 139C and 139D have been inserted which empower the CBDT to make rule for facilitating annexure-less return by dispensing with the requirement of filing any documents including audit report which is required to be filed along with return under any of the provisions of the Act and Rule 12(2) of the Rules provides that the return of income shall not be accompanied by any report of audit, which is required to be adopted under any of the provisions of the Act. The only requirement is to file the TAR electronically as per *proviso* to rule 12(2) of the Rules. Further, such e-filing portal of the department provides facility for filing of income-tax return without the TAR. Therefore, there is no requirement of filing of the TAR along with the return as claimed by the petitioner. It is the say of the respondent that there was delay in rolling out the utility for filing the TAR in the revised format for assessment year 2014-15. Due date in respect of those assessees, who were not required to furnish the report under section 92E of the Act, has already been extended from 30th September, 2014 to 30th November,2014 *vide* Order No.133/24/2014-TPL dated 20th August, 2014 with a

clarification that those who had already filed Tax Audit Reports from 1st April, 2014 to 24th July, 2014 in the pre-revised formats, shall be treated as valid tax audit report. It is further contended that whatever information tax payer furnishes in the ITR of the assessment year, the chartered accountant is required to verify the same for the purpose of tax audit of that assessment year is not correct as the format of ITR does not require certification and lodging of information furnished in the return of income. It is further contended that due date for furnishing the ITR was extended on the basis of the petition of the Institute of Chartered Accountants of India where the Institute had requested to extension of due date of furnishing the TAR.

14.1 Moreover, it is the say of the respondent that the filing of the return of income and computation of correct taxable income is primary responsibility of the assessee and as per the provision of section 140A of the Act, it is for the tax payer to verify the correctness of the tax of the return of the income. The auditor is not, in any manner, responsible for deduction of tax. He is supposed to verify the report of the ITR and the amount of allowance/deduction for which the assessee is responsible. He, being an independent professional, shall have to compute taxable income of the assessee accordingly. It is the stand of the department that not in all tax audit cases furnishing of details of the tax auditor is made mandatory. Where before furnishing of the income tax return, the tax audit report has been completed, such information is required to be submitted. It is also the say of the department that process of revision of the TAR was initiated as early as in January, 2014 but the same was rolled out only by July, 2014 due to delay in receiving suggestions from various stake holders and the extra

time taken by the law Ministry in vetting and also in getting Hindi translation done. Again, due to lengthy forms, such delay is caused. For the aforesaid reasons, it is the stand of the respondent that the request of the petitioner to extend the due date of income tax return has no basis emphasizing on the impact of extension of such due date of tax collection. It is urged that once such date for payment of self-assessment tax is linked with the due date of furnishing return of income on extension of date of return of income, date of self-assessment tax would get automatically extended and hence, payment of self-assessment tax to be made by the tax payer in the month of September is likely to be deferred till November, 2014. Such amount approximately runs into Rs.11,089 crores as that was the collection during the month of September, 2013 the previous year.

14.1 Mr. Bhatt, learned Senior Advocate for the respondent has urged to construe these comments offered by the CBDT as his submissions and he further added that a huge amount of collection of self-assessment of tax is likely to suffer. The Court may not interfere in the present petition. It is further urged that in the event of tax audit reports being availed subsequent to the filing of the income tax return and there are no objections to revise the return, the law provides for sufficient mechanism for such filing of the revised return, if otherwise the ITR is furnished within the stipulated time period. He also further urged that available with the assessee is the mechanism of rectification as well, and therefore, the aspect of non-extension of period of due date for the purpose of the ITR along with TAR may not be unnecessarily blown out of proportion. He urged the Court, therefore, not to direct, in any

manner, the exercise of powers to the CBDT in the given circumstances.

15. Responding to the issue of tax collection in the rejoinder, learned senior advocate Mr. Soparkar has pointed out that in the budget of 2014-15, the gross tax receipt estimated is of Rs.13,64,524/- . Out of the said yearly receipt estimated by the Revenue possible loss of interest is Rs.110 crores per month and, if the extension is provided for the period of two months, it may come to Rs. 220 crores maximum, which is less than 0.8% of the total receipt. He, therefore, urged that putting these figures in absolute term is only the exercise to mislead the Court. Not only the amount is insignificant as compared to the hardship to be faced by the citizens of this country, but furthermore, the remedies are also available if such loss is not to be faced by the Revenue. It is submitted fairly that if extension of due date if is granted, qualifying that the said grant would not result into interest under the provision of section 234A not to be charged, the apprehension of the Revenue could be taken care of.

16. On thus, hearing both the sides and on considering the pleadings as also the provisions of the law, at the outset, it is required to be reiterated that the cause has arisen on account of the exercise of powers conferred upon the CBDT under section 119 of the Act, whereby it extended the due date for obtaining and furnishing the TAR under section 44AB of the Act for the assessment year 2014-15 to 30th November, 2014 without corresponding extension of the due date for furnishing of ITR.

17. As could be noted, section 44AB was introduced from 1st

April, 1985 which provides for compulsory audit of accounts of certain class of persons carrying on business or profession.

17.1 Reproduction of this provision would be profitable for the purpose of grasping the contention of making the due date for both the purposes the same.

17.2 Section 44AB is reproduced as under:-

> "**Audit of accounts of certain persons carrying on business or profession.**
>
> 44AB. Every person.-
>
> (a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year; or
>
> (b) carrying on profession shall, if his gross receipts in profession exceeds twenty-five lakh rupees in any previous year; or
>
> (c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or
>
> (d) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AD and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his business and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed:

Provided that this section shall not apply to the person, who derives income of the nature referred to in section 44B or section 44BBA, on and from the 1st day of April, 1985 or, as the case may be, the date on which the relevant section came into force, whichever is later:

Provided further that in a case where such person is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this section if such person gets the accounts of such business or profession audited under such law before the specified date and furnishes by that date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under this section/

Explanation.- For the purposes of this section,-

(i) "accountant" shall have the same meaning as in the Explanation below sub-section(2) of section 288;

(ii) "specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means the due date for furnishing the return of income under sub-section(1) of section 139."

17.3 The explanation to 44AB provides that '*specified date*' in relation to the accounts of assesses relevant to the assessment year means '*the due date*' for furnishing the return of income under sub-section (1) of section 139.The explanation to 44AB provides that 'specified date' in relation to the accounts of assesses relevant to the assessment year means '*the due date*' for furnishing the return of income under sub-section (1) of section 139.

18. This provision provides for the categories of the assessee to get their accounts of the previous years to be audited by the chartered accountants before the specified date and obtaining

and furnishing by that specified date the tax audit report in the prescribed form duly signed and verified by the Chartered Accountants. The person who is carrying on business and his total sales/turnover exceeds Rs. 1 Crore [limit increased from 1.4.2012] or the person is carrying on profession and his gross receipts exceeds Rs. 25 Lacs or the person carrying on business or profession is covered under the provision of Section 44AD, 44AE, 44AF and claims his income from the said business is lower than the deemed profit and gains computed under the relevant section, this provision applies.

19. Section 139(1) prescribes for furnishing of the return of income under chapter XIV of the Act which is meant for procedure for assessment. Section 139 states that every person being the company or being a person other than the company or a firm, if his total total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax shall, on or before the due date, furnish a return of his income or the income of such other person during the previous year, in a prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.

19.1 Explanation (2) provides for the due date, which means 30th day of September of the assessment year.

20. In this connection provisions of sub-section(6) and sub-section 6(A) of section 139 as also sub-section (9) of section 139 would require reproduction and reference:

> " **Report of audit of accounts to be furnished under section 44AB**
>
> (6) The prescribed form of the returns referred to in sub-sections (1) and (3) of this section, and in clause

(i) of sub-section (1) of section 142 shall, in such cases as may be prescribed, require the assessee to furnish the particulars of income exempt from tax, assets of the prescribed nature, value and belonging to him, his bank account and credit card held by him, expenditure exceeding the prescribed limits incurred by him under prescribed heads and such other outgoings as may be prescribed.

(6A) Without prejudice to the provisions of sub-section(6), the prescribed form of the returns referred to in this section, and in clause (i) of sub-section (1) of section 142 shall, in the case of an assessee engaged in any business or profession, also require him to furnish the report of any audit referred to in section 44AB, or, where the report has been furnished prior to the furnishing of the return, a copy of such report together with proof of furnishing the report, the particulars of the location and style of the principal place where he carries on the business or profession and all the branches thereof, the names and addresses of his partners, if any, in such business or profession and, if he is a member of an association or body of individuals, the names of the other members of the association or the body of individuals and the extent of the share of the assessee and the shares of all such partners or the members,as the case may be, in the profits of the business or profession and any branches thereof....

(9) Where the Assessing Officer considers that the return of income furnished by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within the period of fifteen days from the date of such intimation or within such further period which, on an application made in this behalf, the Assessing Officer may, in his discretion, allow; and if the defect is not rectified within the said period of fifteen days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, the return shall be treated as an invalid return and the provisions of this Act shall apply as if the assessee had failed to furnish the return:

Provided that where the assessee rectifies the defect

after the expiry of the said period of fifteen days or the further period allowed, but before the assessment is made, the Assessing Officer may condone the delay and treat the return as a valid return."

21. Sub-sections (1) and (3) of section 139 when read with sub-section (1) of section 142 provides for furnishing particulars of income exempted from tax etc. in the prescribed form of return. Sub-section (6A) to section 139 of the Act in case of the assessee engaged in any business or profession without prejudice to the provisions of sub-section (6) requires the report to be furnished of audit referred to in section 44AB. Where such Tax Audit Report has been furnished prior to the furnishing of the return, a copy of such report to be furnished together with proof of furnishing the report, not to give reference of other and further particular of the location and style of the principal place where the assessee carries on the business or profession etc. Any defective return requires intimation from Assessing Officer and if such rectification is not done it would be treated invalid return.

21.1 At this juncture it is to be noted that with the insertion of sections 139C and 139D by the Finance Act, 2007 with effect from 1st June, 2006, the CBDT has been conferred the powers to dispense with furnishing documents etc. with return. It has also provided for filing of return in electronic form by way of section 139D.

22. Section 139C provides for making rules for a class or classes of persons, who may not be required to furnish documents, statements, receipts, certificates, reports of audit or any other documents, which are otherwise under any other provisions of this Act, except section 139D, are required to be

furnished along with the return and instead, they are to be produced before the Assessing Officer on demand.

23. Reference would also be necessary, at this stage to Rule 12 of the Income Tax Rules:-

> " **Return of income and return of fringe benefits**
> 12.(2)The return of income required to be furnished in Form SAHAJ(ITR-1) or Form No.ITR-2 or Form No.ITR-3 or Form SUGAM (ITR-4S) or Form No.ITR-4 or Form No.ITR-5 or Form No.ITR-6 shall not be accompanied by a statement showing the computation of the tax payable on the basis of the return, or proof of the tax, if any, claimed to have been deducted or collected at source or the advance tax or tax on self-assessment, if any, claimed to have been paid or any document or copy of any account or form or report of audit required to be attached with the return of income under any of the provisions of the Act;
> **Provided** that where any assessee is required to furnish a report of audit under section 44AB, 92E, or 115JB of the Act, he shall furnish the same electronically."

24.1 Rule 12 provides for the assessment procedure under Part III of the Rules. Sub-rule (2) of Rule 12 of the said Rules if is considered, it states that the return of income required to be furnished in Forms Nos. ITR-1,ITR-2,ITR-3,ITR-4,ITR-5 and ITR-6 shall be accompanied by statement showing the computation of tax on the basis of return or proof of tax, or collected at source or the advance tax or tax on self-assessment etc. It also provides for Report of audit required to be attached with the return of income.

24. Proviso to Sub-Rule (2) of Rule 12 of the IT Rules provides that where the assessee is required to furnish a report of audit under sections 44AB, 92E, or 115JB of the Act, the same shall be furnished electronically.

25. Thus, what emerges is that the requirement of filing of

documents, statements, receipts, certificates, reports of audit or any other documents, etc. by virtue of the powers given to the CBDT under section 139C & 139D have been done away with. The return of income is no more to be annexed. The tax audit report also is required to be furnished electronically. Thus what can be deduced from this is that though otherwise the requirement is of furnishing TAR either prior to the filing of ITR or when so done along with ITR have been provided by these provisions, later insertion of provision made the return annexure-less and the rule provides the same to be furnished electronically. There would be thus, no requirement of furnishing these documents, particularly, TAR with ITR.

26. Reference, however, would also be necessary here of Rule 6G prescribing the audit reports to be furnished in Form 3CA and Form 3CB and the particulars are required to be furnished in Form 3CD.

27. Yet another submission pressed into service was that when the income tax return is filed prior to the filing of the TAR, there are certain mandatory fields to be filled-in by the assessee, which require giving all the details of the number of Chartered Accountants, name and membership details, signing the tax audit report etc. This also had been emphasized all along. In the event of the date of TAR extended with the ITR, we are given to understand by the Revenue that the assessee would not be required to fulfill this requirement. In other words, those fields made mandatory in the utility otherwise of course, would be optional this year and hence, that may take care of this apprehension. Although reiteratively, petitioners' counsel made a valid point that whenever under the Income Tax Act the statute has made it mandatory for this report to go hand in hand with the ITR, no relaxation except as provided under

section 119 of the Act is permissible by the act of the Board.

27.1 The aspect of section 271B at this stage requires a brief mention. This provision provides that if there is any failure to get the accounts audited in respect of the previous year or years relevant to the assessment year before the specified date, the same may attract penalty. Of course, with the extension of the period of filing of the tax audit report, there may not arise a question of attraction of provision of sections 271B and Section 273B also states that no penalty shall be levied under section 271B, if there is a reasonable cause for such failure.

27.2 Reference however would also be necessary here of Rule 6G prescribing the audit of reports to be furnished in Form 3CA & Form 3CB and the particulars are required to be furnished in Form 3CD.

> "**Report of audit of accounts to be furnished under section 44AB.**
>
> 6G. (1) The report of audit of the accounts of a person required to be furnished under section 44AB shall,-
>
> (a) in the case of a person who carries on business or profession and who is required by or under any other law to get his accounts audited, be in Form No.3CA;
>
> (b) in the case of a person who carries on business or profession, but not being a person referred to in clause (a), be in Form No.3CB.
>
> (2) The particulars which are required to be furnished under section 44AB shall be in Form No.3CD."

28. Cases of those persons who carried on business or profession and who are required to get his accounts audited by or under any other law, the same has to be in the Form No.3CA, whereas a person who carries on his business or

profession but where his accounts of the business and profession have not been audited earlier, the same has to be in Form No.3CB, whereas, particulars required to be furnished under section 44AB shall be in the Form No. 3CD.

29. While furnishing all the required details under these forms and particularly Form 3CD, enormous details are necessary to be provided with which are cluster of factual details and application of various provisions to them to arrive at correct computation of income. As can be noted from sub-Rule (2) of Rule 12 of the I.T. Rules, Form No. ITR-4 is to be filed by a person being an individual or a Hindu undivided family having income from profession or business. ITR-5 is the form prescribed for AOP and BOI, whereas Form No. ITR-6 would be for the companies other than the companies claiming exemption under section 11.

30. It becomes apparent on examining these forms and formats that such exercise of income computation consists of various intricating details and unless those informations available as a result of tax audit report are utilized by the assessee for the purpose of filing the correct income-tax returns, possibility of mistakes for sure cannot be ruled out. If broadly, the entire requirement of introduction of the Tax Audit Report is viewed from the entire statutory scheme, this being a very complex and highly technical subject, aid of tax professional was deemed desirable for making the administration of the tax law more effective.

31. While dealing with the complexities of the issues, which the assessee is required to deal with, particularly, with regard to the computation of the income, it is required to be noted that the requirement of the tax audit report is made applicable

in case of certain class of assesses where the total turnover or the gross receipt exceeds Rs. 1 crore in the previous year or in case of a person carrying on profession exceeds Rs.25 lakhs in the previous year. Several changes in the tax audit report have been introduced by the Income Tax Rules (the 7th Amendment) 2014, which are applicable for the A.Y. 2014-15 onwards. Forms 3CA, 3CB and 3CD in the amended form require specific observations as also qualification, if any, while furnishing correct audit report which amounts to significant enhancement of responsibility of the Tax Auditors. The details required under Form No. 3CD and those provided under Forms No. ITR-4, ITR-5 and ITR-6 when are taken into account, we are of the opinion that the law may not require the filing of the TAR compulsorily with the ITR and also bringing in by the Rules by virtue of the provisions introduced subsequently making it annexure-less. Yet those complexities and the detailed computation of the income etc would necessitate the aid of the TAR in filing of the income tax return.

31.1 The clarification made by virtue of the Circular No.387, while introducing this requirement as mandatory necessity under section 44AB in the year 1985, needs discussion at this stage.

32. A circular no. 387 issued on 6th July 1984 explains the reason of such introduction. This circular says that the books of account and other records when properly maintained by way of Tax Audit Report, they reflect the correct income of the tax payer and claims for deduction are also correctly made thereby. Such audit would also help in checking fraudulent practice. It can also facilitate the administration of tax laws by a proper presentation of the accounts before the tax authorities and thereby considerably saving the time of the

Assessing Officers in carrying out routine verification, like checking correctness of totals and verifying whether purchases and sales are properly vouched or not. The time of the Assessing Officer thus save could be utilized for attending to more important investigational aspects of the case. It can be seen from this circular that with a laudable objective the introduction of TAR under section 44AB is made.

33. The Revenue itself was convinced that such TAR would facilitate proper maintaining of the books of account, other records and would also curb practices adopted to defraud the Department. Not only would it help the administration of tax laws by proper presentation of the books of account before the tax authorities but, the same would save enormous time and energy of the Tax authorities. In absence of such exercise of Tax Audit Report by the professionals at the level of tax authorities and entire detailed exercise was required to be undertaken in examining the tax , return and verification of the various details, which may be provided by the assesses. We are convinced with the submissions made from the petitioners' side that the Revenue would still want those efforts made by the Tax Audit Consultants to be utilized for the purpose of better administration of the tax laws but while not extending the corresponding date, the assesses would be deprived of the fruits of such efforts of the professionals at least at the stage of filing of the tax returns.

34. We are also not impressed by the stand taken by the Revenue urging *inter alia* that the format of the tax audit report nowhere requires certification of the Tax Consultants or Tax Auditors in relation to the informations to be furnished for which Tax Audit is conducted. And that it is predominantly and essentially the duty of the assessees to furnish all proper and

correct computation of taxable income. Both the filing of the return of income and the computation of correct taxable income being the responsibility of the tax payer, he needs to verify the correctness as per section 140 of the Act and whether such figures represented in the return of income are in any manner, incorrect or not.

35. But, that in no manner would make the Tax Auditors and the Consultants who are professionals any less concerned for correct computation of the income and true presentation of entire material before the Tax authorities. For the benefit of large number of assesses whose interest is one of the objectives of the trust, such a request is since made for the extension of such period, the same has to be construed in that spirit.

35.1 If the return of the income under section 139 is filed on or before the due date, the assessee would get an opportunity to revise the same. It is also true that under section 140, it is the assessee who verifies the correctness of the facts and figures reported in the return of income. But, the categories of assesses who are concerned under this provision, if considered, need for ATR to prepare ITR can hardly be over emphasized.

35.2 Counsel for the petitioners did not pursue this line of argument in this petitions any further and hence, we choose not to further delve into it.

36. We are also concerned with the fact that with the details required in the computation of income and other details and complex working are for all practical purposes, if filled-in, in absence of the availability of TAR, the possibility would be manifold where this non-extension may give rise to multiplicity of proceedings. On making available the TAR subsequent to

the filing of ITR, more and more revised returns, if are filed even though it is provided statutorily, this rise in the proceedings on account of non-extension of the due date cannot be left sight of.

37. We notice that by the Notification No.33 of 2014 dated 25th July, 2014 when the earlier Forms No.3CA, 3CB and 3CD have been overhauled, bringing more comprehensive and onerous forms by changing the new utility, after about a month of complete void. According to the Revenue, the process of revision though was undertaken and initiated by January, 2014 but it could come out with the revised forms on account of delay in revising the suggestions received on consultation and extra time taken by the Law Ministry in deciding as also for vetting and subsequent Hindi translation of the notification as the forms are far more lengthy.

38. We do not have very clear details as to what was the period made available for the receipt of the suggestion and consultation from the stakeholders and what was the extra time consumed by the Law Ministry for the purpose of vetting. However, without going into these details, when it could be noted that this change of utility and non-availability of the new version till 20th August, 2014 is the cause for the issue to have cropped up, the assesses cannot be put to the hardship nor can the professionals be made to rush only because the department chose to change the utility during the mid-year.

39. We also note, at this stage, that the three classes of the assessees, who are required to be taken care of: (1) those assessees who have filed their ITR and TAR prior to July, 2014

as the order under section 119 of Act dated 20th August, 2014 clarified that those who have filed the TAR from 1st April, 2014 to 21st July, 2014 in a pre-revised form, shall be treated as valid TAR under section 44AB of the Act. However, for those assessees whose ITR and TAR were underway and those who have not yet prepared them, it is undisputed that the availability of the time period is reduced remarkably from 180 days to 37 days.

40. Therefore, the scenario which had emerged is that ITR when to be filed without the completion of TAR, we can still hold that it would be a must to fill the ITR taking a TAR as the base for the computation of income which essentially needs to take into account the disallowance, adverse comments made by the Tax Auditors, disallowance, depreciation under various provisions and the verification. The possibility is also rightly ventilated that if occasion arises to revise the return, the cases would be questioned and that may give further rise to the cases of scrutiny assessment.

41. In such circumstances, the impact of any extension of the due date, if at this stage, requires serious consideration as well. According to the Revenue, this would automatically extend the date of filing of the self-assessment, and therefore, the payment of self-assessment tax to be made by the tax payers would be further delayed by the period of two months, which would cause prejudice to the collection of the tax, which in the last year was nearly to the tune of Rs.11,000 crores (rounded off).

42. The submissions of rival sides on this aspect is briefly touched upon on this aspect contending inter alia that for the

assessment year 2014-15 the estimated gross tax yearly receipts of Rs.13,64,524/- is expected by way of self-assessment tax, the amount expected is around 0.8% of the total yearly receipt. However, even if the same is not considered in an absolute term as contended, without much delving into this issue, the said aspect surely cannot be disregarded while considering the plea of extension.

43. We notice that section 140 of the Act provides for self-assessment. This provision provides for self-assessment, where tax is payable on the basis of return to be furnished under section 115WD, section 115WH, section 139, section 142, section 148 and section 153A. Various aspects need to be weighed while paying such tax. The amount of tax already paid under any provision of the Act, or any tax deducted, or collected at source of tax, or deduction claimed under various provisions etc., require to be regarded while paying the same. Again, the assessee is required to pay such tax together with interest payable under any provision of such Act. Even when any default is made or delay is caused in payment of advance tax before furnishing the return, the same shall be accompanied by the proof of payment of such tax and interest. Explanation also provides that where the amount paid by the assessee under this sub-section falls short of the aggregate of the tax and interest as aforesaid, the amount so paid shall first be adjusted towards the interest payable as aforesaid and the balance, if any, shall be adjusted towards interest payable.

44. Sub-section (1A) of section 140A for the purposes of sub-section (1) provides that for the interest payable under section 234A, it is also provided as to in what manner the total income

is to be computed.

45. Sub-section (1B) provides that for the purposes of sub-section(1), interest payable under section 234B shall be computed on an amount equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid falls short of the assessed tax.

46. Reference would be needed of section 234A which provides for interest for defaults in furnishing return of income. It provides that where the return of income for any assessment year under sub-section (1) or sub-section (4) of section 139, or in response to a notice under sub-section (1) of section 142, is furnished after the due date, or is not furnished, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the date immediately following the due date.

47. Explanation-1 provides that in this section “due date” means the date specified in sub-section (1) of section 139 as applicable in the case of the assessee.

48. In other words, any failure or default on the part of the assessee to file the return of income for any assessment year within the stipulated time period, the interest liability would arise on the due date specified in relation to the provision, which also means the date specified in sub-section(1) of section 139, as applicable in the case of the assessee. Considering these provisions in the event of self-assessment, tax to be made payable under section 148, if, is not made and if there is any delay in furnishing the return or any default or

delay in making the payment of advance tax before furnishing of the return, the provision or the liability of the tax to be attracted in case of such default is already provided for under the statute. We are given to understand that in most of the cases, the advance tax might have been paid by now and only in cases of a very few assesses such advance taxes, would not have been paid.

49. Provision of the self-assessment as discussed above requires the assesses to pay the tax and in the event of the return not having been filed, or there is any default in furnishing of such return, the statute has made the provision for the interest liability. While acknowledging the need to preserve the right of the Revenue provided under the statute, it is possible for the Court to accede to the request of the petitioners herein mainly noticing the hardship of the tax-payers so also of the Tax Auditors and Tax Consultants, which surely cannot be ignored.

50. We are also actuated by the fact that the entire situation is arising not on account of any contribution on the part of either the professionals or the assesses leading to such a situation. In the present case, with the advancement of the technology, it is always commendable that the department takes recourse to the technology more and more. With the possible defects having been found in utility software in use in the previous year, the required changes in the clarification or the new format of such utility, if brought to the fore, the same would be desirable. At the same time, the complete black out for nearly a month’s time would not allow accessibility to such utility software to the assessees, which has put them to a great jeopardy.

51. It would not be out of context to mention that this

Court while considering the case of non-liability of the deduction made under the TDS had found various defects in the system of computerization introduced by the Income Tax department.

51.1 It would be apt to reproduce the relevant paragraphs of the judgment of this Court rendered in the case of ***Vaghjibhai S. Bishnoi v. Income Tax Officer and another*** reported in **[2013] 36 taxmann.com 371** (Gujarat), at this stage.

> "14....On the contrary, we are of the firm opinion that computerization in every Department is objected with a view to facilitate easy access to the assessee and make the system more viable and transparent. In the event of any shortcoming of software programme or any genuine mistake, the Department is expected to respond to such inadvertence spontaneously by rectifying the mistake and give corresponding relief to the assessee. Instead of that, even when it is being brought to the notice of the Department by the assessee, by a rectification application and subsequent communication, not only it has chosen not to rectify the mistake, but, the lack of inter departmental coordination has driven the assessee to this Court for getting his legitimate due. This attitude for sure does not find favour with the Court, as more responsive and litigant centric system is expected; particularly in the era of computerization. Tax payers friendly regime is promised in this electronic age. For want of necessary coordination between the two departments, the assessee cannot be expected to be sent from pillar to the post.
>
> 14.1 Thus, from the discussion above, it can be very well said that the respondent no. 2 has failed to perform its duty as provided under section 154 of the Act. When a glaring mistake was pointed out to the authority, it ought to have amended the order of assessment by exercising powers under section 154 of the Act, which in the present case, the authority failed to exercise and consequently, the petitioner was compelled to approach this Court by way of the

present petition.

We could not resist ourselves from taking note of details provided in the official website of Income-tax Department which reveals the extension of computerization in the department so far and their vision for the same in this field. With a view to improve the efficiency and effectiveness of Direct Taxes administration and to create a database on its various aspects, a Comprehensive Computerization programme was approved by the Government in October 1993. In accordance with the programme, computerization was taken up on a three-tier system. In the apex level, a National Computer Centre [NCC] having large computers to maintain data base and to execute processing work of a global nature was envisaged. At the second level, 36 Regional Computer Centres [RCCs] were to be established across the country equipped with large computers to maintain regional databases and to cater to regional processing needs. All the RCCs were to be connected to the National Computerization Centre through high speed data communication lines. At the third level, computers were to be installed in the rooms of all the Assessing Officers and connected with the respective Regional Computer Center for data/information exchange, in a phased manner. Accordingly, in the first phase, Delhi, Mumbai and Chennai City regions were taken up and provided with state of art hardware and software connected with RCC, through inter-city and intra-city linkages. After stabilizing of the computer systems in the 3 RCCs, computerization of 33 other centres covering the rest of the country was taken up in the second phase.

The Director General of Income Tax [Systems], {DIT [S]}, New Delhi was made the main nodal authority for overall planning and implementation of the computerization programme; including procurement of hardware and software and development/installation of application software. In addition, at each RCC, the Chief Commissioner of Income Tax [CCIT] was required to monitor and co-ordinate with the DIT [S]. He would be assisted by CIT [Computer Operations] who would monitor the functioning of the RCC.

> The main objectives of the computerization programme, as approved by the Committee on Non-Plan Expenditure [CNE], were (a) to improve the efficiency and effectiveness of tax administration; (b) to ensure timely availability and utilization of information; (c) to reduce compliance burden on honest tax payers; (d) to enhance equitable treatment of tax payers of income-tax and procedures; (e) to ensure better enforcement of tax laws; (f) to provide management with reliable and accurate information in time so as to assist them in tax planning and legislation and also in decision making; (g) to broaden th tax base; and (h) to keep the cost of administration at an acceptable level over a period of time.
>
> 15.1 Thus, computerization of the Income Tax Department when has undergone the exercise of *a comprehensive business process re-engineering*, it is expected that Departments wish to herald *Tax payers friendly regime* becomes the reality. A *paradigm shift is programmed* as tax payers population has been growing exponentially, ushering all the imperative changes and modernization of administration.
>
> 15.2 If the Centralized Processing Center meant for return processing, accounts, refund, storage of data etc. adds to the difficulties of the Tax payers, due to lack of distribution of work between back office and front office, and that too, after having been pointed out the actual error, a serious re-look is expected."

51.3 One of the main objectives of the computerization programme of IT Department as reflected in the judgment of ***Vaghjibhai S. Bishnoi v. Income Tax Officer and another*** (supra) is to improve the efficiency and effectiveness of the tax administration and to ensure better enforcement of tax laws by ushering tax payer friendly regime. If the very computerization has caused genuine hardship to one and all concerned, CBDT ought to have paid heed to the repeated requests of all

concerned in exercise of its statutory powers.

52. It is necessary to specify at this juncture that the in past three decades from the time the requirement of TAR is made compulsory under section 44AB of the Act, the due date for filing the TAR and ITR has never been in conflict. Very peculiar situation has arisen giving rise to the present petitions and on account of the Revenue having realised the difficulty of all the concerned in complying with the requirement of obtaining or furnishing the TAR on or before due date, has rightly taken recourse of provision of section 119 of the Act to extend the date of furnishing or obtaining the TAR to 30th November, 2014.

53. The CBDT derives its powers under the statute which enjoins upon the Board to issue from time to time such orders, instructions and directions to other income-tax authorities if found expedient and necessary for proper administration of the Act. Without prejudice to the generality of powers provided under sub-section (1) of section 119 of the Act, the CBDT also has specific powers to pass general or special orders in respect of any class or class of cases by way of relaxation of any of the provisions of section, which also includes section 139 of the Act. If the Board is of the opinion that it is necessary in the public interest to so do it. For avoiding the genuine hardship in any case or class of cases, the CBDT if considers desirable and expedient, by general or special order, it can issue such orders, instructions and directions for proper administration of this Act. All such authorities engaged in execution of the Act are expected to follow the same. Any requirement contained in any of the provisions of Chapter IV or Chapter VIA also can be relaxed by the CBDT for avoiding genuine hardship in any case or class of cases by general or special orders. This provision,

therefore, gives very wide powers to the CBDT to pass general or special orders whenever it deems it necessary or expedient to so do it in respect of any class of income or class of cases. It has not only to see the public interest for so doing, but also for avoiding the genuine hardship in any particular case or class of cases, such powers can be exercised.

54. Reverting to the matters on hand, a very peculiar situation has arisen arisen portraying the genuine hardship to the assessee, as also to the tax consultants, by way of representations made to the Board, it would have been desirable and expedient on the part of the CBDT to have considered such request and exercise the powers by way of a relaxation. What all that has been sought is to make the due date for filing the tax return harmonious with the filing of the TAR and without jeopardizing the issue of collection of tax, it was not impossible to exercise such powers of relaxation of provision prescribing extension of the due date.

55. While examining the CBDT's powers exercisable under section 119 of the Act, of course, in some other context, the Apex Court has held and observed thus:

> *“9. What is the status of these circulars? Section 119(1) of the Income-tax Act, 1961 provides that, "The Central Board of Direct Taxes may, from time to time, issue such orders, instructions and directions to other Income-tax authorities as it may deem fit for the proper administration of this Act and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board. Provided that no such orders, instructions or directions shall be issued (a) so as to require any Income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner: or (b) so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions." Under sub-section (2) of*

Section 119 without prejudice to the generality of the Board's power set out in sub-section (1) a specific power is given to the Board for the purpose of proper and efficient management of the work of assessment and collection of revenue to issue from time to time general or special orders in respect of any class of incomes or class of cases setting forth directions or instructions, not being prejudicial to assesses, as the guidelines, principles or procedures to be followed in the work relating to assessment. Such instructions may be by way of relaxation of any of the provisions of the sections specified there or otherwise. The Board thus has power, inter alia, to tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing circulars in exercise of its statutory powers under Section 119 of the Income-tax Act which are binding on the authorities in the administration of the Act. Under Section 119(2)(a) however, the circulars as contemplated therein cannot be adverse to the assessee. Thus, the authority which wields the power for its own advantage under the Act is given the right to forego the advantage when required to wield it in a manner it considers just by relaxing the rigour of the law or in other permissible manners as laid down in Section 119. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases which can be properly categorised as belonging to a class, can thus be given the benefit of relaxation of law by issuing circulars binding on the taxing authorities."

55.1 Thus as held by the Apex Court the powers given to the Board are beneficial in nature to be exercised for proper administration of fiscal law so that undue hardship may not be caused to the taxpayers. The purpose is of just, proper and efficient management of the work of assessment and the public interest.

56. Not that the Revenue is not alive to the vital importance of TAR in filing the ITR and the possible complications and genuine hardship that may arise in future in all those tax returns filed without the aid of TAR, however, non-collection of the tax for a period of two months and possible loss of Rs.220 crore in terms of interest for a period of two months in the event the self-assessed tax not paid, appear clearly as the reasons in the foundation for CBDT to deny such extension. For the purpose of filing ITR and furnishing TAR difference in 'due date' possibly may lead many assesses not to file the ITR without the aid of the TAR and thereby the angle of gaining the interest under the provision of law for such late filing of the returns would not have been missed by the Revenue. The Revenue can surely safeguard the interest of both the collection of tax, as also of possible loss of interest on the tax collected, the Revenue cannot be permitted to take advantage of its own error or delay, by putting forth magnified figures of loss and thereby also possibly in the process gaining interest for late filing of return in complete disregard to requirement of efficient management.

57. In the backdrop of factual matrix discussed hereinabove, the expectations of extension of the date in consonance with the date of filing the TAR is legitimate and justifiable. The Revenue, on one hand, highlighted the object and importance of the TAR as mentioned while discussing the Circular of the year 1984, while not sustaining the request of the stake holders, it cannot be permitted to shield behind the reason of late collection of tax, ignoring all other considerations of vital importance in the process.

58. Consequences that would follow on account of the delay in filing the return of income also are weighing factors for the

Court to consider such request. Being conscious of the fact that the writ of mandamus, which is highly prerogative writ is for the purpose of compelling the authorities of any official duties, officially charged by the law either refuses or fails to perform the same, the writ of mandamus is required to be used for the public purpose,particularly, when the party has not other remedy available. It is essentially designed to promote justice.

59. The Apex Court in the case of ***Secretary, Cannanore District Muslim Educational Association, Karimbam v. State of Kerala and others, reported in (2010) 6 SCC 373***, while emphasizing the importance of writ of mandamus and its applicability held and observed thus :

> *“29. While dismissing the writ petition the Hon'ble High Court with respect, had taken a rather restricted view of the writ of Mandamus. The writ of Mandamus was originally a common law remedy, based on Royal Authority. In England, the writ is widely used in public law to prevent failure of justice in a wide variety of cases. In England this writ was and still remains a prerogative writ. In America it is a writ of right. (Law of Mandamus by S.S. Merrill, Chicago, T.H. Flood and Company, 1892, para 62, page 71).*
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> *30. About this writ, SA de Smith in 'Judicial Review of Administrative Action', 2nd edn., pp 378 and 379 said that this writ was devised to prevent disorder from a failure of justice and defect of police and was used to compel the performance of a specific duty. About this writ in 1762 Lord Mansfield observed that 'within the past century it had been liberally interposed for the benefit of the subject and advancement of justice'.*
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> *31. The exact observations of Lord Mansfield about this writ has been quoted in Wade's 'Administrative Law, Tenth Edition' and those observations are still relevant in understanding the scope of Mandamus.*

Those observations are quoted below :-

"It was introduced, to prevent disorder from a failure of justice, and defect of police. Therefore it ought to be used upon all occasions where the law has established no specific remedy, and where in justice and good Government there ought to be one.....The value of the matter, or the degree of its importance to the public police, is not scrupulously weighed. If there be a right, and no other specific remedy, this should not be denied. Writs of mandamus have been granted, to admit lecturers, clerks, sextons, and scavengers and c., to restore an alderman to precedency, an attorney to practice in an inferior court, and c." (H.W.R. Wade and C.F. Forsyth: Administrative Law, 10th Edition, page 522-23).

32. De Smith in Judicial Review, Sixth Edition has also acknowledged the contribution of Lord Mansfield which led to the development of law on Writ of Mandamus. The speech of Lord Mansfield in R v. Blooer, (1760) 2 Burr, runs as under :

"a prerogative writ flowing from the King himself, sitting in his court, superintending the police and preserving the peace of this country". (See De Smith's Judicial Review 6th Edition, Sweet and Maxwell page 795 para 15- 036.

33. Almost a century ago, Darling J quoted the observations in Rex v. The Justices of Denbighshire, (1803) 4 East, 142, in The King v. The Revising Barrister etc. {(1912) 3 King's Bench 518} which explains the wide sweep of Mandamus. The relevant observations are :
"...Instead of being astute to discover reasons for not applying this great constitutional remedy for error and misgovernment, we think it our duty to be vigilant to apply it in every case to which, by any reasonable construction, it can be made applicable...."

34. At KB page 531 of the report, Channell, J said about Mandamus :

"It is most useful jurisdiction which enables this Court

to set fight mistakes".

35. In Dwarka Nath v. Income Tax Officer, Special Circle, D. Ward, Kanpur and another - AIR 1966 SC 81, a three-Judge Bench of this Court commenting on the High Court's jurisdiction under Article 226 opined that this Article is deliberately couched in comprehensive language so that it confers wide power on High Court to 'reach injustice whenever it is found'. Delivering the judgment Justice Subba Rao (as His Lordship then was) held that the Constitution designedly used such wide language in describing the nature of the power. The learned Judge further held that the High Court can issue writs in the nature of prerogative writs as understood in England; but the learned Judge added that the scope of these writs in India has been widened by the use of the expression "nature".

36. The learned Judge made it very clear that the said expression does not equate the writs that can be issued in India with those in England but only draws an analogy from them. The learned Judge then clarifies the entire position as follows :

"4. ...It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself...."

37. The same view was also expressed subsequently by this Court in J.R. Raghupathy etc. v. State of A.P. and Ors. - AIR 1988 SC 1681. Speaking for the Bench, Justice A.P. Sen, after an exhaustive analysis of the trend of Administrative Law in England, gave His Lordship's opinion in paragraph (29) at page 1697 thus:

"30. Much of the above discussion is of little or

academic interest as the jurisdiction of the High Court to grant an appropriate writ, direction or order under Article 226 of the Constitution is not subject to the archaic constraints on which prerogative writs were issued in England. Most of the cases in which the English courts had earlier enunciated their limited power to pass on the legality of the exercise of the prerogative were decided at a time when the Courts took a generally rather circumscribed view of their ability to review Ministerial statutory discretion. The decision of the House of Lords in Padfield's case (1968 AC 997) marks the emergence of the interventionist judicial attitude that has characterized many recent judgments."

38. In the Constitution Bench judgment of this Court in Life Insurance Corporation of India v. Escorts Limited and others, [(1986) 1 SCC 264] : (AIR 1986 SC 1370), this Court expressed the same opinion that in Constitution and Administrative Law, law in India forged ahead of the law in England (para 101, page 344).

39. This Court has also taken a very broad view of the writ of Mandamus in several decisions. In the case of The Comptroller and Auditor General of India, Gian Prakash, New Delhi and another v. K.S. Jagannathan and another - (AIR 1987 SC 537), a three-Judge Bench of this Court referred to Halsbury's Laws of England, Fourth Edition, Volume I paragraph 89 to illustrate the range of this remedy and quoted with approval the following passage from Halsbury about the efficacy of Mandamus :
"89. Nature of Mandamus:- ... is to remedy defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right, and it may issue in cases where, although there is an alternative legal remedy yet that mode of redress is less convenient beneficial and effectual." (See para 19, page 546 of the report)

In paragraph 20, in the same page of the report, this Court further held :

"20. ...and in a proper case, in order to prevent

injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

40. In a subsequent judgment also in Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust and Ors. v. V.R. Rudani and Ors. - AIR 1989 SC 1607, this Court examined the development of the law of Mandamus and held as under :

"*22. ...mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor De Smith states: "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter common law, custom or even contract.*" *(Judicial Review of Administrative Act 4th Ed. P. 540). We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into water-tight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available 'to reach injustice wherever it is found'. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition.*" *(See page 1613 para 21).”*

60. Keeping in mind the scope of writ jurisdiction as detailed in the decision hereinabove, these petitions deserve consideration. In absence of any remedy available, much less effective to the stakeholders against the non-use of beneficial powers by the Board for the larger cause of justice, exercise of writ jurisdiction to meet the requirements of circumstances has become inevitable.

61. Here, we notice that subsequent to the representation made on 21st August, 2014, the CBDT could have responded to such representation by either acceding or refusing to the request of extending the period of filing of ITR and making it extendable upto 30th November, 2014. Ordinarily, in such circumstances, the Court would direct the authority to consider the representation and pass a specific order. In wake of the constrains of time, as the due date of the filing of the return is expiring on 30th September, 2014 and when the respondent Board has chose not to respond to the same, but, later on by offering the comments before this Court in writing in no uncertain terms, it has termed such a request impermissible and has chosen to refuse the same on the ground that all the grievance made by the petitioners are not sustainable. Therefore, considering the larger cause of public good and keeping in mind the requirement of promotion of justice, we chose to exercise the writ of mandamus directing the CBDT to extend the date of filing of return of income to 30th November, 2014, which is due date for filing of the TAR, as provided in the Notification dated 20th August, 2014.

62. Such extension needs to be granted with the qualification that the same may not result into non-charging of interest under section 234A. Simply put, while extending the period of filing of the tax return and granting benefit of such extension for all other provisions, interest charged under section 234A for late filing of return would be still permitted to be levied, if the Board so choses for the period commencing from 1.10.2014 to the actual date of filing of the return of income. Those tax payers covered under these provisions if choose to pay the amount of tax on or before the 30th September, 2014, no interest in any case would be levied despite their filing of

return after the 30th September, 2014.

63. This may provide requisite safeguard against the possible loss to the Revenue as at the base of its apprehension and denial for invoking the powers was such loss, due to deferred collections.

64. We are not inclined to stay new utility for one year as sufficient measures are already taken by the Board to redress this grievance. However, it needs to be observed at this juncture that any introduction or new utility/software with additional requirement in the middle of the year ordinarily is not desirable. Any change unless inevitable can be planned well in advance, keeping in focus that such comprehensive process re-engineering may not result in undue hardship to the stakeholders for whose benefit the same operates.

65. In the light of the above discussion, these petitions succeed and are, accordingly, allowed. The respondent Board is directed to modify the notification dated 20th August, 2014 issued in exercise of powers under section 119 of the Act by extending the due date for furnishing the return of income to 30th November, 2014. It would, however, be open for the Board to qualify such relaxation by extending the due date for all purposes, except for the purpose of Explanation 1 to section 234A of the Act. Rule is made absolute accordingly, to the aforesaid extent with no order as to costs.

(HARSHA DEVANI, J.)

(MS SONIA GOKANI, J.)

Sudhir*

PER : HARSHA DEVANI, J. :

66. I have had the privilege of going through the well considered judgment delivered by my learned Sister and am in respectful agreement with the above conclusion arrived at in the judgment. I would, however, like to supplement the above conclusion.

67. The facts as well as rival contentions have already been recorded, hence, with a view to avoid prolix, it is not necessary to reiterate the same.

68. Vide notification dated 1st May, 2013, the Revenue Department has made e-filing of tax audit report mandatory from assessment year 2013-14. The utility for software for e-filing of tax audit report was introduced for the first time in the month of July, 2013. Subsequently, by a notification No.33/2014 dated 25th July, 2014, the Revenue Department in exercise of powers under section 295 read with section 44AB of the Act, amended the format of tax audit report to be submitted in Forms No.3CA, 3CB and 3CD. After the introduction of the above notification, the old utility for e-filing of tax audit report came to be withdrawn. However, the new utility was not introduced upto 21st August, 2014. Thus, for the period starting from the issue of notification on 25th July, 2014 till the date of initiation of the new utility software on 21st August, 2014, the assessee and the tax professionals were not in a position to file the tax audit report. Subsequently, pursuant

to a representation made by the Chartered Accountants Association, vide notification dated 28th August, 2014, the Central Board of Direct Taxes in exercise of powers under section 119 of the Act, extended the due date for e-filing of the tax audit report to 30th November, 2014. Since the notification only extends the due date for filing of tax audit report without extending the period for filing the return of income for assessment year 2014-15, the Chartered Accountants Association, Ahmedabad made a representation to the respondent on 21st August, 2014. However, since there was no response thereto and the due date for furnishing the return of income under section 139(1) of the Act is about to be over, the petitioners have moved the present petitions.

69. The case of the petitioners is that the whole purpose for tax audit report is for assessing the correct income of the assessee. Therefore, unless the tax audit report is available, the assessee would not be in a position to file the return of income in a proper manner. It is further the case of the petitioners that in case in view of the extension of time in filing the report under section 44AB of the Act, the return of income is filed after some delay, the assessee looses the right (i) to file the revised return of income under section 139(4) of the Act; (ii) to carry forward the losses under section 80 of the Act; (iii) to claim deductions under sections 10A, 10AA and 10B of the Act; (iv) in view of the provisions of section 80AC of the Act, the right to claim benefits of certain deductions under the provisions of Chapter VI-A of the Act; and (v) to get the benefit of section 115JB of the Act. It is also the case of the petitioner that right from the inception since the introduction of section 44AB of the Act, there has never been any occasion when

different dates were provided for filing the return of income and the tax audit report.

70. On the other hand, the stand of the respondent Board is that there is no requirement of filing tax audit report along with the return because the provisions of section 139C and section 139D read with rule 12 of the Income Tax Rules, override the provisions of section 139(6A) of the Act. It is further case of the respondent that filing of return of income and computation of correct taxable income is the primary responsibility of the assessee and as per section 140 of the Act, it is the tax payer who has to verify the correctness of the facts and figures reported in the return of income. The tax auditor is, in no way, connected with the filing of the return of income. He is only supposed to verify in the tax audit report the amount of allowance/deduction for which the assessee is eligible. The tax auditor is an independent professional and is not an employee of the assessee who will compute the taxable income of the assessee. The main grievance against extending the due date for filing return of income is that the due date for self-assessment tax gets automatic extension and hence, the payment of self-assessment tax which is to be made by month of September, 2014, is most likely to be deferred by the taxpayer to November, 2014 in case of extension of the due date of filing the return of income.

71. For the purpose of adjudicating the issue raised in the present petition, it may be necessary to refer to the relevant statutory provisions.

72. Section 44AB of the Act makes provision for audit of accounts of certain persons carrying on business or profession and reads thus:

> ***44-AB. Audit of accounts of certain persons carrying on business or profession****.—Every person,—*
>
> *(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year; or*
>
> *(b) carrying on profession shall, if his gross receipts in profession exceed twenty-five lakh rupees in any previous year , or*
>
> *(c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44-AE, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or*
>
> *get his accounts of such previous year audited by an accountant before the specified date and furnish by that date of report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars may be prescribed:*
>
> *(d) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under Section 44-AD and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his business and his income exceeds the maximum amount which is not chargeable to income tax in any previous year,*

Provided *that this section shall not apply to the person, who derives income of the nature referred to in section 44-B or section 44-BBA, on and from the 1st day of April, 1985 or, as the case may be, the date on which the relevant section came into force, whichever is later:*

Provided further *that in a case where such person is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this section if such person gets the accounts of such business or profession audited under such law before the specified date and furnishes by that date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under this section.*

Explanation.—For the purposes of this section,—

(i) "accountant" shall have the same meaning as in the Explanation below sub-section (2) of section 288;

(ii) "specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means the due date for furnishing the return of income under sub-section (1) of section 139.

73. The scope and effect of insertion of section 44AB have been elaborated in the Departmental Circular No.387 dated 6th July, 1984, wherein in paragraph 17.1 thereof, it has been stated that the accounts maintained by companies are required to be audited under the Companies Act, 1956. Accounts maintained by co-operative societies are also required to be audited under the Co-operative Societies Act, 1912. There is, however, no obligation on other categories of

taxpayers to get their accounts audited. In paragraph 17.2 thereof, it has been stated that a proper audit for tax purposes would ensure that the books of account and other records are properly maintained, that they faithfully reflect the income of the taxpayer and claims for deduction are correctly made by him. Such audit would also help in checking fraudulent practices. It can also facilitate the administration of tax laws by a proper presentation of the accounts before the tax authorities and considerably saving the time of assessing officers in carrying out routine verifications, like checking correctness of totals and verifying whether purchases and sales are properly vouched or not. The time of the assessing officers thus saved could be utilized for attending to more important investigational aspects of a case. Subsequently, the scope of the amendments made by the Finance Act, 1988 in section 44AB, as also in other allied provisions, have been elaborated in the Departmental Circular No.528 dated 16th December, 1988, wherein it has been, *inter alia*, stated thus:

> *"Sub-section (6A) of section 139 of the Income-tax Act provides that an assessee engaged in any business or profession should furnish along with a return of income certain particulars. This section has been amended so as to provide that an assessee engaged in any business or profession who is required to get his accounts audited under section 44AB of the Income-tax Act should file an audit report along with the return of income. Further, section 139(9) of the Income-tax Act has also been amended to provide that a return of income shall be regarded as defective if the audit report obtained under section 44AB of the Income-tax*

Act is not furnished with the return of income.

23.2 Under the existing provisions of section 271B of the Income-tax Act, penalty is leviable in a case where any person fails to get his accounts audited in respect of his income in any year or to obtain a report as required under section 44AB of the Act. By the Finance Act, 1988, such penalty will now be leviable also in cases of failure on the part of an assessee to furnish his report of such audit along with the return of income filed under section 139(1) of the Income-tax Act or along with the return of income filed in response to a notice under section 142(1) of the Act."

74. Thereafter, vide Departmental Circular No.636 dated 31st August, 1992, the scope and effect of the amendments made by virtue of Finance Act, 1992 in section 44AB have been elaborated, wherein in paragraph 33.1 thereof, it has been stated that, *"The purpose of compulsory audit under the provisions of section 44AB is to ensure that the true income is reflected in the return of income through the books of account duly audited."*.

75. From the scope and effect of section 44AB of the Act as amended, and elaborated in the above referred departmental circulars, it is apparent that according to the Revenue Department, the purpose of introducing section 44AB of the Act, apart from facilitating the administration of tax laws by proper presentation of the accounts before the tax authorities, is to ensure that true income is reflected in the return through

the books of account duly audited. As a necessary corollary, therefore, unless and until the books of account are duly audited, in other words, unless the tax audit is carried out under section 44AB of the Act, the assessee would not be in a position to ensure that the true income is reflected in the return. It is for this reason, that the legislature has, and rightly so, provided that the specified date under section 44AB is the due date for filing the return of income under sub-section (1) of section 139 of the Act. However, the Board while considering the request of the Institute of Chartered Accountants of India (ICAI) to extend the due date for filing the tax audit report, having regard to the difficulties that have arisen in the current year in view of the change in Forms No.3CA, 3CB and 3CD, has extended the time limit for filing the tax audit report under section 44AB till 30th November, 2014, but has failed to relax the provisions of section 139 by extending the due date for filing the return of income. Considering the fact that on account of alterations in the above referred forms and utilities and changes in the tax compliance requirements the due date for filing the tax audit report has been extended, in most cases, the tax audit report would not be prepared within the time limit prescribed for filing the return of income, as a consequence whereof it would not be possible for the assessee to furnish the return of income reflecting the true income on or before the due date. When the object of section 44AB of the Act is to ensure that the true income is reflected in the return of income through the books of account duly audited, one fails to understand the stand of the respondent Board that filing of return of income and computation of correct taxable income is the primary responsibility of the assessee and that the tax auditor is in no way connected with the filing of the return. The

above stand of the Board is reflected in paragraph 19 of the comments submitted before this court, which reads thus:

> *"Comments on para 19 : Filing of return of income and computation of correct taxable income is the primary responsibility of the assessee and as per section 140 of the Income-tax Act, 1961, it is the taxpayer who has to verify the correctness of the facts and figures reported in the return of income. The tax auditor is in no way connected to the filing of the return of income, he is only supposed to verify and report in the Tax Audit Report the amount of allowance/deduction for which the assessee is eligible. The tax auditor is an independent professional and is not an employee of the assessee who will compute the taxable income of the assessee."*

76. Besides, no grave prejudice would be caused to the revenue if the due date for filing the return of income is also extended till the date of filing of the tax audit report, whereas the assessee would be visited with serious consequences as referred to hereinabove in case of non-filing of return of income within the prescribed period as he would not be in a position to claim the benefit of the provisions referred to hereinabove. The apprehension voiced by the revenue that in case due date for filing return of income is extended, due date for self-assessment also gets automatic extension, resulting into delay in collection of self-assessment tax which is otherwise payable in September, 2014, can be taken care of by providing that the due date shall stand extended for all purposes, except for the purposes of Explanation 1 to section 234A of the Act.

77. An important aspect of the matter, which has a bearing on the very validity of the notification dated 20th August, 2014, is required to be examined. A perusal of the notification dated 20th August, 2014 whereby the due date for obtaining and furnishing the report of audit under section 44AB of the Act for assessment year 2014-15 has been extended to 30th November, 2014, reveals that the same has been issued in exercise of powers under section 119 of the Act. It may, therefore, be germane to refer to the provisions of section 119 of the Act which read thus:

> ***119. Instructions to subordinate authorities****.—(1) The Board may, from time to time, issue such orders, instructions and directions to other Income Tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board:*
>
> ***Provided*** *that no such orders, instructions or directions shall be issued—*
>
> > *(a) so as to require any Income Tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or*
> >
> > *(b) so as to interfere with the discretion of the Commissioner (Appeals) in the exercise of his appellate functions.*
>
> *(2) Without prejudice to the generality of the foregoing power,—*

(a) the Board may, if it considers it necessary or expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue, issue, from time to time (whether by way of relaxation of any of the provisions of Sections 115-P, 115-S, 115-WD, 115-WE, 115-WF, 115-WG, 115-WH, 115-WJ, 115-WK, 139, 143, 144, 147, 148, 154, 155, 158-BFA, sub-section (1-A) of Section 201, Sections 210, 211, 234-A, 234-B, 234-C, 271 and 273 or otherwise), general or special orders in respect of any class of incomes or fringe benefits or class of cases, setting forth directions or instructions (not being prejudicial to assessees) as to the guidelines, principles or procedures to be followed by other Income Tax authorities in the work relating to assessment or collection of revenue or the initiation of proceedings for the imposition of penalties and any such order may, if the Board is of opinion that it is necessary in the public interest so to do, be published and circulated in the prescribed manner for general information;

(b) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorise any Income Tax authority, not being a Commissioner (Appeals) to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making

such application or claim and deal with the same on merits in accordance with law;

(c) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order for reasons to be specified therein, relax any requirement contained in any of the provisions of Chapter IV or Chapter VI-A, where the assessee has failed to comply with any requirement specified in such provision for claiming deduction thereunder, subject to the following conditions, namely:—

(i) the default in complying with such requirement was due to circumstances beyond the control of the assessee; and

(ii) the assessee has complied with such requirement before the completion of assessment in relation to the previous year in which such deduction is claimed:

***Provided** that the Central Government shall cause every order issued under this clause to be laid before each House of Parliament.*

78. Under sub-section (2) of section 119 of the Act, the legislature had enumerated the sections, the provisions whereof the Board is empowered to relax, however, section 44AB of the Act does not find place therein. It is, therefore, clear that section 119 of the Act does not empower the Board to relax the provisions of section 44AB of the Act. Thus, *prima facie*, the exercise of powers under section 119 of the Act for extending the due date for obtaining and furnishing of report of

audit under section 44AB of the Act is without any authority of law. In ***Kerala Financial Corporation v. Commissioner of Income Tax***, *(1994) 4 SCC 375*, the Supreme Court has held that what section 119 has empowered is to issue orders, instructions or directions for the "proper administration" of the Act and for such other purposes specified in sub-section (2) of the section. Such an order, instruction or direction cannot override the provisions of the Act; that would be destructive to all the known principles of law as the same would really amount to giving power to a delegated authority to even amend the provision of law enacted by the Parliament.

78. At this juncture it may be pertinent to note that section 44AB of the Act provides for getting the accounts of an assessee of the previous year audited by an accountant before the specified date and to furnish report of such audit by that date in the prescribed form, setting forth such particulars as may be prescribed. As to what is the "specified date" is provided under clause (ii) of the Explanation to section 44AB which postulates that "specified date" in relation to the accounts of an assessee of the previous year relevant to an assessment year, means the due date for furnishing the return of income under sub-section (1) of section 139. It would, therefore, be necessary to examine as to what is the due date for furnishing return of income under sub-section (1) of section 139 of the Act. For this purpose, reference may be made to Explanation 2 to section 139 of the Act, which reads thus:

Explanation 2.—In this sub-section, "due date" means,—

(a) where the assessee other than an assessee referred to in clause (aa) is—

(i) a company; or

(ii) a person (other than a company) whose accounts are required to be audited under this Act or under any other law for the time being in force; or

(iii) a working partner of a firm whose accounts are required to be audited under this Act or under any other law for the time being in force,the 30th day of September of the assessment year;

(aa) in the case of an assessee who is required to furnish a report referred to in section 92-E, the 30th day of November of the assessment year;

(b) in the case of a person other than a company, referred to in the first proviso to this sub-section, the 31st day of October of the assessment year;

(c) in the case of any other assessee, the 31st day of July of the assessment year;

79. On a combined reading of the above provisions, it is abundantly clear that the expressions “specified date” in section 44AB and “due date” in section 139 of the Act are inextricably linked together. The legislative intent is clear. Namely that, the due date for filing return of income and the specified date for furnishing tax audit report under section 44AB of the Act should be the same. The Board in exercise of powers under section 119 of the Act, therefore, cannot issue any circular or notification which is contrary to the legislative intent and the scheme of the enactment which envisages that the “specified date” and “due date” should be the same. The

inevitable conclusion, therefore, is that the Board could not have extended the due date of filing tax audit report alone without extending the due date for filing return of income as that would amount to overriding the provisions of the Act. Moreover, the very fact that section 119 of the Act does not empower the Board to relax the provisions of section 44AB of the Act, clearly reflects the legislative intent not to permit relaxation of the "specified date" without relaxing the "due date". Had the legislature intended to permit relaxation of the specified date for furnishing tax audit report alone, it would have included section 44AB in section 119 of the Act.

80. Moreover, it appears that the Board was also conscious of the fact that it does not have the power to relax the provisions of section 44AB of the Act and therefore, what is extended in the notification dated 20th August, 2014 is the "due date" for obtaining and furnishing the report of audit under section 44AB, whereas the language employed by the legislature in relation to section 44AB is the "specified date". Since the "due date" for filing return under section 139 of the Act is the "specified date" as envisaged under section 44AB of the Act, the Board appears to have consciously used the expression "due date" and not "specified date" in the said notification. However, it cannot be gainsaid that there cannot be two due dates, one for the purposes of filing of return under section 139 of the Act and the other for the purpose of determining the specified date under section 44AB of the Act.

81. Nonetheless, for the purpose of extending the due date for obtaining and furnishing the report of audit under section 44AB of the Act, the Board, in exercise of powers under clause

(a) of sub-section (2) of section 119 of the Act, can relax the provisions of section 139 of the Act and can extend the due date for filing the return of income, in which case, the specified date under section 44AB of the Act would stand automatically extended. Therefore, the Board, if at all it was of the view that it was necessary to extend the due date for obtaining and furnishing the report of audit under section 44AB of the Act, could have resorted to extending such date only by extending the due date for filing the return of income under section 139 of the Act. For this reason also, the Board ought to have extended the due date for filing the return of income under section 139 of the Act so as to maintain the same date for furnishing the return of income and tax audit report. It appears that the sole reason which has weighed with the Board for not extending the due date for filing the return of income under section 139 of the Act, is that by doing so the due date of self-assessment tax would get automatically extended and the payment of self-assessment tax would be deferred by the tax payer to 30th November 2014. As suggested by the learned counsel for the petitioners, this situation can be taken care of by extending the due date for filing return of income under section 139 of the Act for all purposes except for the purpose of Explanation I to section 234A of the Act, in which case, the interests of the revenue would also be protected.

82. This court is conscious of the fact that the period of filing return of income is prescribed under sub-section (1) of section 139 of the Act and in exercise of powers under Article 226 of the Constitution, it would not be permissible for this court to extend such period as the same would amount to legislation on the part of the court. However, as noticed earlier, the Board is

duly empowered under sub-section (2) of section 119 of the Act, to relax the provisions of section 139 of the Act, whereas there is no power to relax the provisions of section 44AB of the Act. The Board, however, by the notification dated 20th August, 2014, has relaxed provisions of section 44AB of the Act for assessment year 2014-15 without extending the due date for filing the return of income. Thus, in the absence of any statutory power vested in the Board to relax the provisions of section 44AB of the Act, the notification dated 20th August, 2014 has no legs to stand on its own. The only remedy available for the Board to sustain the validity of the notification is to extend the due date for filing return of income under section 139 of the Act in exercise of powers under section 119 of the Act.

83. Another way of looking at the matter is that the notification dated 20th August, 2014 extends the “due date” for furnishing the report of audit. Insofar as the provisions of section 44AB of the Act are concerned, the expression “due date” is found only in clause (ii) of the Explanation thereto which is the date of furnishing the return of income under sub-section (1) of section 139. Therefore, the notification itself could be construed as having extended the due date for filing return of income under section 139 of the Act. However, the stand taken by the Board does not admit any such construction.

84. In the aforesaid circumstances, having regard to the fact that the Board has no power to relax the provisions of section 44AB of the Act, it would be in the fitness of things if with a view to bring the notification dated 20th August, 2014 within

the ambit of its jurisdiction, the Board relaxes the provisions of section 139(1) of the Act by extending the due date for filing the return of income till 30th November, 2014 as a direct consequence whereof, the “specified date” for obtaining and furnishing the report of audit under section 44AB of the Act would get automatically extended.

85. In the light of the above discussion, the petition succeeds and is, accordingly, allowed in terms of paragraph 65 of this judgement. Rule is made absolute accordingly, to the aforesaid extent with no order as to costs.

(HARSHA DEVANI, J.)

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