

Sequeira

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION Lodging NO. 2492 OF 2014

The Chamber of Tax Consultants
Through its President
Shri Paras Savla & others.

.. Petitioners

Vs

Union of India
through its Secretary,
Ministry of Finance & others.

.. Respondents

Dr.K.Shivaram, senior Advocate a/w Mr.Ajay Singh a/w Mr.Rahul Sarda
a/w Mr.Rahul Hakani a/w Ms Neelam Jadhav, for Petitioners.

Mr.Arvind Pinto, for Respondents.

**CORAM: M.S.SANKLECHA, J.
N.M.JAMDAR, J.
Thursday 25 September, 2014**

P.C.:

Rule. Rule made returnable forthwith. Respondents waive service. Taken up for disposal by consent.

2 This petition under Article 226 of the Constitution of India :-

(a) challenges Notification dated 25 July 2014 passed by the Government of India in exercise of powers under Section 295 read with Section 44 AB of the Income-tax Act 1961 (the Act) introducing a new format for Tax Audit Reports;

(b) seek a direction to the Central Board of Direct Taxes (CBDT) to extend the time for filing Income Tax Returns from 30 September 2014 to 30 November 2014. This is on the basis the time to furnish the Audit Report under Section 44 AB of the Act has been extended from 30 September 2014 to 30 November 2014. This petition relates to Assessment Year (AY) 2014-2015.

3 Dr.Shivaram, learned senior Advocate for the Petitioners has placed on record the order passed by the learned Single Judge of Madras High Court dated 24 September 2014 in Writ Petition Nos.25443 & 26306 to 26310 of 2014. He submitted that the Gujarat High Court has also issued directions permitting the assesseees to file Return of Income till 30 November 2014, on payment of interest. He submitted that the copy of the order passed by the Gujarat High Court is not yet available.

4 Dr.Shivaram, after arguing the matter for some time, submitted that in view of the orders passed by the Madras High Court and the Gujarat High Court, Petitioner's grievance will be satisfied if CBDT is directed to consider the representation of the Petitioners. Dr.Shivaram submitted that if the date of filing of Return of Income is not extended to coincide with the date of filing of Tax Audit Report, which is already extended to 30 November 2014, serious practical difficulties will follow. He submitted that the members of the Petitioners' Associations as well as the assesseees in general will be put to great inconvenience. Mr.Arvind Pinto learned counsel for the Revenue, opposed the grant of any relief by this Court but is not averse to the matter being considered by CBDT on its own merits.

5 The Petitioners have listed the prejudice that would be caused by non-extension of date of filing of Return of Income to 30 November 2014 as under :-

a) The new proforma of Tax Audit under Section 44 AB requires the tax auditor to examine and report on 27 additional aspects of assessee's accounts for the purpose of tax Audit. This examination would require time and the Audit would not normally be complete before the date of filing Return on 30 September 2014. This if it is submitted would result in the Petitioners declaring an income which may consequent to the Audit be inaccurate / incorrect. The present practice of filing Income Tax Return along with the Audit Report or post the Audit Report ensures that the income offered to tax had been scrutinised and it has been properly declared.

b) The consequence of the Tax Audit not being performed prior to filing Return of Income would result in the Petitioners declaration of Income being erroneous requiring the assessee to file a Revised Return of Income. This Revised Return of Income would entail the Petitioners as mentioned in the petition being deprived as under -

i *Shall deprive the assessee from claiming a set off of loss carry forward, if any, in the A.Y. 2013-14*

ii *Shall deprive the assessee from claiming the benefits available under Section 43B of the Act;*

iii *Shall deprive the assessee from claiming the deductions under Chapter VIA of the Act in view of section 80AC of the Act.*

iv *Shall lead to the imposition of interest upon the assessee under Section 234A, 234B and 234C of the Act.*

c) It was further submitted that computation of the actual tax liability of an assessee can take place and an Income Tax Return can be filed only after obtaining of Tax Audit Report. The entire scheme of the Act (Section 139 read with Section 44

AB of the Act) is weaved based on the aforesaid 'fundamental principle'.

d) It was further submitted that it is settled law that consistency in tax laws is the need of the hour, and such complications (which are a sheer creation of inefficient decision making) especially qua compliances, only adds to the woes of a person and acts as a barrier to the promotion of efficient tax compliances.

e) Keeping the aforesaid time frames in mind, the Chartered Accountants schedule their audits for the assessees, in a manner to meet with the aforesaid timelines, and such audits therefore effectively begin with the finalization of the books of accounts of an assessee, as on 31.03.2014.

f) The new proforma of Tax Audit Report cast an additional compliance burden without providing adequate / reasonable time without appreciating that audit is not merely a formality but a statutory duty, non-compliance of which leads to attraction of penal provisions under the Act.

6 In view of the fact that the Hon'ble Madras High Court has already directed the CBDT to examine the representation of the assessees in general, before 30 September 2014, we feel it appropriate that the above representation of the Petitioners is also considered by CBDT. Though we do not wish to express any view of the legalities of various issues involved, it does appear to us, from the arguments advanced, that there will be substantial hardship caused to the assessees, if the date of filing Return is not suitably extended. We hope and trust that CBDT will look into all these practical difficulties enumerated above and take a just and proper decision on the matter, before 30 September 2014, as already directed by the Madras High Court.

7 Dr.Shivaram, also contended that the CBDT should be directed to frame guidelines which will require CBDT to consult all stake-holders like the Petitioners, before taking any major decision, such as the one in question. Mr.Pinto learned counsel for the Respondents, submitted that no such direction is warranted, as whenever the CBDT finds it necessary, it does consult all stake-holders. We leave the issue at that.

8 We are informed at the bar that various High Courts have passed orders on issues identical to the issues raised in this petition. However the orders passed by these High Courts (except one by Madras High Court) are not available for our perusal. It is made clear that in case the Petitioners are entitled any further relief in view of the orders passed in various petitions filed in other High Courts, this order would not preclude the Petitioners from claiming the same.

9 The Petition is disposed of in the above terms. No costs.

N.M.JAMDAR, J

M.S.SANKLECHA, J