

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

WRIT PETITION (L.) NO.955 OF 2021

CVO Chartered & Cost

Accountants' Association, Mumbai and anr. ... Petitioners

V/s.

Union of India and anr.

... Respondents

Mr.V.Sridharan, Senior Advocate with Mr.Vipul Joshi, Mr. S.Sriram, Mr.Harsh Kapadia, Advocates for the Petitioners.
Mr.Anil Singh, ASG with Mr.Sham Walve, Advocates for the Respondents.

**CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.
DATE : JANUARY 15, 2021.**

P.C.:-

Heard Mr.Sridharan, learned senior counsel for the petitioners; and Mr.Anil Singh, learned Additional Solicitor General of India assisted by Mr.Sham Walve, learned standing counsel, Revenue for the respondents.

2. This petition has been filed under Article 226 of the Constitution of India seeking the following reliefs:-

“(a) direct the Respondent No.2 to issue the forms and utilities for filing of the Return of Income under section 139 of the Act and the Tax Audit Report under section 44AB the Act immediately after the end of the previous year and at the beginning of the Assessment Year and, henceforth, not make any alterations in Forms and Utilities or changes in tax compliance requirements in that regard, after the beginning

of the Assessment Year in which the same are made applicable;

(b) direct the Respondent No.2 to provide the tax payers and the tax practitioners a clear period of 183 and 214 days to prepare and submit the prescribed Reports and Forms, respectively and that in the matter of extension of due dates, consult the stakeholders well in advance and not to keep the matter pending till last moment.

(c) direct the Respondent No.2 to extend the due date for filing the Income Tax Returns (ITR) for A.Y. 2020-2021 till 31st March, 2021 and to extend the due date for filing the Tax Audit Reports (TAR) for A.Y. 2020-2021 to 28th February, 2021;

(d) for ad-interim reliefs in terms of prayers in clauses above;

(e) for costs of the petition; and

(f) for such other and further other reliefs as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case."

3. Petitioner No.1 is a trust representing Chartered Accountants, Company Secretaries and Cost Accountants whereas petitioner No.2 is a Chartered Accountant besides being an assessee under the Income Tax Act, 1961 and Vice-President of petitioner No.1 as well.

4. From the prayer portion as extracted above, it is seen that principal relief sought for by the petitioners is for a direction to respondent No.2 i.e. Central Board of Direct Taxes (also referred to as "CBDT" hereinafter) to extend the due date for filing income tax returns for the assessment year 2020-21 till 31st March, 2021 and to extend the due date for filing tax audit reports for the said assessment year to 28th February, 2021.

5. Due date for filing of return of income in the case of those categories of assessee whose accounts are required to be audited is 15th February, 2021; and the due date for filing tax audit report under section 44AB of the Income Tax Act, 1961 (briefly “the Act” hereinafter) is 15th January, 2021.

6. It may be mentioned that seeking similar relief, a writ petition was filed in the Gujarat High Court by the All Gujarat Federation of Tax Consultants. By order dated 8th January, 2021 Gujarat High Court directed Union of India, Ministry of Finance to look into such grievance and, thereafter, to take an appropriate decision in accordance with law.

7. Though not part of the writ petition, at the hearing Mr. Sridharan has produced before us a copy of order dated 11th January, 2021 passed by the CBDT under section 119 of the Act which we have taken on record. By the said order all representations made for further extension of due dates have been rejected. Since the order dated 11th January, 2021 is relevant, the same is extracted hereunder in its entirety:-

“F.NO.370153/39/2020 TPL
GOVERNMENT OF INDIA
MINISTRY OF FINANCE DEPARTMENT OF REVENUE
(CENTRAL BOARD
OF DIRECT TAXES)
(TAX POLICY AND LEGISLATION DIVISION)

New Delhi, 11th January, 2021

ORDER UNDER SECTION 119 OF INCOME TAX ACT,
1961

The Hon'ble Gujarat High Court vide judgment dated 8th January, 2021, in the case of The All India Gujarat Federation of Tax Consultants Vs. Union of India, SCA 13653 of 2020, has directed the Ministry of Finance to look into the issue of extension of due dates for filing of Audit Report under section 44AB of the Income Tax Act more particularly the representation dated 12.10.2020 and take an appropriate decision in accordance with law.

2. In the wake of the global pandemic due to COVID-19 the due dates for filing of income tax returns for A.Y. 2020-21 was extended vide the Taxation and Other laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (which was enacted on 29th September, 2020) to 30th November, 2020. Subsequently, vide notification s.o. 3906(E) dated 29th October, 2020 the due dates for filing of returns were further extended to 31st January, 2021 for cases in which tax audit report under section 44AB of the Income tax Act ("the Act") is required to be filed and 31 st December, 2020 for all other cases. Further vide notification S.O.4805 (E) dated 31st December, 2020 the above due dates were further extended to 15th February, 2021 and 10th January, 2021 respectively.

3. As per the provisions of the Act the due date for filing of the audit report under section 44AB is one month prior to the due date of filing of income tax return. Therefore, the said due date was extended to 31st October, 2020 vide the Taxation and Other laws (Relaxation and Amendment of Certain Provisions) Act, 2020, 31st December, 2020 vide notification s.o. 3906(E) dated 29th October, 2020 and further to 15th January, 2020 vide notification S.O. 4805 (E) dated 31st December, 2020.

4. The due dates for payment of self-assessment tax, for taxpayers whose amount due does not exceed rupees one lakh, also coincide with the due dates for filing of income tax returns. The table below summarises the various due date extensions given:

S. No.	Action	Original due date	1 st Extension vide TOLA 2020	2 nd Extension vide Notification	3 rd Extension Notification S.O. 4805

				S.O. 3906(E) dated 29.10.2020	(E) dated 31.12.2020
1	Return for Non-Audit Cases	31.07.2020	30.11.2020	31.12.2020	10.01.2021
2	Tax Audit	30.09.2020	31.10.2020	31.12.2020	15.01.2021
3	Return for Tax Audit Cases	31.10.2020	30.11.2020	31.01.2021	15.02.2021

5. Thus, it is apparent that the Government has not only considered representations of various stakeholders but also has been proactive in providing relaxation to the taxpayers by extending due dates regularly. The table below gives the statistical data comparing the return filing statistics of A.Y. 2019-20 and A.Y. 2020-21

Date - this year	AY 20-21 ITRs filed	Daily figures	Date-year last	AY 19-20 ITRs filed	Daily figures
05-Jan-21	5,08,48,022	7,26,177	26-Aug-19	4,14,13,558	13,65,348
06-Jan-21	5,16,71,398	8,23,376	27-Aug-19	4,30,99,600	16,86,042
07-Jan-21	5,27,14,751	10,43,353	28-Aug-19	4,51,44,749	20,45,149
08-Jan-21	5,41,54,435	14,39,684	29-Aug-19	4,77,39,460	25,94,711
09-Jan-21	5,64,10,561	22,56,126	30-Aug-19	5,12,55,607	35,16,147
10-Jan-21	5,95,15,322	31,04,761	31-Aug-19	5,61,79,905	49,24,298

From the above table, it is apparent that the number of returns filed this year has already exceeded the number of returns filed last year up to 31st August which was the last day of filing of the all the returns

other than the company/tax audit returns, by about 6%.

The table below gives the statistical data comparing the filing statistics of tax audit report for A.Y. 2019-20 and A.Y. 2020-21.

Date	Form 3CA	Form 3CB	Date	Form 3CA	Form 3CB
20-Oct-19	2,741	29,760	04-Jan-21	3,079	27,492
21-Oct-19	5,598	51,069	05-Jan-21	3,238	28,875
22-Oct-19	7,626	62,938	06-Jan-21	3,190	30,582
23-Oct-19	9,125	75,031	07-Jan-21	3,323	31,035
24-Oct-19	10,977	87,350	08-Jan-21	3,316	29,924
25-Oct-19	11,841	93,575	09-Jan-21	2,824	26,924
26-Oct-19	10,366	91,397	10-Jan-21	1,416	16,370
27-Oct-19	2,309	30,861	11-Jan-21		
28-Oct-19	6,138	59,785	12-Jan-21		
29-Oct-19	10,119	1,00569	13-Jan-21		
30-Oct-19	23,125	1,87,444	14-Jan-21		
31-Oct-19	42,280	3,15,190	15-Jan-21		
Grand Total cumulative	2,88,236	25,37,444	Grand Total cumulative	2,14,804	18,49,461

6. The above table also show that majority of the audit reports under section 44AB of the Act as well as income tax returns are filed within the last few days of the dates only. For A.Y. 2019-20 it is seen that 24% of total audit reports were filed in last 3 days before the due date. Therefore, lesser filing compliances having been made much before the due date cannot be said to be an anomalous situation.

7. A look at the relaxation of similar nature provided by other economies globally makes it clear that the Government of India has been very empathetic to the needs of the taxpayers as compared various other countries. It is apparent from the table no other country has extended the due dates as much as India. Even countries which are comparatively worse hit by COVID19, like the USA, UK etc., have provided no or lesser extensions in due dates. The table below lists such extensions given by a few countries:

Country	Financial period	Individual		Corporate	
		Due date	Extended due date	Due date	Extended due date
USA	2019	15 th April 2020	15 th October 2020	15 th April 2020	15 th October 2020
UK	2019-2020	31 January, 2021	No Extension	31 st December 2020	No Extension
Australia	2018-2019	5 th May 2020	5 th June 2020	15 th May 2020	5 th June 2020
South Africa	2019	16 th November 2020	No Extension	31 st December 2020	No Extension
Netherlands	2019	1 st May 2020	No Extension	1 st June 2020	No Extension
Ireland	2019	12 th November 2020	10 th December 2020	12 th November 2020	10 th December 2020
Singapore	2019	18 th April 2020	31 st May 2020	15 th December 2020	15 th January 2020
Canada	2019	30 th April 2020	30 th September 2020	May August 2020	30 th September 2020
Brazil	2019	1 st March 2020	30 th April 2020	30 th April 2020	30 th June 2020

8. From the above it may be seen that Government has been proactive in analyzing the situation and providing relief to assessee. However, it should also be appreciated that filing of tax returns/audit reports are essential part of the obligations of assessee and cannot be delayed indefinitely. Many functions of the Income-tax Department start only after the filing of the returns by the assessee. Filing of tax returns by assessee also results in collections of taxes either through payment of self-assessment tax by the assessee or by the subsequent collection by the department post processing or assessment of the tax returns. The tax collections assume increased significance in these difficult times and Government of India needs revenue to carry out relief work for poor and other responsibilities. Any delay in filing returns affects collection of taxes and other welfare functions of the state for the vulnerable and weaker sections of society which is funded through the revenue collected. Sufficient time has already been given to taxpayers to file their tax returns and a large number of taxpayers have already filed their returns of income.

9. From the above discussion, it is apparent that,-

- The due dates for filing of return/tax audit have already been extended on 3 occasions.
- Internationally, the extension provided by India is more generous as compared to other countries.
- The return filing statistics of the current year indicates that returns filed in this financial year already for exceeds the returns filed which were due on the last date of filing of returns.

Any further extension would adversely affect the return filing discipline and shall also cause injustice to those who have taken pains to file the return before the due date. It would also postpone the collection of revenue thereby hampering the efforts of the Government to provide relief to the poor during these COVID times.

10. In this regard, the decisions of the Hon'ble Supreme Court have also been considered. The Hon'ble Supreme Court in the case of **Govt. of A.P. v. N. Subbarayudu, (2008) 14 SCC 702 at page 703:**

“5. In a catena of decisions of this Court it has been held that the cut-off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut-off dates is within the domain of the executive authority and the court should not normally interfere with the fixation of cut-off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. (See State of Punjab v. Amar Nath Goyal 1(2005) 6 SCC 754 : 2005 SCC (L&S) 910].

7. There may be various considerations in the mind of the executive authorities due to which a particular cut-off date has been fixed. These considerations can be financial, administrative or other considerations. The court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut-off date. The Government must be left with some leeway and free play at the joints in this connection.

8. In fact several decisions of this Court have gone to the extent of saying that the choice of a cut-off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter-affidavit filed by the Government (unless it is shown to be totally capricious or whimsical), vide State of Bihar v. Ramjee Prasad [(1990) 3 SCC 368: 1991 SCC (L&S) 51] , Union of India v. Sudhir Kumar Jaiswal [(1994) 4 SCC 212: 1994 SCC (L&S) 925 : 1994) 27 ATC 561] (vide SCC para 5), Ramrao v. All India Backward Class Bank Employees Welfare Assn. 1(2004) 2 SCC 76 2004 SCC (L&S) 337] (vide SCC para 31), University Grants Commission v. Sadhana Chaudhary [(1996) 10 SCC 536: 1996 SCC (L&S) 1431], etc. It follows, therefore, that even if no reason has been given in the counter-affidavit of the

Government or the executive authority as to why a particular cut-off date has been chosen, the court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut-off date leads to some blatantly capricious or outrageous result.”

11. In fact several decisions of the Hon'ble Supreme Court have gone to the extent of saying that the choice of a cut off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter affidavit filed by the Government, (unless it is shown to be totally capricious or whimsical). [State of Bihar vs. Ramjee Prasad 1990(3) SCC 368, Union of Indian & Anr. vs. Sudhir Kumar Jaiswal 1994(4) SCC 212 (vide para 5), Ramrao & Ors. vs. All India Backward Class Bank Employees Welfare Association & Ors. 2004(2)SCC 76 (vide para 31), University Grants Commission vs. Sadhana Chaudhary & Ors. 1996(10) SCC 536, etc .] When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegated must be accepted unless it can be said that it is very wide off the reasonable mark. (See Union of India & Anr. v. Mis Parameshwaran match works Ltd., 1975 (2) SCR 573, at p.579; and Dr. (Mrs.) Sushma Sharma etc. etc. v. State of Rajasthan & Ors. 1985 (3) SCR 243, at p. 269)

12. In view of the above reasons, all the representations for further extension of the due date are hereby rejected.”

8. Grievance expressed by the petitioners as highlighted by Mr.Sridharan relates to amendment brought to the Income Tax Rules, 1962 by way of Income Tax (22nd Amendment) Rules, 2020 vide notification dated 1st October, 2020, whereby certain additions have been inserted in section 115BAA of the Act, amongst others, for the assessment year 2020-21 only. That apart, various utilities for income tax returns were made available belatedly on 22nd September,

2020 and subsequently amended on 11th January, 2021. Extension granted on previous occasions carry no meaning as those were granted at the eleventh hour. Further, voluminous instructions for filing income tax return as per revised form running into 700 plus pages was released by the CBDT on 31st October, 2020. All these therefore justifies further extension of the due dates which is a very reasonable prayer.

9. On the other hand, Mr.Singh submits that the changes carried out in various forms of the Income Tax Rules, 1961 are of minor nature having no substantive effect. That apart, CBDT had already looked into the overall situation of the country in view of covid-19 pandemic and the resultant lockdown and had accordingly extended the due dates on three earlier occasions. He submits that notwithstanding the critical situation faced by the country life has to go on, so also the tax administrative machinery.

10. We have heard learned counsel for the parties at length and given our anxious consideration to the rival submissions.

11. We find from the order dated 11th January, 2020 passed by the CBDT under section 119 of the Act that across the board three extensions of the due dates have been granted. In so far filing of tax audit report is concerned, the original due date was 30th September, 2020, which was first extended to 31st October, 2020, thereafter to 31st December,

2020 and now to 15th January, 2021. In respect of filing of income tax return in those cases where tax audit report is required to be filed the original due date was 31st October, 2020 which was first extended to 30th November, 2020, thereafter to 31st January, 2021 and finally to 15th February, 2021. Thus, we find that CBDT had considered the evolving situation in the country and thereafter, had extended the due dates on three occasions. Now CBDT says that filing of audit reports and income tax reports cannot be delayed indefinitely. Therefore, a line has been drawn that no further extension of the due dates would be granted.

12. Power exercised by the CBDT under section 119 of the Act is discretionary. On careful consideration of the order passed by the CBDT on 11th January, 2021 under the said provision, we are of the considered view that it cannot be said that CBDT had failed to exercise its discretion or that CBDT had acted in an arbitrary or unreasonable manner in refusing to grant further extension of the due dates. We therefore do not find any good ground to invoke our writ jurisdiction under Article 226 of the Constitution of India to direct CBDT for further extension of the due dates.

13. Having regard to the above, we are not inclined to entertain the writ petition.

14. Writ petition is accordingly dismissed. However, there shall be no order as to costs.

15. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(MILIND N. JADHAV, J.)

(UJJAL BHUYAN, J.)

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