

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

WRIT PETITION (L) NO. 2764 OF 2015

The Chamber of Tax Consultants
& Others .. Petitioners.
V/s.
Union of India
& Others .. Respondents.

Dr. K. Shivram, Sr. Advocate with Mr. Rahul Hakani, Mr. V. B. Joshi, Mr. Rahul Sarda and Ms. Neelam Jadhav, for the Petitioners.
Mr. Suresh Kumar, for the Respondents.

**CORAM: M.S.SANKLECHA, &
G.S. KULKARNI, JJ.**

DATE : 30th SEPTEMBER, 2015.

P.C:-

RULE.

2 At the very outset, it was impressed upon us that the last date for filing return of income in ITR Form Nos. 3, 4, 5, 6 and 7 is today i.e. 30th September, 2015. It is in the aforesaid circumstances that the Petitioners prayed for grant of interim/ ad-interim reliefs, extending the date for filing returns of income in the ITR Form Nos. 3,4,5,6, and 7 to 31st October, 2015. This on the ground that on similar grievances such a prayer has been finally allowed by orders of the Punjab & Haryana Court dated 29th September,2015 (Vishal Garg v/s. Union of India) and Gujarat High Court in by its order dated 29th September, 2015 in Special Civil Application No. 15075 of 2015 (All Gujarat Federation of Income Tax Consultants v/s. Central Board of Direct Taxes).

3 Our attention was also specifically drawn to the fact that for the present, the Central Board of Direct Taxes (CBDT) have accepted the decision of the Gujarat High Court and the Punjab and Haryana High Court referred to herein above. Inasmuch as on 30th September, 2015, the following two orders under Section 119 of the Income Tax Act, 1961 (the Act) have issued:-

Ist Order:-

“ The Central Board of Direct Taxes, in compliance to the order of Hon'ble Punjab and Haryana High Court dated 28.09.2015 in case of Vishal Gard & Ors., v/s. Union of India & Anr; CWP 19770-205 and in exercise of powers conferred under section 119 of the Income Tax act, 1961 (the Act), hereby orders that the returns of income due to be E-filed by 30th September, 2015 may be filed by 31st October, 2015 in cases of Income Tax assesees of the State(s) of Punjab and Haryana and Union Territory of Chandigarh.

2 *This order shall be subject to the outcome of any further appeal/SLP which the CBDT may file against the said judgment.*

IInd Order:-

“ The Central Board of Direct Taxes, in compliance to the order of Hon'ble Gujarat High Court dated 29.09.2015 in case of All Gujarat Federation of Tax Consultants v/s. CBDT; Special Civil Application No. 15075 of 2015 and in exercise of powers conferred under section 119 of the Income Tax act, 1961 (the Act), hereby orders that the returns of income due to be E-filed by 30th September, 2015 may be filed by 31st October, 2015 in cases of Income Tax assesees of the State of Gujarat.

2 *This order shall be subject to the outcome of any further appeal/SLP which the CBDT may file against the said judgment.”*

4 As it is clear from the above orders, the benefit of the decision rendered by Gujarat High Court and Punjab and Haryana High Court have been restricted only in respect of assessee's within the State of Punjab and Haryana, Union Territory of Chandigarh and the State of Gujarat. In the circumstances, we heard the Petitioner's prayer for interim reliefs.

5 Before proceeding further, it may be pointed out that this Petition first listed on board on 23rd September, 2015, at that time, the Petition was adjourned to 28th September, 2015 at 3.00 p.m. on the joint request of the parties. This was to enable Mr. Suresh Kumar, learned Counsel appearing for the Revenue to take instructions in the matter.

6 On 28th September, 2015, when the matter reached hearing, our attention was drawn to the decision of the Punjab and Haryana High Court in Vishal Garg (supra) wherein Punjab and Haryana High Court had granted extension of time for E-filing return upto 31st October, 2015 and directed the CBDT to issue appropriate instructions/directions under Section 119 the Act.

7 Mr. Suresh Kumar, learned Counsel appearing for the Revenue had invited our attention to the decision of the Delhi High Court in *Avinash Gupta v/s. Union of India in Writ Petition (C) No.9032 of 2015* rendered on 21st September, 2015 where the Court refused to extend the time for E-filing of return of income in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India. To a similar effect is the decision of the Rajasthan High Court cited by Mr. Suresh Kumar, being *Writ Petition (PIL) No. 11037 of 2015 in M/s. Rajasthan Tax Consultants Association v/s. Union of India* wherein also the Court refused to exercise its extra ordinary jurisdiction and extend the

time to file return of income from the stipulated date of 30th September, 2015.

8 In view of the conflicting views of different High Courts, the Petition was kept today in the expectation that the CBDT would take a decision of either challenging the orders passed by Punjab and Haryana High Court before the Apex Court or accepting the same and applied all over India. Today, as pointed out herein above, the CBDT has issued two separate orders under Section 119 of the Act, accepting the order of the Punjab and Haryana High Court and Gujarat High Court and extended the time to file up to 31st October, 2015 only in respect of assessee in the above two States and in the Union Territory of Chandigarh.

9 Dr. Shivram, learned Sr. Advocate appearing for the Petitioner invited our attention today to the decision of Gujarat High Court in All Gujarat Federation of Tax Consultants (supra) which has extended the due date till 31st October, 2015. This has been accepted by the CBDT having extended the filing of E-Form of the ITR returns from 30th September, 2015 to 31st October, 2015 by issuing an order under Section 119 of the Act as pointed out above.

10 The grievances raised in this Petition are more or less similar to the one raised before the Gujarat High Court and the Punjab and Haryana High Court. It is that the CBDT / Central Government had failed in its obligation to notify ITR Forms, in particular, Form Nos. 3,4,5,6 and 7 on 1st April, 2015 all of which have the due date of being filed with the Income Tax Department before 30th September, 2015.

11 It is excepted of the State that it would notify the required

ITR Forms on 1st April of the subject Assessment year. This enables the assessee to gather the necessary details as required by the ITR Forms and submit the same while E-filing their return of income. This delay causes prejudice to the assessees who have to E-file their returns of income with shortage of time is likely to result in filing of inaccurate returns. Thus, the plea of extension of time to file the return of income in Form Nos. 3,4,5,6 and 7 from 30th September, 2015 to 31st October, 2015.

12 In view of the delay in having notified the ITR Form Nos. 3,4,5,6 and 7, various assessee had in individual capacity made representations that the time to file E-returns in Form Nos.3,4,5,6 and 7 be extended in view of prejudice as pointed out above. The Petitioners had also filed a representation dated 25th August, 2015 inter alia raising various issues warranting extension of time. However, the CBDT by a press note dated 9th September, 2015 rejected the representation and informed the trade that the last date of 30th September, 2015 to E-file the return of income would not be extended. This decision of the CBDT does not deal with all the issues raised by the Petitioners.

13 Thereafter, the Petitioner No.1 made another representation on 19th September, 2015 to the CBDT, seeking extension of time to E-file return of income to be filed in ITR Form Nos. 3,4,5,6 and 7 from 30th September, 2015 to 31st October, 2015. The same was not responded to by the CBDT. Thus, this Petition. The Revenue has not yet filed any reply. Therefore, we are at this stage not finally disposing of the Petition but after admitting it are considering interim relief, if any, to be granted.

14 We have heard the Counsel for the Petitioner and the Revenue. We find that with effect from Assessment Year 2013-14, it is

mandatory to E-file Return of Income. It is not open to an assessee to file return of income in hard copy. Thus, in the absence of the form and facility being available, it was impossible for any assessee to file its return of income. It is not dispute before us that the CBDT notified the ITR Forms Nos.3,4,5,6 and 7 only on 29th July, 2015 and the Forms were made available for filing on the web site of the department only with effect from 7th August, 2015. Thus, if the forms were notified as expected on 1st April of the year, then the assessee concerned would have had 183 days time available to collect the necessary information so as to enable them to E-file their return of income, giving all particulars expected of them. However, in view of the delay in notifying the forms, the available time for the assessee to fill up the forms was restricted to 55 to 61 days, depending upon the dates when the forms are notified. Thus, in view of short time available, assesseees were finding it difficult to comply with all the requirements sought in the notified forms. Besides, non-filing of return of income before the prescribed date would result in great prejudice to the assesseees as any claim for set off of loss would not be allowed to be carried forward will deprive them of deduction under Section 43B of the Act and also deduction under Chapter VI-A of the Act. Besides, if there is any omission/ mistake in the filing of the return of income, if filed beyond the due date, it would also deprive the assessee an opportunity to file revised return of income.

15 The present situation has arisen only in view of the delay on the part of CBDT in discharging its obligations of making available the ITR Form Nos. 3,4,5,6, and 7 in due time. Thus, the need to extend the due date. One more feature which was emphasized was that in case of ITR Forms 1,2,2-A and 4-S being non-audit cases, necessary forms were

notified only on 22nd June, 2015 instead of 1st April, 2015 i.e. a delay of 83 days. The normal date of filing of return in such cases would be 31st July, 2015. However, the CBDT extended the same to 7th September, 2015 by an order dated 2nd September, 2015 under Section 119 of the Act. This on the ground that the delay in notifying the forms would cause great hardship to the tax payers. We are unable to appreciate how a delay of 83 days in making the ITR Form Nos.1,2, 2-A and 4-S in case of non-audit will cause great prejudice and delay of 120 days in making ITR Form Nos.3,4,5,6 and 7 does not cause any prejudice. The Gujarat High Court noted that the Scheme of the Act indicates that ordinarily a period of 180 days is available to the assessee to file income tax return in case of E-filing of return of income in Form Nos.3,4,5,6, and 7. Any curtailment of this period on account of non-availability of the necessary utility for filing a return on-line, does certainly cause prejudice to the assessee wholly on account of the delay on the part of the CBDT to notify the ITR Forms.

16 Mr. Suresh Kumar, learned Counsel appearing for the Revenue places reliance upon the decision of the Delhi High Court in the case of Avinash Gupta (supra) and Rajasthan High Court in the case of Rajasthan Tax Consultants (supra) and submitted that the first decision on this issue was rendered by the Delhi High Court in Avinash Gupta (supra) on 21st September, 2015 wherein it has refused to entertain a Petitioner seeking extension of the due date provided under the Act to E-file return in ITR Form Nos.3,4,5,6 and 7. It is submitted that in view of the above, the subsequent decision ought not to have been rendered, taking a view contrary to that taken by the Delhi High Court. In our opinion, Mr. Suresh Kumar is not right in this contention as these orders are relied up by him would loose their significance in view of the CBDT itself accepting the

contrary view of the Punjab and Haryana High Court and the Gujarat High Court. Besides, each Court is entitled to take its own view [see CIT v/s. Thane Electricity Supply Ltd., 206 ITR 727 (Bom.)]

17 Mr. Suresh Kumar, also placed reliance upon the order dated 29th September, 2015 passed by the CBDT under Section 119 of the Act consequent to the order of the Karnataka High Court directing it to deal with the representation filed by the Karnataka State Chartered Accountants Association, to contend that this Court should not interfere with the executive action of not extending the date of 30th September, 2015 to E-file the returns. As pointed out above, the view of the Gujarat High Court as also the view of the Punjab and Haryana High Court of extending the due date to 31st October, 2015 has been accepted by the CBDT as evidenced by having issued an order on 30th September, 2015 under Section 119 of the Act by extending the time in respect of assessee's in the State of Punjab and Haryana High Court and Gujarat High Court. We also notice that the order dated 29th September, 2015 under Section 119 of the Act dealt with the representation of the Karnataka State Chartered Accountants Association (supra) consequent to the directions of the Karnataka High Court was prior to the CBDT's order passed today, i.e. 30th September, 2015. Consequently, the order passed on the representation of Karnataka State Chartered Accountants Association (supra) would stand diluted even if not entirely wiped out, consequent to the subsequent orders passed today under Section 119 of the Act by the CBDT. The order dated 29th September, 2015 accepted the fact that the due date in case of non-audited case covered by the ITR Form Nos. 1,2,2-A and 4-S, the due date for E-filing should extend from 31st July, 2015 to 7th September, 2015. Mr. Suresh Kumar, learned Counsel appearing for the

Revenue in the absence of instructions sought to contend that that there was sufficient time of the Chartered Accountants in filing returns for Assessment Years 2015-16 having due date of 30th September, 2015. This, however yet does not explain the reasons why a delay of 83 days in notifying the ITR Form Nos,1,2,2-A and 4-S would justify the extending time while a delay of 120 days in notifying the ITR Form Nos. 3,4,5,6 and 7 does not warrant extension of time.

18 It may be pointed out that even the Delhi High Court in the case of Avinash Gupta (supra) while not entertaining the Petition, seeking extension of due date did observe in paragraph 22 as under:-

“22:- Notwithstanding having held so. I am of the view that there is some merit if not legal then otherwise, in the grievances of the Petitioner. The counsel for the respondents appearing on advance notice is unable to give the reasons for the forms etc. being not available at the beginning of the assessment year on 1st April of every year and the same thereby causing inconvenience to the practitioners of the subject. There is sufficient time available to the Government, after the Finance Act of the financial year, to finalize the forms and if no change is intended therein, to notify of the same immediately. There appears to be no justification for delay beyond the assessment year in prescribing the said forms. Accordingly, though not granting any reliefs to the petitioner for the current assessment year, the respondents are directed to, with effect from the next assessment year, at least ensure that the forms etc. which are to be prescribed for the Audit Report and for filing the ITR are available as on 1st April of the assessment year unless there is a valid reason therefor and which should be recorded in writing by the respondents themselves, without waiting for any representations to be made. The respondents, while doing so, to also take a decision whether owing thereto any extension of the due date is required to be prescribed and accordingly notify the public.”

From the aforesaid observations of the Delhi High Court, it is

clear that it was also of the view that the CBDT should make available the necessary ITR Forms on 1st April of the subject Assessment Year for the benefit of the assessee. However, in case, there is any delay, the same should be recorded in writing and also consider whether in view of the delay, an extension of time in filing return is warranted.

19 It may be noted that despite sufficient time being available, the Respondent-Revenue has chosen not to file any affidavit in reply. It is in this view of the matter, we are at this stage unable to consider all the aspect of the matter which may arise in the present case. However, taking into account the fact that the decision of the Gujarat High Court and Punjab and Haryana High Court have been accepted by the CBDT issuing orders under Section 119 of the Act but very unfairly in case of an all India Statute restricting its benefit to only two States and one Union Territory. This itself warrants an extension of due date to the same date as is available for the assesseees in Gujarat, Punjab and Haryana to avoid any discrimination to the assesseees else where. Moreover, we find ourselves in agreement with the reasons given by the Gujarat High Court in All Gujarat Federation of Tax Consultants (supra) as also the decision of the Punjab and Haryana High Court in Vishal Garg (supra). We, therefore, pass the following order:-

- (i) The Respondent No.2 i.e. CBDT is directed to forthwith issue the order/ notification under Section 119 of the Income Tax Act and extend the due date for E-filing of the Income Tax Returns in respect of the assessee who are required to file return of income by 30th September, 2015 to 31st October,2015;

- (ii) It is made clear that at this stage we have not opined on any other issue except to the extent of the aforesaid directions. It is made clear that this order will not affect any other obligation that may arise under the Act.

(G.S.KULKARNI,J.)

(M.S.SANKLECHA,J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/Order.

Bombay High Court