IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 13653 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J.B.PARDIWALA

and
HONOURABLE MR. JUSTICE ILESH J. VORA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**YES**
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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THE ALL GUJARAT FEDERATION OF TAX CONSULTANTS
Versus
UNION OF INDIA

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Appearance:
MR SN SOPARKAR, SENIOR ADVOCATE WITH MR B S SOPARKAR(6851) for the Petitioner(s) No. 1,2
MR VARUN PATE, ADVOCATE for the Respondent No.2, 3
DS AFF.NOT FILED (N)(11) for the Respondent(s) No. 1,2,3

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CORAM: **HONOURABLE MR. JUSTICE J.B.PARDIWALA**
and
HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 08/01/2021

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1 The draft amendment is allowed. The same shall be carried out at the earliest.

2 By this writ application under Article 226 of the Constitution of India, the writ applicants have prayed for the following relief:

> *"The petitioners, therefore, prays that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, direction or order and be pleased to:*
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> *(a) direct the respondent No.2 henceforth not make any alternations in Forms and Utilities or changes in tax compliance requirements, after the beginning of the Assessment year in which the same are made applicable; providing the tax payers and the tax practitioners a clear period of 183 and 214 days to prepare and submit the due reports and forms respectively.*
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> *(b) direct the respondent No.2 to extend the due date for filing the Income Tax Returns (ITR) and Tax Audit Reports (TAR) for AY 2020-21 to 31.01.2021*
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> *(c) any other and further relief deemed just and proper be granted in the interest of justice.*
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> (d) to provide for the cost of this petition."

3 The facts giving rise to this writ application may be summarised as under:

3.1 The writ applicant No.1 is a Trust formed and registered in accordance with the provisions of the Bombay Public Trust Act, 1950 (for short, "the Act, 1950") and has, as it members, the various professions and various associations of professionals from the State of Gujarat engaged in the field of practicing taxation. The writ applicant

No.2 is a practicing Chartered Accountant and a Co-Chairman of the representation committee of the writ applicant No.1. Mr. S. N. Soparkar, the learned Senior Counsel assisted by Mr. B. S. Soparkar, the learned counsel appearing for the writ applicant would submit that having regard to the covid-19 pandemic situation, the CBDT i.e. the respondent No.2 herein thought fit to extend the due date for filing the tax audit report from 30th September 2020 to 31st October 2020 in the case of all those assessees who are required to get their books of account audited. Mr. Soparkar wants this Court to issue a writ of mandamus to the Union of India, Ministry of Finance, to ask the CBDT to exercise its powers vested in it under Section 119 of the Income Tax Act, 1961 (for short, "the Act, 1961") by extending the due date of 31st October 2020 at least for three months i.e. upto 31st January 2021 for the purpose of both : (1) filing the ITR and (2) tax audit report in case of assessees whose accounts are required to be audited. Mr. Soparkar would submit that in line with the reality of covid 19 pandemic and due to orders and directives for work places from the Central Government Home Ministry regarding "Work for Home", "Staggering of work / Business hours" and "reduced workforce" it is impossible for the Tax Practitioners to complete the Audit work to issue a certificate required under section 44AB within the extended due date of 30.10.2020. It is submitted that as reflected in the data released by the respondent No.2, for 2019 as many as 55% of the Income Tax Returns and Tax Audit Reports were filed outside of office hours which shows the sheer burden of workload upon the Tax Practitioners to work overtime to complete the assignment. It is, therefore, submitted that in the year 2020 with covid infections and safety measures, such work is not possible. Mr. Soparkar would submit that the Ministry of Law and Justice has in fact recognized the reality of the situation and extended en mass time limits (except otherwise specified) of the specified Acts to 31st March 2021 which falls during the

period from 30th March 2020 to 31st December 2020 vide the Taxation and Others Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. Even in the specified extensions, in many cases, the effective extensions are substantial ranging to 3 to 6 months. It is, therefore, submitted that a meagre extension of one month in case of the filing of return of income under Section 139 is violative of Article 14 and Article 19(1)(g) of the Constitution of India being manifestly arbitrary, discriminatory and unreasonable. Mr. Soparkar would submit that as stated by this High Court in Special Civil Application No.15075 of 2015, there is a duty cast upon the respondents to ensure that necessary utility for e-filing of the income-tax returns is made available to various categories of assessees at the beginning of the assessment year so that the assessees can plan their tax matters accordingly. However, the amendment in the forms with additional requirements and utilities for e-filing of returns being available only belatedly curtails the time available for filing the income-tax returns. It is submitted that the amendment in rules and disclosure requirements as late as on 1st October 2020 has effectively given only 30 days (as opposed to extended 214 days) to the Chartered Accounts to furnish the Tax Audit Report. Also, the belated issuance of the ITR forms have also curtailed the effective time period. Any user who file e-return will have to create an XML file based on the schema. The schema is needed by those, software companies and organizations who wish to use this code to help create their own software utility for filing up these forms. Due to frequent changes in schema or utility, third party services providers will have to upgrade their software which may take about 5 to 6 days to upgrade, depending upon nature of change. It is further submitted that more than 50% of the Income Tax Returns and Tax Audit Reports were e-filed in 2019 using private softwares and therefore, the issuance of Schema and Validation Rules before sufficient time is also crucially important for the same. Mr.

Soparkar further submitted that due to delay in e-enabling of return of forms, the effective time available for filing return of income becomes very less and cause severe hardship to the assessees and the tax practitioners. Tax Audit of accounts of an assessee is a detailed and time consuming exercise, wherein the Chartered Accountant is required to vouch for and certify the correctness of the details provided in the TAR. Understanding the need for the thoroughness of the Audit, the legislators, in their wisdom, have statutorily granted a reasonable time beginning from the Assessment Year on 1st of April. It may be noted that only after such thorough audit of accounts of an assessee is carried out, then a computation of the actual tax liability of an assessee can take place and ITR can be filed. Arbitration alternation of such mandatorily required details causes genuine and grave hardship upon the assessees, and the principle of natural justice only mandates that such introduction be made in systematic manner accounting for time line to take into account the changes brought-in.

3.2 Mr. Soparkar invited the attention of this Court to the chart as below to give a fair idea as regards the delay caused in release of the utility to e-file the forms:

ITR/Form	*Due date of filing (original)*	*Due date of filing (extended)*	*Time available (extended)*	*Date of availability of e-filing utility*	*Effective time available*
ITR 1	*31.07.2020*	*30.11.2020*	*244 days*	*02.06.2020*	*182 days*
ITR 2	*31.07.2020*	*30.11.2020*	*244 days*	*26.06.2020*	*158 days*
ITR 3	*31.07.2020*	*30.11.2020*	*244 days*	*31.07.2020*	*123 days*
ITR 4	*31.07.2020*	*30.11.2020*	*244 days*	*05.06.2020*	*179 days*
ITR 5	*31.07.2020*	*30.11.2020*	*244 days*	*25.08.2020*	*98 days*
ITR 6	*31.07.2020*	*30.11.2020*	*244 days*	*10.10.2020*	*52 days*

ITR 7	*31.07.2020*	*30.11.2020*	*244 days*	*03.09.2020*	*89 days*

Form	*Due date of filing (original)*	*Due date of filing (extended)*	*Time available (extended)*	*Date of updation of utility*	*Effective time available*
3CA, 3CB, 3CD	*30.09.2020*	*31.10.2020*	*214 days*	*25.08.2020*	*67 days*

DELAY IN AMENDING 3CA/3CB/3CD FORM

Date on which form / rules are amended	*Date of providing amended form / utility*
'1.10.2020	*Awaited as on 19.10.2020*

4 It is submitted that the decision of the respondent No.2 to introduce the new forms to be made applicable 30 days prior to the due date and to subsequently amend the utility without corresponding extension of the due date to e-file is without any basis and contrary to law.

5 Mr. Soparkar, in support of his aforesaid submissions, has placed strongly reliance on the following two decisions of this High Court:

(1) All Gujarat Federation of Tax Consultants vs. Central Board of Direct Taxes [2014] 50 taxmann.com 115 (Gujarat) [Special Civil Application No.12571 and 12656 of 2014 decided on 22nd September 2014]

(2) All Gujarat Federation of Tax Consultants vs. Central Board of Direct Taxes [2014] 50 taxmann.com 115 (Gujarat) [Special Civil Application No.15075 of 2015 decided on 29th September 2015]

6 Mr. Soparkar would submit that in both these cases upon which reliance is placed, the tendency of the respondents to make multiple last

minute changes was criticized. In both the judgements, directions were issued to grant additional time for filing returns.

7 Mr. Soparkar also pointed out that a detailed representation has been filed addressed to the Union Finance Minister of India dated 12th October 2020 at Annexure : I to this writ application (page : 108). However, there is no response in this regard at the end of the respondent No.1 till this date.

8 In such circumstances referred to above, Mr. Soparkar prays that there being merit in this writ application, the same may be considered accordingly.

9 On the other hand, this writ application has been vehemently opposed by Mr. Varun Patel, the learned Senior Standing Counsel appearing for the respondents Nos.2 and 3 respectively. Mr. Patel pointed out that so far as ITR – 1 and ITR – 4 is concerned, the time limit expires on 10th January 2021. The Tax Audit Reports are to be submitted by 15th January 2021 and the returns are to be filed by 15th February 2021. He would submit that for the Assessment year 2020-21, the due date for filing the ITR and TAR under the Act has been extended earlier considering the covid-19 pandemic as under:

> [a] The due date for filing income tax returns for A.Y.2020-21 was extended vide the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 to 30th November 2020. Subsequently, vide notification S.O. 3906 (E) dated 29th Oct, 2020, the due dates were further extended to 31st Jan. 2021 for cases in which tax audit report under section 44AB is required to be filed and 31st Dec. 2020 for others.

[b] Since as per Section 44AB due date for filing tax audit report is one month prior to the due date for return, the due date for filing of tax audit report was also extended to 31st Oct. 2020 vide Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and extended further to 31st Dec. 2020 vide notification S.O. 3906(E) dated 20th Oct. 2020.

[c] Subsequently vide notification S.O. 4805(E), the due dates were further extended to 15th February, 2021 for cases in which tax audit report under Section 44AB is required to be filed and 10th January, 201 for others.

10 Mr. Patel would submit that based on Notified Forms, the software for preparation of ITRs have been prepared and the date of release of 1st version of ITR utilities in e-filing portal is as per table below. Due to changes in Notified Form or Press releases the ITR preparation software have been modified / are being modified:

ITR utility	Date of release of ITR utility in e-filing portal
ITR-1	'02-June-2020
ITR-2	'26-June-2020
ITR-3	'31-July-2020
ITR-4	'05-June-2020
ITR-5	'25-Aug-2020
ITR-6	'22-Sept-2020
ITR-7	'03-Sept-2020

11 Mr. Patel would further submit that ITRs 1 and 4 meant for salaried tax payers and business reporting income on presumptive basis, constitute 81% of all ITRs filed, and were available for filing within 1

week of Notification of the forms by CBDT. Til 28th Dec 4.37 Cr. ITRs had been filed for only AY 2020-21 as compared to 4.51 Cr for only AY 2019-20 as on 28th Aug 2019.

12 Mr. Patel would also submit that utility for filing TAR – Form No.3CA-3CD & 3CB-3CD for A.Y. 2020-21, incorporating amendments as per notification dated 01-Oct-2020 was released in e-filing portal on22-Oct-2020. The utility before the date of notification for amendment of Form was already available in e-filing portal which would be used for filing the Form No.3CA-3CD & 3CB-3CD A.Y. 20202-21 till Oct. 1st Form No.3CEB for A.Y. 2020-21, incorporating amendments as per notification dated 01-Oct-2020 was released in e-filing portal on 28-Oct-2020. The utility before the date of notification for amendment of Form was already available in e-filing portal which could be used for filing the Form No.3CEB for A.Y. 2020-21 till Oct. 1st. Therefore, except for the gap from Oct 1st to Oct 21st necessitated to incorporate changes as per notification dated 01-Oct-2020 in the software/portal CAS/Tax payers could submit their Tax Audit Reports at all other dates. It is submitted that till 28th Dec 2020, 1,51,855 FORM 3CA and 13,63,277 FORM 3CB under Section 44AB have been filed.

13 Mr. Patel would further submit that the changes incorporated in the various forms and utilities during an assessment year are to give effect to the relevant Finance Act which comes into effect at the start of the said assessment year. Further, apart from the above, any changes to the forms and utilities, if made, are only to bring about simplification of procedure, clarify in understanding and ease of compliance of the tax payers.

14 Mr. Patel would submit that the 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 compliance 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 asessee 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 hence providing relief to poor. It may also be noted that 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.

15 In the last, Mr. Patel pointed out that the last extension for filing the ITRs and TARs has been given by press release dated 30th December 2020. The Government Notification dated 31st December 2020 has also been issued with respect to the extension for fling the ITRs and TARs.

16 Mr. Patel pointed out that having regard to the same, the Bombay High Court thought fit not to entertain an identical petition and the same came to be rejected vide order dated 31st December 2020. Mr. Patel invited out attention to page : 138 of the paper book on which the order passed by the Bombay High Court has been annexed.

17 In such circumstances referred to above, Mr. Patel prays that there being no merit in this writ application, the same may be rejected.

18 Having heard the learned counsel appearing for the parties and having gone through the materials on record, we intend to keep this writ application pending and pass an interim order in the larger interest of justice.

19 In **All Gujarat Federation of Tax Consultants (supra)**, a Coordinate Bench of this High Court had the occasion to consider identical situation. We quote few relevant observations made in the said judgement:

> *"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.*
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> *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.*

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.

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 :-*
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> *"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.

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.

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."

20 In the second judgement, in the case of **All Gujarat Federation of Tax Consultants (supra),** this Court observed as under:

"11.1 The controversy involved in the present case lies in a very narrow compass. The petitioners and other assessees covered under the categories to which the petition relates, are ordinarily required to file their returns of income any time from 1st April till 30th September of the relevant assessment year. By virtue of rule 12 of the rules, all the assessees have to file the income tax returns electronically, that is, online. For this purpose, the corresponding utility relating to each category of assessees in the nature of Forms No.ITR-3, ITR-4, ITR-5, ITR-6 and ITR-7 are required to be provided by the respondents. It is an admitted position that in the year under consideration, the relevant utility has been provided only with effect from 7th August, 2015. Therefore, prior to 7th August, 2015, it was not possible for any of the assessees who were required to file income tax returns in the above referred forms, to file their returns of income. Therefore, while in the ordinary course, the assessees falling in the above categories have a period of 180 days to compile relevant details and to file the income tax returns by 30th September, in view of the fact that the utility for filing the income tax returns has been furnished only on 7th August, 2015, such period stands substantially curtailed. Having regard to the difficulties faced by the Chartered Accountants and other professionals as well as the assessees, the petitioners made representations to the respondent Board for exercising powers under section 119 of the Act and extending the due date for filing the income tax returns prescribed under Explanation 2 to section 139 of the Act. However, by the announcement dated 9th September, 2015, such request has been turned down and it has been stated that the last date for filing of returns being 30th September, 2015 will not be extended. As noticed hereinabove, in case of other categories of assessees who are required to file tax returns in Form ITR-1, ITR-2, ITR-2A, ITR-4S, in whose case also, there was a delay in furnishing the necessary utility, the Board had extended the due date for filing the income tax returns. The stand of the Board is that the period of seven weeks which is available to the petitioner and other assessees for filing online income tax returns, is sufficient and therefore, there is no reason for extending the due date for filing the income tax returns.

12 While it is true that the powers under section 119 of the Act are discretionary in nature and it is for the Board to exercise such powers as and when it deems fit. However, it is equally true that merely because such powers are discretionary, the Board cannot decline to exercise such powers even when the conditions for exercise of such powers are shown to exist. At this juncture reference may be made to the decision of the Supreme Court in the case of ***UCO Bank v. CIT,*** *(1999) 4 SCC 599?/I> (1999) 237 ITR 889, wherein the court had occasion to interpret section 119 of the Act. The court held thus:*

> ***9.*** *What is the status of these circulars? Section 119(1) of the Income Tax Act, 1961 provides that:*

119. (1) 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.
(emphasis supplied)

Under sub-section (2) of Section 119, without prejudice to the generality of the Boards 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 assessees, 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 manner 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.

13 Thus, the power under section 119 of the Act is a beneficial power

given to 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. In the case at hand, as is evident from the facts noted hereinabove, in the normal course, assessees who are subject to audit as well as other categories of assessees referred to hereinabove, can file their returns of income from 1st April to 30th September of the year in question. In view of the provisions of rule 12 of the rules, whereby, the assessees who are subject to tax audit, as well as the assessees referred to hereinabove, are required to file the tax returns electronically, that is, online. However, for filing the tax returns, appropriate utility is required to be made available by the respondents to the assessees. Therefore, till such utility is provided by the respondents, it is not possible for the assessees to file their returns of income. Therefore, there is a duty cast upon the respondents to ensure that necessary utility for e-filing of the income tax returns is made available to various categories of assessees at the beginning of the assessment year so that the assessees can plan their tax matters accordingly. However, as noted hereinabove, the utilities for e-filing of returns have been made available only with effect from 7th August, 2015, thereby curtailing the time available for filing the income tax returns to a great extent. According to the petitioners, such curtailment of time causes immense hardship and prejudice to the petitioners and other assessees belonging to the above categories, whereas the respondent Board, on the other hand, has taken an adamant stand not to extend the time for e-filing of the returns despite the fact that the entire situation has arisen on account of default on the part of the Department and not the assessees.

14 It may be recalled that in relation to assessment year 2014-15, the respondent Board had extended the time for filing the tax audit reports, but had not extended the time for filing the returns and the petitioners were constrained to approach this court for extension of the due date for filing return of income. In that case, this court has, inter alia, observed thus :

> *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 months time would not allow accessibility to such utility software to the assessees, which has put them to a great jeopardy.*
>
> *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 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 rigor 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 forgo 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.

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.

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.

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.

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.

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.

15 It may be noted that despite the fervent hope expressed by the court that the respondents in future may plan any change well in advance, a

similar situation has prevailed in the present year also and the utilities for e-filing of income tax returns have been made available as late as on 7th August, 2015, leaving the petitioners and other assessees with less than one third of the time that is otherwise available under the statute.

16 t may be noted that in the facts of the above case, there was a blackout for a period of one month, whereas in the year under consideration, the utility was not made available till 7th August, 2015. Thus, it was not possible for any of the assessees who are required to file returns in Forms No.ITR-3, ITR-4, ITR-5, ITR-6 and ITR-7, to file income tax returns before such date.

17 Another notable aspect of the matter is that as contended on behalf of the petitioners, non-filing of returns before the due date would result into the assessees being deprived of their right to file the revised return or claiming loss, whereas insofar as the revenue is concerned, no hardship or prejudice is likely to be caused, inasmuch as the interest of the revenue 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. Under the circumstances, when no prejudice is caused to the revenue and the assessees are put to great hardship on account of the short period within which the income tax returns are to be filed, it was expected of the Board to exercise the discretionary powers vested in it under section 119 of the Act to ameliorate the difficulties faced by the assessees on account of no default on their part, at least to a certain extent, by extending the due date for filing the income tax returns for a reasonable time. In the opinion of this court, the Board should not create a situation whereby the assessees are required to knock the doors of the court year after year, more so, when on account of the delay on the part of the respondents, it is the assessees who would have to face the consequences of not filing the returns in time. The contention that no prejudice is caused to the petitioners/assessees, therefore, does not merit acceptance.

18 Unfortunately, however, despite the aforesaid position, the Board has declined to exercise the discretion vested in it under section 119 of the Act to come to the rescue of the assessees and grant them some relief, leaving the court with no option but to direct the Board to extend the due date for filing the income tax returns under section 139 of the Act from 30th September, 2015 to 31st October, 2015 so as to alleviate to a certain extent, the hardships caused to the assessees on account of delay in providing the utilities.

19 Significantly, one of the factors which appears to have weighed with the Board while turning down the request for extension of the due date for filing returns is that as per the guidelines of ICAI, a practicing Chartered Accountant, as an individual or as a partner of a firm, can conduct only upto sixty tax audits under section 44AB of the Act and

corresponding number of tax returns are required to be filed, in respect of which, the seven weeks available to them should be sufficient. In this regard it may be germane to refer to rule 12 of the rules, which prescribes the different forms under which assessees belonging to various categories enumerated thereunder are required to file their returns. Clause (c) of sub-rule (1) of rule 12 prescribes Form No.ITR-3 in case of a person being an individual or Hindu Undivided family who is a partner in a firm and where income chargeable to income-tax under the head Profits and gains of business and profession does not include any income except the categories enumerated therein. Clause (d) of rule 12(1) prescribes Form No. ITR-4 in the case of a person being an individual or a Hindu undivided family or other than the individual or Hindu undivided family referred to in clause (a) or (b) or (c) or (ca) deriving income from a proprietory business or profession. Clause (e) prescribes Form No. ITR-5 in the case of a person not being an individual or a Hindu undivided family or a company or a person to which clause (g) applies. Clause (f) prescribes Form No. ITR-6 in the case of a company not being a company to which clause (g) applies and clause (g) prescribes Form No.ITR-7 in the case of a person including a company whether or not registered under section 25 of the Companies Act, 1956 which is required file return under the relevant sub-sections of section 139 of the Act mentioned thereunder. Not all the aforesaid classes of assessees are required to be audited under section 44AB of the Act. Therefore, it is not just assessees who are subject to tax audit under section 44AB of the Act who are affected by the non-extension of due date but assessees belonging to all the above categories who may not be subject to tax audit under section 44AB. The number of tax audits conducted by a Chartered Accountant may be limited to 60, but the total number of assessees that he deals with is not limited to 60, as a large number of assessees may belong to the categories which are not subject to tax audit under section 44AB of the Act.

20 The Board while not extending the due date for filing return was also of the view that due date should not be extended just for the benefit of those who have remained lax till now for no valid reason in discharging their legal obligations. It may be noted that despite the fact that ordinarily the ITR Forms which should be prescribed and made available before the 1st of April of the assessment year, have in fact, been made available only on 7th August, 2015 and the assessees are given only seven weeks to file their tax returns. Therefore, laxity, if any, evidently is on the part of the authority which is responsible for the delay in making the utility for E-Filing the return being made available to the assessees. When the default lies at the end of the respondents, some grace could have been shown by the Board instead of taking a stand that such a trend may not be encouraged. Had it not been for the laxity on the part of the respondents in providing the utilities, there would not have been any cause for the petitioners to seek extension of the due date for filing tax returns.

21 As regards the decision of the Delhi High Court on which reliance has been placed by the learned counsel for the petitioners, it may be noted that the learned Single Judge has observed that the claim of the petitioners that it is entitled to 180 days for filing the return of income is not prescribed either in the statute or rules, whereas as noticed hereinabove, the scheme of the Act clearly indicates that ordinarily a period of 180 days is available to an assessee who is required to file the income tax return by 30th September, 2015 and consequently, the time prescribed by the Act gets curtailed on account of non-availability of the necessary utility for filing the return online. Besides, the Delhi High Court has not taken into consideration the factor that unless the utility is made available, the assessees would not be aware of the details which they are required to furnish, inasmuch as, the delay in providing the utilities is on account of the changes made in the corresponding forms. It may also be pertinent to note that the court in paragraph 22 of the judgment has expressed the view that there is some merit, if not legal then otherwise, in the grievance of the petitioner. The court noticed that the counsel for the respondents was unable to give reasons for the forms etc. not being available at the beginning of the assessment year on 1st April of every year and the same thereby causes inconvenience to the practitioners of the subject. The court further observed that there is sufficient time available to the Government, after the Finance Act of the financial year, to finalise the forms and if no change is intended therein, to notify the same immediately. The court found no justification for delay beyond the assessment year in prescribing the said forms. Accordingly, while not granting relief to the petitioner for the current assessment year, the court directed the respondents to, with effect from the next assessment year, at least ensure that the forms etc. which are 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 court further observed that 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.

22 As regards the decision of the Karnataka High Court, the court has merely relegated the petitioners therein to the CBDT for the consideration of their representation and does not lay down any proposition of law. The Rajasthan High Court has expressed the view that the decision contained in the announcement dated 9th September, 2015 being a policy decision, the court should not interfere. The court, therefore, has not considered the non-exercise of discretionary powers under section 119 of the Act on the part of the Board despite the fact that the circumstances so warrant exercise of discretion in favour of the assessee.

23 The Punjab and Haryana High Court in the case of Vishal Garg v. Union of India (supra) has, having regard to the totality of facts and

circumstances of the case, considered it appropriate to extend the due date for e-filing of returns upto 31st October, 2015. Therefore, instead of extending the due date to 30th November as prayed for in the petition, with a view to maintain consistency in the due date for e-filing of returns, this court is of the view that, the same date is required to be adopted.

24 The contention that once the Delhi High Court has taken a particular view, in relation to an all India statute, it is not permissible for this court to take a different view, does not merit acceptance in the light of the view taken by this court in N R Paper Board Limited v. Deputy Commissioner of Income tax (supra). Besides, even if such contention were to be accepted, there are conflicting decisions of different High Courts, inasmuch as, the Punjab and Haryana High Court has taken a view different from the Delhi High Court and hence, it is permissible for the court to adopt the view with which it agrees.

25 In the light of the above discussion, the petition partly succeeds and is accordingly allowed to the following extent. The respondent Board is hereby directed to forthwith issue requisite notification under section 119 of the Act extending the due date for e-filing of the income tax returns in relation to the assessees who are required to file return of income by 30th September, 2015 to 31st October, 2015. The respondents shall henceforth, endeavour to ensure that the forms and utilities for e-filing of income tax returns are ordinarily made available on the 1st day of April of the assessment year. Rule is made absolute to the aforesaid extent with no order as to costs."

21 We are of the view that the respondent No.1 – Union of India, Ministry of Finance should immediately look into the issue, more particularly, the representation dated 12th October 2020 at Annexure : I of the paper book (page 108) and take an appropriate decision at the earliest in accordance with law. We, accordingly, direct the respondent No.1 to do so. While taking an appropriate decision, the Union shall bear in mind the observations made by this High Court in the two above noted judgements, more particularly, the observations of the Supreme Court in the case of **Vaghjibhai S. Bishnoi (supra)** that the powers given to the CBDT 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. One additional aspect needs to be kept in mind before taking any appropriate decision that the time period for the officials of the tax department has been extended upto 31st March 2021 having regard to the current covid-19 pandemic situation. If that be so, then some extension deserves to be considered in accordance with law. Let an appropriate decision be taken by 12th January 2021.

22 Post this matter on 13th January 2021 on top of the Board.

23 Mr. Patel, the learned Senior Standing Counsel appearing for the respondents Nos.2 and 3 shall apprise this Court of any decision or development in the matter on the next date of hearing.

(J. B. PARDIWALA, J)

(ILESH J. VORA,J)

CHANDRESH