

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 13653 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 660 of 2021****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE J.B.PARDIWALA****and****HONOURABLE MR. JUSTICE ILESH J. VORA**

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

Appearance:

IN SPECIAL CIVIL APPLICATION NO.13653 OF 2020:MR SN SOPARKAR, SENIOR COUNSEL WITH MR B S SOPARKAR(6851)
for the Petitioner(s) No. 1,2MR ZOHEB HOSSAIN WITH MR VARUN K PATEL WITH MR NIKUNT K
RAVAL, ADVOCATES for the Respondent(s) No. 1,2

DS AFF.NOT FILED (N)(11) for the Respondent(s) No. 1,2,3

IN SPECIAL CIVIL APPLICATION NO.660 OF 2021:

MR.AVINASH PODDAR(9761) for the Petitioner(s) No. 1

MR.VISHAL J DAVE(6515) for the Petitioner(s) No. 1

MR NIPUN SINGHVI(9653) for the Petitioner(s) No. 1

MR ZOHEB HOSSAIN WITH MR VARUN K PATEL WITH MR NIKUNT K
RAVAL, ADVOCATES for the Respondent(s) No. 1,2

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

Date : 13/01/2021

ORAL JUDGMENT

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

1 The operative part of the order passed by this Court dated 8th January 2021 in the Special Civil Application No.13653 of 2020 reads as under:

*“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.”

2 Pursuant to the directions issued by this Court referred to above, the CBDT looked into the representation dated 12th October 2014

preferred by the All Gujarat Federation of Tax Consultants and is said to have also taken into consideration the other observations made by this Court in the order dated 8th January 2021.

3 The order under Section 119 of the Income Tax Act, 1961 dated 11th January 2021 declining to extend the time limit any further reads thus:

“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 judgement 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 S.O.3906 (E) dated 29.10.2020	3 rd Extension vide Notification S.O. 4805 (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 – last year	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 31 st 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	1,00,569	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	Grant 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 COVID-19, 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 far 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.

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 India & 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. v. State of Rajasthan & Ors. 1985 (3) SCR 243, at p. 269)

2. In view of the above reasons, all the representations for further

extension of the due date are hereby rejected.”

4 Thus, it appears that the CBDT has taken the final decision not to extend the due date any further and accordingly, rejected all the representations.

5 The decision taken by the CBDT vide order dated 11th January 2021 referred to above is sought to be produced by way of further affidavit filed on behalf of the respondents Nos.2 and 3 respectively. The same is ordered to be taken on record.

6 We proceeded with the further hearing of this litigation today at sharp 11:00 A.M.

• **SUBMISSIONS ON BEHALF OF THE WRIT APPLICANTS:**

7 Mr. S. N. Soparkar, the learned Senior Counsel appearing for the writ applicants vehemently submitted that the decision of the CBDT placed on record is nothing, but an eyewash. It is argued that the core issue arising in this litigation has not been addressed by the CBDT.

8 It is argued that the CBDT has very conveniently and consciously not addressed itself to the hard reality that the utilities for filing the Tax Audit Report and the Income Returns were released at a belated stage. In fact, those were released almost after a period of more than five months despite there being a mandate from this Court in the previous litigation referred to in the order dated 8th January 2021 that the utilities should be released not later than 1st April of the financial year. The CBDT has failed to appreciate that by inordinate delay in releasing the

utilities, the time available with the tax practitioners could be said to have been considerably curtailed. The tax practitioners are finding it very difficult to prepare the Returns of Income and Tax Audit Reports before the due date.

9 It is argued that the issues raised in the present writ applications are identical to the one decided in **2014(50) taxmann.com 115(Guj)** paras 37 to 39 and **2015 (61) taxmann.com 431 (Guj)** (para 6). It is argued that in the present case also, the Income Tax Return utilities were issued at a belated stage. Substantive amendments were introduced in the form of Tax Audit Reports in the middle of the order i.e. 1st October 2020 and even thereafter, the utility was not issued till 22nd October 2020 creating a complete state of disarray.

10 It is argued that even if the two subsequent extensions are taken into consideration, then the total time available is only 85 days instead of 183 days.

11 There is no fault on the part of the writ applicants and the case is one of genuine hardship on account of the delay on the part of the CBDT.

12 Way back in the year 2014, this Court had directed the CBDT not to introduce new utility with additional requirements in the midst of the year. The directions issued by this Court in the two judgements referred to above have been completely defied.

13 It is argued that this High Court extended the due date in the decision reported in **2015 (61) taxmann.com 431**, even while the other High Courts declined to do so.

14 It is argued that by extending the time period, as prayed for, no hardship is going to be caused to the Revenue, whereas, if the time period is not extended, the writ applicants will be put to immense difficulties.

15 Mr. Soparkar, once again, invited our attention to the following chart:

ITR/ TAR Form	Due date of filing (original)	Clear days expected from 01.04.20 20	Date of availability of e-filing utility	Schema upadation date	Utility upadation date	Extended due date	Effective days available with taxpayers and the tax professiona ls from utility availability
ITR 3	31.10.2020	214 days	31.07.2020	29.08.2020 09.11.2020 11.01.2021	11.01.2021	15.02.2021	199 days
ITR 5	31.10.2020	214 days	25.08.2020	30.09.2020 13.11.2020 11.01.2021	11.01.2021	15.02.2021	174 days
ITR 6	31.10.2020	214 days	10.10.2020	22.11.2020 & 11.01.2021	11.01.2021	15.02.2021	128 days
ITR 7	31.10.2020	214 days	03.09.2020	15.10.2020 08.12.2020 11.01.2021	11.01.2021	15.02.2021	165 days
TAR 3CA 3CB 3CD	30.09.2020	183 days	22.10.2020 (Rules amended on 01.10.2020)			15.01.2021	85 days

ITR 3: for individuals having income from business/ profession head

ITR 5: For Firm /LLP/AOP/BOI

ITR 6: For company

ITR 7: for charitable organisation/political party/university (claiming exemption)

16 It is argued that on account of the covid pandemic situation, there has been frequent disruption as regards the availability of the staff,

employees, working hours, client meetings and audit work. The hardship faced by the taxpayers and tax professionals in finishing the audit assignments and collecting the requisite details to file the Returns of Income and Tax Audit Reports is genuine and real. Adequate time period is needed to finish the work. It is pointed out that not less than 18 organizations (including the Institute of Chartered Accountants of India) have made representations for this purpose.

17 It is argued that through the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, the due dates for completion of any proceedings or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, Commission or Tribunal, by whatever name called under the provisions of the specified Act is extended upto 31st March 2021. If the adequate time period determined for such purposes is extended upto 31st March 2021 than the same should also be granted to the writ applicants. It is argued that the CBDT has recognized the need to extend the time period and has already extended the same for three times for A.Y. 2021-21. Therefore, the need to extend the time period from the original due dates is genuine and not superfluous. Only the adequacy of extension is in question. It is argued that that the pandemic has not come to an end.

18 In such circumstances referred to above, Mr. Soparkar prays that there being merit in his writ application, the same may be considered appropriately and the time period, as prayed for, may be extended in the interest of not only the tax payers but also the tax professionals.

19 Mr. Avinash Poddar, the learned counsel appearing with Mr. Vishal J. Dave and Mr. Nipun Singhvi, the learned counsel for the writ

applicants of the connected writ application submitted that they would adopt all the submissions canvassed by Mr. S. N. Soparkar referred to above and noted above.

● **SUBMISSIONS ON BEHALF OF THE RESPONDENTS:**

20 On the other hand, both the writ applications have been vehemently opposed by Mr. Zoheb Hossain assisted by Mr. Varun K. Patel and Mr. Nikunt K. Raval, the learned counsel appearing for the respondents.

21 Mr. Hossain would submit that the principal argument canvassed on behalf of the writ applicants as regards the delay in releasing the utilities for filing the Tax Audit Reports and Income Tax Returns has been blown out of proportion. It is argued that the changes brought about in the ITR by way of an update do not amount to adding or extending the fields. It is only increasing or making changes in the character of the existing fields to enable certain minuscule taxpayers to report correctly which they might not have been able to otherwise.

22 It is argued that the Tax Audit work undertaken by the writ applicants is in no manner affected by such amendment minuscule changes or updates which are provided in the existing fields. No prejudice could be said to have been caused warranting any interference at the end of this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India. It is argued that the Tax Audit Report Utility has been made available from 1st April of the relevant year. Reliance placed on the two decisions of this High Court referred to above are completely misplaced because in the said case by a Notification dated 1st May 2013, the CBDT had made it mandatory for the assesseees to

electronically file the Income Tax Returns relevant for the assessment year 2013-14 and onwards. In relation to the assessment year 2014-15, the respondents therein had failed to make the utility specified for filing the Tax Audit Report until 31st August 2014. Various representations were made to the CBDT in that regard which in exercise of power under Section 119 of the Act extended the due date for filing the Tax Audit Report under Section 44AB of the Act 1961 to 30th September 2014. However, the due date for filing of Returns of Income was not extended. It is in such factual background prevailing at the relevant point of time that this Court thought fit to issue the writ of mandamus directing the CBDT to extend the due date for filing the Income Tax Returns. It is argued that after deliberations at the highest level in the Ministry of Finance, it was decided that the time limit for filing of the Audit Reports, which is presently fixed as 15th January 2021 should not be extended any further for the following reasons:

(1) *The Compliance in filing the Tax Audit Reports is rapidly increasing each day as is evident from the following table:*

Date	FORM3 CA AY 20- 21	FORM3 CB AY20- 21	Cumulati ve figure – AY 20- 21	Date	FORM3C A AY 19-21	FORM3C B AY 19-20	Cumulativ e figure AY 19-20	Differenc e
04- Jan-21	3,079	27,492	18,84,075	20-Oct-19	2,791	29,760	15,30,967	3,53,108
05- Jan-21	3,238	28,875	19,16,188	21-Oct-19	5,598	51,069	15,87,634	3,28,554
06- Jan-21	3,190	30,582	19,49,960	22-Oct-19	7,628	62,938	16,58,198	2,91,762
07- Jan-21	3,323	31,035	19,84,318	23-Oct-19	9,125	75,031	17,42,354	2,41,964
8-Jan- 21	3,316	29,924	20,17,558	24-Oct-19	10,977	87,350	18,40,681	1,76,877
09- Jan-21	2,824	26,097	20,46,479	25-Oct-19	11,841	93,575	19,46,097	1,00,382
10- Jan-21	1,416	16,370	20,64,265	26-Oct-19	10,366	91,397	20,47,860	16,405
11-	4,320	41,970	21,10,555	27-Oct-19	2,309	30,861	20,81,030	29,525

Jan-21								
12- Jan-21	8,690	85,663	22,04,908	28-Oct-19	6,138	59,785	21,46,953	57,955
13- Jan-21				29-Oct-19	10,119	1,00,569	22,57,641	
14- Jan-21				30-Oct-19	23,125	1,87,444	24,68,210	
15- Jan-21				31-Oct-19	42,280	31,15,190	28,25,680	
Grand Total cumula tive	2,27,814	19,77, 094	22,04,908	Grand Total cumulative	2,88,236	25,37,444	28,25,680	-6,20,772

(2) From the above data, it is evident that there has been a huge leap in filing of the tax audit reports and from 10.01.2021 the daily filings have increased 4 to 5 times as on 12.01.2021. On 10.01.2021, the daily filing of Form 3CB was 16,370 which jumped to 41,970 on 11.01.2021 which has again more than doubled to 85,663 on 12.01.2021. The assesseees are rapidly complying with the filing of the tax audit report across the country and any interference at this stage may affect the discipline of filings by the Assesseees as well as the larger interest of the Revenue and public interest.

(3) Notably, from the above table it is also evident that as against last year with 3 days remaining from the deadline, the cumulative figure of the TAR filings for AY 2019-20 was 21,46,953 as against the cumulative figure of the TAR filings this year with three days remaining from the last date is 22,04,908 which is 57,955 already in excess of the last year's TAR filings. Therefore, there is disciplined compliance taking place by the assesseees.

(4) The TAR utility was available from the beginning of the year, and therefore, there is no justification in seeking an extension for filing the tax audit report.

(5) Moreover, the submission that certain ITR Forms were released in June 2020, July 2020, August 2020 and September 2020 respectively and therefore filing of the ITRs should be extended is misplaced since the preparation of the Final Accounts, which is done on the basis of the Income Tax Act and the Rules therein is nowhere dependent on the date of release of the ITR utility and is an independent exercise. It is nobody's case that the assessee was ready to file his returns prior to June 2020, July 2020, August 2020 or September 2020 - the various dates when the different ITR Forms became available - but could not file the same and thereafter they were prevented from filing till the last date of filing such return on 15.02.2021. There is nothing in the Act or Rules which mandates that the portal should be open and available from 1st April of

the relevant year itself provided that a reasonable time is given to the assesseees to file their return of income. In fact the ITR forms which were made available contained only minimal changes to reflect the amendments made in the Finance Act 2020 which were already known to all assesseees and Tax practitioners.

(6) The Filing of returns in the tax audit cases demonstrate that even as on 12.01.2021 which is 34 days before the extended due date, the returns filed in the tax audit cases far exceed the returns filed in comparison to last year on a similar date. A chart to this effect is as under:

Asst year	AY 2020-21 a on 12 th Jan 2021	AY 2019-20 as on 28 th Sep 2019	Difference
ITR-3	83,98,573	79,18,513	4,80,060
ITR -5	10,68,479	7,68,756	2,99,723
ITR-6	4,82,981	2,38,168	2,44,813

This is comparison for AY 2019-20 (due date 31st Oct 2019 for all ITRs with TAR) and AY 20-21 (due date 15th Feb 2021 for all ITRs with TAR): 34 days prior to extended due date for equivalent comparison

(7) Indisputably, the assesseees would have at least 148 days to upload their returns from 22/09/2020 the date when the ITR-6 was made available till 15.02.2021 which is the date when the return for the Audit Cases is to be filed. The writ applicants have not been able to establish any prejudice caused to the Assessee or indicate any rational nexus between their inability to prepare their Final Accounts and Tax Audit Reports and the availability of the utility for various forms from June 2020/September 2020 onwards.

(8) The Supreme Court has consistently held that in financial matters judicial deference may be shown to the executive pragmatism and free play in the joints may be given to the executive especially in fixing cut-off dates.

(9) It has also been demonstrated that the various updates the Petitioner has referred to made to various forms did not amount to changing or increasing any existing fields, rather only the size of such fields were increased in the number of characters or in some cases the field was modified to accommodate from numeric characters to alpha numeric characters keeping in mind certain special cases. A list of such Schema changes and justification was presented before this Court.

(10) The consequence of late filing of a tax audit report is provided under Section 271B which reads as under:

“Failure to get accounts audited.

271B. If any person fails to get his accounts audited in respect of any previous year or years relevant to an assessment year or furnish a report of such audit as required under section 44AB, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum equal to one-half per cent of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years or a sum of one hundred fifty thousand rupees, whichever is less.”

(11) However, Section 273B containing the consequence of non-filing of tax audit report provides that if in a given case the assessee proves reasonable cause for failure to file tax audit report in accordance with Section 44AB, no penalty will be imposable on the person or the assessee. The relevant portion of Section 273B is reproduced hereunder:

“Penalty not to be imposed in certain cases.

273B. Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of...section 271B, ..., no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure.”

(12) Therefore in exceptional cases, if an assessee is able to make out a case of reasonable cause for his failure to file tax audit report within the relevant time as required under Section 44AB, then the case of such person or assessee will be considered in accordance with law under Section 273B.

23 In support of the aforesaid submissions, the learned counsel have relied upon the following case law:

(1) Government of Andhra Pradesh vs. N. Subbarayudue and others (2008) 14 SCC (paras 5 to 8)

(2) Ramrao and others vs. All India Backward Class Bak Employees Welfare Association (2004) 2 SCC 76 (para 31 to 33)

(3) Union of India and another vs. Sudhir Kumar Jaiswal (1994) 4 SCC 212 (paras 5 to 7)

(4) University Grants Commission vs. Sadhana Chaudhary (1996) 10 SCC 536 (para 21)

(5) RK Garg vs. Union of India (1981) 4 SCC 675 (para 8)

(6) Union of India vs. Nitdip Textile Processors Pvt Ltd (2013) 1 SCC 226 (para 66)

(7) Supreme Court's order dated 20th March 2020 In Union of India vs. PD Sunny and others in SLP(C) No.10669 of 2020

24 It is also brought to our notice that the High Court of Kerala and the High Court of Allahabad had passed orders issuing general directions to the various departments like the banks, financial institutions, income tax authorities, authorities dealing with the erstwhile KVAT, GST, recovery of tax on motor vehicles and building tax to defer the recovery proceedings or coercive measures till a particular point of time. The Revenue challenged the two orders before the Supreme Court by filing the Special Leave to Petition (Civil) No.10669 of 2020. The Supreme Court passed the following order dated 20th March 2020, which reads thus:

“The Registry is directed to accept these special leave petitions against the judgment and order(s) passed by the High Court of Judicature at Kerala, Ernakulam Bench in Writ Petition (Civil) No.8231/2020 and of the High Court of Judicature at Allahabad, Allahabad Bench in Writ Petition (Civil) No.7014/2020.

Permission to file special leave petitions is granted.

Issue notice.

In the meantime, there shall be ex-parte ad-interim stay of the impugned judgment and order(s) passed in the aforesaid writ petitions and of further proceedings before the High Court(s), in view of the stand taken by the Government of India through learned Solicitor General, before us, that the Government is fully conscious of the prevailing situation and would itself evolve a proper mechanism to assuage concerns and hardships of every one.”

25 In such circumstances referred to above, the learned counsel appearing for the respondents pray that there being no merit in these two writ applications, those be rejected.

• **SUBMISSIONS IN REJOINDER:**

26 Mr. Soparkar, in rejoinder, submitted that the Revenue has raised the following five contentions:

“(1) Comparing number of income tax returns filed on 31.08.2019 (5.51 crores) and 10.01.2021(5.95 crores) – an argument is advanced that a greater number of returns are already filed by the time 10.01.2021 and therefore no further extension is required.

(2) Comparing number of Tax audit reports filed on 31.10.2019 (2.88 lakhs/25.37 lakhs) and 10.01.2021(2.14 lakhs/18.49 lakhs) – an argument is advanced that a lesser number of returns filed before a due date is not anomaly as 24% of total reports were filed in last five days.

(3) Comparing the extension granted by other countries around the world – an argument is made that the CBDT has been generous in granting extension that it has granted already and no further extension is required.

(4) It is also argued that return filing is an obligation of the assessee which cannot be delayed indefinitely. Many functions of the tax department begin after filing of the returns. Filing of the returns results in tax payment that the government needs. Further extension will adversely affect return filing discipline and shall cause injustice to those who have filed before due date.

(5) Reliance is placed on Supreme Court decisions to submit that due date is not arbitrarily decided and the same may not be disturbed.”

27 Mr. Soparkar would submit that the CBDT still owes an answer to

the following:

- (a) the delay in releasing the utilities by 4-6 months despite repeated orders of various High Courts.
- (b) amendments in the Rules and Tax Audit Return form in the middle of the year
- (c) No hardship is likely to be caused to the revenue if the due date is extended
- (d) Why the writ applicants should not be treated at par with the revenue officers for whom the due date is extended to 31.03.2021

28 Mr. Soparkar submitted that the comparison of the ITR filed on 31st August 2019 and 10th January 2015 is fundamentally flawed. The reason being that by 31st August 2019, only the non-Tax Audit Returns would have been filed, whereas by 10th January 2015, both the Tax Audit as well as the non-Tax Audit Returns would have been filed.

29 It is pointed out from the table produced by the Revenue itself that the daily Tax Audit Reports filed in 2021 are less than half compared to what was filed in 2019. In such circumstances, it is unrealistic to expect that 25% shortfall can be met in last five days the way it did in 2019.

30 It is pointed out that the United States has given extension of six months, whereas the CBDT has given extension of 3.5 months. It is further submitted that for all other countries (except U.K.), the financial period is the calendar year 2019 i.e. when there was no pandemic. The

Audit and Return filing preparation would have begun and materially completed before the pandemic in such cases. Such is not the scenario with India and therefore, such comparison is not valid. It is pointed out that the population of India and the number of returns are substantially large compared to other countries.

31 In the last, it is argued that the case law relied upon on behalf of the Revenue is completely misplaced and not applicable in any manner as in each of those cases relied upon, the challenge was to the fixing of date. The writ applicants do not seek to challenge Section 139(1) or Section 44AB of the Act, 1961. The writ applicants only seek judicious exercise of powers under Section 119 of the Act, 1961.

32 In such circumstances, it is prayed that this Court may consider the prayer sympathetically keeping in mind the practical difficulties faced by one and all in this hard times of the covid pandemic.

• **ANALYSIS:**

33 Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether this Court should issue a writ of mandamus to the CBDT for the purpose of extending the time limit to file the Tax Audit Reports and the Income Tax Returns.

34 There is no denying to the fact that the year 2020 was a challenging one. The challenge still continues in the new year 2021 which has just dawned. There has been loss of life and there has been loss of livelihood. There has been anxiety, anguish and even, a degree of anger which stems from helplessness or our inability to be in control of the situation. The Union and the State Government has been striving

hard since a long period of time to combat the situation. It is not as if the Government is completely oblivious of the difficulties which have been pointed out by the learned Senior Counsel appearing for the writ applicants so far as the present litigation is concerned. However, the moot question for this Court to consider is as to where to draw the line. In other words, to what extent the High Court in exercise of its writ jurisdiction should interfere with the decision taken by the respondents, more particularly, when it comes to Revenue.

35 Before an applicant could get a writ of mandamus or an order in the nature of mandamus, he has to satisfy the court that the following conditions are fulfilled.

- (a) The applicant has a legal right;
- (b) The opposite party has a legal duty;
- (c) The application is made in good faith;
- (d) The applicant has no other alternative remedy; and
- (e) The opposite party has refused relief, i.e. demand and refusal.

36 Mandamus is one of the prerogative writs issued by the superior courts (High Court or Supreme Court), which is in the shape of command to the State, its instrumentality or its functionaries to compel them to perform their constitutional / statutory/public duty. 23. A writ of mandamus is an extraordinary remedy to be invoked only upon special occasion and in exceptional circumstances. It is intended to supply deficiency in law. It cannot be granted merely for the asking but has to be obtained where there is no alternative, efficacious and adequate remedy. It cannot be used as an appeal against the decision of a court, tribunal or an authority exercising statutory power. It can only be issued as a last resort where the court is satisfied that without its aid

there would be failure of justice.

37 Mandamus is an action or judicial proceeding of a civil nature extraordinary in the sense that it can be maintained only when there is no other adequate remedy, prerogative in its character to the extent that the issue is discretionary, to enforce only clear legal rights, and to compel courts to take jurisdiction or proceed in the exercise of their jurisdiction, or to compel corporations, public and private, and public boards, commissions, or officers, to exercise their jurisdiction or discretion and to perform ministerial duties, which duties result from an office, trust, or station, and are clearly and peremptorily enjoined by law as absolute and official (P.R. Aiyar, *Advanced Law Lexicon*, (2005), Vol. III P. 2873.).

38 Mandamus is not a writ of right and is not granted as a matter of course (*ex debito justitiae*). Its grant or refusal is at the discretion of the court. A court may refuse mandamus unless it is shown that there is a clear legal right of the applicant or statutory duty of the respondent and there is no alternative remedy available to the applicant. **(Union of India v. S.B. Vohra, (2004) 2 SCC 150)**

39 The discretion of the court, however, is not arbitrary and it must be exercised fairly, reasonably and on sound and well established legal principles.

40 The court, in the exercise of discretion, must take into account wide variety of circumstances. It must consider the facts of the case, the exigency which calls for the exercise of discretion, the consequences of granting or refusing the writ, the nature and extent of injury likely to ensue by the grant or refusal of the writ, etc. In short, courts discretion

must be governed by considerations of public policy, public interest and public good.

41 In the decision reported in (2008) 2 SCC 280, **Oriental Bank of Commerce v. Sunder Lal Jain**, in paragraphs 11 and 12, the Supreme Court held thus,

“11. The principles on which a writ of mandamus can be issued have been stated as under in The Law of Extraordinary Legal Remedies by F.G. Ferris and F.G. Ferris, Jr.:

Note 187.-Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.

Note 192.-Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

Note 196.-Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the court, subject always to the well-settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and should, look to the larger public interest which may be concerned-an interest which private litigants are apt to overlook when striving for private ends. The court

should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

Note 206.- ... The correct rule is that mandamus will not lie where the duty is clearly discretionary and the party upon whom the duty rests has exercised his discretion reasonably and within his jurisdiction, that is, upon facts sufficient to support his action.

12. These very principles have been adopted in our country. In Bihar Eastern Gangetic Fishermen Coop. Society Ltd. v. Sipahi Singh after referring to the earlier decisions in Lekhraj Sathramdas Lalvani v. N.M. Shah, Rai Shivendra Bahadur (Dr.) v. Nalanda College and Umakant Saran (Dr.) v. State of Bihar this Court observed as follows in para 15 of the Reports (SCC): (Sipahi Singh case, SCC pp. 152-53)

"15. ... There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance.... In the instant case, it has not been shown by Respondent 1

that there is any statute or rule having the force of law which casts a duty on Respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that Respondent 1 was not entitled to apply for grant of a writ of mandamus under Article 226 the Constitution and the High Court was not competent to issue the same.

Therefore, in order that a writ of mandamus may be issued, there must be a legal right with the party asking for the writ to compel the performance of some statutory duty cast upon the authorities...."

42 Mandamus is the most valuable and essential remedy in the Administrative Justice resorted to supply want of some appropriate ordinary remedy. The functions of the writ court is to compel the performance of public duty, for which, the person approaching the writ court should statutorily, has a clear, specific and unequivocal,

constitutional or statutory or legal right to the relief sought for and the failure on the part of those who are bound to perform certain duties and functions, as laid down by the legislature or directions issued for the purpose of enforcing the provisions of an enactment or of any delegated or subordinate legislation. There must be a legal right and corresponding legal duty.

43 In **State of Kerala v. A.Lakshmi Kutty**, reported in 1986 (4) SCC 632, the Supreme Court held that a Writ of Mandamus is not a writ of course or a writ of right but is, as a rule, discretionary. There must be a judicially enforceable right for the enforcement of which a mandamus will lie. The legal right to enforce the performance of a duty must be in the applicant himself. In general, therefore, the Court will only enforce the performance of statutory duties by public bodies on application of a person who can show that he has himself a legal right to insist on such performance. The existence of a right is the foundation of the jurisdiction of a Court to issue a writ of Mandamus. The present trend of judicial opinion appears to be that in the case of non- selection to a post, no writ of mandamus lies.

44 When a Writ of Mandamus can be issued, has been summarised in Corpus Juris Secundum, as follows:

"Mandamus may issue to compel the person or official in whom a discretionary duty is lodged to proceed to exercise such discretion, but unless there is peremptory statutory direction that the duty shall be performed mandamus will not lie to control or review the exercise of the discretion of any board, tribunal or officer, when the act complained of is either judicial or quasi-judicial unless it clearly appears that there has been an abuse of discretion on the part of such Court, board, tribunal or officer, and in accordance with this rule mandamus may not be invoked to compel the matter of discretion to be exercised in any particular way. This principle applies with full force and effect, however, clearly it may be made to appear what the decision ought to be, or even though its conclusion be disputable or, however, erroneous the conclusion reached may be, and although there may be no other method of review or correction provided

by law. The discretion must be exercised according to the established rule where the action complained has been arbitrary or capricious, or based on personal, selfish or fraudulent motives, or on false information, or on total lack of authority to act, or where it amounts to an evasion of positive duty, or there has been a refusal to consider pertinent evidence, hear the parties where so required, or to entertain any proper question concerning the exercise of the discretion, or where the exercise of the discretion is in a manner entirely futile and known by the officer to be so and there are other methods which it adopted, would be effective." (emphasis supplied)"

45 A prerogative writ, like, a Mandamus cannot be demanded *ex debito justitiae*, but it can be issued by the court in its discretion, for which, it must be shown that, there is a non discretionary legal duty upon the authority against whom, the relief is sought for and that the person approaching the High Court under Article 226 of the Constitution of India, has to prove that he has a legal right to be enforced against the authority, for the failure of performance of a legal or statutory duty, by the authority against whom, the relief is sought for.

46 To sum up, (a) certain conditions have to be satisfied before a writ of mandamus is issued; (b) the petitioner for a writ of mandamus must show that he has a legal right to compel the respondent to do or abstain from doing something; (c) there must be in the petitioner a right to compel the performance of some duty cast on the respondents; (d) the duty sought to be enforced must have three qualities. It must be a duty of public nature created by the provisions of the Constitution or of a statute or some rule of common law; (e) the remedy of a writ of mandamus is not intended to supersede completely the modes of obtaining relief by an action in a Civil Court or to deny defence legitimately open in such actions; (f) the power to issue a writ of mandamus is a discretionary power. It is sound use of discretion to leave the party to seek his remedy by the ordinary mode of action in a Civil Court and to refuse to issue a writ of mandamus; (g) a writ of

mandamus is not a writ of course or a writ of right but is, as a rule a matter for the discretion of the Court; (h) in petitions for a writ of mandamus, the High Courts do not act as a Court of appeal and examine the facts for themselves. It is not the function of the Court to substitute its wisdom and discretion for that of the person to whom the judgment in the matter in question was entrusted by law. The High Court does not issue a writ of mandamus except at the instance of a party whose fundamental rights are directly and substantially invaded or are in imminent danger of being so invaded; (i) a writ of mandamus is not issued to settle private disputes or to enforce private rights. A writ of mandamus cannot be issued against the President of India or the Governor of State; (j) A writ will not be issued unless the Court is certain that its command will be carried out. The Court must not issue a futile writ.

47 It is true that a Coordinate Bench of this Court in the year 2015 had the occasion to deal with almost a similar issue as the one involved in the present case. This High Court had directed the CBDT to extend the due date for filing the Income Tax Returns under Section 139 from 30th September 2015 to 31st October 2015 so as to alleviate to a certain extent, the hardships caused to the assesses on account of delay in providing the utilities. However, this Court had to interfere in a situation when for the first time by way of a Notification the CBDT made it mandatory for the assesseees to electronically file the Income Tax Returns relevant for the assessment year 2013-14 and onwards.

48 Although Mr. Soparkar, the learned Senior Counsel has criticized the manner in which the decision is taken by the CBDT not to extend the time limit any further, yet we believe that such decision must have been taken after due deliberations, and in taking such decision, many

financial experts must have applied their minds. It is true that the Board is vested with the power under Section 119 of the Act to extend the due date and the powers are discretionary in nature and that is the reason why we thought fit to ask the CBDT to look into the matter and take an appropriate decision in accordance with law. If the CBDT has looked into the matter closely and has arrived at the conclusion that the extension of time limit would not be in the interest of the Revenue, then it cannot be said that the CBDT has failed to exercise its discretionary powers vested in it under Section 119 of the Act. When there is a power coupled with duty, there is an obligation on the Board to exercise the same if the facts so warrant. Upon due consideration of all the relevant aspects of the matter, if the Board has taken the final decision not to extend the time limit any further, then it is difficult for this Court to issue a writ of mandamus to the Board to extend the time limit on the assumption that undue hardship would be caused to the taxpayers and the tax professionals, more particularly, in view of the latest data put forward before us by the Revenue.

49 It is the case of the CBDT that it has declined to exercise its power under Section 119 of the Act as the conditions for exercise of such power do not exist. It is the case of the Revenue that the issue of hardship was dealt with considerably at the relevant point of time and that is the reason why three times the time limit came to be extended. The Board has now thought fit in the interest of the Revenue not to extend the time period any further. There are so many vital issues which the Revenue needs to keep in mind before taking such decision. The question is whether this Court should go into all such issues which weighed with the CBDT in taking a particular decision one way or the other and substitute the same with that of this Court on the ground that if the time limit is not extended, then the people at large would be put immense hardships?

Interference at the end of this Court, at this point of time, in the matters relating to the Revenue may have far reaching implications. This Court may find it very easy to issue a writ of mandamus, as prayed for, saying that if the time limit has been extended in the past on three occasions, then why not for one last time upto 31st March 2021. However, such a line of reasoning or approach may upset the entire functioning of the Government and may lead to undesirable results.

50 In the overall view of the matter, we have reached to the conclusion that we should not interfere in the matter.

51 In the result, both the writ applications fail and are hereby rejected. At this stage, we may only observe that the CBDT may consider issuing an appropriate circular taking a lenient view as regards the consequences of late filing of the Tax Audit Reports as provided under Section 271B of the Act. We leave it to the better discretion of the CBDT in this regard.

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THE HIGH COURT
OF GUJARAT
WEB COPY

(J. B. PARDIWALA, J)

(ILESH J. VORA, J)

CHANDRESH