

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.19770 of 2015
Date of decision: September 29, 2015**

Vishal Garg and others

.....Petitioners

Union of India and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Hitesh Kaplish, Advocate for the petitioners.

Ms. Urvashi Dhugga, Advocate for the respondents.

Ajay Kumar Mittal,J.

1. The petitioners impugn the Press Release dated 9.9.2015, Annexure P.1 whereby the respondents have taken a decision not to extend the date for filing of returns due by 30.9.2015 for the assessment year 2015-16 for certain categories of assesseees including companies, firms and individuals engaged in proprietary business/profession etc. whose accounts are required to be audited in terms of Section 44AB of the Income Tax Act, 1961 (in short, "the Act").

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioners are practicing Chartered Accountants and are based at Chandigarh and different places in the State of Punjab. According to the petitioners, as per Section

139(1) of the Act, the income tax return of every financial year ending on 31st of March is to be filed by the due dates fixed. The forms under which the respective categories of tax payers are required to file their returns have to be duly made available to the said categories of tax payers on the very first day of the assessment year so that every tax payer has sufficient time to file the income tax return in the prescribed format. However, the respondents knowing well the essence of time in filing income tax return failed to notify the prescribed income tax return forms for the concerned categories of tax payers. Further, the respondents notified the income tax return forms for all types of assessees at a belated stage on different dates. On account of the said delay on the part of the respondents in notifying the said forms, the tax payers of the concerned categories suffered a grave prejudice as due to the same, the forms were not available to the said categories of tax payers as on 1.4.2015. The respondents issued Press Release dated 9.9.2015, Annexure P.1 not to extend the date for filing return from 30.9.2015 for certain categories of assessees including companies, firms and individuals engaged in proprietary business/profession etc. whose accounts are required to be audited in terms of Section 44AB of the Act. Aggrieved thereby, the petitioners are before this court through the instant writ petition with the prayer for extension of the due date for filing income tax returns.

3. We have heard learned counsel for the parties.

4. Learned counsel for the petitioners inter alia submitted that it was only after 1.8.2015, 2.8.2015 and 7.8.2015 that the income tax return Forms No. 4, 5 and 6 respectively were available for downloading by the assessees. In such circumstances, the last date fixed for e-filing of income

tax return for the assessment year 2015-16 by the assessee, being 30.9.2015 is unreasonable and is liable to be extended.

5. On 24.9.2015, learned counsel for the revenue produced a copy of communication dated 23.9.2015 received from the Central Board of Direct Taxes wherein while supporting the Press Release dated 9.9.2015, Annexure P.1, it has been inter alia stated that in the assessment year 2015-16 as compared to the earlier assessment year, only some minor modifications have occurred in the ITR 5, 6 and 7 forms and the relevant scheme. Therefore, there does not exist any greater compliance burden on the tax payers this year as compared to the earlier year. It has been further stated that in the last two years, Central Board of Direct Taxes (CBDT) got representations from various stakeholders mentioning that some tax payers were finding it difficult to upload the audit report because of the newly introduced e-filing system as well as frequent changes in e-filing utility. After due consideration of various representations and keeping in view the fact that e-filing of audit report had been made mandatory for the first time and some difficulties were being encountered in e-filing of audit reports for the assessment years 2013-14 and 2014-15 by the tax payers, the CBDT invoked its powers under Section 119 of the Act to extend the due date.

6. During the course of hearing on 24.9.2015, the following two questions were put to the learned counsel for the revenue:-

- i) As to why Forms No.4, 5 and 6 were not prescribed before 7th August 2015 when the same are required to be appended alongwith the e-filing of the return under Section 139D of the Income Tax Act, 1961?
- ii) Has any assessee in this category filed the return before 7th August 2015? If yes, whether the assessee is required to file fresh return after the format of audit report has been

prescribed by 7th August, 2015, as Form No.4 was available on 1st August 2015, Form No.5 was available on 2.8.2015 and Form No.6 was available on 7th August 2015?

Learned counsel for the revenue submitted that only minor changes had been made in the aforesaid forms. However, she prayed for time to file reply. Consequently, the case was adjourned to 28.9.2015.

7. On 28.9.2015, written statement on behalf of respondent Nos. 1 and 2 was filed in Court which has been taken on record. The arguments were concluded and the case was fixed for 29.9.2015 for orders.

8. In the reply filed, it has been inter alia stated that no averment has been made by the petitioners as to the statutory mandate being violated or rules not being followed or any specific violation of any statutory rights. Further, the factual position for filing of the returns in the instant year is totally different from the last year.

9. The only question that arises for consideration in this case is whether keeping in view the facts and circumstances of the case and the genuine hardship of the assesseees, the date for filing of returns for the assessment year 2015-16 for certain categories of assesseees including companies, firms etc. whose accounts are required to be audited in terms of Section 44AB of the Act, is to be extended beyond 30.9.2015.

10. Learned counsel for the petitioners during the course of hearing also produced a copy of the representation sent to the Finance Minister, Ministry of Finance, Government of India, New Delhi requesting for extension of the due date for filing tax audit report and income tax return for the assessment year 2015-16 for assesseees referred to in clause (a) of Explanation 2 to Section 139(1) of the Act from 30th September 2015 to atleast 31st of October 2015. Further in the office memorandum dated

24.9.2015 issued by Government of India, Ministry of Finance, department of Revenue, Central Board of Direct Taxes, with reference to the observations of this Court, it has been inter alia stated as under:-

“Since returns in ITR 4, 5 and 6 were mandatory required to be e-filed, no assesseees in these categories could have filed their returns of income for assessment year 2015-16 before 1st, 2nd and 7th August 2015 respectively.”

A copy of the document from the website of the income tax department containing Form 3CD on which audit report was required to be filed was also produced by learned counsel for the petitioners. There were certain modifications made on 24.9.2015 itself.

11. At this stage, it would be expedient to consider certain statutory provisions as are relevant for the decision of the controversy involved which read thus:-

“**139.** (1) Every person,—

(a) being a company or a firm; or

(b) being a person other than a company or a firm, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax,

shall, on or before the due date, furnish a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed :

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Explanation 2.—In this sub-section, "**due date**" means,—

(a) where the assessee other than an assessee referred to in clause (aa) is—

(i) a company; or

(ii) a person (other than a company) whose accounts are required to be audited under this Act or under any other law for the time being in force; or

(iii) a working partner of a firm whose accounts are required to be audited under this Act or under any other law for the time being in force,

the 30th day of September of the assessment year;

(aa) in the case of an assessee who is required to furnish a report referred to in [section 92E](#), the 30th day of November of the assessment year;

(b) in the case of a person other than a company, referred to in the first proviso to this sub-section, the 31st day of October of the assessment year;

(c) in the case of any other assessee, the 31st day of July of the assessment year.

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139C. Power of Board to dispense with furnishing documents, etc. with the return.—(1) The Board may make

rules providing for a class or classes of persons who may not be required to furnish documents, statements, receipts, certificates, reports of audit or any other documents, which are otherwise under any other provisions of this Act, except section 139D, required to be furnished, along with the return but on demand to be produced before the Assessing Officer.

(2) Any rule made under the proviso to sub-section (9) of section 139 as it stood immediately before its omission by the Finance Act, 2007 shall be deemed to have been made under the provisions of this section.

139D. Filing of return in electronic form.—The Board may make rules providing for—

(a) the class or classes of persons who shall be required to furnish the return in electronic form;

(b) the form and the manner in which the return in electronic form may be furnished;

(c) the documents, statements, receipts, certificates or audited reports which may not be furnished along with the return in electronic form but shall be produced before the Assessing Officer on demand;

(d) the computer resource or the electronic record to which the return in electronic form may be transmitted."

"119. (1) The Board 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 Commissioner (Appeals) in the exercise of his appellate functions.

(2) Without prejudice to the generality of the foregoing power,—

(a) the Board may, if it considers it necessary or expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue, issue, from time to time (whether by way of relaxation of any of the provisions of [sections 115P, 115S, 115WD, 115WE, 115WF, 115WG, 115WH, 115WJ, 115WK, 139, 143, 144, 147, 148, 154, 155, 158BFA](#), sub-section (1A) of [section 201](#), [sections 210, 211, 234A, 234B, 234C, 234E, 271 and 273](#) or otherwise), general or special orders in respect of any class of incomes or fringe benefits or class of cases, setting forth directions or instructions (not being prejudicial to assesseees) as to the guidelines, principles or procedures to be followed by other income-tax authorities in the work relating to

assessment or collection of revenue or the initiation of proceedings for the imposition of penalties and any such order may, if the Board is of opinion that it is necessary in the public interest so to do, be published and circulated in the prescribed manner for general information;

(b) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorise any income-tax authority, not being a Commissioner (Appeals) to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law;

(c) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order for reasons to be specified therein, relax any requirement contained in any of the provisions of Chapter IV or Chapter VI-A, where the assessee has failed to comply with any requirement specified in such provision for claiming deduction thereunder, subject to the following conditions, namely:—

(i) the default in complying with such requirement was due to circumstances beyond the control of the assessee; and

(ii) the assessee has complied with such requirement before the completion of assessment in relation to the previous year in which such deduction is claimed :

Provided that the Central Government shall cause every order issued under this clause to be laid before each House of Parliament.”

12. A perusal of the above provisions shows that Section 139(1) of the Act prescribes procedure for assessment whereunder the return of income under Chapter XIV of the Act is to be furnished. It states that every

person being the company or being a person other than the company or a firm, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income tax shall on or before the due date furnish a return of his income or the income of such other person during the previous year in a prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed. Explanation (2) thereof provides for the 'due date' which in the case of a company, a person (other than a company) or a working partner of a firm whose accounts are required to be audited under this Act or under any other law for the time being in force, is 30th day of September of the assessment year. Section 139C provides for making rules for a class or classes of persons who may not be required to furnish documents, statements, receipts, certificates, reports of audit or any other documents which are otherwise under any other provisions of the Act except Section 139D, required to be furnished alongwith the return and instead they are to be produced before the Assessing Officer on demand. Section 139D provides for filing of return in electronic form. Under Section 119 of the Act, the CBDT is inter alia empowered to issue such orders, instructions and directions as it considers necessary or expedient for the purpose of proper and efficient management of the work of assessment and collection of revenue. It is also authorized to issue such orders, instructions and directions for proper administration of the Act.

13. Having analyzed the scope of the statutory provisions noticed herein before, we proceed to examine the scope of extraordinary writ jurisdiction of a High Court under Articles 226/227 of the Constitution of

India. This Court while expounding the scope of power of superintendence under Article 227 of the Constitution of India in *Partap Singh Kairon vs. Gurmej Singh*, AIR 1958 P&H 409, observed as under:-

“19. Our Constitution has vested the High Courts in this country with three independent and distinct grants of power or jurisdiction : (1) Original jurisdiction, (2) appellate jurisdiction, (3) general superintending control over all inferior courts and tribunals.

20. The power of superintending control conferred by [Article 227](#) is similar to the control exercised by the court of King's Bench over the inferior courts of England under the common law. According to Blackstone the Court of King's Bench was entitled to a general superintendence over all subordinate courts for the purpose of keeping them within the bounds of their authority and of preventing usurpation.

In order to achieve this object the King's Bench was at liberty to remove their proceedings to be determined by it, to prohibit their progress below and to enforce in inferior tribunals the due exercise of those judicial or ministerial powers which had been vested in them, by restraining their excesses and quickening their negligence and obviating their denial of justice (2 BI. Com. 111).

The power which was exercised by the court of King's Bench was a branch of the power of the King of England, while the power which has been conferred on the High Courts in this country by [Article 227](#) is a branch of the sovereign power of the people as vested in them by the Constitution of a democratic Republic.'

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23. In *Pickus v. Perry*, (1931) 59 S. D. 350 (Z8) the court said:

"The existence of this power partakes of the nature of an ultimate safeguard to be availed of, not as an instrument of

routine procedure, but in extraordinary and unusual situations where customary remedial procedure is inadequate and resort must be had to some such high power for the public good or for the prevention of gross injustice and irreparable injury. The very nature of the power, its scope and lack of limitation, impose upon the court to which it is entrusted a most serious responsibility to make a prudent and a sparing use of it, and to employ it in those cases only where the exercise of a sound judicial discretion clearly indicates a necessity for its use".

Again the court said:

"The exercise of the power of superintending control is always a matter of discretion, never a matter of absolute right, and it is the clear weight of authority that the power will not ordinarily be exercised as a substitute for appellate jurisdiction, or where other remedy exists, excepting only in those cases where the other remedy is so slow, difficult, or inadequate that to compel resort thereto amounts to a denial of justice".

24. The general principles governing the exercise of the power of superintending control were admirably summarised in *Re Pierce-Arrow Motor Car Co.*, (1910) 143 Wis. 282 (Z9) where the court said:

"That this jurisdiction is not to be exercised upon light occasion, but only upon some grave exigency; that the writs by which it is exercised will not be used to perform the ordinary functions of an appeal or writ of error; that the duty of the court below must be plain; its refusal to proceed within the line of such duty or, on the other hand, its intent to proceed in violation of such duty, must be clear the results must be not only prejudicial, but must involve extraordinary hardship; the remedy by appeal or writ of error must be utterly inadequate; and the application for the exercise of the power of superintending control must be speedy and

prompt".

This was followed by a Single Bench of Madhya Pradesh High Court in ***Sukha vs. Central Administrative Tribunal***, 1996(1) SCT 547.

14. While discussing scope of Article 226 of the Constitution of India, the Apex Court in ***Sh.Jogendrasinhji Vijaysinghji vs. State of Gujarat and others***, Civil Appeal No.2374 of 2015 decided on 6.7.2015 observed as under:-

“11. In dealing with the powers of the High Court under Article 226 of the Constitution, this Court has expressed itself in almost similar terms, vide ‘*Veerappa Pillai v. Raman and Raman Ltd. AIR 1952 SC 192 at pp 195-196(1)*’ and said:

“Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made.”

These passages indicate with sufficient fullness the general principles that govern the exercise of jurisdiction in the matter of granting writs of ‘certiorari’ under Article 226 of the Constitution.”

7. In ***Hari Vishnu Kamath v. Ahmad Ishaque and Ors. AIR 1955 SC 233***, a seven- Judge Bench, while dealing with the scope of proceeding under Article 226 of the Constitution,

observed that there can be no dispute that the orders of the Election Tribunals are subject to the supervisory jurisdiction of the High Courts under Article 226 and a writ of certiorari under that Article will be competent against decisions of the Election Tribunals also. The Court referred to the decision in ***T.C.Basappa*** (supra) and other authorities and ruled thus:-

“We are also of opinion that the Election Tribunals are subject to the superintendence of the High Courts under Article 227 of the Constitution, and that superintendence is both judicial and administrative. That was held by this Court in *Waryam Singh v. Amarnath*, AIR 1954 SC 215, where it was observed that in this respect Article 227 went further than Section 224 of the Government of India Act, 1935, under which the superintendence was purely administrative, and that it restored the position under Section 107 of the Government of India Act, 1915. It may also be noted that while in a ‘certiorari’ under Article 226 the High Court can only annul the decision of the Tribunal, it can, under Article 227, do that, and also issue further directions in the matter. We must accordingly hold that the application of the appellant for a writ of ‘certiorari’ and for other reliefs was maintainable under Articles 226 and 227 of the Constitution.”

15. In the present case, Form Nos. 4, 5 and 6 were prescribed on 1st, 2nd and 7th of August 2015 respectively when the audited accounts were required to be appended for e-filing of the return under Sections 139C and 139D of the Act. Further, it has been admitted by the respondent department in the office memorandum dated 24.9.2015 that since returns in ITRs 4, 5 and 6 were mandatorily required to be e-filed, no assessee in these categories could have filed their returns of income for the assessment year 2015-16 before 1st, 2nd and 7th of August 2015 respectively. Under

Section 119 of the Act, the Board 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 the Act which also includes Section 139 thereof. For avoiding the genuine hardship in any case or class of cases, the Board if considers desirable and expedient, by general or special order, it can issue such orders, instructions and direction for proper administration of this Act. All such authorities engaged in execution of the Act are expected to follow the same. The Board 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 when such powers can be exercised. It was not disputed by learned counsel for the revenue that the forms were not available on the very first day of the assessment year as required. Learned counsel for the revenue could not furnish any satisfactory explanation or justification for not prescribing Forms 4, 5 and 6 prior to 1st, 2nd and 7th August, 2015 respectively. The plea of the department that there were only minor changes in the forms is not justified. Thus, the period required for e-filing of the return is held to be not reasonable.

16. In *Tax Bar Association, Hisar vs. The State of Haryana and others*, CWP No.15499 of 2015 decided on 30.7.2015, a Division Bench of this Court considering the issue relating to extension in time for filing the returns under the Haryana Value Added Tax Act, 2003 had extended the date for e-filing of returns upto 10.8.2015.

17. A Single Bench of the Delhi High Court in *Avinash Gupta vs. Union of India and others*, W.P.(C) No.9032 of 2015 decided on 21.9.2015, had the occasion to consider the issue relating to extension of time for e-filing of return beyond 30th September 2015. The writ petition

was dismissed but certain observations were recorded therein that the prescribed format to be filed alongwith the return should be notified by 1st day of the assessment year. It was recorded as under:-

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

We are in agreement with the above observations but express our dissent with regard to rejection of prayer for extension of time in e-filing the returns beyond 30th September 2015.

18. Similarly, the Gujarat High Court in ***All Gujarat Federation of Tax Consultants vs. Central Board of Direct Taxes***, Special Civil

Application No.12656 of 2014 decided on 22.9.2014 while delving into

identical issue held that keeping in view the facts and circumstances of the case, it would be in the fitness of things if the Board relaxes the provisions of Section 139(1) of the Act by extending the due date for filing the return of income till 30th of November 2014 as a direct consequence whereof, the specified date for obtaining and furnishing the report of audit under Section 44AB of the Act would get automatically extended. It was observed as under:-

“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.

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65. In the light of the above discussion, these petitions succeed and are, accordingly, allowed. The respondent Board is directed to modify the notification dated 20th August, 2014 issued in exercise of powers under [section 119](#) of the Act by extending the due date for furnishing the return of income to 30th November, 2014. It would, however, be open for the Board to qualify such relaxation by extending the due date for all purposes, except for the purpose of Explanation 1 to [section 234A](#) of the Act. Rule is made absolute accordingly, to the aforesaid extent with no order as to costs.”

19. To put the record straight, it is noted that arguments in the writ petition by both the sides were concluded on 28.9.2015 and the case was adjourned for today for orders. Learned counsel for the revenue has produced a copy of the order dated 28.9.2015 passed by the Rajasthan High Court on a Public Interest Litigation in ***The Rajasthan Tax Consultants Association and another vs. The Union of India and another***, D.B. Civil Writ (PIL) Petition No.11037 of 2015, where the Hon'ble Bench has declined to interfere by referring that it is a policy decision of the Government and had relied upon decision of the Delhi High Court in ***Avinash Gupta's*** case (supra) dated 21.9.2015 where the writ petition was dismissed for extension of time. As noticed above, we have already expressed our dissent with the order passed by the Delhi High Court qua dismissing the writ petition with regard to extension of time for e-filing of the income tax returns. Accordingly, we are unable to concur with the view expressed by the Rajasthan High Court.

20. In view of the above, taking the totality of facts and circumstances of the case, it is considered appropriate to extend the due date for e-filing of returns upto 31st October 2015 for which the CBDT shall

issue appropriate notification/instructions under Section 119 of the Act. Direction is also issued to the respondents to ensure that the forms etc. which are to be prescribed for the audit report and for e-filing the returns should ordinarily be made available on the first day of April of the assessment year. The writ petition stands disposed of accordingly.

(Ajay Kumar Mittal)
Judge

September 29, 2015
'gs'

(Ramendra Jain)
Judge