IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 591 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 586 of 2022

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THE SOUTHERN GUJARAT INCOME TAX BAR ASSOCIATION, SURAT
Versus
UNION OF INDIA & 1 other(s)

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Appearance:
MR TUSHAR HEMANI SENIOR COUNSEL WITH 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 DEVANG VYAS, ADDITIONAL SOLICITOR GENERAL OF INDIA for the Respondent(s) No. 1,2

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CORAM:**HONOURABLE MR. JUSTICE J.B.PARDIWALA**
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 12/01/2022

COMMON ORAL ORDER

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

1 Since the issues raised in both the captioned writ applications are the same, those were taken up for hearing analogously.

2 For the sake of convenience, we treat the Special Civil Application No.591 of 2022 as the lead matter.

3 This writ application has been filed by the Southern Gujarat Income Tax Bar Association, Surat, through its Secretary, seeking the following reliefs:

> *"(a) Your Lordships may be pleased to pass a writ of mandamus or any other appropriate writ, order or direction, directing the respondent No.1 and /or 2 to extend the due date of filing of Tax Audit Report and the Income Tax Returns for the assessment year 2021-2022 till March*

31, 2022.

(b) To issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents not to levy interest under section 234A till the revised due dates provided vide circular 17/2021 dated 09.09.2021.

(c) Your Lordships may be pleased to pass a writ of mandamus or any other appropriate writ, order or direction to issue appropraite directions to authorities for accepting the TAR and/or ITR in physical form till the New Income Tax Portal stabilizes and becomes glitch free;

(d) Your Lordships may be pleased to pass a writ of mandamus or any other appropriate writ, order or direction to not invoke section 271B for late filing of the audit report and the physical filing be sufficient compliance of the Section;

(e) Pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to direct respondents to allow filing of TAR / ITR in physical form to jurisdictional authorities;

(f) Your Lordships may be pleased to grant any other relief or reliefs' as this Hon'ble Court may deem just, fit and expedient be granted in favour of the petitioner."

4 We have heard Mr. Tushar Hemani, the learned Senior Counsel assisted by Mr. Avinash Poddar, Mr. Nipun Singhvi, the learned counsel appearing for the writ applicants and Mr. Devang Vyas, the learned Additional Solicitor General of India appearing for the respondents on an advance copy served upon him.

5 This litigation has something to do with extension of due date of filing of Tax Audit Report and the Income Tax Returns for the assessment year 2021-2022 and levy of interest under Section 234A of the Income Tax Act, 1961 (for short, "the Act, 1961").

6 We had an occasion to deal with one such litigation yesterday in the form of the Special Civil Application No.272 of 2022. We passed the following order in the said matter dated 11th January 2022:

"1. We have heard Mr. Avinash Poddar and Mr. Nikul Singhavi, the

learned counsel appearing for the writ applicants, Mr. M.R. Bhatt, the learned senior counsel appearing for the respondent No.2 and Mr. Devang Vyas, the learned Additional Solicitor General of India appearing for the respondent No.1 – Union of India.

2. We have been able to understand to some extent the difficulties, which are being experienced by the assessee in uploading the audit report for the purpose of filing the its income tax return. Our attention has also been drawn to the Circular No.17/2021 issued by the Ministry of Finance Department of Revenue, CBDT dated 09.09.2021 with respect to extension of the time limit for filing income tax returns and various reports of audit for the A.Y. 2021-22. Prima facie, it appears that the writ applicants are aggrieved by the clarification 1 in the Circular. Clarification 1 reads thus:

> **"Clarification 1:** *It is clarified that the extension of the dates as referred to in clauses (9), (12) and (13) of Circular No.9/2021 dated 20.05.2021 and as referred to in clauses (1), (4) and (5) of this Circular shall not apply to Explanation 1 to section 234A of the Act in cases where the amount of tax on the total income as reduced by the amount as specified in clauses (I) to (vi) of sub-section (1) of that section exceeds one lakh rupees."*

3. The learned counsel appearing for the writ applicants pointed out that for the purpose of uploading the audit report, the assessee has to generate the Unique Document Identification Number (for short "the UDIN"). This has been made mandatory from 01.07.2019 for all audit. The grievance voiced by the learned counsel appearing for the writ applicants is that on account of technical glitches in the Portal, the Chartered Accountants are finding it very difficult to upload the audit report. In other words, even after generating the UDIN on account of some technical problems in the Portal, the audit reports are not being uploaded. Once the audit report is not uploaded and the return is not filed in time, the some would entail interest under Sections 234A and 234B respectively, late fees under Section 234F and penalty under Section 271B of the Act respectively.

4. Mr. M.R. Bhatt, the learned senior counsel would submit that the apprehension expressed by the writ applicants in the aforesaid regard is not well founded. Mr. Bhatt, the learned senior counsel would like to file a detailed reply explaining the correct position. At this stage, we may only say that if there are any technical problems with the Portal so far as uploading of the audit report is concerned, the same should be attended and looked into by the Authority concerned at the earliest.

5. Mr. Poddar, the learned counsel made a request that the deadline of 15.01.2022 for the purpose of filing the audit report may be extended to 15.02.2022. We are not inclined to go into this controversy at this *point of time. The issues of penalty, interest etc. would arise when the final order of assessment is passed. Even for the purpose of penalty under Section 271B, it is necessary to issue a notice to the assessee. If the assessee has not been in a position to file his return in time on account of his inability to upload the audit report on account of technical glitches in the Portal, he can always point out all such circumstances beyond his control when he is called upon to show cause as to why penalty should not be imposed.*

6. However, with all the aforesaid, we once again impress upon the respondent to attend to the technical glitches, which are being experienced in the Portal at the earliest. The Portal is something which is within the control of the respondent and if there are any technical problems in the same, it is only the respondents, who can take care of such problems. At this stage, Mr. Devang Vyas, the learned Additional Solicitor General of India received information that CBDT has issued a Circular No.01/2022 dated 11.01.2022 extending the timeline for filing the income tax return and various reports of audit for the A.Y. 2021-22. The due date of furnishing of Report of Audit under any provision of the Act for the Previous Year 2020-21, which was 30th September, 2021, in the case of assessees referred in clause (a) of Explanation 2 to subsection (1) of Section 139 of the Act, as extended to 31st October, 2021 and 15th January, 2022 by Circular No.9/2021 dated 20.05.2021 and Circular No.17/2021 dated 09.09.2021 respectively, is hereby further extended to 15th February, 20222. The due date of furnishing of Report of audit under any provision of the Act for the Previous Year 2020-21 which was 31st October, 2021, in the case of assessees referred in clause (aa) of Explanation 2 to sub-section (1) of Section 139 of the Act, is hereby extended to 15th February, 2022.

7. Post this matter on 08.02.2022 to enable the respondents to file their counter. One copy of the counter shall be furnished to the learned counsel appearing for the writ applicants well in advance. The further progress in the matter with regard to the technical glitches shall be reported to us on the next date of hearing.

One copy each of this order shall be furnished at the earliest to Mr. M.R. Bhatt, the learned senior counsel and Mr. Devang Vyas, the learned Additional Solicitor General of India for its onwards communication."

7 In view of the aforesaid, the time period for filing of the Tax Audit Report and the Income Tax Returns has been extended upto 15th February 2022. We once again take notice of the circular No.1 of 2022, which came to be issued by the CBDT dated 11th January 2022. We

deem fit to reproduce the entire circular as under:

"Circular No.01/22

F.No.225/49/2021/ITA-II
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
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New Delhi, dated 11th January 2022

Subject : Extension of timelines for filing of Income-tax returns and various reports of audit for the Assessment Year 2021-22-reg.

On consideration of difficulties reported by the taxpayers and other stakeholders due to COVID and in electronic filing of various reports of audit under the provisions of the Income-tax Act,1961 (Act), the Central Board of Direct Taxes (CBDT), in exercise of its powers under Section 119 of the Act, provides relaxation in respect of the following compliances:

1. The due date of furnishing of Report of Audit under any provision of the Act for the Previous Year 2020-21, which was 30th September 2021, in the case of assessees referred in clause (a) of Explanation 2 to sub-section (1) of section 139 of the Act, as extended to 31st October 2021 and 15th January 2022 by Circular No.9/2021 dated 20.05.2021 and Circular No.17/2021 dated 09.09.2021 respectively, is hereby further extended to 15th February, 2022;

2. The due date of furnishing of Report of Audit under any provision of the Act for the Previous Year 2020-21, which was 31st October, 2021, in the case of assessees referred in clause (aa) of Explanation 2 to sub-section (1) of section 139 of the Act, is hereby extended to 15th February, 2022;

3. The due date of furnishing of Report from an Accountant by persons entering into international transaction or specified domestic transaction under section 92E of the Act for the Previous Year 2020-21, which was 31st October 2021, as extended to 30th November 2021 and 31st January 2022 by Circular No.9/2021 dated 20.05.2021 and Circular No.17/2021 dated 09.09.2021 respectively, is hereby further extended to 15th February, 2022;

4. The due date of furnishing of Return of Income for the Assessment Year 2021-22, which was 31st October 2021 under sub-section (1) of section 139 of the Act, as extended to 30th November 2021 and 15th February 2022 by Circular No.9/2021 dated 20.05.2021 and Circular

No.17/2021 dated 09.09.2021 respectively, is hereby further extended to 15th March, 2022:

5. The due date of furnishing of Return of Income for the Assessment Year 2021-22, which was 30th November 2021 under sub-section (1) of section 139 of the Act, as extended to 31st December 2021 and 28th February 2022 by Circular No.9/2021 dated 20.05.2021 and Circular No.17/2021 dated 09.09.2021 respectively, is hereby further extended to 15th March, 2022.

Clarification 1: *It is clarified that this extension shall not apply to Explanation 1 to section 234A of the Act, in cases where the amount of tax on the total income as reduced by the amount as specified in clauses (i) to (vi) of sub-section (1) of that section exceeds one lakh rupees.*

Clarification 2: For the purpose of Clarification 1, in case of an individual resident in India referred to in sub-section (2) of Section 207 of the Act, the tax paid by him under section 140A of the Act within the due date (without extension under circular No.9/2021, Circular No.17/2021 and this circular) provided in that Act, shall be deemed to be the advance tax.

Sd/-
(Ravinder Maini)
Director to the Government of India"

8 We take notice of the fact that although the time period has been extended upto 15th February 2022, yet the Clarification 1 in the circular would indicate that the extension would not apply to Explanation 1 to Section 234A of the Act, in cases where the amount of tax on the total income as reduced by the amount as specified in clauses (i) to (vi) of sub-Section (1) of Section 234A if it exceeds one lakh rupees.

9 Mr. Hemani, the learned Senior Counsel made one further request that having regard to the technical glitches in the portal, the assessees may be permitted to file TAR / ITR in the physical form to the jurisdictional authority. According to Mr. Hemani, it should not happen that although the time period has been extended upto 15th February 2022, yet on account of the technical glitches in the portal, the assessees are not able to make good the extended period.

10 In the aforesaid context, we request Mr. Devang Vyas, the learned Additional Solicitor General of India to speak to the highest authority concerned and try to ascertain whether the department would be agreeable to accept the filing of the TAR / ITR in the physical form. We request the authority concerned to take a practical view of the problems which the assessees are facing as on date on account of the technical glitches in the portal. The authority should not overlook this fact and try to solve the problems or rather ease the difficulties which the assessees are facing.

11 We appreciate the decision taken by the CBDT to extend the time period upto 15th February 2022, but the assessees should be in a position to make the best of this extended time period. Mr. Hemani is right to a certain extent that if the technical glitches are going to continue, then even extension of further three months would not solve the problems.

12 Let Notice be issued to the respondents, returnable on 17th January 2022.

13 We request Mr. Vyas to discuss this matter at the earliest with the highest authority concerned and revert to us by the returnable date. One copy of this order shall be furnished to Mr. Vyas today itself for its onward communication. We permit service of notice to the respondents by Speed Post R.P.A.D. as well as by E-mail.

(J. B. PARDIWALA, J)

(NISHA M. THAKORE,J)

CHANDRESH