

(2015) 09 DEL CK 0035

In the Delhi High Court

Case No : Writ Petition (C) No. 9032 of 2015

Avinash Gupta

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 119(2), 139, 139(1), 44AB

Citation : (2015) 280 CTR 282 : (2015) 378 ITR 137

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Manish Jain, for the Appellant; Jasmeet Singh, CGSC and Astha Sharma, Advocates for the Respondent

Judgement

Rajiv Sahai Endlaw, J.

Cm No. 20437/2015 For Exemption

1. Allowed, subject to just exceptions.

2. The CM stands disposed of.

W.P.(C) No. 9032/2015 & CM No. 20436/2015 (for stay)

3. The petition is filed seeking the following reliefs:-

"a. Issue appropriate Writ, Order or Direction, thereby declaring that the time prescribed for filing the Income Tax Returns under Section 139(1) in the form of "Due Date" is the constitutional and statutory right of the Assessee; and / or

b. Issue appropriate Writ, Order or Direction, thereby declaring that the delay in notifying the prescribed Income Tax Forms under Rule 12 of the Income Tax Rules 1962, on and after 1st of April of every assessment year, is unconstitutional and is an consequence of the abdication of powers by the Respondents; and / or

c. Issue appropriate Writ, Order or Direction, thereby directing the Respondents to extend / increase the due date of filing the Income Tax Returns as prescribed under Section 139(1) and furnishing Audit Reports under Section 44AB of the Income Tax Act, to the extent of delay in number of days in notifying the prescribed Income Tax Forms under Rule 12 of the Income Tax Rules 1962 after 01.04.2015; and / or

d. Issue appropriate Writ, Order or Direction, thereby declaring the decision of the Respondents No. 1 and 2 vide its Press Release Dated 09.09.2015 as null and void and in contravention of the provisions of Part III of the Constitution of India, by virtue of which, the Respondent No. 1 and 2 has not extended the date for filing of returns due by 30.09.2015 for Assessment Year 2015-2016 for certain categories of Assesses including Companies, and Firms and, Individuals Engaged in Proprietary Business / Profession etc., whose Accounts are required to be Audited in terms of the Income Tax Act 1961; and / or

e. Issue Writ, Order or Direction in the nature of Certiorari and / or any other appropriate Writ, Order or Direction for the purpose of quashing the said Press Release Dated 09.09.2015 issued by Respondent no.1 and 2; and / or

f. Issue Writ, Order or Direction in the nature of mandamus and / or any other appropriate Writ, Order or Direction, thereby directing the Respondents no.1 and 2 to extend the date of filing of Returns due by 30th September for Assessment Year 2015-2016 for Categories of Assesses Including Companies, and Firms and, Individuals Engaged in Proprietary Business / Profession etc., whose Accounts are required to be Audited as per Income Tax Act, 1961 from 30.09.2015 to 31.12.2015; and / or

g. Pass any other order and / or direction, as this Hon"ble Court may deem fit proper under the facts and circumstances of the present case and in the interest of Justice."

4. The petitioner, along with another person had earlier filed W.P.(C) No. 8771/2015 impugning the decision dated 9th September, 2015 of the Government of India refusing to extend the date prescribed of 30th September, 2015 for filing the Income Tax Return (ITR) of entities whose accounts are required to be audited. The said petition came up first before this Bench on 14th September, 2015 when finding that the petition did not disclose any cause of action in favour of the petitioners and that in fact it was pleaded that the petition had been filed in public interest, it was enquired from the counsel for the petitioners as to how that petition was maintainable before this Bench. Upon the same, the counsel for the petitioners had withdrawn the petition with liberty to file a Public Interest Litigation (PIL).

5. However now, the petitioner pleading his own cause of action as a Chartered Accountant engaged by various clients to file returns as well as in his personal capacity, his own ITR being subject to audit, has filed this petition.

6. The position which emerges after hearing the counsel for the petitioner is, Explanation 2 to Section 139(1) of the Income Tax Act, 1961 as amended by Finance Act, 2015 prescribes the "Due Date" i.e. the date for filing the ITRs of entities whose accounts are required to be audited as 30th September of the assessment year i.e. to say for the Financial Year 1st April, 2014 to 31st March, 2015, the due date of the Assessment Year 2015-2016 would be 30th September, 2015. However Section 119(2) empowers the Central Board of Direct Taxes (CBDT) to, 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, general or special orders including by way of relaxation of any of the provisions of inter alia Section 139.

7. It is the case of the petitioner that in exercise of power under Section 119(2), the CBDT can extend the date of 30th September as has been done in the current year also in relation to assessees not amenable to audit, the due date for whom was 31st July, 2015 but was extended to 31st August, 2015 and ultimately to 7th September, 2015. It is contended that though there was a demand for a similar extension in the case of the due date of 30th September, 2015 also but the same has not been acceded to, without giving any reasons therefor.

8. The petitioner claims to be entitled to such extension owing to the delay on the part of the respondents in prescribing the form of the return to be filed by the assessees due date wherefore is 30th September, 2015. It is contended that the said forms were prescribed only vide Notification dated 29th July, 2015 and were made available only w.e.f. 7th August, 2015.

9. The argument of the counsel for the petitioner is that since the Assessment Year 2015-2016 commenced on 1st April, 2015 and the due date for filing the return is 30th September, 2015, i.e. after 180 days of commencement of the assessment year, under the scheme of the Act, 180 days are to be made available to the assessee to file the return. It is contended that the assessee, as a matter of right, is entitled to the said 180 days and if the respondents owing to their own laxity in prescribing the form only on 29th July, 2015 and making the same available from 7th August, 2015 have taken away any part of the said 180 days, the assessee should be entitled to corresponding extension of the due date and which the respondents are entitled to do in exercise of power under Section 119(2) and which they have failed to do without giving any reason whatsoever.

10. I have enquired from the counsel for the petitioner as to what is the prejudice which the petitioner or other assesses suffer from the non-grant of such extension. It has been enquired whether not the audit required to be conducted of the accounts for the Financial Year 2014-2015 could have commenced only after 1st April, 2015 and whether not by the time the said audit is completed, the forms are available and the time, even if say from 29th July or 7th August, 2015 to 30th September, 2015 is sufficient for filing the ITR.

11. The counsel for the petitioner has contended:-

(a) that since 180 days are required to be given as a matter of right, it matters not whether the petitioner has suffered any prejudice or not;

(b) that the persons practising in taxation were under the bona fide impression that upon the promulgation of the Financial (No.2) Act, 2014, Form 3CD for furnishing the Tax Audit Report would be amended / modified but which was not done for the Assessment Year 2015-2016;

(c) certain provisions of the new Companies Act, 2013 have come into force only w.e.f. 2014-2015 and various clarifications whereof have been issued from time to time, even after 31st March, 2015; that the preparation of Audit Report was dependent on the said factors; and,

(d) that the assesses, due date wherefore is 30th September, have been discriminated against vis-a-vis the assessees due date wherefore was 31st July and who were granted extension till 7th September, 2015;

(e) the Income Tax Department has introduced the concept of zero tolerance and keeping that in mind also it is in public interest that sufficient time should be available to the assessees and practitioners of income tax for auditing and filing ITRs.

12. I have considered the aforesaid contentions.

13. The period claimed by the petitioner as a matter of right of 180 days for filing the ITR is admittedly not prescribed, neither in the Statute nor in the Rules. According to the counsel for the petitioner also, the same has to be deduced from the scheme of the Act.

14. I am afraid, I am unable to gauge any such scheme in the Act assuring 180 days to the assessee for filing the ITR. As already observed above, filing of ITR for assesses due date wherefore is 180 days is dependent upon the accounts of the assessee being audited and which audit the counsel for the petitioner admits commences only on the beginning of assessment year. The said audit, in the case of some assesses may be completed in a few days and in case of others may take longer. Thus, the time taken in audit, which is variable, will be determinative of the time available thereafter for filing the ITR. The said audit is not dependent upon the prescription of the forms for report of the said audit and / or for filing of the ITR. Audit, as per my understanding is to be as per the Guidelines prescribed by the Institute of Chartered Accountants of India and the expectation, even if any for amendment to the form of the Audit Report and /or of the form for filing the ITR is not to interfere with the commencement or completion of the audit and which can by no stretch of imagination be said to be a small task. Experience of life shows that the said audit itself takes the majority of the time, even if can be said to be prescribed of 180 days, for filing of the ITR. Once the audit is complete, in my opinion, the time admittedly available from 29th July, 2015 / 7th August, 2015 to 30th September, 2015 cannot be said to be so small / short which would qualify as unreasonable and in which the Chartered Accountants and

the other practitioners of the field cannot be said to be having sufficient time to fill up the forms as per the audit already completed and to file the ITR.

15. It is not as if the Authorities have not applied themselves to the matter. The Authorities concerned, while have extended time for filing of the ITR from the due date of 31st July to 7th September, after having brought out the Notification dated 29th July, 2015 were of the opinion that there was no need for extension of due date of 30th September.

16. It is also significant that the respondents, vide Press Release dated 9th September, 2015 have notified that the date of 30th September will not be extended and have advised the taxpayers to file the returns accordingly. It is thus not as if the respondents have kept the decision in this regard pending till the last date. After 9th September also, sufficient time is available for filing the ITR.

17. Such decisions of the Government, is a matter of policy and which the Government is best entitled to take and with which the Courts are not to interfere with except when either find the same to be infringing a vested right or causing undue prejudice to the persons effected thereby. The petitioner, has neither been able to make out any case of any time being prescribed to be made available to the assessee, after the form of audit report and ITR have been prescribed, for filing the ITR nor has been able to make out a case of the same causing any prejudice to himself. The time available, even say after 7th August, 2015 and till 30th September, 2015 is else not found by me to be illogical or unreasonable to enable the assessees to file the ITR.

18. The counsel for the petitioner has then argued that the respondents will not suffer any prejudice by granting such extension of time beyond 30th September, 2015 for filing ITR inasmuch as interest, if any payable on the tax due would then be paid till the extended date for filing of the ITR.

19. However the test to be applied in such matters is not of seeing whether the respondents would suffer any prejudice or not, without first being satisfied of the infringement of rights of the petitioner and/or prejudice being caused to the petitioner. If no right is infringed and no prejudice is found to be caused to the petitioner, merely because no prejudice would be caused to the respondents by extending the time for filing the ITR would not be a ground for interfering with the policy decision of the Government and granting such extension.

20. Faced therewith, the counsel for the petitioner has made two other arguments. Firstly, it is contended that since the due date of 31st July was extended till 7th September, the practitioners of Income Tax remained busy till 7th September, 2015 in filing the returns of the assessees due date wherefore was 31st July and have been left with very little time for assessees due date wherefore is 30th September, 2015. Secondly, it is contended that such a representation has been made by the Institute of Chartered Accountants of India as well.

21. The aforesaid, in my view, would not make any difference. As aforesaid, these decisions are in the executive domain and unless shown to be causing any prejudice or infringing a right, are not to be interfered with under Article 226 of the Constitution of India.

22. 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 finalise 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.

23. Save for the aforesaid direction, the petition is dismissed.

No costs.

Copy of this order be given dasti under signature of Court Master.