

(1985) 08 MP CK 0003

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No"s. 1403 and 1801 of 1985

Mohan Trading Company and Others and Hari Shankar
Shrivastava and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-08-1985

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Income Tax Act, 1961 — Section 271B, 44AB
Income Tax Rules, 1962 — Rule 6G

Citation : (1986) 52 CTR 329 : (1986) ILR (MP) 133 : (1985) 156 ITR 134 :
(1986) 29 TAXMAN 54

Hon'ble Judges : K.K. Adhikari, J;J.S. Verma, J

Bench : Division Bench

Advocate : R.K. Sanghi, Y.S. Dharmadhikari, B.L. Nema, V.S. Dabir, R.P. Verma, D.C. Bhamore, B.C. Jain, H.C. Kolhi and H.S. Shrivastava, for the Appellant; K. Krishnamoorthy (A.G. of Tamil Nadu), B.K. Rawat, Senior Standing Counsel for I.T. Dept., R.K. Verma, Kumari Malti and Muthukumar Swamy, for the Respondent

Judgement

Verma, J,

1. This Order shall also dispose of Misc. Petitions Nos. 1072/85, 1261/85, 1284/85, 1299/85, 1384/85, 1447/85, 1566/85, 1610/85, 1692/85, 1655/85, 1666/85, 1729/85, 1763/85, 1777/85, 1800/85, 1817/85, 1822/85, 1908/85, 2072/85 and 2260/85.

2. By these petitions under Article 226 of the Constitution, challenge is made to the constitutional validity of ss. 44AB and 271B of the I.T. Act, 1961 (hereinafter called "the Act"), introduced in the Act by Section 11 of the Finance Act, 1984 (Act No. 11 of 1984), rule 6G in Chapter CCC introduced in the I.T. Rules, 1962 (hereinafter called "the Rules"), and Forms Nos. 3CB, 3CC, 3CD and 3CE introduced in Appendix II. of the said Rules. Section 44AB provides for compulsory audit of the accounts of the class of assessee specified therein and Section 271B provides the penalty for non-compliance of Section 44AB. Rule 6G

prescribes the manner in which the report of the audit of accounts is required to be furnished u/s 44AB and Forms Nos. 3CB to 3CE prescribe the particulars to be furnished in that connection. The amendments were made in the Act and the Rules with effect from April 1, 1985, and apply from the assessment year 1985-86 corresponding to the relevant accounting year of the assessee.

3. A batch of petitions have been filed to challenge the constitutional validity of the aforesaid amendments made in the Act and the Rules and they have all been heard together. All of them are being disposed of simultaneously and this order shall govern the disposal of the remaining petitions which were heard at the same time. These two petitions relate to the categories of businessmen and professionals who claim to be aggrieved by these amendments and together cover all the contentions urged in support of these petitions.

4. The challenge to the constitutional validity of the aforesaid provisions has been made by persons who can be classified broadly as businessmen and professionals, since the impugned provisions relate only to businessmen and professionals of the category specified therein. The professionals are mainly practising lawyers who claim to be adversely affected by the impugned provisions. On the other hand, chartered accountants, who appear to be benefited thereby have opposed the petitions and as inter-veners, they have supported the validity of the provisions.

5. For the petitioners, the main argument on behalf of the category of businessmen was addressed by Shri B. L. Nema and Shri H. S. Shrivastava, while on behalf of the professionals, the main argument was by Shri Y. S. Dharmadhikari. Sarvashree V. S. Dabir, R. P. Verma, D. C. Bhamore, B. C. Jain and H. C. Kohli adopted their arguments. On behalf of the respondents, Shri R. Krishnamurthy, Advocate-General of Tamil Nadu, asserted that no invalidity in the impugned provisions had been shown. Shri R. K. Sanghi, on behalf of the interveners, adopted the arguments of the learned Advocate-General.

6. There is no dispute that the petitioners are persons likely to be affected by the impugned provisions and, therefore, they have sufficient interest to raise the question of the constitutional validity of these provisions. The petitioners are businessmen, practising lawyers including Income Tax practitioners and other professionals, who may be affected by these provisions. Further facts relating to the individual petitioners are not necessary for deciding the question of constitutional validity of the impugned provisions. The impugned provisions introduced in the I.T. Act, 1961, and the I.T. Rules, 1962, are as under :

" 44AB. Audit of accounts of certain persons carrying on business or professions--
Every person,--

(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds forty lakh rupees in any previous year or years relevant to the assessment year commencing on the 1st day of April, 1985, or any subsequent assessment year; or

(b) carrying on profession shall, if his gross receipts in profession exceed ten lakh rupees in any previous year or years relevant to the assessment year, commencing on the 1st day of April, 1985, or any subsequent assessment year,

get his accounts of such previous year or years audited by an accountant before the specified date and obtain before that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed:

Provided that in a case where such person is required by or under any other law to get his accounts audited by an accountant, it shall be sufficient compliance with the provisions of this section if such person gets the accounts of such business or profession audited under such law before the specified date and obtains before that date the report of the audit as required under such other law and a further report in the form prescribed under this section.

Explanation.--For the purposes of this section,--

(i) accountant shall have the same meaning as in the Explanation below Sub-section (2) of Section 288 ;

(ii) "specified date", in relation to the accounts of the previous year or years relevant to an assessment year, means the date of the expiry of four months from the end of the previous year or, where there is more than one previous year, from the end of the previous year which expired last before the commencement of the assessment year, or the 30th day of June of the assessment year, whichever is later.

271B. Failure to get accounts audited.--If any person fails, without reasonable cause, to get his accounts audited in respect of any previous year or years relevant to an assessment year or obtain a report of such audit as required u/s 44AB, the ITO 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 thousand rupees, whichever is less.

CCC. REPORTS OF AUDIT OF ACCOUNTS OF PERSONS CARRYING ON BUSINESS OR PROFESSION :

6G. Reports of audit of accounts to be published u/s 44AB.--(1) The report of audit of the accounts of a person required to be furnished u/s 44AB shall,--

(a) in the case of a person who carries on business and who is required by or under any other law to get his accounts audited by an accountant, be in Form No. 3CA;

(b) in the case of a person who carries on business, but not being a person referred to in Clause (a), be in Form No. 3CB ;

(c) in the case of a person who carries on profession, be in Form No. 3CC.

(2) The particulars which are required to be furnished under section 44AB shall,--

(a) in the case of a person carrying on business, be in Form No. 3CD ;

(b) in the case of a person carrying on profession, be in Form No. 3CE."

7. The prescribed Forms Nos. 3CB and 3CD relate to businessmen, while Forms Nos. 3CC and 3CE relate to professionals. It is not necessary to quote the same in extenso and it is sufficient to say that these forms for the businessmen and professionals are similar which lay down the requirements of the audit report and particulars, which the assessee has to furnish u/s 44AB. It is only some parts of these forms which have been assailed and, therefore, reference will be made only to the alleged offending parts while dealing with the relevant contention.

8. The substance of these provisions may now be stated. According to Section 44AB, every person carrying on business whose total sales, turnover or gross profits exceed Rs. 40 lakhs in the relevant year of assessment, or a person carrying on profession, if his gross receipts in profession exceed Rs. 10 lakhs in the relevant year, is required to get his accounts of that year audited by an "accountant" before the "specified date" and to obtain before that date the report of such audit in the prescribed form duly signed and verified by the "accountant" setting forth the prescribed particulars. Explanation to this section says that "accountant" shall have the same meaning as in the Explanation below Sub-section (2) of Section 288, which means a "Chartered Accountant" within the meaning of the Chartered Accountant Act, 1949, and includes in relation to any State any person who is entitled to be appointed to act as an auditor of companies registered in that State by virtue of Section 226(2) of the Companies Act, 1956. The "specified date" means the date of the expiry of four months from the end of the relevant accounting year or 30th day of June of the assessment year, whichever is later. In short, by this provision, every businessman whose "total sales, turnover or gross receipts" exceed Rs. 40 lakhs; and every person carrying on a profession whose "gross receipts in profession" exceed Rs. 10 lakhs in the relevant year, is required to get his accounts for the relevant year audited by an "accountant" as defined in the Explanation below Sub-section (2) of Section 288 ; this audit has to be completed and a report obtained within four months from the expiry of the accounting period or 30th day of June of the assessment year, whichever is later; the audit report is to be in the prescribed form containing the prescribed particulars and duly signed and verified by the "accountant" ; and this audit report has to be filed along with the return within the specified period. Rule 6G introduced simultaneously in the I.T. Rules, 1962, read along with Forms Nos. 3CA to 3CE prescribe the requisite form and particulars of the audit report to be given by the "accountant" after making this compulsory audit in the case of businessmen and professionals, as the case may be. Section 271B provides the penalty for failure to comply with Section 44AB "without reasonable cause". It is, therefore, the requirement of compulsory audit in the case of the assessee of

this category by Section 44AB which is the main challenge made in these petitions. The other provisions prescribing the forms and the particulars of the audit report and the penalty which can be imposed for non-compliance of Section 44AB are ancillary and consequential.

9. The arguments advanced on behalf of the petitioners to challenge the constitutional validity of these provisions may now be stated. The arguments may be classified broadly under two heads, namely, (A) violation of Article 14 ; and (B) violation of Article 19(1)(g) of the Constitution. The several arguments classified under these two broad heads are as under i (A) Violation of Article 14 :

(i) The classification of assessees belonging to the category of businessmen on the basis of " total sales, turnover or gross receipts " exceeding Rs. 40 lakhs is unreasonable, as it brings within its ambit even small commission agents whose actual income may be much less ; and

(ii) the requirement of compulsory audit by an " accountant" as defined in the Explanation below Sub-section (2) of Section 288 gives an unfair advantage to the chartered accountants who can also appear as an " authorised representative " for the assessee, inasmuch as the assessee may prefer them to the legal practitioners for representing them in the assessment proceedings.

(B) Violation of Article 19(1)(g):

(i) The requirement of compulsory audit is an unreasonable burden placed on the assessee when the information required to be furnished in this manner can be obtained directly from the assessee without the aid of the audit report;

(ii) this burden becomes too onerous also because enough number of chartered accountants are not available for the work of compulsory audit of such assessees; and the "specified period " of four months from the end of the accounting year is not adequate for the purpose;

(iii) the provisions directing audit in accordance with Section 142(2A), in Section 142(1) to call for books of accounts, etc., and in Section 143(2) to call for evidence, are sufficient to serve the purpose of compulsory audit and, therefore, the additional burden of compulsory audit in Section 44AB is too onerous;

(iv) the provision for recovery of interest u/s 139(8)(a) in case of delay in filing the return and in Section 271B for penalty for non-compliance of Section 44AB are unduly harsh, since the "specified period" of four months from the end of the accounting period is inadequate to obtain the audit report and to file the return; and

(v) the object sought to be achieved by the impugned provision is not likely to be served by it.

10. In reply, the learned Advocate-General contended that the presumption of the constitutional validity of the impugned provisions has not been rebutted in any manner ; and that there is neither any hostile discrimination infringing

Article 14 of the Constitution nor any unreasonable restriction resulting in violation of Article 19(1)(g) of the Constitution. He also contended that the restriction, if any, is a reasonable restriction saved by Article 19(6) of the Constitution. It was pointed out by him that the object of the impugned provisions requiring compulsory audit in the case of some bigger assesseees is to check tax evasion and plug loopholes enabling tax avoidance. It is one of the measures adopted to locate and to check the growth of black money. As a consequence of the audit report being made available to the assessing authority, the time and energy of the authority would now be available for more important work in connection with the assessment instead of the routine work of checking which can be safely entrusted to an "accountant". He also urged that this requirement of compulsory audit in the case of the bigger assesseees only, is a reasonable classification and it also does not result in any unreasonable burden on the assesseees. It was pointed out by him that recovery of interest and imposition of penalty are not automatic in case of delay in filing the return and if sufficient cause is shown, the concerned authority has power not only to reduce the amount but also to waive it. There is thus no undue hardship to the assessee. The work of compulsory audit required to be done by the chartered accountants is by virtue of the special qualification they possess as "accountants" and not by virtue of being "authorised representatives" of the assessee and so there can be no vice of discrimination alleged on that basis. The learned Advocate-General has countered all the arguments advanced on behalf of the petitioners.

11. The above arguments are considered hereafter in the same order. Article 14 of the Constitution :

The first contention based on Article 14 of the Constitution relates to classification of assesseees. "The classification is made on the basis of "total sales, turnover or gross receipts" exceeding Rs. 40 lakhs in the case of businessmen and "gross receipts in profession" exceeding Rs. 10 lakhs in the case of professionals during the year. It is only this class of businessmen and professionals who are covered by the impugned Section 44AB and the ancillary provisions. The classification on the very face of it is quite reasonable, since the impugned provisions have been applied only to the bigger assesseees in whose case a close scrutiny of their accounts by audit has been considered necessary to check tax evasion and to locate and prevent the growth of black money. It may be mentioned that the initial proposal in the bill was to specify a minimum amount as Rs. 20 lakhs in the case of businessmen, but the same was later raised to Rs. 40 lakhs at the time of making the enactment, resulting in a further reduction in the number of assesseees covered by the provision. It is settled that in a taxing statute, classification of assesseees on the basis of turnover is a reasonable classification ; and greater latitude is available to the legislature for classification. [See *British India Corporation Ltd. Vs. Collector of Central Excise*, and *The Anant Mills Co. Ltd. Vs. State of Gujarat and Others*,]. The intelligible differentia on which the classification is based is obvious in the present case,

since the requirement of compulsory audit is confined only to the accounts of bigger assesseees whose annual turnover or gross receipts exceed the specified amount and who are allowed deductions under several heads making their accounts more complicated.

12. The object of enacting the impugned provisions mentioned in the budget speech of the Finance Minister made on February 28, 1984, reported in Smt. Raj Kumari Nanda Vs. Commissioner of Income Tax, New Delhi, is as under :

" With the reduction in rates and expeditious disposal of assessments, I believe there can now be no excuse for any leniency to be shown to those who abuse our laws. Such cases will necessarily have to be dealt with severely. In order to discourage tax avoidance and tax evasion, I am also introducing some further measures. In all cases where the annual turnover exceeds Rs. 20 lakhs or where the gross receipts from a profession exceed Rs. 10 lakhs, I am providing for a compulsory audit of accounts. This is intended to ensure that the books of account and other records are properly maintained and faithfully reflect the true income of the taxpayer..."

13. As earlier stated, the figure of annual turnover in the case of businessmen proposed at the sum of Rs. 20 lakhs was later increased to Rs. 40 lakhs while making the enactment. Thus, the classification of assesseees made on this basis is clearly founded on an intelligible differentia, which distinguishes the persons grouped together from those left out of the group. The vice of discrimination is, therefore, not attracted to such a classification, since it has a reasonable nexus with the object of the enactment.

14. It was urged that there was likelihood of some small commission agents being covered by these provisions on the basis of turnover of their principals, even though the income of the agents is very meagre. No material has been placed before us to provide the foundation for this argument. As such, it is not necessary to examine this hypothetical argument.

15. The next contention based on Article 14 of the Constitution relates to the alleged unfair advantage to the chartered accountants to dislodge legal practitioners as the assessee's " authorised representative" before the assessing authority. It was argued that the chartered accountants who would audit the assessee's accounts were more likely to be engaged by the assesseees as their " authorised representative " for representation before the assessing authority in preference to the legal practitioners. It was urged that, in this manner, there was discrimination against the legal practitioners. In our opinion, there is no merit in this contention, which is based on an obvious fallacy.

16. The chartered accountants, who do the work of audit, perform the function of an "accountant" on account of the special qualification they have for this purpose and the legal practitioners obviously do not belong to that category. It is, therefore, not a case where the legal practitioners, who are qualified to perform the duty of an " accountant", have been restrained from doing so. As for

representation of the assessee before the assessing authority, the legal practitioner as well as the "accountant" appear for the assessee, since both are included in the category of persons entitled to represent the assessee as an "authorised representative " in accordance with Section 288 of the Act. It is for the purpose of Section 288 of the Act that a legal practitioner and an "accountant" are equals and not for the purpose of compulsory audit of the assessee's account, for which the " accountant" alone is qualified. Admittedly, there is no discrimination made between a legal practitioner and an "accountant" for the purpose of appearance as an " authorised representative" of the assessee in accordance with Section 288 of the Act. If a person clubbed with others in Section 288 possesses some further qualification enabling him to perform a function in addition to appearance as an " authorised representative " of the assessee, no discrimination can result from the disability of others for want of qualification to perform the additional function outside the ambit of Section 288 of the Act. The mere possibility of an "accountant" being preferred to a legal practitioner for the purpose of representing the assessee before the assessing authority is no ground to hold that there is any discrimination between them as equals u/s 288 of the Act.

17. It may also be mentioned that while a legal practitioner, who is an advocate, is authorised to represent the assessee also before the High Court and the Supreme Court, the " chartered accountant" cannot do so, even though they are equals u/s 288 of the Act. No vice of discrimination is suggested on this ground for the obvious reason that the persons clubbed together in Section 288 are equals only for the purpose of that provision and they may be unequals in matters outside its scope.

18. We fail to see how any case for discrimination between legal practitioners and accountants is made out to invoke Article 14 of the Constitution, simply because both of them are authorised to represent the assessee before the assessing authority by virtue of Section 288 while the " accountant" alone can audit the assessee's accounts, as required by Section 44AB of the Act. For the purpose of compulsory audit in Section 44AB, an accountant and a legal practitioner are unequals and they cannot, therefore, be treated alike. For the purpose of representing an assessee before the assessing authority, they are equals in accordance, with Section 288 of the Act and there is no allegation of discrimination between them for this purpose.

19. In support of this contention, reliance was placed mainly on two decisions. The first is S.K. Dutta, Income Tax Officer and Others Vs. Lawrence Singh Ingty., . In that case, for the purpose of granting an exemption under the I.T. Act, members of the Scheduled Tribes in Govt. service and those not in Govt. service were treated differently and the exemption was not given to Govt. servants. Such a classification was struck down as offending Article 14 of the Constitution. The reason was that distinction between Govt. Servants and the rest belonging to the same class for the purpose of granting exemption under the

I.T. Act was not reasonable as there was no intelligible differentia to distinguish Govt. Servants from non-Govt. Servants for the purpose of the exemption. That decision is, therefore, clearly distinguishable and has no application to the facts of the present case. The other decision relied on is R.B. Basu Vs. P.K. Mukherji, . That decision too is of no assistance for the present purpose. However, the decision indicates that it is merely for the purpose of appearing as an "authorised representative" of the assessee that the "chartered accountant" as an "accountant" belongs to the same class as a legal practitioner and not for any other purpose.

20. The principles relating to the applicability of Article 14 of the Constitution are well settled by a series of decisions of the Supreme Court. It is sufficient to refer only to a recent decision in AIR India Vs. Nergesh Meerza and Others, wherein the propositions based on the Supreme Court decisions have been summarised in para 37 of the decision. No case of violation of Article 14 of the Constitution has been made out by the petitioners. The second contention based on Article 14 of the Constitution is also, therefore, rejected.

Article 19(1)(g) of the Constitution:

In short, the argument based on Article 19(1)(g) of the Constitution under several heads is that the impugned provisions place an unreasonable restriction on the assessee's right to carry on his business or profession. The reply to the argument is that there is no restriction or burden on the assessee and, at any rate, it is reasonable and is saved by Article 19(6) of the Constitution.

21. The first argument is that the requirement of compulsory audit is unnecessary since the information required to be furnished by the method of compulsory audit can be obtained without the aid of an audit report from the assessee. This argument has no merit. The requirement of compulsory audit is for the purpose of scrutinising the assessee's version in the accounts and to facilitate the assessing authority in making the assessment. Obviously, this purpose cannot be served by depending only on the assessee's version. It is, therefore, not correct to say that the requirement of audit is unnecessary or is a mere formality. A perusal of the prescribed forms, which are substantially similar for the businessmen as well as the professionals, indicates that the particulars required are material for proper scrutiny of the accounts and to ensure that the books of account and other records are properly maintained and faithfully reflect the true income of the assessee.

22. The requisite particulars, according to the prescribed forms, require the accountant to specify the books of account examined; method of accounting employed; method of compilation of opening and closing stock-in-trade ; amount of expenditure incurred under the specified heads; payments by way of interest, salary, bonus, commission, etc., or remuneration to the partners if the assessee is a firm ; details of expenditure referred to in Section 40A ; and tax due or other sum debited or paid; any amount borrowed or due on a hundi and repaid

otherwise than through an account payee cheque; particulars of the specified items, e.g., credits, loans, etc.; deduction of any tax at source ; particulars of raw materials and finished products in case of manufacturing concerns; and certain other specified particulars in relation to a company. The accountant is also required to certify in the prescribed form the correctness of the account and the particulars. This will ensure that the " accountant" will discharge his obligation with a sense of responsibility. It has not been shown that any of these requirements is unnecessary for the purpose of assessment. On the other hand, their relevance for the purpose of making the assessment is obvious.

23. It was argued that some of these particulars require the "accountant " to give his opinion about the correctness of accounts and the permissible deductions, etc., amounting to delegation of the assessing authority's function to the "accountant". There is no basis for this apprehension and this is not the result of the required audit report. The decision has to be given by the assessing authority while making the assessment with the aid of the audit report and not merely on that basis. There is no delegation to the " accountant" or abdication of the assessing authority's function. This enables the assessing authority to utilise the available time for the more important work of assessment of the bigger assesseees instead of spending the same for the purpose of scrutinising the accounts, which can be safely entrusted to an " accountant" who is quite well versed in the task. The requirement of compulsory audit cannot be treated as an unreasonable burden placed on the bigger assesseees to whom alone these provisions apply.

24. It was then argued that there are not enough number of chartered accountants to do the work of compulsory audit of all such assesseees within the " specified period " of four months. No material was placed by the petitioners to provide a foundation for this argument. However, it was stated by the learned Advocate-General on the basis of the Finance Minister's answer in Parliament to one of the questions on this point that as on March 31, 1984, there were 32,329 chartered accountants out of whom more than 21,000 were in active practice and this number must have further increased since then; and the total number of bigger assesseees likely to be affected by the impugned provisions was 1,50,000. According to these figures, which alone have been made available to us, the number of chartered accountants in active practice cannot be treated as insufficient to cater to the needs of the bigger assesseees whose accounts are required to be audited. It is also significant that this number of the assesseees would include even those who are required to get their accounts audited by or under any other law and to them it is not an additional burden. This is also evident from the fact that in their case, only the audit report in Form No. 3CA is required which has not even been challenged before us. This argument has no merit.

25. It was also argued that the provisions contained in Sections 142(1), 142(2A) and 143(2) of the Act are sufficient to serve the purpose and, therefore, the

additional burden of compulsory audit is unreasonable. Section 142(1) enables the assessing authority to call for the books of account and Section 143(3) empowers him to require the presence of the assessee or the production of evidence. Section 142(2A) enables the ITO with the previous approval of the Commissioner to get the accounts audited by an " accountant " in case of complexity of the accounts of the assessee. Provision is also made requiring the Commissioner to determine the expenses as well as the remuneration of the accountant when such a direction is made. Simply because these provisions exist in the Act, it does not mean that the further requirement of compulsory audit in the case of the bigger assessee is an unreasonable restriction on their right under Article 19(1)(g)-The existing provisions are to be resorted to during the course of the assessment, if in the opinion of the assessing authority, a situation arises for making such an order. The result of the compulsory audit is that the audit report is available to the assessing authority along with the return to enable the assessing authority to proceed on that basis. The existing provisions would be available even now in such cases, if any further scrutiny is considered necessary by the assessing authority. The existing provisions and the impugned provisions are not mutually exclusive and they can co-exist. This argument also is of no avail. .

26. The next argument is that the provision for automatic recovery of interest u/s 139(8)(a) in the case of delay in filing the return and in Section 271B for penalty for non-compliance of Section 44AB is unduly harsh. It is urged that delay in filing "the return on account of liability in getting the audit report within the " specified period " renders the assessee liable for interest and penalty automatically. A bare perusal of Section 139(8)(a) and Section 271B indicates that liability for interest as well as penalty is not automatic in case of delay. The proviso to Section 139(8)(a) enables the ITO to reduce or even waive the interest payable by the assessee in the prescribed circumstances. Rule 117A of the I.T. Rules, 1962, prescribes these circumstances and existence of sufficient cause which prevented furnishing the return within the time is included therein. Section 271B provides for penalty if the failure is "without reasonable cause ". It is, therefore, open to the assessee to show that there was reasonable cause for non-compliance of Section 44AB within the specified period and he was prevented by sufficient cause from furnishing the return within the specified period. It is, therefore, incorrect to contend that the assessee's liability for interest and/or penalty under these provisions is automatic.

27. It was lastly argued that the object sought to be achieved by the impugned provisions is not likely to be served by it. This argument doubting the wisdom of the legislation is not a ground to challenge its constitutionality. In the words of Krishna Iyer J. in *Murthy Match Works and Others Vs. The Asstt. Collector of Central Excise, and Another*, " unconstitutionally and not unwisdom of a legislation is the narrow area of judicial review ". All the same, a brief reference may be made to the object of the legislation.

28. The object clearly is to prevent tax evasion and plug loopholes enabling tax avoidance. The impugned provisions have been enacted for this purpose as one of the measures in the drive to unearth black money and to prevent its further growth. Even assuming that this object is not fully achieved by enactment of the impugned provisions, that can be no ground to hold that it is unconstitutional. It cannot, however, be doubted that the impugned provisions are a step towards achieving the professed object and are, therefore, in consonance with it. This alone is sufficient for the present purpose.

29. It was also urged on behalf of the petitioners that any attempt to check "tax avoidance" is not a legitimate object since "tax avoidance" is permissible to an assessee, who can reduce his tax burden by arranging his affairs in the manner permitted by law. It is sufficient to say that any attempt to plug loopholes in order to make "tax avoidance" difficult is a legitimate legislative exercise and no objection can be taken to it. This being so, an attempt in that direction to discourage "tax avoidance" and "tax evasion" as stated in the budget speech of the Finance Minister cannot be called an illegitimate objective of the legislature. We may also refer usefully to a recent decision of the Supreme Court in McDowell and Co. Ltd. Vs. Commercial Tax Officer, wherein the shift towards emphasis on frowning at tax avoidance has been indicated. In view of this later decision of the Supreme Court, reference made by the Finance Minister in his budget speech to discouraging "tax avoidance" cannot be objected to.

30. It follows from the above discussion that challenge to the impugned provisions on all the aforesaid grounds based on Article 14 and Article 19(1)(g) of the Constitution has no merit and must be rejected. We may at this stage also refer to a decision of the Karnataka High Court in T.S. Natraj Vs. Union of India and Others, wherein a similar challenge to the constitutional validity of these provisions based on arts. 14 and 19(1)(g) was rejected. With respect, we are in agreement with the conclusion reached therein.

31. We may also add that the time available this year for compulsory audit has been extended up to September 30, 1985 by Circular No. 422* [F. No. 201/156/85-IT(A-II)] dated June 19, 1985, issued by the CBDT. However, counsel for the petitioners urged that in view of the stay order made in these petitions, no steps were taken for getting the accounts audited and the available period up to September 30, 1985, would be insufficient for this purpose. The learned Advocate-General stated before us that the concerned assessing authority would be instructed that if the return along with the requisite audit report is filed by the petitioners in all these cases within a period of four months of this order dismissing the petitions, then no penalty u/s 271B or interest u/s 139(8)(a) would be charged from them for the period of delay. In our opinion, this would also be the fair course to adopt since by virtue of the stay order of this court in these petitions, the petitioners were not required to get their accounts audited till the petitions were decided by this court against them vacating the stay order. It is, therefore, directed that no interest or penalty will be recovered

from the petitioners for delay in filing the return, if the same is furnished within four months of this order.

32. Consequently, all these petitions are dismissed and the interim orders stand vacated. No costs. The outstanding amount of security, if any, be refunded to the petitioners.