**(1998) 11 KAR CK 0008**

**In the Karnataka High Court**

**Case No :** Writ Petition No''s. 21889 of 1992

N. VINOD KUMAR and CO. APPELLANT

Vs

UNION OF INDIA and Others RESPONDENT

**Date of Decision :** 18-11-1998

**Acts Referred:**

Constitution of India, 1950 — Article 14, 19
Income Tax Act, 1961 — Section 139 (1), 271 B, 44 AB

**Citation :** (1999) 153 CTR 608

**Hon'ble Judges :** V.K. Singhal, J

**Bench :** Division Bench

# Judgement

V.K. SWHAL, J:

Validity of the provisions of ss. 271B, 44AB and s. 139(1) of the IT Act, 1961 have been assailed in these petitions. The petitioners are aggrieved by fixing different dates in obtaining the audit report for the companies vis-a-vis non companies. It is submitted that the persons whose accounts are to be audited constitute one group and liability under s. 44AB have been casted where sales, turnover or bills, receipts exceeds rupees 40 lakhs in the previous year. It is submitted that all the assessees which fall in that category constitute one category and there cannot be a further discrimination regarding different date in furnishing the return.

2. Expln. to s. 44AB defines the specific dates in relation to accounts of the previous year or years relating to the assessment year means the date of expiry of 4 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 30th June of the assessment year whichever is later. This definition was amended by Finance Act of 1988 and now a ''specified date'' in relation to the accounts of the previous year for the companies have been mentioned as 31st December and in other cases 31st October, of the assessment year. This date of 31st December was further

changed to 30th November by Finance Act of 1994. Sec. 139(1) prescribes the time-limit for filing return which is to be filed on the due date. Expln. (1) has defined ''due date'' in the case of company 31st December of the assessment year which has now been changed to 30th November. In the case of assessee other than the company where accounts are required to be audited the return is to be filed by 31st October. Where the assessee is carrying on business or profession the return has to be filed by 30th August and in other. cases the last date for furnishing return is 30th June.

3. Reliance is placed on the judgment given by the apex Court in the case of The State of Gujarat and Another Vs. Shri Ambica Mills Ltd., Ahmedabad and Another, wherein the following observations are made :

"53. A reasonable classification is, one which includes all who are similarly situated and none who are not. The question then is .. what does the phrase 1 similarly situated'' mean? The answer to the question is that we must look beyond the law. A reasonable classification is one which includes all persons who are similarly situated with respect to the purpose of the law. The purpose of a law may be either the elimination of a public mischief or the achievement of some positive public goods.

54. A classification is under-inclusive when all who are included in the class are tainted with the mischief but there are others also tainted whom the classification does not include. In other words, a classification is bad as under-inclusive when a State benefits or burdens persons in a manner that furthers a legitimate purpose but does not confer the same benefit or place the same burden on others who are similarly situated. A classification is over-inclusive when it includes not only those who are similarly situated with respect to the purpose but others who are not so situated as well. In other words, this type of classification imposes a burden upon a wider range of individuals that are included in the class of those attended with mischief at which the law aims. Herod ordering the death of all male children born on a particular day because one of them would some day bring about his downfall employed such a classification."

4. Sec 271B provides that if any person fails to get his accounts audited in respect of any previous year or years relating to an assessment year or obtain a report of such audit as required under s. 44AB etc., a penalty equal to one-half per cent of the total sales, turnover or gross receipts or one thousand rupees whichever is less is prescribed.

5. The entire argument of the learned counsel for the petitioner is on the basis that when the company and other assessees constitute one class, providing different dates for obtaining report or submitting the return is discriminatory and violative of Art. 14 of the Constitution.

6. Arguments of both the learned counsel have been heard. In the case of companies even the time-limit for filing return, where provisions of s. 44AB are

not applicable, is 31st December which has now been changed to 30th November. A company even after the audit has to get the accounts approved and, therefore, the general date for filing return is at a later date. Therefore, in the case of a company it has been considered by the Parliament to fix a date subsequent to those which is available to the other assessees. Persons other than the companies are not required to follow the procedure prescribed under the Company''s Act where some delay may take place. Companies constitute separate class by itself and, therefore, if the Parliament has prescribed different dates for obtaining report or filing return, it cannot be said that the other assessees are of the same group as a company is. Classification of a company and other assessee is a reasonable classification as the company constitute a different class. There are other provisions under the Act where the different treatment is being given to companies. Since company itself constitutes different class prescribing different dates for obtaining report under s. 44AB or prescribing report under s, 44AB or prescribing different dates for filing return cannot be considered to be violative of Art. 14 of the Constitution of India.

Provisions of s. 44AB were held not violative of Arts. 14 and 19 of the Constitution by this Court in the case of T.S. Natraj Vs. Union of India and Others, .

Gujarat High Court in Rajkot Engineering Association and Others and Tax Advocates Association and Others Vs. Union of India and Others, Andhra Pradesh High Court in A.S. Sarma and Others Vs. Union of India, Madhya Pradesh High Court in Mohan Trading Company and Others and Hari Shankar Shrivastava and Another Vs. Union of India (UOI) and Others, Rajasthan High Court in Abhay Kumar and Co., Mehta Vegetables Product, Jagannath Ramgopal and Co., Kailash Mal Chitarmal, Luna Trading Co., Daulat Raj Shyam Sunder, Prasan Chand Sukhraj Mehta, Lunawat Dal Mill, Baktarwar Mal Govind Ram, Chainsukh Parveen Kumar and Padam Chand Mutha and Co. Vs. Union of India (UOI) and Others, and R. Sathya Moorthy and Others Vs. Union of India and Others, have also taken the same view.

The writ petitions are, therefore, dismissed.

7. The petitioners have filed appeals before CIT(A) which were dismissed on 4th June, 1992. Petitioners have a remedy to challenge that order by filing second appeals before the Tribunal. Petitioners may file such appeals within four weeks from today and if the appeals are filed within the aforesaid period no objection regarding limitation would be raised.