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(1989) 08 MAD CK 0014

In the Madras High Court

Case No : Writ Petition No. 1275, 3203, 3408, 3709, 3863, 4157, 8713, 8714 and 10765 of 1985

R. Sathya Moorthy and Others — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 29-08-1989

Acts Referred:
Constitution of India, 1950 — Article 14, 19(1)
Income Tax Act, 1961 — Section 139, 139(9), 288, 288(1), 288(2)

Citation : (1990) 81 CTR 207 : (1991) 189 ITR 491

Hon'ble Judges : S. Mohan, O.C.J.;S. Ramalingam, J

Bench : Division Bench

Advocate : P.V. Bakthavatchalam, for the Appellant; Nalini Chidambaram, for the Respondent

Judgement

S. Mohan, Officiating C.J.

1. All these writ petitions can be dealt with under a common judgment, since the prayer is one and the same, viz., for a declaration that section

44AB of the Income Tax Act, 1961, which imposes audit of accounts of assessees by accountants alone and restraining the other authorised and

qualified practitioners as unreasonable, discriminatory and unconstitutional. In all the cases, barring W.P. No. 10765 of 1989, the petitioners are

Income Tax practitioners. The petitioner in W.P. No. 10765 of 1985 is an assessee.

2. It is enough if we refer to W.P. No. 3203 of 1985. The petitioner herein is an Income Tax practitioner. He has been so registered with the

Commissioner of Income Tax and, in the course of the exercise of his procession, he assists assessees in the preparation of accounts, balance-

sheets, profit and loss accounts, statements and return of income to be filed before the Income Tax authorities. He has been carrying on his

profession since 1976.

3. He is an authorised representative within the meaning of section 288(1) of the Act. The relevant clause applicable would be clause (vi) of sub-

section (2) which reads as follows :

(vi) any person who has acquired such educational qualifications as the Board may prescribe for this purpose"".

4. Section 139 of the Act provides for filing a return. Sub-section (9) read along with the Explanation says that the return of income shall be

accompanied by statements relating to the computation of the income chargeable under various heads of accounts, computation of the gross total

income and computation of the tax payable on the income returned.

5. As per rule 12A of the Rules, every authorised representative, before he makes an appearance before the Income Tax Officer or after making

such appearance, shall furnish to the officer :

(a) particulars of accounts, statements or other documents supplied to him by the assessee for the preparation of the return of income; and

(b) if the authorised representative has for the purpose of the preparation of the return of income carried out any examination of such accounts,

statements or documents, a report on the scope and results of such examination.

Therefore, as per the above provision, he is an authorised representative to what is commonly known as ""audit"".

The Finance Act, 1984, has introduced a new section 44AB which runs as follows :

Audit of accounts of certain persons carrying on business or profession. -

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 year relevant to the assessment year commencing on the day of April 1, 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 day of April 1, 1985, or any subsequent assessment year,

get his accounts of such previous year or years audited by an accountant before

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the specified date and obtain before that date the report of such

audit in the prescribed from 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 the 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 the 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 day of June 30 of the assessment year, whichever is later"".

6. Consequent to the introduction of this section, the authorised representatives other than the chartered accountants are gravely affected as they

are denied the right to carry on their profession effectively. In practical terms, this would, in fact, exclude all authorised representatives other than

chartered accountants from practising their profession as authorised representatives in respect of the assessees whose turnover exceeds rupees

forty lakhs and in respect of professional whose income (gross receipts from profession) exceeds rupees ten lakhs.

7. As a result of this compulsory audit by the chartered accountants, necessarily, one has to engage the services of chartered accountants. The

result will be to exclude all authorised representatives other than chartered accountants from practising their professional and this would amount to

an unreasonable restriction, amounting to almost a prohibition. Further, it brings about a discrimination in favour of a class of persons, viz.,

chartered accountants. Therefore, this provision is attacked in the affidavit as follows :

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The petitioner submits that the classification made by choosing only chartered accountants for favoured treatment as against other classes of

authorised representatives would be a person who falls within one of the clauses of section 288(2). I am authorised to appear before an Income

Tax Officer as an authorised representative by virtue of clause (v) of section 288(2) read with rule 51(1). In view of the equal treatment of

authorised representatives contemplated by section 288(2), there is no justification to single out only chartered accountants and give them a

favoured treatment as contemplated by section 44AB. The classification is arbitrary and irrational.

The petitioner submits that section 139(9) and rule 12A are the provisions dealing with filing of the return of income and completion of an

assessment thereon, and the discrimination brought out between chartered accountants on the one hand and other categories of authorised

representatives is unjustified. The information that is to be furnished before the Income Tax Officer is the same whether it is filed by a chartered

accountant or by any other authorised representatives and all the necessary information is furnished to the Income Tax Officer. Section 44AB is,

therefore, violative of article 14 of the Constitution.

The effect of section 44AB is that it discriminates between the different classes of authorised representatives and imposes a restriction upon certain

categories of authorised representatives. Since the direct effect of section 44AB is to exclude all other categories of authorised representatives

except chartered accountants from carrying on their profession, it brings in an oppressive restriction in the guise of an obligation. Hence, section

44AB is violative of article 14 of the Constitution.

The petitioner submits that he has a fundamental right to carry on his profession as an authorised representative without any hindrance. This right is

guaranteed under article 14 of the Constitution. Further, article 19(1)(g) confers a fundamental right upon which only reasonable restrictions in the

public interest may be imposed. Section 44AB is so arbitrary and unreasonable that it violates both articles 14 and 19(1)(g) of the Constitution.

8. In the counter filed by the Chief Commissioner of Income Tax and Commissioner of Income Tax, Tamil Nadu, after tracing out the advantages

of compulsory audit of accounts, it is stated that, in the year 1984, it was found

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that time was ripe to introduce compulsory audit in the case of big

assessees in non-corporate sector. The tax administration has become complex with the increase in the number of assessees and it was felt

necessary by the Government that compulsory audit in the cases of bigger the Income Tax Officer to concentrate on the investigational aspect of

the assessment rather than attending to routine check of the accounts maintained by the assessees. It is incorrect to contend that the chartered

accounts have been favoured to the exclusion of the Income Tax practitioners. Auditing of accounts is a specialised job. It means official

examination of accounts and verification by reference to receipts and vouchers. Therefore, only chartered accountants have acquired such skill and

knowledge. It may be true that some Income Tax practitioners may also acquire that skill by sheer practice without passing the necessary

examinations. But that does not preclude Parliament from prescribing special qualifications with reference to the auditing of the accounts.

9. The inevitability brought about by section 44AB by restraining certain class of authorised representatives from being engaged by certain

assessee for audit of their records and accounts itself cannot render the provision unconstitutional. Chartered accountants are a class by

themselves. Therefore no discrimination ever arises. Equally, the right of the petitioners under article 19(1)(g) of the Constitution is not in any way

affected. A comparison between the Income Tax practitioners on the one hand and the chartered accountants on the other is obvious. The

impugned section does not preclude assessees from taking advice from legal practitioners for their legal problems. Even now, nothing prevents the

Income Tax practitioners from preparing the return of the bigger assessees or representing them before the Income Tax authorities. Where a

provision is sought for making the tax administration more efficient, the petitioners have no right to complain about the infraction of their

fundamental rights. Prescribing qualification for audit of certain assessee''s accounts is certainly within the legislative competence of Parliament.

Therefore, article 19(1)(g) of the Constitution is not violated. The writ petition is, therefore, devoid of merit and is liable to be dismissed.

Before us, the following points, are urged :

(a) This is an unreasonable classification because where, for long, the petitioners

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have all along been furnishing statements of accounts and

representing the cases of various assessees, irrespective of what their income, suddenly that right cannot be exclusively conferred on chartered

accountants;

(b) This section takes away the fundamental right of practising and

(c) Having regard to the terms of the proviso, it clearly brings about discrimination because a person other than a chartered accountant would

represent the case. In the case of co-operative societies, for instance, if the auditor is enabled to audit the accounts under any special law, the same

auditor cannot represent in the case of any other assessees. From this point of view, it is hit by article 14 of the Constitution of India.

10. Mr. k. Srinivasan, appearing for the assessee in W.P. No. 10765 of 1985, states that every person has a right to carry on business in his own

way. All that it required of him is to file a true return. Such a return can be filed by the assessee himself. There is no necessity to engage a chartered

accountant. If that be so, why not allow the assessee himself to file a statement of accounts and why compel him to take the services of a chartered

accountant. By reason of this compulsion, freedom of trade guaranteed under article 19(1)(g) of the Constitution is denied in the case of an

assessee. Therefore, beside the points raised on behalf of the Income Tax practitioners, he would add this as well.

11. Mrs. Nalini Chidambaram, appearing for the Department, would state that the points raised by both counsel (in all these writ petitions) either

on behalf of the Income Tax practitioners or on behalf of the assessee are no longer res integra. There are several decisions which have upheld the

validity of the section wherein identical contentions raised on behalf of the petitioners have been held to be untenable. Counsel submitted in support

of their submissions Mohan Trading Company and Others and Hari Shankar Shrivastava and Another Vs. Union of India (UOI) and Others, ;

Rajkot Engineering Association and Others and Tax Advocates Association and Others Vs. Union of India and Others, ; 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

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(UOI) and Others, ; A.S. Sarma and Others Vs. Union of India, and T.S. Natraj Vs. Union of India and Others, . She is adopting the reasoning

contained in these judgments as her arguments and would submit that the writ petitions are liable to be dismissed.

12. Having regard to the above arguments, we are only to consider whether the main provision u/s 44AB is violative of either article 14 or article

19(1)(g) of the Constitution of India. Then, the other question would be relating to the proviso. We do not think that we need dwell at length

because, as rightly urged on behalf of the Revenue, all the points either from the point of view of the Income Tax practitioners or from the point of

view of the assessee have been considered elaborately in several decisions. First of all, we would refer to the objects and reasons for introduction

of the section (see [1985] 146 (St.) 161 :

Accounts maintained by companies are required to be audited under the Companies Act, 1956. Accounts maintained by co-operative societies

are also required to be audited under the Co-operative Societies Act, 1912. There is, however, no obligation on other categories of taxpayers to

get their accounts audited.

A proper audit for tax purposes would ensure that the books of account and other records are properly maintained and that they faithfully reflect

the income of the taxpayer and claims for deductions are correctly made by him. Such audit would also help in checking fraudulent practices. It can

also facilitate the administration of tax laws by a proper presentation of the accounts before the tax authorities and considerably saving the time of

assessing officers in carrying out routine vertifications, like checking correctness of totals and verifying whether purchases and sales are property

vouched or not. The time of the Assessing Officers thus saved could be utilised for attending to more important investigational aspects of the case.

Having regard to the foregoing considerations, the Bill seeks to make a new provision in the Income Tax Act making it obligatory on a person

carrying on business to get his accounts audited before the ''specified date'' by an ''accountant'', if the total sales, turnover or gross receipts in

business for the accounting year or years relevant to the assessment year 1985-86 or any subsequent assessment year exceed or exceeds forty

(forty, by F. A. 1984 from 1-4-85) See Fatehchand Moonat Vs. Commissioner of

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Income Tax, .lakhs rupees. A person carrying on profession

will also have to get his accounts audited before the ''specified date'', if his gross receipts in profession for an accounting year or years relevant to

any of the aforesaid assessment years exceed ten lakhs rupees. The proposed new provision also casts an obligation on such persons to obtain

before the ''specified date'' a report of the audit in the prescribed form duly signed and verified by the ''accountant'' setting for the such particulars

as may be prescribed by rules made in this behalf by the Central Board of Direct Taxes.

In cases where accounts are required to be audited by or under any other law (as in the case of companies and co-operative societies), it will

suffice if the accounts are audited under such other law before the ''specified date'' and the assessee obtains before the said date the report of the

audit as required under such other law, and also a report of audit in the form to be prescribed by the Central Board of Direct Taxes.

For the purposes of the proposed provisions, the term ''accountant'' will have the same meaning as in the Explanation below sub-section (2) of

section 288 of the Income Tax Act. The expression ''specified date'', in relation to the accounts of any accounting year or years relevant to any

assessment year, would mean the date of the expiry of four months from the end of the accounting year or, where the assessee has more than one

accounting year, from the end of the accounting year which expired last before the commencement of that assessment year or the June 30 of that

assessment year, whichever is later.

If any person fails, without reasonable cause, to get his accounts audited in respect of any accounting year or years relevant to an assessment year

or to obtain a report of such audit as required under the aforesaid provision, the Income Tax Officer 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 the business or of the gross

receipts in the profession, in such accounting year or years, subject to a maximum of one lakh rupees.

The proposed provision will take effect from April 1, 1985, and will, accordingly, apply in relation to the assessment year 1985-86 and

subsequent years.

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13. This explains sufficiently the object behind the introduction of this provision. Really, a proper audit for tax purposes would ensure the proper

maintenance of accounts which would faithfully reflect the state of affairs. It would help detecting fraudulent practices and, therefore, it is for the

benefit of facilitating the administrators of tax laws. The matter will have to be approached only from that perspective.

14. So considered, we find that in Mohan Trading Company and Others and Hari Shankar Shrivastava and Another Vs. Union of India (UOI) and

Others, , a Division Bench of the Madhya Pradesh High Court, after referring to the objects and reasons, held concerning violation of article 14 of

the Constitution as follows (p. 143) :

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 assessees 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.

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 accounts, for which the

''accountant'' alone is qualified. Admittedly, there is no discrimination made between a legal practitioner and an ''accountant'' for the purpose of

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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......

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 u/s 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.

As regards violation of article 19(1)(g) of the Constitution, it is observed (p. 148) :

The object clearly is to prevent tax evasion and plug loopholes enabling tax avoidance. The impugned provision 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.

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

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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.

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 articles 14 and 19(1)(g) was rejected. With respect, we are in agreement with

the conclusion reached therein.

15. It may be seen that this ruling referred, in its turn to T.S. Natraj Vs. Union of India and Others, and agreed with the conclusion contained

therein. Therefore, we will now take up T.S. Natraj Vs. Union of India and Others, wherein the petitioners belong to two categories - (1) Income

Tax practitioners and (2) taxpayers. The taxpayers, as is urged here by Mr. Srinivasan. Urged as follows (at p. 85) :

The taxpayers, supporting the Income Tax practitioners, have urged that section 44AB unreasonably compels them to have their accounts audited

by chartered accountants which is satisfactorily attended to by their Income Tax practitioners without any complaint by the Income Tax authorities.

They have highlighted the inconveniences, hardships and difficulties they are exposed to by the exclusive privilege conferred on the chartered

accounts; they may dictate their own terms against them.

16. The Division Bench considered the matter at length and came to the conclusion rejection the contention (p. 118) :

We have earlier indicated that taxpayers have the weakest case. The bigger

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cases of bigger assessee whose transactions exceed the specified

amounts cannot compare themselves with those that do not exceed the specified limit. Every one of the reasons on which we have held that the

provision is not arbitrary and is not violative of article 14, apply with greater force to reject the challenge of the taxpayers. We have, therefore, no

hesitation in rejecting the challenge of the taxpayers to section 44AB of the Act based on article 14 of the Constitution.

We will now turn to examine the challenge of the petitioners based on article 19(1)(g) of the Constitution.

Every one of the reasons on which we have rejected the challenge of the petitioners based on article 14 are also relevant to decide their challenge

based on article 19 also. We, therefore, do not propose to restate them over again and proceed to examine only the special requirements of that

article.

17. In Rajkot Engineering Association and Others and Tax Advocates Association and Others Vs. Union of India and Others, , a Division Bench

of the Gujarat High Court considered this question in a very elaborate way and it also dealt with the proviso, at page 83, as under :

The second limb of this contention that the sub-classification makes the main classification unintelligible appears to be attractive and, therefore,

requires to be examined.

The answer is found at page 162 ITR 88 which runs as below :

In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative

judgment..... If, therefore, Parliament in its legislative wisdom has thought it fit to extend the special privilege, if there is any, of being entitled to

carry out tax audit to special auditors who are recognised under a special law to be auditors for a category of assessees, we do not think that we

would be justified in treating this impugned provision as violative of article 14 of the Constitution since in our opinion there is a fair reason for

granting this preferential treatment to the special categories of assessees who are required under the special law to get their accounts audited, as for

example, co-operative societies under the relevant Co-operative Societies Act since otherwise these welfare agencies would be subjected to the

burden of audit twice over-one being commercial audit and the other being tax

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audit. It cannot be said that there is no fair reason underlying the

proviso for giving preferential treatment to a specified category of assessees, this apparent preferential treatment does not militate against the rule of

equality enshrined under article 14 of the Constitution. The non-corporate assessees who are not required to get their accounts audited under any

law cannot, therefore, press this proviso in support of their plea of under-classification, because Parliament having recognised that these welfare

agencies constituted under the special Act subjecting them to commercial audit thought it fit to exclude them from the obligation of the tax audit by

the chartered accounts and to treat the report of the special auditor as sufficient compliance with the obligation under the impugned section, we do

not think that it can be said that there is no fair reason for the apparent under-classification. We are, therefore, unable to agree with the ''two-fold

contention urged by the learned Advocate-General of Gujarat appearing for the petitioners.

18. The same line of reasoning was adopted by a recent judgment of the Andhra Pradesh High Court in A.S. Sarma and Others Vs. Union of

India, . Here again, the Division Bench held as under dealing with the aspect of equality (p. 261) :

income tax practitioners an auditors cannot be considered on par with chartered accountants regarding expertise and excellence in audit. It is

contended that the Income Tax practitioners, advocates and chartered accountants are considered and treated alike u/s 288 and, therefore, there

is no logic for this differentiation. Section 288 enumerates the diverse categories of persons entitled to attend on behalf of the assessee before the

hierarchy of authorities under the Act and apart from other persons, Income Tax practitioners, advocates and chartered accountants are

mentioned. A glance at the list of persons set out in sub-section (2) of section 288 reveals that the persons who are expected to make an effective

and genuine representation and having an over-view knowledge of the affairs of the assessee are authorised to represent without reference to any

specialised proficiency in taxation or otherwise. It is patent that all those categories are lined up on an equal footing u/s 288 for the purpose of

representation of the case of the assessee and this equal eye should be confined to the purpose of representation only and it cannot be expected of

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advocates and Income Tax practitioners with their background of education and academic attainment to give a good account of themselves in

audit. Equally, chartered accountants cannot be credited with legal education. Chartered accounts constitute a distinct group and Income Tax

practitioners and advocates cannot be equated with them in so far as audit is concerned and as such section 44AB is not violative of article 14 of

the Constitution. In T.S. Natraj Vs. Union of India and Others, and Mohan Trading Company and Others and Hari Shankar Shrivastava and

Another Vs. Union of India (UOI) and Others, , the Karnataka and Madhya Pradesh High Courts, respectively, took the same view.

It may also be noticed that the Division Bench further held as below (p. 261) :

The object of section 44AB is to have a detailed scan of accounts of assessees in higher income brackets so that the detection of evasion, if any,

may yield attractive dividends regarding exigibility to tax. Further, the compulsory audit facilitates the assessing authority to get at a neat epitome of

the transactions without the necessity of devoting considerable time to scrutiny of accounts and transactions. The audit report contributes to

expeditious and accelerated assessments and detection of evasion. The stipulation of audit by chartered accountants has a legitimate affinity to the

object sought to be achieved. Learned counsel for the petitioner contended that by diverting their clientele to the corridors of chartered accounts

for the purpose of audit, the petitioners lose their grip over them and there is a remote possibility of such assessees unfolding themselves from the

nest of chartered accountants. This contention is far-fetched and not founded upon proximity to a realistic approach.

19. It may be noticed that the two decisions to which we have made reference had been cited with approval. Therefore, with respect, adopting the

reasoning in these decisions, we find absolutely no difficulty in upholding the validity of section 44AB.

20. All these writ petitions will, accordingly, stand dismissed with costs, counsel''s fee Rs. 500 in each petition.

21. Some after we delivered judgment, an oral application was made for leave to appeal to the Supreme Court. Leave granted.

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