

(1985) 04 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petition No's. 1585 to 1603 of 1985

T.S. Nataraj

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-04-1985

Acts Referred:

Citation : (1985) 22 TAXMAN 84

Hon'ble Judges : Puttaswamy, J;Narayana Rai Kudoor, J

Bench : Division Bench

Advocate : Viswanatha Iyer, K.B. Basavaraj, B.P. Gandhi, G. Sarangan, B.V. Katageri and Kishore Mailya, for the Appellant; K. Srinivasan and H. Raghavendra Rao, for the Respondent

Final Decision : Dismissed

Judgement

Puttaswamy, J.

ORDER OF REFERENCE

In these petitions under article 226 of the Constitution of India, the petitioners, who are either tax advocates or income tax practitioners or assesseees under the income tax Act, 1961 ("the Act") (as the case may be) have challenged the constitutional validity of section 44AB of the Act as introduced by the Finance Act, 1984.

On the very questions raised in these petitions, there is no authoritative ruling of the Supreme Court or this Court. The questions raised in these cases will affect a large number of tax advocates, income tax practitioners and assesseees in the country itself. In these circumstances, I am of the opinion that these are fit cases to be heard and decided by a Division Bench of this Court. In exercise of powers conferred u/s 9 of the Karnataka High Court Act, I refer these cases to a Division Bench for disposal.

ORDER OF DIVISION BENCH

Puttaswamy, J.—On a reference made by one of us (Puttaswamy, J.), these cases were posted before us for disposal. As the petitioners in these writ petitions have challenged the constitutional validity of section 44AB, we propose to dispose of these petitions by this order.

2.1 There are two groups of petitioners. The first group who are the petitioners in Writ Petition Nos. J585 to 1603 and 3775 to 3788 of 1985 are professionals, who are authorised by law and section 288 of the Act in particular to appear, act and plead for the assessee before all the authorities under the Act. We will hereafter refer to them as ITPs.

2.2 The ITPs consist of advocates, who are on the rolls of one or the other Bar Council in the country, whose enrolment, conduct and other related matters are regulated by the Advocates' Act of 1961 (Central Act No. 25 of 1961). A number of advocates, some of whom are petitioners before us, besides possessing a qualification in law which is necessary to enroll them as advocates, possess qualifications in commerce like a Degree of Bachelor in Commerce or a Master's Degree in Commerce or a Diploma in Commerce. With this added qualification, that stands them in good stead, these advocates prepare the returns of their clients-taxpayers, file them and then represent them before the original, appellate and revisional authorities under the Act. Some of the advocates though they do not possess qualifications of Degree or Diploma in Commerce, have gained necessary experience in the preparation and filing of returns before the authorities.

2.3 Besides the advocates, there are others with qualifications such as a Degree or Diploma in Commerce, who have chosen to practise exclusively before the authorities under the Act. A large number of them are registered or recognised income tax practitioners under Part XI of the income tax Rules, 1962 ("the Rules") framed under the Act by one or the other Commissioner of income tax, who is empowered to register them as ITPs under the Rules. A few of them do not have any Degree or Diploma in Commerce, but are authorised ITPs.

2.4 The second group of petitioners before us, are taxpayers or assessee under the Act and some of them are the clients of one or the other ITPs, who are the first group of petitioners.

3. The Finance Act, 1984 has, inter alia, incorporated section 44AB to the Act and the same has come into force from 1-4-1985. Section 44AB provides for compulsory or statutory audit of accounts of certain class of persons carrying on business or profession by chartered accountants (CAs), who are on the register of members maintained by the Institute of Chartered Accountants of India (Institute) established and functioning from 1-7-1949 under the Chartered Accountants Act of 1949. As the said exclusive right or privilege conferred on CAs has affected their interests, the petitioners have challenged the said provisions under article 226 of the Constitution, as violative of the fundamental rights guaranteed to them by articles 14 and 19(1)(g) of the Constitution.

4.1. The ITPs, with whom we are primarily concerned, have asserted that they have all the qualifications and experience possessed by CAs and the right conferred on CAs is discriminatory, arbitrary, irrational and is not in the general public interest at all. They have asserted that this arbitrary provision was earlier dropped on a very detailed examination of all the relevant criteria including considerations such as the largeness of their number in the country; the satisfactory service rendered by them to the public and the very limited number of CAs available in the country and the like. The petitioners- the first group of them-assert that their fundamental right to practise their profession is violated their being no corresponding advantage to any section of the public.

4.2. The taxpayers, supporting the ITPs have urged that section 44AB unreasonably compels them to have their accounts audited by CAs which is satisfactorily attended to by their ITPs 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 CAs, who may dictate their own terms against them.

5. In their common return, the respondents without admitting the correctness of the assertions and contentions urged by the petitioners assert that section 44AB providing for compulsory audit exclusively by CAs, who have superior qualifications and expertise to audit the accounts of big assesseees had been enacted to check evasion of taxes and facilitate the administration, was not violative of articles 14 and 19 of the Constitution and was in any event saved by article 19(6) of the Constitution.

6. Sriyuths Viswanath Iyer, G. Sarangan, B.V. Katageri, B.P. Gandhi, K.B. Basavaraj, Kishore Mallya, the learned advocates have appeared for the petitioners. Whenever we refer to the arguments addressed by Sriyuths Viswanath Iyer or Sarangan, we should be understood as referring to all the learned counsels for the petitioners.

7. Sri K. Srinivasan, the senior standing counsel for the income tax Department assisted by Sri H. Raghavendra Rao, junior standing counsel appeared for the respondents.

8. Both sides in their elaborate and very pains taking arguments, extending for five days, have relied on a large number of rulings, reports and treatises in support of their respective cases. We will refer to them at the appropriate stages.

9. The learned counsels for the petitioners have urged that section 44AB providing for compulsory or statutory audit of accounts of taxpayers carrying on business or profession specified therein, exclusively by CAs does not in any way achieve or advance the purposes of the Act, but is an irrational and arbitrary provision violative of articles 14 and 19.

10. Sri Srinivasan has urged that section 44AB providing for compulsory audit by CAs possessing superior qualifications and expertise had been enacted to check

evasion of taxes and facilitate administrative convenience and the same was not violative of articles 14 and 19.

11. In order to appreciate the challenges made to section 44AB, it is useful to first ascertain the legislative history, the true scope and ambit of the provision and the principles that should guide in adjudging its validity.

12. On 2-3-1970, the Government of India constituted a high power committee of experts under the Chairmanship of Sri Justice K.N. Wanchoo, retired Chief Justice of India to examine and suggest the legal and administrative measures for counteracting evasion and avoidance of direct taxes in the country (vide Chapter I-Introduction of Direct Tax Enquiry Committee-Final Reports-published by the Government of India in December, 1971). The Wanchoo Committee was asked to examine and recommend (a) concrete and effective measures; (i) to unearth black money and prevent its proliferation through further evasion; (ii) to check avoidance of tax through various legal devices, including the formation of trusts; and (iii) to reduce tax arrears; (b) examine various exemptions allowed by the Tax Laws with a view to their modification, curtailment or withdrawal and (c) indicate the manner in which tax assessment and administration may be improved for giving effect to all its recommendations. On a detailed examination of the questions referred to it, the Wanchoo Committee in its final report submitted to the Government in December 1971, made a number of recommendations, one of which related to compulsory audit of accounts with which only we are concerned in these cases. On that aspect, the Wanchoo Committee recommended for compulsory audit of accounts in the "bigger cases" or "bigger class" of assessees under the Act in these words:

Compulsory audit of accounts:

2.144. We think, it would facilitate the administration of tax laws to a considerable extent if, simultaneously with the compulsory maintenance of accounts, there is a statutory provision for their mandatory audit, at least in the bigger cases. Audit would ensure that the books and records are properly maintained and that they reflect faithfully the taxpayer's income (as shown in the books of account) and claims for deductions. Audit would also help in the proper presentation of the accounts before the tax authorities, thereby making the assessment proceedings more meaningful. Further, in a vast majority of cases, it would save considerable time of the assessing officers which is at present spent on carrying out routine verification, like correctness of totals and whether purchases and sales are properly vouched or not. The time, thus, saved could then be utilised for attending to more important investigational aspects of a case. The information which the auditor could be required to furnish with his certificate would also enable building up of information exchange for purposes of cross-verification, which will be invaluable in detecting tax evasion and spotting new assessees. Audit would also help to check fraudulent practices such as concoction of accounts at later dates, maintaining duplicate sets of accounts, etc.

2.145. In his report, Nicholas Kaldor had expressed the view that malpractices like the presentation of false and misleading accounts could be checked to a great extent if it were made compulsory for taxpayers to present audited accounts in all cases in which income or property exceeded certain limits. The idea of compulsory audit of accounts in large income cases has found support even in quarters which were not otherwise quite favourably inclined towards the suggestion of compulsory maintenance of accounts. The income tax Investigation Commission, while not favouring the imposition of a legal obligation on all to maintain accounts was of the view that compulsory audit in the case of business with large incomes would be desirable. The Direct Taxes Administration Enquiry Committee also recommended that in the interest of expeditious and proper assessment of taxpayers in higher income group, audit of accounts in all cases of business, profession and vocation, where the total assessed income in any one of the last three years exceeded Rs. 50,000 should be made compulsory by law and that audit should also be made compulsory in those cases of business, profession and vocation, where the returned income for the first time exceeds Rs. 50,000. The Working Group of the Administrative Reforms Commission also favoured compulsory audit by chartered accountants of cases with income over Rs. 50,000. However, the Administrative Reforms Commission, while agreeing that audit by qualified chartered accountants would be helpful in relieving the assessing authority of the need to make routine checks and enabling him to concentrate on the broader aspects of determination of the assessee's correct liability, felt that the number of chartered accountants being limited, it may not be possible for all the assessees to secure their services except at heavy cost and that the requirement of compulsory audit might delay the submission of returns. The Commission, therefore, recommended only an amendment of the provisions of rule 12A of the Rules, so as to provide for furnishing of certain additional information in all cases in which the returned income from business exceeds Rs. 50,000 and the returns are prepared by chartered accountants.

2.146. In the Questionnaire issued by us, we had specifically elicited views on this subject. Most of the departmental officers, who appeared before us, welcomed the suggestion and there was near unanimity among them that this would also go a long way in fighting tax evasion. Even among taxpayers, we found a sizable support for the measure, which they felt would smoothen proceedings before the income tax authorities. Some of the persons who appeared before us have, however, expressed their fears that a provision for compulsory audit of accounts might put an undue burden on the taxpayer. We concede that this may no doubt be true in the case of small business or professional men or persons deriving income from other sources. We are, therefore, of the view that such persons should not be required to get their accounts audited. The requirement of compulsory audit of accounts should be applicable to persons engaged in business or profession where the income or turnover/receipts exceed certain specified limits.

2.147. Doubts have also been expressed whether enough qualified auditors will

be available for undertaking audit in all cases where it is mandatory. Companies are already statutorily required to get their accounts audited. We feel that if suitable limits are prescribed for the non-corporate sector, the workload may not be too great to be tackled by the existing professional accountants. We understand that the number of chartered accountants has increased from eight thousand in April 1967 to over twelve thousand in October 1971. Further, during the same period, the number of chartered accountants solely in practice has risen significantly from 2,900 to 5,400. From the concern voiced from time to time, in the press and elsewhere about a few well known firms of chartered accountants monopolising bulk of the audit work relating to the corporate sector, it appears that there is a considerably large number of practising chartered accountants who can undertake additional workload of audit in the non-corporate sector without much difficulty.

2.148. We are conscious that determination of taxable income is altogether different from that of commercial profits. The scope of audit and examination of accounts for the purpose of determination of taxable income has, therefore, to be wider. Apart from examining the evidence for a particular item of expense or income, an auditor has to ascertain whether the expenditure is allowable or the income taxable allowance of a certain expenditure turns on its being reasonable or in consonance with fair market price for similar goods or services. This is a matter which depends on the subjective judgment of the ITO. Similarly, about cash credits and other items, inference from facts is likely to differ from person to person. Further, there could well be cases where some bank accounts in the name of the taxpayer or his benamidar were not disclosed to the auditor or where some receipts and payments were omitted to be entered in the books. In the case of noncorporate assesseees, imperfect methods of record-keeping in many a case may well hinder the auditor in applying normal audit procedures.

We consider that all these limitations should be taken into account in availing of the services of chartered accountants. Non the-less, as an auditor can devote more time to examination and verification of accounts than an ITO, auditor's services could be usefully harnessed for obtaining facts and figures that could be relied upon. To the extent, the time and effort of the ITO now spent on gathering requisite information and verifying its correctness is saved, he would be enabled to apply himself more fruitfully to complicated aspects of law and investigation.

We, therefore, recommend that a provision be introduced in the law making presentation of audited accounts mandatory in all cases of business or profession where the sales/turnover/receipts exceed Rs. 5 lakhs or the profit before tax exceeds Rs. 50,000. We further recommend that a form of audit report be prescribed taking due note of the manner in which documents, records and books are maintained in the non-corporate sector. Auditor's report should include, among other things, pertinent information like the following:

1. Scope of examination-whether full-check, test-check or mere reconciliation in order to satisfy that purchases, sales, income and expenses are properly

accounted for and balance sheet is properly drawn up.

2. Nature of security offered for obtaining secured loans. Particulars of security not recorded or accounted for in the books to be stated.

3. Computation of admissible allowance by way of depreciation.

4. Brief particulars of expenditure on entertainment, advertisement, guest house, etc., and the amount, if any, disallowable u/s 37 of the Act.

5. Particulars of expenses in respect of which the payments have been made to directors, partners or persons substantially interested in the concern and their relatives. The amount, if any, not deductible under sections 40 and 40A of the Act.

6. Particulars of amounts, if any, chargeable as profits u/s 41 of the Act.

7. Particulars of payments in respect of which income tax has not been deducted at source and paid in accordance with the requirements of sections 192-200 of the Act.

The Government may also, in due course, evolve a proforma of information to be furnished by the auditors which would facilitate completion of assessments."

Sri S. Prakash Chopra, a member of that Committee, a chartered accountant by profession, in a separate note (vide pages 231 to 239) generally agreed with the recommendations of the Committee.

13. But, one Sri D.K. Rangnekar, a member of the Committee in his dissent (vide pages 249 to 251) did not concur with the recommendations of the Committee on compulsory audit for these reasons:

2. Reform of Audit System and Profession.

We have made in the main report a number of proposals which visualise compulsory audit of accounts on the assumption that audited accounts will assist the income tax Department in making speedy assessment. In my view, the assumption is valid only if the scope and nature of audit are also changed. Over the years, auditors have tended to certify financial statements without making a satisfactory audit assessment or even without verifying the authenticity of accounts. One wonders if black income would have proliferated the way it has if the auditing profession had discharged its functions objectively and in keeping with the high traditions of independent audit. Frequently, auditors have tended to regard audit as merely a financial obligation to certify accounts which are supposed to have been examined by them. And these are usually signed with a qualification that absolves auditors of all responsibilities for certifying financial jugglery, black money manipulations, inventory and other irregularities.

In the manner in which the profession has developed, the role of the auditors has obviously come under a cloud. Some auditors have set themselves up as management consultants, directors, businessmen, income tax experts (sic). They

seem to do almost everything else other than searching audit. There can be no doubt that when an auditor starts to sell management and "other" advice and offers various unspecified services virtually one ends up with a situation where the company that has purchased the "services" of the auditors in various forms follows the recommendations of its own auditor consultant leaving little else for "audit". In some cases at least, it would mean that the auditors concerned are being asked to pass on their own firms "other work". And these instances are by no means small. A study of 501 companies showed that payments to auditors for services other than auditing were as high as 60 to 65 percent of the total payment made to the auditors by these companies. There are also cases where travelling and other allowances (which are usually reserved for salaried employees) are paid to auditors.

Difficulties arise because the precise role of the auditor has not been defined. The Company Law is vague on this subject and there is very little in the existing legal framework to safeguard either the independence of the auditor or the interest of the shareholders, the public and the exchequer. The independence of the auditor is essential also for the orderly development of trade and industry. It is not enough for the auditor or his institute or council to claim independence on behalf of the profession. Independence of the auditors must be seen to exist and must be seen in practice. It is, therefore, very essential for the Government, I think, to define the role of the auditor and free him from any obligations to his client and avoid the development of a situation which might mar his independence, objectivity and sense of responsibility. If there is any doubt about the independence, the integrity and the objectivity of the auditor or of the profession, we may well see the emergence of a movement challenging the validity of balance sheets, audit certificates and even the credentials of auditors. Balance sheets may no longer be accepted by the shareholders and gradually by other authorities as a true index of the state of affairs of a business enterprise. There may even be a feeling that when the auditor has other interests in the company, or other incomes from the company, he may tend to conceal things in his own interest.

Even for purposes of income tax assessment or rectitude of business and high standards of management, it is important that the public is told about the correctness of inventory valuation, of depreciation provisions and other important matters of business and profession. The multi-relationship developed by the auditors with their clients tends to dim the strictly professional role of auditors and their independence.

Against this background, I thought I might put forward the following proposals. These I consider are significant in the battle against the evil of black income. In order to ensure the evolution of an independent audit system, the economic dependence of auditors upon a certain small group of clients should also be broken:

(i) Auditors should not be allowed to render any service other than the

professional service of auditing. Those auditors who prefer to render "other services" should not be allowed to take up audit work. The ideal is to develop a corps of audit firms exclusively doing audit work on the lines of specialised legal and medical services.

(ii) No auditor should be allowed any position on the board of directors of any company so long as he continues to be a professional auditor. Any auditor who prefers to be a director of a company or engages himself in tax consultancy work, system, design or any other similar work should be debarred from audit work.

(iii) Any complaint on the accuracy of audit made by 10 percent of the shareholders (present and voting at a general body meeting) should be compulsorily followed by an independent investigation.

(iv) In order to reduce concentration of audit business among selected firms a system of rotation should be followed whereby no audit firm is allowed to audit the accounts of the same client for more than three years,

(v) As a general rule, a supervisory audit should be undertaken every three years by an audit firm other than the one contractually employed as auditor of a particular company. The supervisory audit should be done by an auditor nominated by the Comptroller and Auditor General of India.

(vi) The Company Law should be amended to define the role of the auditor and to set up a private accounts committee. This committee should comprise of independent economic, technical management and accountancy experts and should assist the Comptroller and Auditor General to ensure that high standards are maintained in supervisory audit and also to act as a watchdog of business operations involving an annual turnover of Rs. 1 crore and above.

We have extracted this dissent note as counsel for petitioners placed considerable reliance on the same.

14. Accepting a large number of recommendations of the Wanchoo Committee, one of which related to the compulsory audit in non-corporate sector and the 47th report of the Law Commission, Government introduced the Taxation Laws (Amendment) Bill of 1973 (Bill No. 34 of 1973) (1973 Bill) proposing a number of amendments to the Act (vide the statement of objects and reasons appended to the Bill). Clause 39 of this Bill proposed an amendment to section 139 of the Act to provide for compulsory audit of bigger cases in the non-corporate sector and the reasons or objects for the same was set out in the "notes" appended to this clause in these words:

Clause 39 - This clause seeks to amend section 139 of the Act so as to provide that taxpayers, other than companies, carrying on business or profession, whose income is over Rs. 50,000 or turnover or receipts are over Rs. 5 lakhs in a year should get their accounts audited and an audit report in the prescribed form should accompany the return of income. The audit is to be conducted by an

accountant as defined in the- Explanation to section 288 of the Act.

Power is being taken to make a provision in the form of income tax return, in such cases as may be prescribed, for obtaining information about income exempt from tax, assets and particulars of expenditure under prescribed heads and exceeding prescribed limits and other outgoings.

The 1973 Bill was referred to a Select Committee of the Lok Sabha which in its report presented on 20-3-1975 recommended for dropping clause 39, however, making provision for conferring power to refer any particular case for special audit by a chartered accountant and the recommendation made thereon is in these words:

35. Clauses 38 and 43 (original clauses 39 and 44):

(i) The Committee feel that the proposed provisions of clause 39 requiring compulsory audit of accounts of persons (not being companies) by chartered accountants are likely to cause harassment, inconvenience and unnecessary expense to the assessee particularly in the mofussil areas and other places where chartered accountants are not readily available, without any corresponding substantial benefit to the Government revenue. Sub-clause (i) of clause 39 has been omitted accordingly.

(ii) However, the Committee are of the opinion that in a case, where the nature and complexity of the accounts of the assessee and the interests of Government revenue so require, the department should be empowered to direct the assessee to get his accounts audited by a chartered accountant and furnish a report of such audit in the prescribed manner. In order to see that no harassment is caused to the assessee and he is not put to unnecessary expense, the decision to get his accounts audited should be taken at the level of the Commissioner and the chartered accountant for the purpose should also be nominated by him.

Clause 44 has been amended accordingly.

The Bill as modified by the Select Committee and passed by the Parliament as the Taxation Laws (Amendment) Act, 1975, inter alia, introduced section 142(2A) conferring special power of audit by a chartered accountant in certain special cases only came into force from 1-4-1976. What emerges from this is that Parliament did not favour a provision for audit of the big cases by chartered accountants.

15. But, clause No. 11 of the Finance Bill of 1984 introduced in the Parliament to give effect to the financial proposals of the Central Government for the financial year 1984-85 again proposed the introduction of section 44AB in the Act from 1-4-1985 providing for compulsory audit in the non-corporate sector. The notes to this clause explains the object and purposes in these words:

Clause 11 seeks to insert a new section 44AB in the income tax Act relating to audit of accounts of certain persons carrying on business or profession.

The proposed provision seeks to make it obligatory for 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 previous year or years exceeds or exceed twenty lakh rupees. A person carrying on profession will also have to get his accounts audited before the said date if his gross receipts in profession for the previous year or years exceeds or exceed ten lakh rupees. Such persons will also be required to obtain before the specified date a report of the audit in the prescribed form. These requirements will apply only in relation to the accounts for the previous year or years relevant to any assessment year commencing on 1st April, 1985 or any subsequent assessment year.

In cases where the accounts of a person are required to be audited by or under any other law, it will suffice if the person gets his accounts audited under such other law before the specified date and also obtains before the said date the report of audit in the prescribed form, in addition to the report of audit required under such other law.

The expression "accountant", for the purposes of this provision, will have the same meaning as in the Explanation below section 288(2) of the income tax Act. The expression "specified date", in relation to the accounts of the previous year or years relevant to any assessment year, means the date of the expiry of four months from the end of that year or where there is more than one previous year, from the end of the previous year which expired last before the commencement of that assessment year or the 30th June of such assessment year, whichever date falls later.

The proposed amendment will take effect from 1st April, 1985 and will, accordingly, apply in relation to the assessment year 1985-86 and subsequent years.

On this aspect, the Hon'ble Finance Minister in introducing the 1984 Bill and his budget proposals stated in the Parliament thus:

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.

The 1984 Bill enacted as the Finance Act of 1984 introduced section 44AB of the Act with effect from 1-4-1985 and the same that is material reads thus:

44AB. 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.

With the object of carrying out the purposes of this section the CBDT has framed detailed rules on 31-1-1985 prescribing the forms of audit reports or certificates that should be furnished by the auditors or chartered accountants and the details of statements that should accompany such audit reports. The forms of audit reports which should be furnished by chartered accountants or the auditors in the case of persons carrying on "business" and "profession", reads thus:

"FORM NO. 3CA

[See rule 6G(1)(a)]

Audit report u/s 44AB of the income tax Act, 1961 in a case where the accounts of the business of a person have been audited under any law by an accountant

*I/We have to report that the statutory audit of.....[name and address of the assessee] [Permanent Account No.....] was conducted by *me/us M/s.....chartered accountants/auditors of companies, in pursuance of the provisions of the..... Act, and *I/we annex hereto a copy of *my/our

audit report dated.....along with a copy each of the audited profit and loss account for the year ended on.....and a copy of the audited balance sheet as at.....along with the documents declared by the relevant Act to be part of, or annexed to, the profit and loss account and balance sheet.

A further report as required under the proviso to section 44AB is furnished in Form No. 3CD annexed hereto.

In *my/our opinion and to the best of *my/our information and according to explanations given to *me/us, the particulars given in Form No. 3CD, are true and correct.

Place.....

Date.....

Sd/- *** Accountant

Notes:

(1) *Delete whichever is not applicable.

(2) Where any of the matters stated in this report is answered in the negative or with a qualification, the report shall state the reasons therefore.

(3) **This report has to be given by-

(i) a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949); or

(ii) any person who, in relation to any State, is, by virtue of the provisions of subsection (2) of section 226 of the Companies Act, 1956 (1 of 1956) entitled to be appointed to act as an auditor of companies registered in that State.

FORM NO. 3CB

[See rule 6G(1)(b)]

Audit report u/s 44AB of the income tax Act, 1961 in the case of a person carrying on business

*I/We have examined the balance sheet of.....[name and address of the assessee] [Permanent Account No.....] as at.....and the profit and loss account for the year ended on that date which are in agreement with the books of account maintained at the head office at.....and branches at.....I/We have obtained all the information and explanations which to the best of *my/our knowledge and belief were necessary for the purposes of the audit. In *my/our opinion, proper books of account have been kept by the head office and the branches of the assessee so far as appears from *my/our examination of books, subject to the comments given below:-

.....In *my/our opinion and to the best of *my/our information and

according to explanations given to *me/us, the said accounts give a true and fair view-

(i) in the case of the balance sheet, of the state of the above named assessee's affairs as at, and

(ii) in the case of the profit and loss account, of the profit or loss of the above named assessee for the account year ending on.....

The prescribed particulars are furnished in Form No. 3CD annexed hereto. In *my/our opinion and to the best of *my/our information and according to explanations given to *me/us, these are true and correct.

Place.....

Date.....

Sd/- *** Accountant

Notes:

1. *Delete whichever is not applicable.
2. Where any of the matters stated in this report is answered in the negative or with a qualification, the report shall state the reasons therefore.
3. **This report has to be given by-

(i) a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949); or

(ii) any person who, in relation to any State, is, by virtue of the provisions of subsection (2) of section 226 of the Companies Act, 1956 (1 of 1956) entitled to be appointed to act as an auditor of companies registered in that State.

16. Clause 13 of the Finance Bill of 1985 introduced in the Lok Sabha to give effect to the financial proposals of the Central Government for the year 1985-86, proposes to delete the words "by an accountant" in the proviso to section 44AB. As this is in the state of a Bill, we exclude the same from our consideration.

17. With this backdrop of legislation, we now turn to ascertain the true scope and ambit of section 44AB bearing in mind the well settled rules of construction of statutes, one of which is that a machinery provision in a taxation measure must be construed as to effectuate the charging provisions or the tax measure as such.

18.1. The heading of a section gives a clue in the understanding of a section though it cannot control the plain language of the section itself. The heading of section 44AB, viz., "Audit of accounts of certain persons carrying on business or profession" provides for audit of certain class of persons or class of assessees carrying on business or profession. Section 44AB does not cover cases of every person or persons but proposes to cover only certain class of persons that carry on business or profession only.

18.2. The word "person" occurring in section 44AB refers to a person occurring in section 2 (31) of the Act in which that term has been given an extensive but not an exhaustive meaning as to include (i) an individual, (ii) a Hindu undivided family, (iii) a company, (iv) a firm, (v) an association of persons or a body of individuals, whether incorporated or not, (vi) a local authority, and (vii) every artificial juridical person not falling within any of the preceding sub-clauses of that sub-section.

18.3. Section 44AB(a) provides for audit of accounts of persons that carry on business but whose total sales, turnover or gross receipts as is the case 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. Even here the term "business" should be understood as defined in section 2 (13) of the Act, which includes "any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture". Section 44AB(b) provides for audit of accounts of persons that carry on a profession within the meaning of that term occurring in section 2 (36) of the Act, but whose 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.

18.4. When persons who carry on a business or profession covered by section 44AB file their returns under the Act, they are compulsorily required to get their accounts of such previous year or years audited by a chartered accountant of their choice before the specified date and obtain a report of such audit in the prescribed form duly signed and verified by him furnishing the particulars stipulated in the rules made by the Board and annex them to their returns filed u/s 139 of the Act. When a return of any such person is not accompanied with an audit report and the particulars prescribed by the rules, then the assessing authority is required to exercise his powers u/s 139(9) and enforce its compliance thereto under the Act.

18.5 The proviso to section 44AB only carves out an exception to those persons whose accounts are compulsorily audited under other laws in the country, like the Companies Act or the Co-operative Societies Act. But, here also the exemption is not absolute but is subject to the conditions stipulated in the proviso itself. The proviso only recognises the audit of accounts carried on by those who are authorised by other laws to perform those functions here to before. The proviso requires the person carrying on business or profession but is governed by other laws to furnish a report and the particulars in the form prescribed by the Board.

18.6. The Explanation appended to the section only defines the terms "accountant" and the "specified date". The word "accountant" means a chartered accountant who is a member of the Institute under the Chartered Accountants" Act. The words "specified date" have been defined as the date of 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 expires last before the commencement of the assessment year or the 30th day of June of the assessment year, whichever is later. The specified date defined in section 44AB has relevance to the specified date before which returns are required to be filed by a tax payer under the Act. As we apprehend this is the true scope and ambit of section 44AB.

19. Section 44AB excludes the ITPs-Petitioners in Writ Petition Nos. 1585 to 1603 and 3775 to 3788 of 1985 and persons similarly situated from auditing the accounts of their clients who come within the sweep of the section. What is true of the professionals is also true of persons carrying on their business or profession. In other words, those that fall within the sweep of section 44AB are bound to get their accounts audited from chartered accountants only and not " from any other person on and after the enforcement of that provision. The legislation has affected the petitioners and they are personally aggrieved by the same and, therefore, they can undoubtedly maintain their Writ Petitions before this Court. Sri Srinivasan, in our opinion, rightly did not contend to the contrary.

20. Earlier we have noticed that in 1975, "a similar proposal to introduce compulsory audit was dropped by the Parliament. But, in 1984, Parliament has approved the same and has enacted section 44AB with some modifications. The learned counsel for the petitioners, in our opinion, very rightly, did not contend that Parliament was incompetent to enact section 44AB in 1984. The Parliament was competent to enact on the second occasion and its validity has to be adjudged without reference to what the Parliament did earlier.

20.1. The true scope and ambit of article 14 has been explained by the Supreme Court in a large number of cases. In one of the latest cases in re The Special Courts Bill, 1978 a larger Bench of 7 learned Judges speaking through Chandrachud, C.J. reviewing all the earlier cases has restated its true scope and ambit, even observing that the avalanche of cases on that article had even made it platitudinous. In that case, the Court summarised the true scope and ambit of article 14 of the Constitution in these words:

72. There are numerous cases which deal with different facets of problems arising under article 14 and which set out principles applicable to questions which commonly arise under that article. Among those may be mentioned the decisions in Budhan Choudhry and Others Vs. The State of Bihar, ; Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, ; C.I. Emden Vs. State of Uttar Pradesh, ; Kangshari Haldar and Another Vs. The State of West Bengal, ; Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi, and The State of Gujarat and Another Vs. Shri Ambica Mills Ltd., Ahmedabad and Another, But, as observed by Mathew, J. in the last mentioned case:

It would be an idle parade of familiar learning to review the multitudinous cases in which the constitutional assurance of equality before the law has been applied." (p. 782)

We have, therefore, confined our attention to those cases only in which special tribunals or Courts were set up or Special Judges were appointed for trying offences or classes of offences or cases or classes of cases. The survey which we have made of those cases may be sufficient to give a fair idea of the principles which ought to be followed in determining the validity of classification in such cases and the reasonableness of specified procedure prescribed for the trial of offenders alleged to constitute separate or distinct class.

73. As long back as in 1960, it was said by this Court in *Kangshari Haldar* that the propositions applicable to cases arising under article 14 have been repeated so many times during the past few years that they now sound almost platitudinous. What was considered to be platitudinous some 18 years ago has, in the natural course of events, become even more platitudinous to day, especially in view of the avalanche of cases which have flooded this Court. Many a learned Judge of this Court has said that it is not in the formulation of principles under article 14 but in their application to concrete cases that difficulties generally arise. But, considering that we are sitting in a larger Bench than some which decided similar cases under article 14, and in view of the peculiar importance of the questions arising in this reference, though the questions themselves are not without a precedent, we propose, though undoubtedly at the cost of some repetition, to state the propositions which emerge from the judgments of this Court in so far as they are "relevant to the decision of the points which arise for our consideration. Those propositions may be stated thus:

1. The first part of article 14, which was adopted from the Irish Constitution is a declaration of equality of the civil rights of all persons within the territories of India. It enshrines a basic principle of republicanism. The second part, which is a corollary of the first and is based on the last clause of the first section of the Fourteenth amendment of the American Constitution, enjoins that equal protection shall be secured to all such persons in the enjoyment of their rights and liberties without discrimination or favouritism. It is a pledge of the protection of equal laws, that is, laws that operate alike on all persons under like circumstances.

2. The State, in the exercise of its govern mental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.

3. The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The Courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably

arbitrary.

4. The principle underlying the guarantee of article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is substantially the same.

5. By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification, thus, means segregation in classes which have a systematic relation usually found in common properties and, characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

6. The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

7. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act.

8. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense above- mentioned.

9. If the legislative policy is clear and definite and as an effective method of carrying "out that policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece

of discriminatory legislation. In such cases, the power given to the executive body would import a duty on it to classify the subject-matter of legislation in accordance with the objective indicated in the statute. If the administrative body proceeds to classify persons or things on a basis which has no rational relation to the objective of the Legislature, its action can be annulled as offending against the equal protection clause. On the other hand, if the statute itself does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be held on the face of it to be discriminatory, irrespective of the way in which it is applied.

10. Whether a law conferring discretionary powers on an administrative authority is constitutionally valid or not should not be determined on the assumption that such authority will act in an arbitrary manner in exercising the discretion committed to it. Abuse of power given by law does occur but the validity of the law cannot be contested because of such an apprehension. Discretionary power is not necessarily a discriminatory power.

11. Classification necessarily implies the making of a distinction or discrimination between persons classified and those who are not members of that class. It is the essence of a classification that upon the class are cast duties and burdens different from those resting upon the general public. Indeed, the very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality.

12. Whether an enactment providing for special procedure for the trial of certain offences is or is not discriminatory and violative of article 14 must be determined in each case as it arises, for, no general rule applicable to all cases can safely be laid down. A practical assessment of the operation of the law in the particular circumstances is necessary.

13. A rule of procedure laid down by law comes as much within the purview of article 14 as any rule of substantive law and it is necessary that all litigants, who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination.

In *R.K. Garg v. Union of India* AIR 1981 SC 2138 the majority speaking through Bagawathi, J. upheld the validity of the Special Bearer Bonds Act enacted as a measure to combat "black money" in the country, contrary to the recommendations of the majority of the Wanchoo Committee's report. In that case, the majority referring to *In re. In Re: The Special Courts Bill, 1978*, explained the scope of article 14 vis-a-vis the validity of an economic or a taxation measure in these words:

6. That takes us to the principal question arising in the writ petitions, namely, whether the provisions of the Act are violative of article 14 of the Constitution. The true scope and ambit of article 14 has been the subject-matter of discussion in numerous decisions of this Court and the propositions applicable to cases arising under that article have been repeated so many times during the last 30

years that they now sound platitudinous. The latest and most complete exposition of the propositions relating to the applicability of article 14 as emerging from "the avalanche of cases which have flooded this Court" since the commencement of the Constitution is to be found in the judgment of one of us (Chandrachud, J. as he then was) In re. In Re: The Special Courts Bill, 1978, It not only contains a lucid statement of the propositions arising under article 14, but being a decision given by a Bench of seven Judges of this Court, it is binding upon us. That decision sets out several propositions delineating the true scope and ambit of article 14 but not all of them are relevant for our purpose and hence we shall refer only to those which have a direct bearing on the issue before us. They clearly recognise that classification can be made for the purpose of legislation but lay down that:

1. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely: (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (2) that differentia must have a rational relation to the object sought to be achieved by the Act.

2. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense abovementioned.

It is clear that article 14 does not forbid reasonable classification of persons, objects and transactions by the Legislature for the purpose of attaining specific ends. What is necessary in order to pass the test of permissible classification under article 14 is that the classification must not be "arbitrary, artificial or evasive" but must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the Legislature. The question to which we must therefore address ourselves is whether the classification made by the Act in the present case satisfies the aforesaid test or it is arbitrary and irrational and hence violative of the equal protection clause in article 14.

7. Now while considering the constitutional validity of a statute said to be violative of article 14, it is necessary to bear in mind certain well established principles which have been evolved by the Courts as rules of guidance in discharge of its constitutional function of judicial review. The first rule is that

there is always a presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. This rule is based on the assumption, judicially recognised and accepted, that the Legislature understands and correctly appreciates the needs of its own people, its laws are directed to problems made manifest by experience and its discrimination are based on adequate grounds. The presumption of constitutionality is indeed so strong that in order to sustain it, the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation.

8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. It has been said by no less a person than Holmes, J., that the Legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straightjacket formula and this is particularly true in case of legislation dealing with economic matters where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the Legislature. The Court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in *Morey v. Doud* [1957] 354 U.S. 457 where Frankfurter, J, said in his inimitable style:

"In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The Legislature after all has the affirmative responsibility. The Courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events self-limitations can be seen to be the path to judicial wisdom and institutional prestige and stability."

The Court must always remember that "legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry", that exact wisdom and nice adoption of remedy are not always possible and that "judgment is largely a prophecy based on meagre and uninterrupted experience". Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The Courts cannot, as pointed out by the

United States Supreme Court in *Secretary of Agriculture v. Central Roig Refining Co.*, [1950] 94 Led 381, be converted into Tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any Legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light the Legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the Legislature in dealing with complex economic issues." (p. 2146)

In *E.P. Royappa Vs. State of Tamil Nadu and Another*, , Bhagwathi, J. speaking for himself and also on behalf of Chandrachud, J. (as His Lordship then was) and Krishna Iyer, J. evolved the principle that arbitrariness was the very antithesis of the rule of law enshrined in article 14 in these words:

We cannot countenance any attempt to truncate its all embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of article 14....

In the later cases notably in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, the Court speaking through the same learned Judge has expressed thus:

The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades article 14 like a brooding omnipresence...." (p. 598)

We consider it unnecessary to refer to all the earlier cases on the scope and ambit of article 14.

21. The true scope and ambit of article 19 has been explained by the Supreme Court in a large number of cases. In *State of Madras Vs. V.G. Row*, one of the earliest cases, a locus classicus (vide para 23 of *Laxmi Khandsari and Others Vs. State of U.P. and Others*, Patanjali Sastry, CJ. speaking for the Court explained the scope and ambit of the article in these words that has become classical:

...It is important in this context to bear in mind that the test of reasonableness,

wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the Judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions considered them to be reasonable." (p. 200)

In *Narendra Kumar and Others Vs. The Union of India (UOI) and Others*, a Constitution Bench of the Supreme Court reviewing the earlier cases explained the scope and ambit of this article in these words:

(16) It is clear that in these three cases, viz., *Chintaman Rao Vs. The State of Madhya Pradesh*, *Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others*, and *Madhya Bharat Cotton Association Ltd. Vs. Union of India (UOI) and Another*, the Court considered the real question to be whether the interference with the fundamental right was "reasonable" or not in the interests of the general public and that if the answer to the question was in the affirmative, the law would be valid and it would be invalid if the test of reasonableness was not passed. Prohibition was in all these cases treated as only a kind of "restriction". Any other view would in our opinion, defeat the intention of the Constitution.

(17) After article 19(1) has conferred on the citizen the several rights set out in its seven sub-clauses, action is at once taken by the Constitution in clauses 2 to 6 to keep the way of social control free from unreasonable impediment. The *raison d'être* of a State being the welfare of the members of the State by suitable legislation and appropriate administration, the whole purpose of the creation of the State would be frustrated if the conferment of these seven rights would result in cessation of legislation in the extensive fields where these seven rights operate. But, without the saving provisions that would be the exact result of article 13 of the Constitution. It was to guard against this position that the Constitution provided in its clauses 2 to 6 that even in the fields of these rights new laws might be made and old laws would operate where this was necessary for general welfare. Laws imposing reasonable restriction on the exercise of the rights are saved by clause 2 in respect of rights under sub-clause (a) in respect of rights under sub-clause (a) where the restrictions are "in the interests of the security of the State", and of other matters mentioned therein; by clause 3 in

respect of the rights conferred by sub-clause (b) where the restrictions are "in the interests of the public order"; by clauses 4, 5 and 6 in respect of the right conferred by sub-clauses (c), (d), (e), (f) and (g) the restrictions are "in the interests of the general public" in clause 5 which is in respect of rights conferred by sub-clauses (d), (e) and (f) also where the restrictions are "for the protection of the interests of any Scheduled Tribe". But for these saving provisions such laws would have been void because of article 13 which is in these words:

"All laws in force in the territory of India immediately before the commencement of this Constitution in so far as they are inconsistent with the provisions of this part, shall, to the extent of such inconsistency, be void; (2) The State shall not make any laws which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void..."

(18) As it was to remedy the harm that would otherwise be caused by the provisions of article 13, that these saving provisions were made, it is proper to remember the words of article 13 in interpreting the words "reasonable restrictions" on the exercise of the right as used in clause 2. It is reasonable to think that the makers of the Constitution considered the word "restriction" to be sufficiently wide to save laws "inconsistent" with article 19(1), or "taking away the rights" conferred by the article, provided this inconsistency or taking away was reasonable in the interests of the different matters mentioned in the clause. There can be no doubt, therefore, that they intended the word "restriction" to include cases of "prohibition" also. The contention that a law prohibiting the exercise of a fundamental right is in no case saved, cannot, therefore, be accepted. It is undoubtedly correct, however, that when, as in the present case, the restriction reaches the stage of prohibition special care has to be taken by the Court to see that the test of reasonableness is satisfied. The greater the restriction, the more the need for strict scrutiny by the Court.

(19) In applying the test of reasonableness, the Court has to consider the question in the background of the facts and circumstances under which the order was made, taking into account the nature of the evil that was sought to be achieved by such law, the ratio of the harm caused to individual citizens by the proposed remedy, to the beneficial effect reasonably expected to result to the general public. It will also be necessary to consider in that connection whether the restraint caused by the law is more than was necessary in the interests of the general public." (p. 435)

In *Laxmi Khandsari's* case (*supra*), a Division Bench of the Supreme Court speaking through Fazal Ali, J. referring to all the earlier cases in particular the two cases noticed earlier, has expressed on the scope and ambit of this article thus:

16. It is abundantly clear that fundamental rights enshrined in Part III of the Constitution are neither absolute nor unlimited but are subject to reasonable

restrictions which may be imposed by the State in public interest under clauses 2 to 6 of article 19. As to what are reasonable restrictions would naturally depend on the nature and circumstances of the case, the character of the statute, the object which it seeks to serve, the existing circumstances, the extent of the evil sought to be remedied as also the nature of restraint or restriction placed on the rights of the citizen. It is difficult to lay down any hard or fast rule of universal application but this Court has consistently held that in imposing such restrictions the State must adopt an objective standard amounting to a social control by restricting the rights of the citizens where the necessities of the situation demand. It is manifest that in adopting the social control one of the primary considerations which should weigh with the Court is that as the directive principles contained in the Constitution aim at the establishment of an egalitarian society so as to bring about a welfare State within the framework of the Constitution, these principles also should be kept in mind in judging the question as to whether or not the restrictions are reasonable. If the restrictions imposed appear to be consistent with the directive principles of State policy they would have to be upheld as the same would be in public interest and manifestly reasonable.

17. Further, restrictions may be partial, complete, permanent or temporary but they must bear a close nexus with the object in the interest of which they are imposed. Sometimes even a complete prohibition of the fundamental right to trade may be upheld if the commodity in which the trade is carried on is essential to the life of the community and the said restriction has been imposed for a limited period in order to achieve the desired goal.

18. Another important consideration is that the restrictions must be in public interest and are imposed by striking a just balance between the deprivation of right and danger or evil sought to be avoided....," (p. 880)

Bearing these principles it is necessary to examine the challenge of the petitioners based on articles 14 and 19 of the Constitution.

22.1 The term "audit" which is not defined in the Act or the General Clauses Act, is defined in the following Dictionaries as hereunder;

Audit 2. Official examination of accounts with verification by reference to witnesses and vouchers...."

"Audit. 1. To make an official systematic examination of (accounts)...."

(vide : Shorter Oxford English Dictionary, Third edn., Revised with Addenda, p. 122)

"Audit, 1a: a formal or official examination and verification of books of account (as for reporting on the financial condition of a business at a given date or on the results of its operations for a given period) but a methodical examination and review of a situation or condition (as within a business enterprise) concluding with a detailed report of findings: a rendering and settling of accounts. 2. the

final report following a formal examination of books of account: an account as adjusted by auditors: final statement of account. 3. archaic: a judicial examination (as in a court). 4. Audi-tale. 5. a check of publishers' records to verify claims as to the extent of publication's circulation.

Audit. 1. to examine and verify (as the books of account of a company or a treasurer's accounts)..."

(vide: Webster's Third New International Dictionary - Unabridged, Vol. 1 (AG), p. 143)

Audit, an examining of accounts. An audit may be either detailed or administrative, and is usually both. A detailed audit is a comparison of vouchers with entries of payment, in order that the party whose accounts are audited may not debit his employer with payments not in fact made. An administrative audit is a comparison of payments with authorities to pay, in order that the party whose accounts are audited may not debit his employer with payments not authorised. Exchequer and Audit Departments Act, 1866 (as amended) See Comptroller."

(vide: Jowitt's Dictionary of English Law, II Edn., Vol. 1 (AK). p. 161).

"Audit. Inspection and verification by I.R.S. of a tax-payer's return or other transactions possessing tax consequences.

Systematic inspection of accounting records involving analyses, tests and confirmations.

The hearing and investigation had before an auditor. An audience; a hearing; an examination in general. A formal or official examination and authentication of accounts, with witnesses, vouchers, etc., Green-Boots Const. Co. v. State Highway Commission 165 Okl. 288, 25 P.2d 783".

(vide: Blacks Law Dictionary - Fifth Edn. at p. 120).

On audit, the Encyclopedia Britannica (Vol. I Micropedia) states thus:

"Audit, examination of the activities, records and reports of an enterprise by accounting specialists who are not the same accountants responsible for their preparation. Public auditing by independent accountants has acquired professional status and become increasingly common with the rise of large business units and the separation of ownership from control. The public accountant performs tests to determine whether the management's statements fairly present the firms financial position and operating results; such independent evaluations of management reports are of interest to actual and prospective share holders, bankers, suppliers, lessors, and government agencies.

In English speaking countries, public auditors are usually certified and high standards are encouraged by professional societies. Most European and former British Commonwealth Nations follow the example of Great Britain, where Government-chartered organizations of accountants have developed their own

admission standards. Other countries follow the pattern in the United States, where the States have set legal requirements for licensing. Most countries have specific agencies or departments charged with the auditing of their public accounts (e.g., the General Accounting Office in the United States and the *courdes comptes* in France).

Internal auditing is relatively new, designed primarily to meet the needs of management. Internal auditors try to determine whether the requirements of the accounting system are being met effectively and also whether the system itself is adequate for management needs.

Perhaps the most familiar type of auditing is the administrative audit, or pre-audit, in which individual vouchers, invoices or other documents are investigated for accuracy and proper authorisation before they are paid or entered in the books....

An auditor is one who audits or is engaged in audit. What is true of an "auditor" is also true of "audit."

22.2 In a number of cases, English and Indian Courts had occasion to deal with the true role of an auditor either under their respective Companies Act or under the Acts regulating the profession of chartered accountants. Every one of those rulings that very aptly describe the role of an auditor or audit are relevant. We propose to notice a few of them only.

22.3. In *Institute of Chartered Accountants of India Vs. P.K. Mukherji and Another*, the Supreme Court dealing with a disciplinary proceedings against a chartered accountant expressed thus:

...In other words, the auditing was intended for protection of the beneficiaries and the auditor was expected to examine the accounts maintained by the trustees with a view to inform the beneficiaries of the true financial position. The auditor is, in such a case, under a clear duty towards the beneficiaries "to probe into the transactions" and to report on their true character. In our opinion, the legal position of the auditor in the present case is similar to that of the auditor under the Indian Companies Act, 1956. In such a case, the audit is intended for the protection of the shareholders and the auditor is expected to examine the accounts maintained by the directors with a view to inform the shareholders of the true financial position of the company. The directors occupy a fiduciary position in relation to the shareholders and in auditing the accounts maintained by the directors the auditors act in the interest of the shareholders who are in the position of beneficiaries. In *London Oil Storage Co. Ltd. v. Seear, Hasluck & Co.*, *Dicksee on Auditing*, 17th Edn., p. 632, Lord Alverstone stated as follows:

"He must exercise such reasonable care as would satisfy a man that the accounts are genuine, assuming that there is nothing to arouse his suspicion of honesty and if he does that he fulfils his duty, if his suspicion is aroused, his duty is to prove the thing to the bottom and tell the directors of it and get what

information he can."

(Vide also the observations in- In re: London and General Bank (No. 2) [1895] 2 Ch. 673- In re: Kingston Cotton Mill Co. (No. 2); 1896-2 Ch. 279 and- In re: City Equitable Fire Insurance Co. Ltd. 1925 Ch. 407)." (p. 1108)

22.4 In the oft-quoted celebrated passage Lopes L.J., in the matter of re: Kingston Cotton Mill's Company (No. 2) [1896] 2 Ch. 279 (CA) at 288, explains the role of an auditor in these words:

An auditor is not bound to be a detective, or...to approach his work...with a foregone conclusion that there is something wrong. He is a watchdog, but not a bloodhound. He is justified in believing tried servants of the company in whom confidence is placed by the company. He is entitled to assume that they are honest, and to rely on their representations, provided he takes reasonable care. If there is anything calculated to excite suspicion he should probe it to the bottom; but in the absence of anything of that kind he is only bound to be reasonably cautious and careful.

But, on the very observations of Lopes L.J., Ramaiya in his Guide to the Companies Act, 9th edn. referring to a ruling rendered by Lord Justice Holmes in Irish Woolen Co. v. Tyson 1900 ALR 13 has this to say:

It has become common place to quote a figure of speech employed by Lopes, L.J., in re. Kingston Cotton Mills Co. [1896] 2 Ch. 288, and say that "the auditor is only a watchdog and not a bloodhound, which casting the metaphor aside, means that his duty is verification and not detection. But, does not verification extend to being vigilant? Is not the watchdog bound to bark and chase too where necessary? If when sniffing round, you hit upon a trail of something wrong, surely you must follow it up and there is just as much obligation on the auditor, who is bound to keep his eyes open, and his nose too. It may be that by vigilantly follow this trail up to the end, he may "root up" something from which fraud is exposed." Cf. the judgment of Lord Justice Holmes in the Irish Woolen Co. v. Tyson reported in [1900] 26 ALR 13.

22.5 In the matter of Re: London & General Bank (No. 2) [1895] 2 LR (Ch. D.), p. 673 Lindely, L.J., on the role of an auditor has expressed thus:

It is no part of an auditor's duty to give advice, either to directors or shareholders, as to what they ought to do. An auditor has nothing to do with the prudence or imprudence of making loans with or without security. It is nothing to him whether the business of company is being conducted prudently or imprudently, profitably or unprofitably. It is nothing to him whether dividends are properly or improperly declared, provided he discharges his own duty to the shareholders. His business is to ascertain and state the true financial position of the company at the time of the audit, and his duty is confined to that. But, then comes the question, How is he to ascertain that position? The answer is, by examining the books of the company. But, he does not discharge his duty by

doing this without inquiry and without taking any trouble to see that the books themselves show the company's true position. He must take reasonable care to ascertain that they do so. Unless he does this his audit would be worse than an idle farce. Assuming the books to be so kept as to show the true position of a company, the auditor has to frame a balance sheet showing that position according to the books and to certify that the balance sheet presented is correct in that sense. But, his first duty is to examine the books, not merely for the purpose of ascertaining what they do show, but also for the purpose of satisfying himself that they show the true financial position of the company. This is quite in accordance with the decision of *Sterling, J. in Leeds Estate Building & Investment Co. v. Shepherd* (36 Ch. D. 802), An auditor, however, is not bound to do more than exercise reasonable care and skill in making inquiries and investigations. He is not an insurer; he does not guarantee that the books do correctly show the true position of the company's affairs; he does not even guarantee that his balance sheet is accurate according to the books of the company. If he did, he would be responsible for error on his part, even if he were himself deceived without any want of reasonable care on his part, say, by the fraudulent concealment of a book from him. His obligation is not so onerous as this. Such 1 take to be the duty of the auditor: he must be honest- i.e., he must not certify what he does not believe to be true, and lie must take reasonable care and skill before he believes that what he certifies is true. What is reasonable care in any particular case must depend upon the circumstances of that case. Where there is nothing to excite suspicion very little inquiry will be reasonably sufficient, and in practice I believe businessmen select a few cases at haphazard, see that they are right, and assume that others like them are correct also. Where suspicion is aroused more care is Obviously necessary; but still, an auditor is not bound to exercise more than reasonable care and skill, even in a case of suspicion, and he is perfectly justified in acting on the opinion of an expert where special knowledge is required.

22.6 In *Fomento (Sterling Area) Ltd. v. Selsdon Fountain Pen Co. Ltd.* [1958] 1 WLR 45 (HL) at 61 Lord Denning on the role of an auditor in his own inimitable style has expressed thus:

What is the proper function of an auditor? It is said that he is bound only to verify the sum, the arithmetical conclusion, by reference to the books and all necessary vouching material and oral explanations: and that it is no part of his function to inquire whether an article is covered by patents or not. I think this is too narrow a view. An auditor is not to be confined to the mechanics of checking vouchers and making arithmetical computations. He is not to be written off as a professional "adder-upper and subtracter". His vital task is to take care to see that errors are not made, be they errors of computation, or errors of omission or commission, or downright untruths. To perform this task properly he must come to it with an inquiring mind-not suspicious of dishonesty, I agree-but suspecting that someone may have made a mistake somewhere and that a check must be made to ensure that there has been none. I would not have it thought that the

Kingston Mill Case [1896] 2 Ch. 279: 12 TLR 430 relieved an auditor of his responsibility for making a proper check. But, the check to be effective may require some legal knowledge, or some knowledge of patents or other specialty. What is he then to do? Take, for instance, a point of law arising in the course of auditing a company's accounts. He may come upon a payment which, it appears to him, may be unlawful in that it may not be within the powers of the Corporation, or improper in that it may have no warrant or justification. He is then not only entitled but bound to inquire into it and, if need be, to disallow it, see *Roberts v. Hopwood* [1925] AC 578, 605: 41 TLR 436 and *In re: Ridsdel* [1947] Ch. 597, 604: [1947] 2 All ER 312. It may be, of course that he has sufficient legal knowledge to deal with it himself, as many accountants have, but if it is beyond him, he is entitled to take legal advice on the principle stated in *Bevan v. Webb* [1901] 2 Ch. 59, 75: 17 TLR 440 that "permission to man to do" an act, which he cannot do effectually without the help of an "agent, carried with it the right to employ an agent". So also with an auditor who is employed for the purpose of checking the royalties payable. It is part of his duty to use reasonable care to see that none have been omitted which ought to be included. He is not bound to accept the ipse dixit of the licensee that there are no other articles which attract royalty. He is entitled to check the accuracy of that assertion by inquiring the nature of any other articles which, it appears to him, may come within the patented field. If he cannot be sure, of his own knowledge whether they attract royalty or not, he can take the advice of a patent agent, just as, within the legal sphere, he can take the advice of a lawyer.

In *Council of Chartered Accountants v. Shantaram Rao* [1977] 1 KLJ 256, a Division Bench of this Court consisting of Venkataswami and Jagannatha Shetty, JJ. dealing with a case of a disciplinary proceeding under the Chartered Accountants Act, vide pages 258 and 259 (paras 8, 9 and 10) have referred to with approval some of the cases noticed by us earlier.

22.7. In *Commr. of Income Tax, Madras Vs. G.M. Dandekar of M.K. Dandekar and Co., Chartered Accountants, Madras*, on which reliance was placed by Sri Viswanatha Iyer, the Madras High Court was dealing with the question whether a chartered accountant who had audited the accounts or the returns of an assessee filed before the ITO under the earlier income tax Act and not a case of statutory audit as is now the position owed a duty to the department and whether there was negligence in the discharge of his duties. At any rate, this case that dealt with the legal position of an auditor who owed no duty to the income tax Department then, but not now, no longer bears on the point. With this brief backdrop of the meaning of the terms "audit" and "auditor" we proceed to examine the contentions urged before us.

23. Sri Viswanatha Iyer has urged that section 142(2A) of the Act that empowered the ITO to get the accounts of an assessee audited by a chartered accountant was more than sufficient to safeguard the interests of the revenue and there was hardly any justification to introduce section 44AB prejudicially

affecting the ITPs.

24. Section 142(2A) of the Act empowers an ITO to get the accounts of an assessee audited by a chartered accountant, provided he is satisfied with the conditions specified in that section. The power conferred by section 142(2A) is a special power to be exercised on an examination of facts and circumstances of a particular case and cannot be compelled or resorted to as a rule in all cases of bigger assessee covered by section 44AB. The power conferred by section 142(2A) to direct "intensive" audit, has nothing to do with the compulsory general audit of bigger assessee provided by section 44AB. We see no merit in this contention of Sri Iyer and reject the same.

25. We propose to record, at the very threshold, that the case of taxpayers to invalidate section 44AB of the Act either under article 14 or article 19 is really very weak. The case that really calls for a somewhat serious examination is that of the ITPs, whose case we now proceed to examine. But, when we find that the case of the ITPs should be rejected on parity of reasoning, we must be understood to have rejected the case of the taxpayers also.

26. Under the Chartered Accountants Act and the Chartered Accountants Regulations of 1964, framed there under, a person to be enrolled as a chartered accountant, must possess the special qualifications prescribed by the regulations which require him to undergo an arduous and intensive training and then pass the various tough examinations that qualify him for enrolment as a chartered accountant. In that process one of the qualifications acquired will be the special skill/knowledge in the audit of accounts which is both a science and an art. Any and every one cannot claim the qualification and status of a chartered accountant. We can with certainty hold that a chartered accountant has the necessary qualification, skill and expertise to audit the accounts required to be filed under the Act. While this is the position of chartered accountants we cannot hazard to say the same so far as the ITPs. The class of ITPs cannot compare themselves with the class of chartered accountants. We are here concerned with the superior and special qualifications possessed and recognised by law and not with the individual and special attainments if any attained by an individual and not recognised by law. As pointed out by Cardozo, J. in *Stewart Dry Goods Co. v. Lewis* 294 US 550 quoted with approval by our Supreme Court in *S. Kodar v. State of Kerala* [1974] 34 STC 73. The "law builds on the probabilities only" and cannot possibly comprehend all conceivable situations at any rate in one measure, in any event at one time. What emerges from this discussion is that the ITPs, who belong to a separate class, cannot compare themselves with the class of chartered accountants that have special qualifications and expertise to do the job of audit more efficiently. Article 14 guarantees equal treatment to equals and not unequals. On this conclusion, the challenge of the petitioners based on article 14 is liable to be rejected.

27. Section 44AB that provides for audit of accounts of bigger cases fulfils the twin tests of a valid qualification. The object of choosing bigger cases or bigger

assesseees for specialised audit by a special class of persons that have special qualifications to audit them facilitates the prevention of evasion of taxes, administrative convenience in the quick and proper completion of the assessments under the Act has rational nexus to the objects of the Act. On the principles enunciated by the Supreme Court in *Balaji Vs. Income Tax Officer, Special Investigation Circle*, *Pooran Mal Vs. The Director of Inspection (Investigation)*, *New Delhi and Others*, and *Hira Lal Rattan Lal v. STO* [1973] 31 STC 178. Section 44AB that fulfils the objects of the Act cannot be condemned as violative of article 14.

28. The fact that the ITPs were satisfactorily attending to the preparation of returns, the completion of the assessments and are even qualified to prepare them and facilitate the completion of assessments as hitherto before, does not necessarily mean that the Legislature cannot step in and require that to be done by a more competent and specialised agency. On any test, the Court cannot hold that the provision is an arbitrary provision and is the very antithesis of rule of law enshrined by article 14. We have earlier found that the provision had been enacted to prevent evasion of taxes and facilitate the administration. If that is so, it is undoubtedly a reasonable provision that furthers the objects and purpose of the Act.

29. We are of the view that the principles enunciated by the High Court of A.C.S. Kandaswami Reddiar and Others Vs. The Textile Commissioner of the Government of India, on which strong reliance was placed by Sri Viswanatha Iyer, even if correct, do not bear on the point and assist the petitioners.

30. When one examines the provision in the light of the principles enunciated in every one of the cases referred to by us dealing with the scope and ambit of article 14, we find it difficult to hold that the provision is violative of article 14.

31. Sri Sarangan has alternatively urged that the exclusive right or privilege conferred on the chartered accountants should alone be struck down which would necessarily enable all the ITPs to attend to the requirements of section 44AB.

32. The argument of Sri Sarangan is attractive at the first sight. But, a close examination of the same, shows that it has no merit and is even fraught with serious adverse implications. The reasons given by us earlier equally justify the rejection of this contention also. Even otherwise, we find it difficult to take exception only to the right or privilege conferred on the chartered accountants, invalidate the same and, thus, render the provision itself as unworkable. We see no merit in this contention of Sri Sarangan and reject the same.

33. We have earlier indicated that taxpayers have the weakest case. The bigger cases or bigger assesseees 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 based on article 14.

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

35. 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, there fore, do not propose to restate them over again and proceed to examine only the special requirements of that article.

36. The right of ITPs assuming that to be a right and not a privilege to practise their profession is not an absolute right but is subject to laws made from time to time. If the law made with due regard to the prevailing conditions, excludes the ITPs in the bigger cases or bigger assesseees. from audit, on the ratio of the ruling of the Supreme Court in *Devata Prasad Singh Chaudhury v. Hon''ble Chief Justice and the Judges of the Patna High Court Devata Prasad Singh Chaudhuri and Others Vs. The Hon''ble The Chief Justice and Judges of the Patna High Court, and the Madras High Court in A.N. Rangaswamy and Another Vs. The Industrial Tribunal, Fort. St. George, Madras and Others*, it is difficult to hold that the fundamental right of the petitioners is infringed. When their fundamental right is not infringed, the question of this Court examining whether the restriction, if any, is a reasonable restriction, does not arise. On this short ground, the challenge of the ITPs based on article 19 is liable to be rejected.

37. So far as the taxpayers, the provision even if it infringes their fundamental right, is a reasonable restriction and. is saved by article 19(6) vide *Fedco (P) Ltd. and Another Vs. S.N. Bilgrami and Others*, and *Steward Dry Goods Co.'s case (supra)*. We are also of the view that the interests of public revenue and the advantages derived thereby by public far outweigh the inconvenience and hardship if any caused to the taxpayers and on that score also the measure had to be upheld by this Court.

38. We have earlier found that section 44AB has been enacted to prevent evasion of taxes and facilitate administrative convenience. Section 44AB and the rules made there under that supplement that provision decidedly facilitate the administration in completing the assessments of bigger assesseees on the basis of accounts statutorily audited by persons that are competent to assist the authorities. Section 44AB does not in any way interfere with the right of the ITPs to represent the assesseees before the authorities under the Act. We do not also rule out the possibility of bigger assesseees that are perforce required to approach chartered accountants for audit of their accounts engaging them for all their work under the Act that is being satisfactorily attended to by their ITPs. But, that is an inevitable consequence that ensues in entrusting the job to a chartered accountant that has the necessary expertise in the matter. Whatever be the hardship that is caused to the ITPs, the provision is in the general public interest. On the application of the principles enunciated in the cases noted by us earlier, we are of the view that section 44AB places a reasonable restriction in the

interest of the general public and is saved by article 19(6). As all the contentions urged for the petitioners fail, these writ petitions are liable to be dismissed. We, therefore, dismiss these writ petitions and discharge the rule issued in all these cases.