

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 13533 of 2025

With

CIVIL APPLICATION (FOR JOINING PARTY) NO. 1 of 2025

In R/SPECIAL CIVIL APPLICATION NO. 13533 of 2025

With

R/SPECIAL CIVIL APPLICATION NO. 13582 of 2025

With

R/SPECIAL CIVIL APPLICATION NO. 13589 of 2025

With

CIVIL APPLICATION (FOR AMENDMENT) NO. 1 of 2025

In R/SPECIAL CIVIL APPLICATION NO. 13589 of 2025

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INCOME TAX BAR ASSOCIATION & ANR.

Versus

UNION OF INDIA & ORS.

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Appearance:

MR DHINAL A SHAH(12077) for the Petitioner(s) No. 1,2

MR PRADIP D BHATE(1523) for the Respondent(s) No. 1,2

MR.VARUN K.PATEL(3802) for the Respondent(s) No. 3

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CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 26/09/2025

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

Heard learned advocate Mr. Dhinal A. Shah, learned advocate Mr. Parth Contractor with learned advocate Mr. Dhruven Shah and learned advocate Mr. Avinash Poddar for the petitioners in the respective petitions and learned Senior Standing Counsel Mr. Varun K. Patel for the respondents.

Order in CIVIL APPLICATION (FOR AMENDMENT) NO. 1 of 2025 In R/SPECIAL CIVIL APPLICATION NO. 13589 of 2025

This Application is filed seeking amendment in the main petition.

Considering the averments made in the application, amendment as prayed for is granted. Amendment to be carried out forthwith. Civil Application stands disposed of.

Order in R/SPECIAL CIVIL APPLICATION NO. 13533 of 2025 with R/SPECIAL CIVIL APPLICATION NO. 13582 of 2025 with R/SPECIAL CIVIL APPLICATION NO. 13589 of 2025

These petitions are filed under Article 226 of the Constitution of India with a prayer to extend the specified date for filing the tax audit report under section 44AB of the Income Tax Act, 1961 (For short “the Act”) and as a corollary to extend the due date for filing the return under section 139(1) of the Act in view of Explanation (ii) of section 44AB which explains the “specified date” as under:

“(ii) “specified date”, in relation to the accounts of the assessee of the previous year relevant to an assessment year, means date one month prior to the due date for furnishing the return of income under sub-section(1) of section 139.”

Learned advocate Mr. Dhinal Shah for the petitioner in Special Civil Application No.13533/2025 submitted that after filing of the petition, the respondents have issued Circular No.14/2025 dated 25.09.2025 extending the “specified date” for furnishing the report of audit under any provisions of the Act for the Financial Year 2024-2025 relevant to Assessment Year 2025-2026 from 30.09.2025 to 31.10.2025 which is produced on record by way of draft amendment. Such draft amendment is granted. To be carried out forthwith.

In view of above facts emerging from the record and in view of Circular No. 14/2025, the grievance of the petitioner for extending the specified date for furnishing the audit report has been redressed.

However, learned advocates for the petitioners submitted that as per Explanation (ii) to section 44AB “specified date” has to be one month prior to due date of filing the return as per section 139(1) of the Act and therefore, the respondents ought to have also issued simultaneous notification for extending the due date of filing of return upto 30.11.2025.

Reliance was placed on the decision of this Court in case of **All Gujarat Federation of Tax Consultants v. Central Board of Direct Taxes** (Judgment dated 22.09.024 rendered in Special Civil Application No.12656 of 2014 and allied matter) wherein it is held as under:

“78. At this juncture it may be pertinent to note that section 44AB of the Act provides for getting the accounts of an assessee of the previous year audited by an accountant before the specified date and to furnish report of such audit by that date in the prescribed form, setting forth such particulars as may be prescribed. As to what is the “specified date” is provided under clause (ii) of the Explanation to section 44AB which postulates that “specified date” in relation to the accounts of an assessee of the previous year relevant to an assessment year, means the due date for furnishing the return of income under sub-section (1) of section 139. It would, therefore, be necessary to examine as to what is the due date for furnishing return of income under sub-section (1) of section 139 of the Act. For this purpose, reference may be made to Explanation 2 to section 139 of the Act, which reads thus:

Explanation 2.—In this sub-section, “due date” means,—

(a) where the assessee other than an assessee referred to in clause (aa) is—

(i) a company; or

(ii) a person (other than a company) whose accounts are required to be audited under this Act or under any other law for the time being in force; or

(iii) a working partner of a firm whose accounts are required to be audited under this Act or under any other law for the time being in force, the 30th day of September of the assessment year;

(aa) in the case of an assessee who is required to furnish a report referred to in section 92-E, the 30th day of November of the assessment year;

(b) in the case of a person other than a company, referred to in the first proviso to this sub-section, the 31st day of October of the assessment year;

(c) in the case of any other assessee, the 31st day of July of the assessment year;

79. On a combined reading of the above provisions, it is abundantly clear that the expressions “specified date” in section 44AB and “due date” in section 139 of the Act are inextricably linked together. The legislative intent is clear. Namely that, the due date for filing return of income and the specified date for furnishing tax audit report under section 44AB of the Act should be the same. The Board in exercise of powers under section 119 of the Act, therefore, cannot issue any circular or notification which is contrary to the legislative intent and the scheme of the enactment which envisages that the “specified date” and “due date” should be the same. The inevitable conclusion, therefore, is that the Board could not have extended the due date of filing tax audit report alone without extending the due date for filing return of income as that would amount to overriding the provisions of the Act. Moreover, the very fact that section 119 of the Act does not empower the Board to relax the provisions of section 44AB of the Act, clearly reflects the legislative intent not to permit relaxation of the “specified date” without relaxing the “due date”. Had the legislature intended to permit relaxation

of the specified date for furnishing tax audit report alone, it would have included section 44AB in section 119 of the Act.

80. Moreover, it appears that the Board was also conscious of the fact that it does not have the power to relax the provisions of section 44AB of the Act and therefore, what is extended in the notification dated 20th August, 2014 is the “due date” for obtaining and furnishing the report of audit under section 44AB, whereas the language employed by the legislature in relation to section 44AB is the “specified date”. Since the “due date” for filing return under section 139 of the Act is the “specified date” as envisaged under section 44AB of the Act, the Board appears to have consciously used the expression “due date” and not “specified date” in the said notification. However, it cannot be gainsaid that there cannot be two due dates, one for the purposes of filing of return under section 139 of the Act and the other for the purpose of determining the specified date under section 44AB of the Act.

81. Nonetheless, for the purpose of extending the due date for obtaining and furnishing the report of audit under section 44AB of the Act, the Board, in exercise of powers under clause (a) of sub-section (2) of section 119 of the Act, can relax the provisions of section 139 of the Act and can extend the due date for filing the return of income, in which case, the specified date under section 44AB of the Act would stand automatically extended. Therefore, the Board, if at all it was of the view that it was necessary to extend the due date for obtaining and furnishing the report of audit under section 44AB of the Act, could have resorted to extending such date only by extending the due date for filing the return of

income under section 139 of the Act. For this reason also, the Board ought to have extended the due date for filing the return of income under section 139 of the Act so as to maintain the same date for furnishing the return of income and tax audit report. It appears that the sole reason which has weighed with the Board for not extending the due date for filing the return of income under section 139 of the Act, is that by doing so the due date of self-assessment tax would get automatically extended and the payment of self-assessment tax would be deferred by the tax payer to 30th November 2014. As suggested by the learned counsel for the petitioners, this situation can be taken care of by extending the due date for filing return of income under section 139 of the Act for all purposes except for the purpose of Explanation I to section 234A of the Act, in which case, the interests of the revenue would also be protected.

82. This court is conscious of the fact that the period of filing return of income is prescribed under sub-section (1) of section 139 of the Act and in exercise of powers under Article 226 of the Constitution, it would not be permissible for this court to extend such period as the same would amount to legislation on the part of the court. However, as noticed earlier, the Board is duly empowered under sub-section (2) of section 119 of the Act, to relax the provisions of section 139 of the Act, whereas there is no power to relax the provisions of section 44AB of the Act. The Board, however, by the notification dated 20th August, 2014, has relaxed provisions of section 44AB of the Act for assessment year 2014-15 without extending the due date for filing the return of income. Thus, in the absence of any statutory power vested in the Board to relax the provisions

of section 44AB of the Act, the notification dated 20th August, 2014 has no legs to stand on its own. The only remedy available for the Board to sustain the validity of the notification is to extend the due date for filing return of income under section 139 of the Act in exercise of powers under section 119 of the Act.

83. Another way of looking at the matter is that the notification dated 20th August, 2014 extends the “due date” for furnishing the report of audit. Insofar as the provisions of section 44AB of the Act are concerned, the expression “due date” is found only in clause (ii) of the Explanation thereto which is the date of furnishing the return of income under sub-section (1) of section 139. Therefore, the notification itself could be construed as having extended the due date for filing return of income under section 139 of the Act. However, the stand taken by the Board does not admit any such construction.

84. In the aforesaid circumstances, having regard to the fact that the Board has no power to relax the provisions of section 44AB of the Act, it would be in the fitness of things if with a view to bring the notification dated 20th August, 2014 within the ambit of its jurisdiction, the Board relaxes the provisions of section 139(1) of the Act by extending the due date for filing the return of income till 30th November, 2014 as a direct consequence whereof, the “specified date” for obtaining and furnishing the report of audit under section 44AB of the Act would get automatically extended.”

In view of above decision of this Court whereby due date for filing the return under section 139(1) is also

deemed to have been extended after one month from the date of extension of the specified date by the respondent Board, in our opinion, the respondent Board is required to explain as to why the simultaneous notification for extension of due date is not issued.

Issue Notice returnable on 6th October, 2025.

To be listed on top of the Board.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI,J)

RAGHUNATH R NAIR