

Income Tax Bar Association vs Union Of India

ID: F2J-C-2231 Court: Gujarat High Court

Case: R/SPECIAL CIVIL APPLICATION NO. 13533 of 2025 Date: 2025-10-13

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Gujarat High Court Income Tax Bar Association vs Union Of India on 13 October, 2025 Author: Bhargav D. Karia Bench: Bhargav D. Karia
NEUTRAL CITATION

C/SCA/13533/2025 ORDER DATED: 13/10/2025

undefined

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

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 =====

INCOME TAX BAR ASSOCIATION & ANR. Versus UNION OF INDIA & ORS.

===== Appearance: (SCA 13553 of 2025) MR TUSHAR HEMANI SR.

ADVOCATE with MR DHINAL A SHAH(12077) for the Petitioner(s) No. 1,2 DS AFF.NOT FILED (N) for the Respondent(s) No. 4 MR PRADIP D BHATE(1523) for the Respondent(s) No. 1,2 MR.VARUN K.PATEL(3802) for the Respondent(s) No. 3 Appearance: (SCA 13582 of 2025) MR PARTH CONTRACTOR for the Petitioner(s) No. 1,2 ADVANCE COPY SERVED TO MR PRADIP BHATE for the Respondent (s) No. 1 MR ANKIT SHAH for the Respondent(s) No. 1 MR.VARUN K.PATEL(3802) for the Respondent(s) No. 2, 3 Appearance: (SCA 13589 of 2025) MR AVINASH PODDAR for the Petitioner(s) No. 1,6 7 MR PRADIP D BHATE(1523) for the Respondent(s) No. 1 ADVANCE COPY SERVED TO MR PRADIP BHATE for the Respondent (s) No. 1 MR.VARUN K.PATEL(3802) for the Respondent(s) No. 2, 3

===== CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI Date : 13/10/2025 ORAL COMMON ORDER (PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned Senior Advocate Mr. Tushar Hemani with learned advocate Mr. Dhinal Shah, learned advocate Mr. Parth Contractor, learned advocate Dhruven Shah, learned Mr. Page 1 of 28 Uploaded by PHALGUNI PATEL(HC00175) on Tue Oct 14 2025 Downloaded on : Wed Oct 15 01:47:38 IST 2025 NEUTRAL CITATION C/SCA/13533/2025 ORDER DATED: 13/10/2025 undefined Avinash Poddar for the respective petitioners and learned Senior Standing Counsel Mr. Varun K. Patel for the respondent nos. 1, 2 and 3 and learned advocate Mr. B.S. Soparkar for the supporting respondent no. 4 in SCA no. 13533 of 2025.

2. This Court passed the following order on 26.09.2025 :-

" 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 Page 2 of 28 Uploaded by PHALGUNI PATEL(HC00175) on Tue Oct 14 2025 Downloaded on : Wed Oct 15 01:47:38 IST 2025 NEUTRAL CITATION C/SCA/13533/2025 ORDER DATED: 13/10/2025 undefined 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 22.09.2024 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,-- Page 3 of 28 Uploaded by PHALGUNI PATEL(HC00175) on Tue Oct 14 2025 Downloaded on : Wed Oct 15 01:47:38 IST 2025 NEUTRAL CITATION C/SCA/13533/2025 ORDER DATED: 13/10/2025 undefined (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 Page 4 of 28 Uploaded by PHALGUNI PATEL(HC00175) on Tue Oct 14 2025 Downloaded on : Wed Oct 15 01:47:38 IST 2025 NEUTRAL CITATION C/SCA/13533/2025 ORDER DATED: 13/10/2025 undefined 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 Page 5 of 28 Uploaded by PHALGUNI PATEL(HC00175) on Tue Oct 14 2025 Downloaded on : Wed Oct 15 01:47:38 IST 2025 NEUTRAL CITATION C/SCA/13533/2025 ORDER DATED: 13/10/2025 undefined 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. Page 6 of 28 Uploaded by PHALGUNI PATEL(HC00175) on Tue Oct 14 2025 Downloaded on : Wed Oct 15 01:47:38 IST 2025 NEUTRAL CITATION C/SCA/13533/2025 ORDER DATED: 13/10/2025 undefined

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."

3. In compliance of the aforesaid order, learned Senior Standing Counsel Mr. Varun K. Patel has tendered the affidavit- in-reply filed on behalf of the respondent no. 2 - Central Board of Direct Taxes, which reads as under :-

"2. It is submitted that pursuant to the order dated 26.09.2025 passed by this Hon'ble Court in SCA No. 13533 of 2025 and other connected petitions, the present affidavit-in-reply is filed for submitted as under :-

(i) It is submitted that during the filing of ITRs/Tax Audit reports, CBDT closely monitors the Functioning of e-filing portal and also takes measures to redress grievances of taxpayers, if any, regarding filing of ITRs/Tax Audit reports.

(ii) It is further submitted that last year, the Board had extended the specified date/due date for filing tax audit reports and ITRs in the case of auditable assesseees for financial year 2023-24 Page 7 of 28 Uploaded by PHALGUNI PATEL(HC00175) on Tue Oct 14 2025 Downloaded on : Wed Oct 15 01:47:38 IST 2025 NEUTRAL CITATION C/SCA/13533/2025 ORDER DATED: 13/10/2025 undefined (relevant to Assessment Year 2024-25) vide Circular No.10/2024 dated 29.09.2024 and Circular No.12/2024 dated 26.10.2024 respectively, copies of which are annexed hereto and marked as Annexure- R/1 & R/2 respectively.

(iii) It is thus submitted that two separate circulars were issued by the Board last year extending specified date and due date. The specified date for the tax audit report was extended in the month of September, 2024 and the due date of ITRs for AY 2024-25 was extended in the month of October, 2024. These two Circulars of the Board were not challenged in any judicial forum for its legality.

(iv) It is further submitted that in the said order dated 26.09.2025, this Hon'ble Court has referred the observations made in the earlier decision dated 22.09.2014 in Special Civil Application No. 12656 of 2014 with Special Civil Application No. 12571 of 2014, that the Board is not having power u/s 119(2) of the Income-tax Act, 1961 to extend the specified date of tax audit report alone without extending the due date of ITRs for the relevant Assessment year. In this regard, it is relevant to submit that the earlier order dated 22.09.2014 of this Hon'ble Court was challenged in SLP No. 8074 8075/2015 filed before the Hon'ble Supreme Court raising the following questions of law:

(i) Whether High Court was correct in law in holding that CBDT has no power u/s 119 of IT Act to extend the due date for furnishing of Tax audit report?

(ii) Whether High Court was correct in law in holding that under section 119 of IT Act, the due date of filing of tax audit report cannot be extended alone without extending the due date for filing of return of income?

(ii) Whether High Court was correct in law in making adverse observation regarding functioning of CBDT without appreciating that individual replies are not sent with regard to representations received and the decision of CBDT is put in public domain as and when the Board deems fit?

It is submitted that the Hon'ble Supreme Court, vide its order dated 11.05.2015, found no reason to entertain these SLPs and dismissed the same by keeping the question of law as open. Therefore, it cannot be said that the question of law regarding power of the Board to extend the specified date of the tax audit report alone has attained finality. Annexed hereto and marked as Annexure- R/3 is the copy of the said order of Hon'ble Apex Page 8 of 28 Uploaded by PHALGUNI PATEL(HC00175) on Tue Oct 14 2025 Downloaded on : Wed Oct 15 01:47:38 IST 2025 NEUTRAL CITATION C/SCA/13533/2025 ORDER DATED: 13/10/2025 undefined Court dated 11.05.2015. (v) It is further submitted that for Assessment Year (AY) 2014-15, as per applicable provisions of section 44AB and section 139 of the Income tax Act, 1961 for that year, the 'specified date' for filing tax audit reports under section 44AB and the 'due date' for filing of ITRs by auditable assesseees are the same date i.e. 30th September, 2014. Annexed hereto and marked as Annexure- R/4 is the copy of the relevant provisions of Section 44AB and section 139 applicable to A.Y. 2014-15. (vi) It is submitted that by the Finance Act, 2020, a one-month time gap between the filing of report of audit and return of income u/s 139(1) for the auditable assesseees for the relevant Assessment Year was introduced w.e.f. 01.04.2020. Accordingly, the 'due date' u/s 139 of the Act for auditable assesseees for filing ITRs 31st October of that assessment year and the 'specified date' is 30th September of that assessment year being one month before filing ITR as per section 44AB for auditable assesseees. It is also submitted that the rationale behind this one-month time gap between furnishing the audit report and filing return of income for auditable assessee is provided in the Explanatory memorandum for Finance Act, 2020 as below:

'Further, to enable pre-filing of returns in case of persons having income from business or profession, it is required that the tax audit report may be furnished by the said assesseees at least one month prior to the due date of filing of return of income. This requires amendments in all the sections of the Act which mandates filing of audit report along with the return of income or by the due date of filing of return of income. Thus, provisions of section 10, section 10A, section 12A, section 32AB, section 33AB, section 33ABA, section 35D, section 35E, section 44AB, section 44DA, section 50B, section 80-IA, section 80-IB, section 80JJAA, section 92F, section 115JB, section 115JC and section 115VW of the Act are proposed to be amended accordingly.

Further, the due date for filing return of income under sub- section (1) of section 139 is proposed to be amended by:-

(A) providing 31st October of the assessment year (as against 30th September) as the due date for an assessee referred to in clause (a) of Explanation 2 of sub-section (1) of Section 139 of the Act;

(B) removing the distinction between a working and a non- Page 9 of 28 Uploaded by PHALGUNI PATEL(HC00175) on Tue Oct 14 2025 Downloaded on : Wed Oct 15 01:47:38 IST 2025 NEUTRAL CITATION C/SCA/13533/2025 ORDER DATED: 13/10/2025 undefined working partner of a firm with respect to the due date as mentioned in sub-clause (iii) of clause (a) of Explanation 2 of sub-section(1) of Section 139 of the Act. These amendments will take effect from 1 st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years." Annexed hereto and marked as Annexure-R/5 is the copy of the relevant part of the Explanatory memorandum of Finance Act, 2020."

4. The order dated 26.09.2025 reproduced herein above explains the issue which is required to be addressed as to whether the due date under Section 139 (1) of the Income Tax Act,1961 (For Short "the Act") is required to be extended in view of the Circular No. 14/2024 dated 25.09.2025 as per Explanation (ii) to Section 44AB of the Act or not by the respondent no. 2.

5. The facts emerging from the record are in narrow compass to the effect that the respondent no. 2 - Central Board of Direct Taxes (For short "CBDT") by Circular No. 14/2024 in exercise of its powers under Section 119 of the Act has extended "specified date" for the assessee referred in clause (a) of Explanation (ii) to sub-section(1) of Section 139 of the Act for furnishing of the report of audit under the provisions of the Act for the Financial Year 2024-25 (relevant to the Assessment Year 2025-26) from Page 10 of 28 Uploaded by PHALGUNI PATEL(HC00175) on Tue Oct 14

2025 Downloaded on : Wed Oct 15 01:47:38 IST 2025 NEUTRAL CITATION C/SCA/13533/2025 ORDER DATED: 13/10/2025 undefined 30.09.2025 to 30.10.2025. 5.1. In order to analyse the effect of said Circular, it would be germane to refer to the provisions of Section 139 (1) and Explanation-2(a) to Section 139 of the Act.

"CHAPTER XIV Return of Income-tax 139 (1) Every person-

(a) being a company [or a firm]; or

(b) being a person other than a company [or a firm], if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax, shall on or before the due date, furnish a return of income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such particulars as may be prescribed :

Provided that a person referred to in clause (b), who is not required to furnish a return under this sub-section and residing in such area as may be specified by the Board in this behalf by notification in the Official Gazette, and who [during the previous year incurs an expenditure of fifty thousand rupees or more towards consumption of electricity or] or at any time during the previous year fulfills any one of the following conditions, namely:-

(i) is in occupation of an immovable property exceeding a specified floor area, whether by way of ownership, tenancy or otherwise, as may be specified by the Board in this behalf; or

(ii) is the owner or the lessee of a motor vehicle other than a two-wheeled motor vehicle, whether having any detachable side car having extra wheel attached to such two-wheeled motor vehicle or not; or

(iii) [***]

(iv) has incurred expenditure for himself or any other person on Page 11 of 28 Uploaded by PHALGUNI PATEL(HC00175) on Tue Oct 14 2025 Downloaded on : Wed Oct 15 01:47:38 IST 2025 NEUTRAL CITATION C/SCA/13533/2025 ORDER DATED: 13/10/2025 undefined travel to any foreign country; or

(v) is the holder of a credit card, not being an "add-on" card, issued by any bank or institution; or

(vi) is a member of a club where entrance fee charged is twenty-

five thousand rupees or more, shall furnish a return, of his income during any previous year ending before the 1st day of April, 2005, on or before the due date in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed :"

5.2. Explanation 2 to Section 139(1) of the Act reads as under:-

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 [***] 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 [or the spouse of such partner if the provisions of section 5A applies to such spouse], the [31st day of October] of the assessment year; (aa) in the case of an assessee [including the partners of the firm or the spouse of such partner (if the provisions of section 5A applies to such spouse) being such assessee] [who is required to furnish a report referred to in section 92E, 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."

6. From the above Explanation-2, we are concerned with clause (a) which is referred to in Circular No. 14/2025 for the Page 12 of 28 Uploaded by PHALGUNI PATEL(HC00175) on Tue Oct 14 2025 Downloaded on : Wed Oct 15 01:47:38 IST 2025 NEUTRAL CITATION C/SCA/13533/2025 ORDER DATED: 13/10/2025 undefined assessee other than referred to in clause (aa) of the Explanation-2 is a company or a person other than Company whose accounts are audited under the Act or under any law other law for the time being in force or a partner of the firm whose accounts are required to be audited under the Act or under any other law for the time being in force, the due date would be 31st October of the Assessment Year. Therefore, for the Assessment Year 2025-26, "due date" as per Explanation-2 (a) to Section 139(1) of the Act for the assessee which are company or the persons whose accounts are required to be audited under the Act or under any other law and the partner of a firm shall be 31st October, 2025.

7. Under the provisions of the Act, Section 44AB of the Act, audit of accounts of certain persons carrying on business or profession and it reads as under :-

"Audit of accounts of certain persons carrying on business or profession. 44AB. 72Every person,--

(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year:

Provided that in the case of a person whose--

(a) aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent of the said amount; and Page 13 of 28 Uploaded by PHALGUNI PATEL(HC00175) on Tue Oct 14 2025 Downloaded on : Wed Oct 15 01:47:38 IST 2025 NEUTRAL CITATION C/SCA/13533/2025 ORDER DATED: 13/10/2025 undefined

(b) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent of the said payment, this clause shall have effect as if for the words "one crore rupees", the words " 73 [ten] crore rupees" had been substituted 4 [Provided further that for the purposes of this clause, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt, as the case may be, in cash; or] (b) carrying on profession shall, if his gross receipts in

profession exceed fifty lakh rupees in any previous year; or (c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or (d) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year; or (e) carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year, get his accounts of such previous year audited by an accountant before the specified date and furnish by 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 this section shall not apply to the person, who declares profits and gains for the previous year in accordance with the provisions of sub-section (1) of section 44AD and his total sales, turnover or gross receipts, as the case may be, in business does not exceed two crore rupees in such previous year:

Provided that this section shall not apply to a person, who declares profits and gains for the previous year in accordance with the provisions of sub-section (1) of section 44AD or sub-section (1) of section 44ADA:

Provided further that this section shall not apply to the person, who derives Page 14 of 28 Uploaded by PHALGUNI PATEL(HC00175) on Tue Oct 14 2025 Downloaded on : Wed Oct 15 01:47:38 IST 2025 NEUTRAL CITATION C/SCA/13533/2025 ORDER DATED: 13/10/2025 undefined income of the nature referred to in section 44B or section 44BBA, on and from the 1st day of April, 1985 or, as the case may be, the date on which the relevant section came into force, whichever is later :

Provided also that in a case where such person is required by or under any other law to get his accounts audited, 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 furnishes by that date the report of the audit as required under such other law and a further report by an accountant 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 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."

7.1. Explanation (ii) to Section 44AB of the Act defines "specified date" as under :

"Explanation -

(i) xxxx

(ii) "specified date", in relation to the account of the assessee of the previous year relevant to an assessment year, means [date one month prior to] [the due date of furnishing the return of income under sub-section 91) of Section 139].]"

7.2. The "specified date" as per Explanation (ii) to Section 44AB of the Act was substituted by the Finance Act, 1998 with effect from 01.04.1989 and later on amended by the Finance Act, 1994 with effect from 01.04.1994. Prior to its substitution, "specified date" was defined as under :-

"(ii) "specified date", in relation to the accounts of the previous year relevant to an assessment year means - Page 15 of 28 Uploaded by PHALGUNI PATEL(HC00175) on Tue Oct 14 2025 Downloaded on : Wed Oct 15 01:47:38 IST 2025 NEUTRAL CITATION C/SCA/13533/2025 ORDER DATED: 13/10/2025 undefined (a) where the assessee is a company, the 30 th day of November of the assessment year (b) in any other case, the 31 st day of October of the assessment year."

8. As stated in the affidavit-in-reply filed on behalf of the respondent no. 2 - CBDT which is reproduced herein-above, the Explanatory Memorandum for Finance Act, 2020 inserted the words "date one month prior to" and accordingly, the specified date which is applicable to the Assessment Year 2025-26 shall have to be the date one month prior to the due date for furnishing the return of income under sub-section(1) of Section 139 of the Act.

9. The intention of the legislature to have a period of one month prior to the due date of filing of the return of income to obtain audit report is to enable pre-filing of returns in case of persons having income from the business or profession. Accordingly, the amendments were carried out in all the Sections of the Act which mandated filing of audit report along with return of income or by the due date of filing of the return of income. Provisions of Sections 10, 10A, 12A, 32AB, 33AB, Page 16 of 28 Uploaded by PHALGUNI PATEL(HC00175) on Tue Oct 14 2025 Downloaded on : Wed Oct 15 01:47:38 IST 2025 NEUTRAL CITATION C/SCA/13533/2025 ORDER DATED: 13/10/2025 undefined 33ABA, 35D, 35E, 44AB, 44AD, 50B, 80-IA 80-IB 80JJAA, 92F, 115JB, 115JC and 115VW of the Act were amended accordingly, by amending the definition of specified date for filing of the audit report being one month prior to the due date of filing of return of income under sub-section (1) to Section 139 of the Act. The due date as specified in Section 139(a) of the Act, Explanation (a) as reproduced herein above, is accordingly amended by providing the due date of filing of return as 31 st October where the assessee is required to furnish audit report on 30 th September of the relevant Assessment Year. As the relevant extract from the Explanatory Memorandum for Finance Act, 2020 is already reproduced in the affidavit of respondent no. 2 CBDT, the same is not again reproduced here for sake of brevity.

10. From the above analysis of the provisions of the Act and taking into consideration the Explanatory Memorandum for Finance Act, 2020, by which the Explanation (ii) to Section 44AB has been amended and all other Sections referred to herein-above also have been amended to mean the specified date in relation to the accounts of the assessee of the previous Page 17 of 28 Uploaded by PHALGUNI PATEL(HC00175) on Tue Oct 14 2025 Downloaded on : Wed Oct 15 01:47:38 IST 2025 NEUTRAL CITATION C/SCA/13533/2025 ORDER DATED: 13/10/2025 undefined relevant Assessment Year means date one month prior to "the due date for furnishing the return of income under sub- section(1) of Section 139 of the Act. Therefore, extending the specified date without extending the due date for furnishing the return of income under sub-section (1) of Section 139 of the Act would be contrary to the statutory provisions. In other words, as the specified date is extended as per the Circular No. 14/2025, the due date has to be extended accordingly by one month from the date of extension of the specified date.

11. For the Assessment Year 2025-26, the due date for furnishing the return of income under sub-section (1) of Section 139 of the Act read with Explanation-2(a) is prescribed as 31 st October, 2025. Therefore, as per the Explanation (ii) to Section 44AB of the Act, the specified date in relation to the account of the assessee of the previous year relevant to the Assessment Year 2025-26 would be the date one month prior to the due date of furnishing the return of income under sub-section (1) of Section 139 of the Act would be 30.09.2025.

12. The respondent no. 2 - CBDT by Circular No. 14/2025 has Page 18 of 28 Uploaded by PHALGUNI PATEL(HC00175) on Tue Oct 14 2025 Downloaded on : Wed Oct 15 01:47:38 IST 2025 NEUTRAL CITATION C/SCA/13533/2025 ORDER DATED: 13/10/2025 undefined extended the "specified date" in exercise of the power conferred upon it under Section 119 of the Act has from 30 th September to 31st October, 2025 for the assessee which are required to file the return of income as per Explanation (a) to Section 139 (1) of the Act which provides filing of return by 31.10.2025.

13. Considering the above facts and the Explanation (ii) to Section 44AB of the Act the "specified date" has to be one month prior to the "due date" of furnishing return of income meaning thereby that there has to be a gap/ difference of one month between the "specified date" and "due date" for filing return of income, otherwise, the Explanation (ii) to Section 44AB of the Act would be rendered nugatory and otiose. The statutory provisions which have been amended by Finance Act, 2020 cannot be rendered nugatory or otiose.

14. The Hon'ble Apex Court in case of Bansal Wire Industries Ltd. & Anr. v. State of Uttar Pradesh & Ors. reported in (2011) 6 SCC 545 has observed as under :-

"29. It is a settled principle of law that the words used in the section, rule or notification should not be redundant and should be given effect to. It is also one of the cardinal principles of interpretation of any statute that some meaning must be given to the words used in the section....." Page 19 of 28 Uploaded by PHALGUNI PATEL(HC00175) on Tue Oct 14 2025 Downloaded on : Wed Oct 15 01:47:38 IST 2025 NEUTRAL CITATION C/SCA/13533/2025 ORDER DATED: 13/10/2025 undefined

15. The Hon'ble Apex Court in case of the Municipal Corporation of Greater Mumbai & Ors. v. Century Textiles and Industries Limited & Ors. reported in 2025 INSC 36 has observed as under :-

"48. Well-settled principles of statutory interpretation demand that no provision of statute should be rendered nugatory or superfluous. A statute must be construed as a coherent whole, ensuring that each part has meaningful content and that the legislative scheme remains workable....."

16. In view of the above dictum of law, the Circular No. 14/2025 is not in consonance with the provisions of the Act meaning thereby that merely extending the "specified date"

without extending the "due date" for filing of return would be contrary to the Explanation (ii) to Section 44AB of the Act and contrary to the legislative intention to bring amendment by Finance Act, 2020. This fact is further fortified from the previous years data which is placed on record which clearly demonstrates that at no point of time the difference between the "specified date " and the "due date" is less than one month after the Assessment Year 2021-22 from which the amendment brought on record by the statute by Finance Act, 2020 is Page 20 of 28 Uploaded by PHALGUNI PATEL(HC00175) on Tue Oct 14 2025 Downloaded on : Wed Oct 15 01:47:38 IST 2025 NEUTRAL CITATION C/SCA/13533/2025 ORDER DATED: 13/10/2025 undefined applicable and the last five years data which is summarized is as under :-

Sr. Assessm Due Date of Due Date of filing Due Date of Due Date of No. ent Year filing of Return return of Income Filing Tax Filing of Tax of Income as Extended by Audit Report Audit Report CBDT as Extended by CBDT 1 2025-26 31.10.2025 Not extended yet 30.09.2025 31.10.2025 2 2024-25 31.10.2024 15.11.2024 30.09.2024 07.10.2024 3 2023-24 31.10.2023 Not extended 30.09.2023 Not extended 4 2022-23 31.10.2022 07.11.2022 30.09.2022 Not extended 5 2021-22 31.10.2021 15.03.2022 30.09.2021 15.02.2022 6 2020-21 31.10.2020 15.02.2021 30.09.2020 31.12.2020

17. Learned advocate Mr. Dhinal Shah for the petitioner has also referred to and relied upon the amendments to the following Sections by Finance Act, 2020 which reads as under :-

Amendments made in the following sections by Finance Act, 2020 Sr. Section Particulars Relevant Extract No. 1 10(23C) Reference to get its accounts audited in respect of that year by an Explanation 5, Specified Date accountant as defined in the Explanation below sub-

8th Proviso(b referred to in Section section (2) of section 288 before the specified date 44AB referred to in section 44AB and furnish by 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 2 10A(5) Reference to The deduction under this section shall not be admissible Specified Date for any assessment year beginning on or after the 1st referred to in Section day of April, 2001, unless the assessee furnishes in the 44AB prescribed form, the report of an accountant, as defined in the Explanation below sub-section (2) of section 288 before the specified date referred to in section 44AB, certifying that the deduction has been correctly claimed in accordance with the provisions of this section. 3 12A(1)(b)(ii) Reference to he accounts of the trust or institution for that year have Specified Date been audited by an accountant defined in the referred to in Section Explanation below sub-section (2) of section 288 before 44AB the specified date referred to in section 44AB and the person in receipt of the income furnishes by 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; Page 21 of 28 Uploaded by PHALGUNI PATEL(HC00175) on Tue Oct 14 2025 Downloaded on : Wed Oct 15 01:47:38 IST 2025 NEUTRAL CITATION C/SCA/13533/2025 ORDER DATED: 13/10/2025 undefined 4 32AB(5) Reference to The deduction under sub-section (1) shall not be Specified dated admissible unless the accounts of the business or referred to in Section profession of the assessee for the previous year 44AB relevant to the assessment year for which the deduction is claimed have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 before the specified date referred to in section 44AB and the assessee furnishes by that date the report of such audit in the prescribed form duly signed and verified by such accountant : 5 33AB (2) Reference to The deduction under sub-section (1) shall not be Specified dated admissible unless the accounts of such business of the referred to in Section assessee for the previous year relevant to the 44AB assessment year for which the deduction is claimed have been audited by an accountant as de fined in the Explanation below sub-section (2) of section 288 before the specified date referred to in section 44AB and the assessee furnishes by that date the report of such audit in the prescribed form duly signed and verified by such accountant 6 35D(4) Reference to Where the assessee is a person other than a company or Specified dated a co-operative society, no deduction shall be admissible referred to in Section under sub-section (1) unless the accounts of the 44AB assessee for the year or years in which the expenditure specified in sub-section (2) is incurred have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288, before the specified date referred to in section 44AB and the assessee furnishes for the first year in which the deduction under this section is claimed, the report of such audit by that date in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed. 7 35E(6) Reference to

Where the assessee is a person other than a company or Specified dated a co-operative society, no deduction shall be admissible referred to in Section under sub-section (1) unless the accounts of the 44AB assessee for the year or years in which the expenditure specified in sub-section (2) is incurred have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288, before the specified date referred to in section 44AB and the assessee furnishes for the first year in which the deduction under this section is claimed, the report of such audit by that date in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed. 8 44AB, Reference to specified date, in relation to the accounts of the Explanation (ii) Specified dated assessee of the previous year relevant to an assessment referred to in Section year, means date one month prior to the due date for 44AB furnishing the return of income under sub-section (1) of Page 22 of 28 Uploaded by PHALGUNI PATEL(HC00175) on Tue Oct 14 2025 Downloaded on : Wed Oct 15 01:47:38 IST 2025 NEUTRAL CITATION C/SCA/13533/2025 ORDER DATED: 13/10/2025 undefined section 139. 9 44AD (2) Reference to Every non-resident (not being a company) or a foreign Specified dated company shall keep and maintain books of account and referred to in Section other documents in accordance with the provisions 44AB contained in section 44AA and get his accounts audited by an accountant as defined in the Explanation below sub-section (2) of section 288 before the specified date referred to in section 44AB and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant. 10 50B(3) Reference to Every assessee, in the case of slump sale, shall furnish Specified dated in the prescribed form a report of an accountant as referred to in Section defined in the Explanation below sub-section (2) of 44AB section 288 before the specified date referred to in section 44AB indicating the computation of the net worth of the undertaking or division, as the case may be, and certifying that the net worth of the undertaking or division, as the case may be, has been correctly arrived at in accordance with the provisions of this section. 11 80IA Reference to The deduction under sub-section (1) from profits and Specified dated gains derived from an undertaking shall not be referred to in Section admissible unless the accounts of the undertaking for 44AB the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant, as defined in the Explanation below sub- section (2) of section 288, before the specified date referred to in section 44AB and the assessee furnishes by that date the report of such audit in the prescribed form duly signed and verified by such accountant. 12 80IB(11C) (iv) Reference to The assessee furnishes the report of audit in such form 80IB (7A) (b) Specified dated and containing such particulars, as may be prescribed, (iii) 80IB (7B) referred to in Section duly signed and verified by an accountant, as defined in (b) (ii) 44AB the Explanation below sub-section (2) of section 288, before the specified date referred to in section 44AB, certifying that the deduction has been correctly claimed. 13 80JJAA(2)(c) Reference to unless the assessee furnishes the report of the Specified dated accountant, as defined in the Explanation below sub- referred to in Section section (2) of section 288, before the specified date 44AB referred to in section 44AB giving such particulars in the report as may be prescribed. 14 92F(iv) Specified date means specified date means the date one month prior to the the date 1 month due date for furnishing the return of income under sub- prior to the date of section (1) of section 139 for the relevant assessment furnishing return of year; income u/s. 139(1) for relevant AY

15 115JB(4) Reference to Every company to which this section applies, shall

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undefined

Specified dated furnish a report in the prescribed form from an referred to in Section accountant as defined in the Explanation below sub- 44AB section (2) of section 288, certifying that the book profit

has been computed in accordance with the provisions of this section before the specified date referred to in section 44AB or along with the return of income furnished in response to a notice under clause (i) of sub- section (1) of section 142. 16 115JC(3) Reference to very person to whom this section applies shall obtain a Specified dated report, before the specified date referred to in section referred to in Section 44AB, in such form as may be prescribed, from an 44AB accountant referred to in the Explanation below sub- section (2) of section 288, certifying that the adjusted total income and the alternate minimum tax have been computed in accordance with the provisions of this Chapter and furnish such report by that date 17 115VW(ii) Reference to furnishes, before the specified date referred to in Specified dated section 44AB, the report of an accountant, in the referred to in Section prescribed form duly signed and verified by such 44AB accountant.

18. From the above table it is clear that there is always a difference of one month from the specified date from filing the audit report and the due date of filing of return and other provisions of the Act which require to get audit report also refer to section 44AB only. This is also explained and expressed in the affidavit filed on behalf of the CBDT by learned Senior Standing Counsel Mr. Patel and highlighted that for the Assessment Year 2024-25 i.e. last year, the specified date was extended by Circular No.10/2024 dated 29.09.2024 to 07.10.2024. It was pointed out that by Circular No. 13/2024 the due date for filing the return was extended from 31.10.2024 to 15.11.2024 i.e. the Page 24 of 28 Uploaded by PHALGUNI PATEL(HC00175) on Tue Oct 14 2025 Downloaded on : Wed Oct 15 01:47:38 IST 2025 NEUTRAL CITATION C/SCA/13533/2025 ORDER DATED: 13/10/2025 undefined due date was extended for more than one month than the specified date. However, there is no embargo on extending the due date. The Explanation (ii) to Section 44AB of the Act provides that specified date as to be prior to one month from the due date of filing under sub-section (1) of Section 139 of the Act.

19. The contention raised by learned Senior Standing Counsel Mr. Patel after referring to the affidavit-in-reply filed on behalf of the respondent no. 2 - CBDT is that the CBDT is closely monitoring the functioning of E-filing portal and also takes measures to redress grievances of the taxpayers and the due date of filing of the return of income is to be considered by the end of October.

20. From the averments made in the affidavit-in-reply filed by the respondent no. 2, it appears that the respondent no. 2 - CBDT is waiting for the end of October,2025 to extend the due date for filing the return after closely monitoring the functioning of the E-filing portal.

21. However, as held by this Court in case of All Gujarat Page 25 of 28 Uploaded by PHALGUNI PATEL(HC00175) on Tue Oct 14 2025 Downloaded on : Wed Oct 15 01:47:38 IST 2025 NEUTRAL CITATION C/SCA/13533/2025 ORDER DATED: 13/10/2025 undefined Federation of Tax Consultants v. Central Board of Direct Taxes rendered in Special Civil Application No. 12656 of 2014 dated 22.09.2024 and on analysis of the provisions of the Act as amended by the Finance Act, 2020 providing period of one month between the date of uploading of the audit report and due date of filing of filing of return as per Section 139(1) of the Act, the concern shown by the respondent no. 2 CBDT in the affidavit-in-reply for closely monitoring the functioning of E- filing portal is without any basis as statutorily there has to be a prior period of one month between the date of uploading the audit report being the "specified date" and "due date" of filing of the return. Respondent no.2 -CBDT therefore would not be justified to wait till end of OCTOBER,2025 for issuing circular to extend the "due date".

22. We, therefore, again reiterate the decision of this Court in case of All Gujarat Federation of Tax Consultants v. Central Board of Direct Taxes (supra). As the respondent no. 2 CBDT has not issued any Circular while exercising its power under Section 119 of the Act to extend the "due date" for filing the return of income for the assessee covered by Explanation (a) Page 26 of 28 Uploaded by PHALGUNI PATEL(HC00175) on Tue Oct 14 2025 Downloaded on : Wed Oct 15 01:47:38 IST 2025 NEUTRAL CITATION C/SCA/13533/2025 ORDER DATED: 13/10/2025 undefined to Section 139 (1) of the Act to 30th November,2025, when the "specified date" is extended from 30.09.2025 to 31.10.2025, a consequential Circular to extend the "due date" to 30.11.2025 as per the provisions of Explanation (ii) to Section 44AB read with Section Explanation (a) to Section 139 (1) of the Act is required to be issued. If 'due date' for filing return of income under Section 139(1) of the Act is not extended by the respondent no. 2 -CBDT then the Explanation (ii) to Section 44AB of the Act shall be rendered negatory and the "specified date" defined therein would as per the extended date by the CBDT and not as per the statutory provision being one month to the due date of filing of the return . The present situation would restore the pre amended provision of filing audit report and return of income together contrary to existing provisions of the Act.

23. It appears that the respondent no. 2 - CBDT has always tendency to extend the "due date" for filing the return on the verge of completion of the period of due date after monitoring E-filing portal so that the last date rush of filing the return may be avoided. However, in the facts and circumstances of the Page 27 of 28 Uploaded by PHALGUNI PATEL(HC00175) on Tue Oct 14 2025 Downloaded on : Wed Oct 15 01:47:38 IST 2025 NEUTRAL CITATION C/SCA/13533/2025 ORDER DATED: 13/10/2025 undefined case, the respondent no. 2 - CBDT ought to have extended the "due date" as a consequence of extending the "specified date"

as per Explanation (ii) to Section 44AB of the Act, being one month prior to the due date of filing of the return of income.

24. In the aforesaid circumstances, and having regard to the provisions of Explanation (ii) of Section 44AB of the Act, we direct the respondent no. 2 CBDT to issue Circular exercising power under sections 119 of the Act to extend the "due date" of filing of return up to 30 th November,2025 for the assessee who are required to file audit report as per clause (a) of Explanation 2 to sub-section (1) of section 139 of the Act or requiring to file the report of audit under the provisions of the Act for the Financial Year 2024-25 (Assessment Year 2025-26).

25. For the foregoing reasons, the petitions stand disposed of. Notice is discharged. (BHARGAV D. KARIA, J) (PRANAV TRIVEDI,J) phalguni Page 28 of 28 Uploaded by PHALGUNI PATEL(HC00175) on Tue Oct 14 2025 Downloaded on : Wed Oct 15 01:47:38 IST 2025