IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 15075 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS.JUSTICE HARSHA DEVANI

and

HONOURABLE MR.JUSTICE A.G.URAIZEE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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ALL GUJARAT FEDERATION OF TAX CONSULTANTS....Petitioner(s)

Versus

CENTRAL BOARD OF DIRECT TAXES & 1....Respondent(s)

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Appearance:

MR SN SOPARKAR, SR. ADVOCATE with MR MANISH K KAJI, ADVOCATE for the Petitioners

MR MR BHATT, SR. ADVOCATE with MRS MAUNA M BHATT, ADVOCATE for the Respondents

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CORAM: **HONOURABLE MS.JUSTICE HARSHA DEVANI**
and
HONOURABLE MR.JUSTICE A.G.URAIZEE

Date : 29/09/2015

ORAL JUDGMENT

(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. Rule. Mrs. Mauna Bhatt, learned senior standing counsel waives service of notice of rule on behalf of the respondents.

2. Having regard to the controversy involved in the present case and the urgency of the matter as discussed hereinafter, the court has heard the matter finally.

3. By this petition under Article 226 of the Constitution of India, the petitioners seek the following substantive reliefs :

> *"[13] The petitioner, therefore, prays :-*
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> *[a] that this Hon'ble Court may be pleased to issue a writ of mandamus, or any other appropriate writ, order or direction, directing that the respondent hence forth, make any alternations in Forms and Utilities or changes in tax compliance requirements, applicable from the A.Y. subsequent to the A.Y. in which such alterations are introduced.*
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> *[b] that this Hon'ble Court may be pleased to issue a writ of certiorari, or any other appropriate writ, order or direction holding the impugned announcement dated 9/9/2015 as being illegal, inasmuch as, it promotes the filing of ITR without the mandatorily required TAR.*
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> *[c] that this Hon'ble Court may be pleased to*

issue a writ of mandamus, or any other appropriate writ, order or direction, directing that the respondent to extend the due date for filing the ITR and TAR to 30/11/2015."

4. The first petitioner is a Trust registered under the provisions of the Bombay Public Trusts Act, 1950 and has over 1000 members who are various professionals, being Advocates, Chartered Accountants and Tax Practitioners engaged in the field of taxation. The second petitioner is the President of the first petitioner Federation and is also assessee who is directly interested in the subject matter of the petition.

5. The controversy involved in the present case arises in the following backdrop. By a notification dated 01.05.2013 the first respondent made it mandatory for the assessees, to electronically file the income tax returns relevant for assessment year 2013-14 and onwards. In relation to assessment year 2014-15, the respondents failed to make the utility software for filing TAR until 21st August, 2014. Representations were made to the Central Board of Direct Taxes, which in exercise of powers under section 119 of the Act extended the due date for filing the Tax Audit Report (TAR) under section 44AB of the Income Tax Act, 1961 (hereinafter referred to as "the Act") to 30th November, 2014; however, the due date for filing of return of income was not extended. The petitioners, therefore, made representations to the Central Board of Direct Taxes (hereinafter referred to as "the Board") for extending the due date of filing return to 30th November, 2015, but to no avail. The petitioners therefore approached this court by way of writ petitions being Special Civil

Application No. 12656 of 2014 and 12571 of 2014. The said petitions came to be allowed by directing CBDT to extend the due date for filing the income tax return to 30th November, 2014.

6. In relation to the current year, viz., assessment year 2015-16, the Department delayed notifying the ITR forms being ITR-1, ITR-2, ITR-2A, ITR-4S but extended the due date for filing the income tax returns in the case of such assessees to 31st August, 2015. The on-line forms in relation to assessees subject to tax audit and other assessees, viz., Forms ITR-3, ITR-4, ITR-5, ITR-6 and ITR-7 in relation to assessment year 2105-16 came to be notified on 29.7.2015 and the forms were e-enabled and were available on the e-filing website of the Department only from 7th August, 2015. Since the income tax returns in case of such assessees were to be filed on or before 30.09.2015, according to the petitioners the delay in making the form available caused utter confusion and chaos amongst the Chartered Accountants and the assessees. It is the case of the petitioners that the tax audit returns can only be filed electronically which requires an appropriate "utility/software" to be made available by the respondents to the assessees. However, the respondents failed to make available the utilities for assessment year 2015 -16 until 07.08.2015, thereby creating a blackout of a period of more than four months making it impossible for assessees to file their return of incomes till 7th August, 2015 when the relevant forms were e-enabled. In the aforesaid premises, several stake holders have made several representations to the CBDT and the Central Government to extend the due date for filing the income tax returns from 30.09.2015 to 30.11.2015. However, the

representations yielded no results, and the respondents did not grant extension of due date for filing the income tax returns. On the contrary by an announcement dated 9th September, 2015 the Government of India Ministry of Finance, it was stated that a decision had been taken that the last date of filing of returns due by 30th September, 2015 will not be extended. It is in these circumstances that the petitioners have approached this court seeking the reliefs noted hereinabove.

7. Mr. S. N. Soparkar, Senior Advocate, learned counsel with Mr. Manish Kaji, learned advocate for the petitioners submitted that with effect from assessment year 2013-14, it is mandatory for the assessees to electronically file the income tax returns online. It was submitted that the utility for filing the income tax returns in respect of the assessees who are subject to tax audit, came to be released only on 7th August, 2015 and was subsequently updated on 22nd August, 2015. It was submitted that while under the statutory provisions, the income tax returns can be filed in time from 1st April till the due date for filing the income tax returns, in the absence of the utility for filing such returns online, the returns could not be filed earlier. It was submitted that there was significant delay in providing the utility for filing the returns online, that is, 7th August, 2015 and prior thereto, till the utility was made available, it was not possible to file the income tax returns. It was submitted that in respect of such delay, the assessees are not at fault and that till the online forms are prescribed, the assessees do not know the nature of the changes made and till such forms are notified, they cannot file the returns. It was submitted that in relation to assessment year 2014-15 also, the respondents had extended the time for filing the tax audit report, however, time

for filing the income tax returns had not been extended and the petitioners had approached this court seeking extension of the time limit for filing the income tax returns. The attention of the court was invited to the judgment and order dated 22nd September, 2014 passed by this court in the petitioner's own case in Special Civil Application No.12656 of 2014 and allied matter, to point out that the court had observed that any introduction or new utility/software with additional requirement in the middle of the year ordinarily is not desirable. Any change unless inevitable can be planned well in advance. Keeping in focus such comprehensive process re-engineering may not result in undue hardship to the stake holders for whose benefits the same operates. It was submitted that the hope expressed by the court is belied by the respondents by once again notifying online forms belatedly on 7th August, 2015 and not granting sufficient time to the assessees to submit the same.

7.1 Mr. Soparkar submitted that the Income Tax Act prescribes time from 31st March to 30th September, that is, 180 days for filing the tax returns, however, this period stands curtailed on account of non-providing of the utility for filing tax returns, thereby causing immense prejudice to the assessees. It was submitted that when the respondent Board, under section 119 of the Act, has the administrative powers to excuse the assessees from the rigours created on account of non-notification of the utilities, fails to do so, the petitioners are justified invoking the jurisdiction of this court under Article 226 of the Constitution of India.

7.2 The attention of the court was invited to the

announcement dated 09.09.2015 issued by the Ministry of Finance (Annexure "A" to the petition) wherein, it has been stated that "*Income Tax Returns Forms 3, 4, 5, 6 and 7 which are used by the companies, firms, individuals engaged in proprietary business/professional etc., whose accounts are to be audited, were notified for assessment year 2015-16 on 29.07.2015. The forms were e-enabled and were available on the e-filing website of the Department from 7th August, 2015 giving enough time for compliance. The changes made to these forms are not extensive as compared to the earlier years. xxxx After consideration of all facts, it has been decided that the last date for filing of returns due by 30th September, 2015 will not be extended. The taxpayers are advised to file their returns in time to avoid last minute rush.*" It was submitted that prior to 7th August, 2015, the relevant forms were not e-enabled and made available to the assessees. Therefore, the question that arises for consideration is that when the law provides for a period of 180 days to assessees who are subject to tax audit, to say that they have lost 129 days and yet, the assessees must now file the returns of income within the prescribed period, is arbitrary. It was submitted that in the aforesaid announcement, it had been stated that the changes in the forms are not extensive as compared to earlier years. However, the assessees would not be aware of the extent of changes till the form is notified. It was submitted that if the forms notified in the previous year were to continue, it would be a different scenario. It was argued that unlike physical forms where everything could be ready, in the case of online forms, that is not the position, because every detail has to be punched in and that it cannot be expected of the assessees to be ready if the system is not

available. It was submitted that in the case of assessees who are required to file returns of income in forms ITR-1, ITR-2, ITR-2A, ITR-4S, the due date for filing return came to be extended till 31st August, 2015 and there is no reason as to why such benefit cannot be extended to the assessees who are required to file returns on income in Forms ITR-3, ITR-4, ITR-5, ITR-6 and ITR-7. It was submitted that curtailing the period for filing the tax returns by providing the utilities for filing the same at a belated stage is not reasonable and is arbitrary. It was submitted that for 122 days, the forms were not available and it is within the remainder period that the returns of income of all the assessees belonging to the categories which are required to file returns in Forms ITR-3, ITR-4, ITR-5, ITR-6 and ITR-7, were required to be filed. It was, accordingly, urged that the action of the respondents in not granting time for filing income tax returns, being unreasonable and arbitrary, necessary directions are required to be issued to the first respondent Board to extend the period till 31st November, 2015.

8 Vehemently opposing the petition, Mr. M. R. Bhatt, Senior Advocate, learned counsel for the respondents submitted that the reliefs prayed for in the present petition reveal that the same is more in the nature of a public interest litigation and therefore, should have been filed by way of a public interest litigation. It was submitted that no cause of action of infringement of any Article of the Constitution has been brought to the notice of the court. It was submitted that the first petitioner which is a federation of professionals cannot, in any manner, be said to be prejudiced by the non-extension of the date for filing the income tax returns. It was contended

that there is nothing in the petition to show that the fundamental rights of a citizen has been infringed. It was submitted that while the utility was made available on 7th August, 2015, the only changes are with regard to giving details of foreign assets and bank accounts and that 98% of the data could have been compiled in advance and kept ready. It was submitted that the major part of the computation has to be done before filing the tax returns. It was submitted that once the finance bill is presented and debated, it is only after the President gives his assent that the Act is enacted. In the present case, the President gave his assent on 14.05.2015 and the utility has been made available on 07.08.2015 and hence, it cannot be said that there is an inordinate delay in providing the same. It was submitted that once everything that was required to be done on the part of the assessee was ready, mere punching of data would not entitle the federation to move a petition seeking extension of time. It was submitted that while it is true that the petitioners had made representations, however, it is not as if such representations have not been considered. It was pointed out that the first respondent Board has replied to the said representations by virtue of the announcement dated 9th September, 2015. It was further submitted that the petition is vague and no data is forthcoming as regards how many returns could not be uploaded. Therefore, on a presumption, there is no warrant for exercise of powers under Article 226 of the Constitution of India. It was submitted that no facts have been stated as regards in case of how many assessees, it is not possible to file the income tax returns within the prescribed period. Reliance was placed upon the decision of the Delhi High Court in the case of ***Avinash Gupta v. Union of India*** rendered on 21st

September, 2015 in W.P.(C) No.9032 of 2015 wherein, the court had dismissed a similar petition seeking extension of due date for filing the income tax returns. It was submitted that the writ petition has been filed without disclosing any cause of action or infringement of fundamental rights.

8.1 As regards the contention that the statute provides for 180 days for filing of income tax returns, it was submitted that neither the Act nor the rules provide that the forms for filing income tax returns have to be notified/e-enabled before 1st April. It was submitted that there is no right conferred by the statute granting 180 days for filing income tax returns, therefore, the contention that the assessees have 180 days for filing tax returns is without any basis. It was submitted that the Punjab & Haryana High Court in the petition filed before it, has not granted any interim relief and the view adopted by the Delhi High Court is not contrary to the provisions of the Act so as to discard the same. It was submitted that the Delhi High Court was alive to the situation prevailing and has not thought it fit to grant any relief. Reliance was placed upon a decision of this court in the case of ***Commissioner of Income Tax v. Deepak Family Trust (No.1)***, (*1995) 211 ITR 575*, wherein the court had placed reliance upon the decision of the Bombay High Court in ***Maneklal Chunilal and Sons Ltd. v. Commissioner of Income Tax****, (1953) 24 ITR 375*, wherein it was observed that “in conformity with the uniform policy which we have laid down in income tax matters, whatever our own view may be, we must accept the view taken by another High Court on interpretation of the section of a statute which is an all-India statute”. The court also referred to the decision of the Bombay High Court in ***CIT v. Chimanlal J. Dalal and Co.***,

(1965) 57 ITR 285, wherein it was observed that, "Barring some exceptions, it has been the general policy laid down by this court in income tax matters that whatever our own view may be, we should follow the view taken by another High Court on the interpretation of a section". It was submitted that therefore, once the Delhi High Court has taken a view, it is not permissible for this court to take a different view.

8.2 It was urged that the Board being an expert body, is alive to the difficulties of the tax payers and has stood up when such difficulties had arisen. Moreover, in the absence of any data as regards the actual hardship, grant of the reliefs prayed for would be detrimental to the policy decision of the Board.

8.3 The learned counsel further submitted that in the facts of the present case, there is no issue with regard to filing of tax audit return under section 44AB of the Act and the issue relates only to the income tax returns. The attention of the court was invited to the fact that as per the guidelines of ICAI, a Practicing Chartered Accountant, as an individual or as a partner in a firm, can conduct only upto 60 tax audits under section 44AB of the Act. This guideline ensures that the work of conducting audit while filing the tax returns is not uneven and constitutes a manageable workload for the professional concerned. Thus, the practicing Chartered Accounts have a limited, pre-known and well-defined workload and with proper time and work management, the audit work should not face any time-constraints. It was submitted that under the circumstances, there is no merit in the argument that Chartered Accountants are not getting sufficient time for finalizing and filing the audit reports as far as returns for

assessment year 2015-16 having the due date of 30th September are concerned. The attention of the court was further invited to the implications of business process, to submit that any change in due date by way of extension has to be given effect by change in return preparation software to handle modification in interest under section 234A/234B of the Act. Similar changes have to be made in processing software to calculate the refund accurately which requires substantial changes to be made in business rules and which in turn also delays the process of handling and processing of returns and its consequential actions. It was further submitted that on writ petitions filed by various stake holders on this issue in their respective jurisdictional High Courts like, Delhi, Karnataka and Rajasthan High Courts have not granted any relief to the petitioners and therefore, in case, this court decides to allow the petition pertaining to its jurisdiction, thus deviating from the stand of the CBDT and decisions of other High Courts, it may create anomalous situation in administering the Income Tax Act which is a Central Act.

8.4 The attention of the court was invited to the decision of the Karnataka High Court in ***Karnataka State Chartered Accountants Association v. Union of India***, rendered on 28.09.2015 in Writ Petitions No.41109 and 41110 of 2015 wherein, the court has observed that extension of time for submission of income tax returns is the domain of the Indian Government and the Central Board of Direct Taxes, and had directed the Central Board of Direct Taxes to consider the representations dated 15th September, 2015 peremptorily by 29th September, 2015. Reference was also made to the decision of the Rajasthan High Court in ***The Rajasthan Tax***

Consultants Association v. Union of India rendered on 28th September, 2015 in D. B. Civil Writ (PIL) Petition No.11034 of 2015 wherein, the court accepted the reasons given by the Government in the communication dated 9th September, 2015 and observed that it was of the view that the court should not interfere in a policy decision of the Government and dismissed the petition after noting that the Delhi High Court has also dismissed a similar petition.

8.5 Referring to the pleadings in the petition, it was submitted that no ground has been made out with regard to the hardships. It was reiterated that in all, a Chartered Accountant has seven weeks to deal with 60 tax audits and a corresponding number of income tax returns, which cannot be said to be not sufficient for the purpose of uploading the income tax returns. It was submitted that two other High Courts have rejected such petitions and the third High Court has not entertained the petition and relegated the petitioner therein to the Board and therefore, this court may not interfere with the policy decision taken by the Board in exercise of powers under section 226 of the Constitution of India.

8.6 In support of such submission, the learned counsel placed reliance upon the decision of the Supreme Court in the case of ***Jal Mahal Resorts Private Limited v. K. P. Sharma and others***, *(2014) 8 SCC 804,* and more particularly, paragraphs 137 and 140 thereof for the proposition that if the court chooses to overrule the correctness of such administrative decision and merits of the view of the entire body including the administrative, technical and financial experts by taking note of hair splitting submissions at the instance of a PIL petitioner

without any evidence in support thereof, the PIL petitioners shall have to be put to strict proof and cannot be allowed to function as an extraordinary and extra-judicial ombudsmen questioning the entire exercise undertaken by an extensive body which include administrators, technocrats and financial experts. The court was of the considered view that this might lead to a friction if not collision among the three organs of the State and would affect the principle of governance engrained in the theory of separation of powers. The decision of the Supreme Court in the case of ***Federation of Railway Officers Association and others v. Union of India****, (2003) 4 SCC 289,* was cited for the proposition that in examining a question of the nature where a policy is evolved by the Government, judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise, the court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the court will not interfere with such matters. Reliance was also placed upon the decision of the Supreme Court in the case of ***Council of Scientific and Industrial Research and Others v. Ramesh Chandra Agrawal and another****, (2009) 3 SCC 35*, wherein the court had held that the State is entitled to fix a cut-off date. Such a decision can be struck down only when it is arbitrary. Its invalidation may also depend upon the question as to whether it has a rational nexus with the object sought to be achieved. The Court observed that by choosing a cut-off date, no illegality was committed. Ex-facie, it cannot be

said to be arbitrary. Reliance was also placed upon the decision of the Supreme Court in the case of ***State of U. P. and another v. Johri Mal***, *(2004) 4 SCC 714*, with particular reference to paragraphs 28 to 30 thereof, for the proposition that the scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution of India would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether power is statutory, quasi-judicial or administrative. The court observed that the limited scope of judicial review, succinctly put, is :

(i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies;

(ii) A petition for a judicial review would lie only on certain well-defined grounds;

(iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal;

(iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a Court is limited to seeing that Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice;

(v) The Courts cannot be called upon to undertake the Government duties and functions. The Court shall not ordinarily interfere with a policy decision of the State.

Social and economic belief of a Judge should not be invoked as a substitute for the judgment of the legislative bodies.

8.7 It was emphatically argued that there are no pleadings of hardships, nor is it the case of the petitioners that the decision of the respondents of 9th September, 2015 is mala fide or capricious. It was submitted that the submission regarding 180 days being available to the assessees is not backed by any statutory provision. It was urged that the Income Tax Act being an all-India statute, an anomalous situation would be created if a view different from other High Courts is taken by this court. It was submitted that, therefore, unless apparent hardship or arbitrariness is pointed out, this court would not interfere. It was, accordingly, urged that the petition being devoid of merits, deserves to be dismissed.

9 In rejoinder, Mr. Soparkar, learned counsel for the petitioners submitted that each member of the federation is directly affected by the non-extension of the date for filing the income tax returns as they have to work overnight for filing of tax returns before the due date and in many cases they are also assessees. It was submitted that the second petitioner is himself an assessee who is subject to audit and hence, is directly affected by the non-extension of the due date for filing the returns and hence, the question of filing public interest litigation does not arise. It was submitted that filing of return does not mean only punching of data, details have to be collected which could not have been done till 7th August, 2015 when the online details were available. As regards the contention that the changes in the online forms are minor in

nature, it was submitted that unless the assessees know about the nature of the changes made, it is immaterial as to whether the changes are minor or major. It was submitted that such a contention could be available to the respondents provided the old form was continued. However, till the new form was issued, there was a total blackout and it was not permissible for the assessees to file their returns till the utility was made available on 7th August, 2015. As regards the contention that the statute nowhere provides for 180 days for filing of returns, it was pointed out that the income tax return is required to be filed after 31st March till 30th September in case of the assessees who are subject to audit and hence, the assesses have 180 days available for filing the returns.

9.1 As regards the contention that the President has given the assent only in May, 2015, it was submitted that the Finance Act, 2015 deals with returns to be filed in the subsequent year and not in the current year and hence, the Act which was given assent would be applicable to the subsequent assessment year and not this assessment year and hence, the contention that there was delay in prescribing the online utility on account of the delay on the part of the President in granting assent, is thoroughly misconceived.

9.2 The learned counsel placed reliance upon a decision of the Supreme Court in the case of ***L. Hirday Narain v. Income Tax Officer, Bareilly***, *(1970) 78 ITR 26*, for the proposition that the words “it shall be lawful” conferred a faculty or power, and they did not of themselves do more than confer a faculty or power. But there may be something in the nature of the thing empowered to be done, something in the object for

which it is to be done, something in the conditions under which it is to be done, something in the title of the persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so. It was submitted that the petitioners have a right as assessees to believe that they would have enough time to file their income tax returns. It was submitted that the Board is vested with powers coupled with a duty to exercise them, when facts justify.

9.3 As regards the contention that necessary details with regard to the number of assessees who have found it difficult to submit the income tax returns before the due date having not been made available, it was submitted that it is the respondents who would know as to how many persons have filed returns. It was submitted that the onus is cast upon the respondents to show that in spite of delay on their part, it is possible to file the tax returns before the prescribed due date. It was submitted that the Board which is the authority which is vested with the powers under section 119 of the Act to extend the due date, has not exercised such powers, and therefore, occasion has arisen for the petitioners to approach the court. It was submitted that the law expects the respondents to be reasonable and that non-extension of the due date for filing the income tax returns cannot in any manner be said to be reasonable.

10 As regards the contention that a Chartered Accountant has in all to deal with 60 tax audits and corresponding income

tax returns, and therefore, it cannot be said that the same cannot be filed within seven weeks, the attention of the court was invited to the provisions of section 139 of the Act to point out that insofar as 60 audits are concerned, the Chartered Accountant is not required to only deal with the assessees who are subject to tax audit under section 44AB of the Act. While the number of assessees who are subject to tax audit under section 44AB of the Act may be limited to 60, there are various other assessees in respect of whom the income tax returns have to be filed. Reference was made to Explanation 2 to section 139 of the Act, which defines “due date”, to point out that the same provides that the due date for filing income tax returns in respect of different categories of assessees. Referring to sub-rule (1) of rule 12 of the Income Tax Rules, 1962 (hereinafter referred to as “the rules”), it was pointed out that various categories of assessees and nature of forms are prescribed therein. It was submitted that the present petition does not relate to the assessees covered under clauses (a), (b) and (ca) thereof. It was pointed that in case of assessees covered by clause (c) in relation to whom the Form ITR-3 is required to be notified, are not subject to tax audit. Similar is the case with the assessees covered by clauses (d), (f) and (g) who may be thousands in number. Under the circumstances, the submission that a Chartered Accountant has to prepare tax audit report and has to conduct only 60 tax audits and correspondingly 60 income tax returns in respect of which the period of seven weeks is sufficient, clearly disregards the other assessees in relation to whom also the utility was made available only with effect from 7th August, 2015. It was submitted that thus, the relevant forms for e-filing of returns were earlier prescribed only in case of the assessees falling

under clauses (a), (b) and (ca), namely, the assessees having salary income, etc. It was submitted that majority of the assessees fall in categories in whose cases utility for filing the returns was provided only on 7th August, 2015. therefore, the view advanced on behalf of the Board is not in consonance with the provisions of the Act and the rules and the Board has failed to appreciate the Scheme of the Act and the rules and therefore, the argument that income tax returns could be filed within the limited period of seven weeks is ex-facie bad.

10.1 As regards the contention that it is not permissible for the court to take a different view from that adopted by the Delhi, it was submitted that the question involved in the petition does not involve interpretation of a statutory provision. The attention of the court was also invited to the decision of this court in the case of ***N. R. Paper Board Limited v. Deputy Commissioner of Income Tax***, *(1998) 234 ITR 733*, wherein the court after considering the decision of the Bombay High Court in the case of *Maneklal Chunilal and Sons Ltd. v. CIT* (supra), observed that the High Court has nowhere laid down any absolute proposition in that decision that it lacked the power to take a different view in cases where some contrary view was expressed. The court observed that there can be no dispute about the proposition that in income tax matters which are governed by an all-India statute, when there is a decision of a High Court interpreting a statutory provision, it would be a wise judicial policy and practice not to take a different view. However, this is not an absolute proposition and there are certain well known exceptions to it. In cases where a decision is sub silentio, per incuriam, obiter dicta or based on a concession or takes a view which it is impossible to arrive at or

there is another view in the field or there is a subsequent amendment of the statute or reversal or implied overruling of the decision by a High Court or some such or similar infirmity is manifestly perceivable in the decision, a different view can be taken by the High Court.

10.2 Dealing with the above referred decisions of the Karnataka High Court and the Rajasthan High Court, on which reliance has been placed on behalf of the respondents, the learned counsel submitted that the said courts have refused to interfere on the ground that the respondents had taken a policy decision. It was submitted that in this regard, this court in Special Civil Application No.12656 of 2014 and allied matter, in the preceding year, has already repelled such argument. It was submitted that as a broad proposition of law, normally, the court would not interfere with the policy decision; however, there are no fetters on the powers of the High Court of judicial review in case when facts warrant interference.

10.3 As regards the submission that the Income Tax Act being all-India Act, taking a different view would create an anomalous position, the learned counsel once again placed reliance upon a decision of this Court in the case of *N. R. Paper Board Limited v. Deputy Commissioner of Income Tax* (supra). It was submitted that in any case, neither the Rajasthan High Court nor the Karnataka High Court has considered the interpretation of section 119 of the Act. It was submitted that when the hardship caused to the petitioners and other assessees is on account of the default on the part of the respondents, there is equally a duty on their part to act fairly.

10.4 The learned counsel also invited the attention of the court to the decision of the Punjab and Haryana High Court in the case of ***Vishal Garg and others v. Union of India and another*** rendered today, that is, on 29th September, 2015 in CWP No.19770 of 2015, wherein the court, after considering the totality of the facts of the case and after considering the decisions of the Rajasthan High Court, Delhi High Court, has considered it appropriate to extend the date for e-filing of returns upto 31st October, 2015.

10.5 As regards the contention based upon the above referred decisions of the Supreme Court that in a matter of policy decision, this court would not interfere, the learned counsel reiterated the proposition of law laid down by the Supreme Court in the case of ***L. Hirday Narain v. Income Tax Officer, Bareilly*** (supra), to submit that when there is a power coupled with duty, there is an obligation on the respondents to exercise the same if the facts so warrant. As regards the decisions on which reliance had been placed by the learned counsel for the revenue, it was submitted that in those decisions, the Government did not owe any obligation. Besides, the issue involved in the present case does not relate to economic policy and is a simple issue of failure to exercise discretion where the facts justify exercise of such discretion. It was, accordingly, urged that the decision of the Board not to extend the due date for filing return of income, suffers from the vice of legal mala fides.

11. Mr. Bhatt, learned counsel for the respondents in response to the contention that there are several other

categories of assessees than those who are subject to tax audit, submitted that in case of all other assessees, only details are required to be punched in the prescribed forms and therefore, no case of hardship has been made out. It was also urged that just because the petitioners have come to the court, is no reason to grant them relief.

11 The controversy involved in the present case lies in a very narrow compass. The petitioners and other assessees covered under the categories to which the petition relates, are ordinarily required to file their returns of income any time from 1st April till 30th September of the relevant assessment year. By virtue of rule 12 of the rules, all the assessees have to file the income tax returns electronically, that is, online. For this purpose, the corresponding utility relating to each category of assessees in the nature of Forms No.ITR-3, ITR-4, ITR-5, ITR-6 and ITR-7 are required to be provided by the respondents. It is an admitted position that in the year under consideration, the relevant utility has been provided only with effect from 7th August, 2015. Therefore, prior to 7th August, 2015, it was not possible for any of the assessees who were required to file income tax returns in the above referred forms, to file their returns of income. Therefore, while in the ordinary course, the assessees falling in the above categories have a period of 180 days to compile relevant details and to file the income tax returns by 30th September, in view of the fact that the utility for filing the income tax returns has been furnished only on 7th August, 2015, such period stands substantially curtailed. Having regard to the difficulties faced by the Chartered Accountants and other professionals as well as the assessees, the petitioners made representations to the respondent Board

for exercising powers under section 119 of the Act and extending the due date for filing the income tax returns prescribed under Explanation 2 to section 139 of the Act. However, by the announcement dated 9th September, 2015, such request has been turned down and it has been stated that the last date for filing of returns being 30th September, 2015 will not be extended. As noticed hereinabove, in case of other categories of assessees who are required to file tax returns in Form ITR-1, ITR-2, ITR-2A, ITR-4S, in whose case also, there was a delay in furnishing the necessary utility, the Board had extended the due date for filing the income tax returns. The stand of the Board is that the period of seven weeks which is available to the petitioner and other assessees for filing online income tax returns, is sufficient and therefore, there is no reason for extending the due date for filing the income tax returns.

12. While it is true that the powers under section 119 of the Act are discretionary in nature and it is for the Board to exercise such powers as and when it deems fit. However, it is equally true that merely because such powers are discretionary, the Board cannot decline to exercise such powers even when the conditions for exercise of such powers are shown to exist. At this juncture reference may be made to the decision of the Supreme Court in the case of ***UCO Bank v. CIT*****,** *(1999) 4 SCC 599 (1999) 237 ITR 889***,** wherein the court had occasion to interpret section 119 of the Act. The court held thus:

"9. *What is the status of these circulars? Section 119(1)*

of the Income Tax Act, 1961 provides that:

"119. (1) The Central Board of Direct Taxes may, from time to time, issue such orders, instructions and directions to other Income Tax Authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board:

Provided that no such orders, instructions or directions shall be issued—

(a) so as to require any Income Tax Authority to make a particular assessment or to dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions."

(emphasis supplied)

Under sub-section (2) of Section 119, without prejudice to the generality of the Board's power set out in sub-section (1), a specific power is given to the Board for the purpose of proper and efficient management of the work of assessment and collection of revenue to issue from time to time general or special orders in respect of any class of incomes or class of cases setting forth directions or instructions, not being prejudicial to assessees, as the guidelines, principles or procedures to be followed in the work relating to assessment. Such instructions may be by way of relaxation of any of the provisions of the sections specified there or otherwise. The Board thus has power, inter alia, to tone down the rigour of the law and ensure a fair enforcement of

its provisions, by issuing circulars in exercise of its statutory powers under Section 119 of the Income Tax Act which are binding on the authorities in the administration of the Act. Under Section 119(2)(a), however, the circulars as contemplated therein cannot be adverse to the assessee. Thus, the authority which wields the power for its own advantage under the Act is given the right to forego the advantage when required to wield it in a manner it considers just by relaxing the rigour of the law or in other permissible manner as laid down in Section 119. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases which can be properly categorised as belonging to a class, can thus be given the benefit of relaxation of law by issuing circulars binding on the taxing authorities."

13. Thus, the power under section 119 of the Act is a beneficial power given to Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. In the case at hand, as is evident from the facts noted hereinabove, in the normal course, assessees who are subject to audit as well as other categories of assessees referred to hereinabove, can file their returns of income from 1st April to 30th September of the year in question. In view of the provisions of rule 12 of the rules, whereby, the assessees who are subject to tax audit,

as well as the assessees referred to hereinabove, are required to file the tax returns electronically, that is, online. However, for filing the tax returns, appropriate utility is required to be made available by the respondents to the assessees. Therefore, till such utility is provided by the respondents, it is not possible for the assessees to file their returns of income. Therefore, there is a duty cast upon the respondents to ensure that necessary utility for e-filing of the income tax returns is made available to various categories of assessees at the beginning of the assessment year so that the assessees can plan their tax matters accordingly. However, as noted hereinabove, the utilities for e-filing of returns have been made available only with effect from 7th August, 2015, thereby curtailing the time available for filing the income tax returns to a great extent. According to the petitioners, such curtailment of time causes immense hardship and prejudice to the petitioners and other assessees belonging to the above categories, whereas the respondent Board, on the other hand, has taken an adamant stand not to extend the time for e-filing of the returns despite the fact that the entire situation has arisen on account of default on the part of the Department and not the assessees.

14. It may be recalled that in relation to assessment year 2014-15, the respondent Board had extended the time for filing the tax audit reports, but had not extended the time for filing the returns and the petitioners were constrained to approach this court for extension of the due date for filing return of income. In that case, this court has, inter alia, observed thus :

"50. We are also actuated by the fact that the entire situation is arising not on account of any contribution on the part of either the professionals or the assesses leading to such a situation. In the present case, with the advancement of the technology, it is always commendable that the department takes recourse to the technology more and more. With the possible defects having been found in utility software in use in the previous year, the required changes in the clarification or the new format of such utility, if brought to the fore, the same would be desirable. At the same time, the complete black out for nearly a month's time would not allow accessibility to such utility software to the assessees, which has put them to a great jeopardy.

53. The CBDT derives its powers under the statute which enjoins upon the Board to issue from time to time such orders, instructions and directions to other income-tax authorities if found expedient and necessary for proper administration of the Act. Without prejudice to the generality of powers provided under sub-section (1) of section 119 of the Act, the CBDT also has specific powers to pass general or special orders in respect of any class or class of cases by way of relaxation of any of the provisions of section, which also includes section 139 of the Act. If the Board is of the opinion that it is necessary in the public interest to so do it. For avoiding the genuine hardship in any case or class of cases, the CBDT if considers desirable and expedient, by general or special order, it can issue such orders, instructions and directions for proper administration of this Act. All such authorities engaged in

execution of the Act are expected to follow the same. Any requirement contained in any of the provisions of Chapter IV or Chapter VIA also can be relaxed by the CBDT for avoiding genuine hardship in any case or class of cases by general or special orders. This provision, therefore, gives very wide powers to the CBDT to pass general or special orders whenever it deems it necessary or expedient to so do it in respect of any class of income or class of cases. It has not only to see the public interest for so doing, but also for avoiding the genuine hardship in any particular case or class of cases, such powers can be exercised.

54. Reverting to the matters on hand, a very peculiar situation has arisen portraying the genuine hardship to the assessee, as also to the tax consultants, by way of representations made to the Board, it would have been desirable and expedient on the part of the CBDT to have considered such request and exercise the powers by way of a relaxation. What all that has been sought is to make the due date for filing the tax return harmonious with the filing of the TAR and without jeopardizing the issue of collection of tax, it was not impossible to exercise such powers of relaxation of provision prescribing extension of the due date.

55. While examining the CBDT's powers exercisable under section 119 of the Act, of course, in some other context, the Apex Court has held and observed thus:

"9. What is the status of these circulars? Section 119(1) of the Income-tax Act, 1961 provides that, "The Central

Board of Direct Taxes may, from time to time, issue such orders, instructions and directions to other Income-tax authorities as it may deem fit for the proper administration of this Act and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board. Provided that no such orders, instructions or directions shall be issued (a) so as to require any Income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner: or (b) so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions." Under sub-section (2) of Section 119 without prejudice to the generality of the Board's power set out in sub-section (1) a specific power is given to the Board for the purpose of proper and efficient management of the work of assessment and collection of revenue to issue from time to time general or special orders in respect of any class of incomes or class of cases setting forth directions or instructions, not being prejudicial to assesses, as the guidelines, principles or procedures to be followed in the work relating to assessment. Such instructions may be by way of relaxation of any of the provisions of the sections specified there or otherwise. The Board thus has power, inter alia, to tone down the rigor of the law and ensure a fair enforcement of its provisions, by issuing circulars in exercise of its statutory powers under Section 119 of the Income-tax Act which are binding on the authorities in the administration of the Act. Under Section 119(2)(a) however, the circulars as contemplated therein cannot be adverse to the assessee. Thus, the authority

which wields the power for its own advantage under the Act is given the right to forgo the advantage when required to wield it in a manner it considers just by relaxing the rigour of the law or in other permissible manners as laid down in Section 119. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases which can be properly categorised as belonging to a class, can thus be given the benefit of relaxation of law by issuing circulars binding on the taxing authorities."

55.1 Thus as held by the Apex Court the powers given to the Board are beneficial in nature to be exercised for proper administration of fiscal law so that undue hardship may not be caused to the taxpayers. The purpose is of just, proper and efficient management of the work of assessment and the public interest.

58. Consequences that would follow on account of the delay in filing the return of income also are weighing factors for the Court to consider such request. Being conscious of the fact that the writ of mandamus, which is highly prerogative writ is for the purpose of compelling the authorities of any official duties, officially charged by the law either refuses or fails to perform the same, the writ of mandamus is required to be used for the public purpose, particularly, when the party has not other remedy

available. It is essentially designed to promote justice.

60. Keeping in mind the scope of writ jurisdiction as detailed in the decision hereinabove, these petitions deserve consideration. In absence of any remedy available, much less effective to the stakeholders against the non-use of beneficial powers by the Board for the larger cause of justice, exercise of writ jurisdiction to meet the requirements of circumstances has become inevitable.

62. Such extension needs to be granted with the qualification that the same may not result into non-charging of interest under section 234A. Simply put, while extending the period of filing of the tax return and granting benefit of such extension for all other provisions, interest charged under section 234A for late filing of return would be still permitted to be levied, if the Board so choses for the period commencing from 1.10.2014 to the actual date of filing of the return of income. Those tax payers covered under these provisions if choose to pay the amount of tax on or before the 30th September, 2014, no interest in any case would be levied despite their filing of return after the 30th September, 2014.

64. We are not inclined to stay new utility for one year as sufficient measures are already taken by the Board to redress this grievance. However, it needs to be observed at this juncture that any introduction or new utility/software with additional requirement in the middle of the year ordinarily is not desirable. Any change unless inevitable can be planned well in advance, keeping in

focus that such comprehensive process re-engineering may not result in undue hardship to the stakeholders for whose benefit the same operates.

76. Besides, no grave prejudice would be caused to the revenue if the due date for filing the return of income is also extended till the date of filing of the tax audit report, whereas the assessee would be visited with serious consequences as referred to hereinabove in case of non-filing of return of income within the prescribed period as he would not be in a position to claim the benefit of the provisions referred to hereinabove. The apprehension voiced by the revenue that in case due date for filing return of income is extended, due date for self-assessment also gets automatic extension, resulting into delay in collection of self-assessment tax which is otherwise payable in September, 2014, can be taken care of by providing that the due date shall stand extended for all purposes, except for the purposes of Explanation 1 to section 234A of the Act."

15. It may be noted that despite the fervent hope expressed by the court that the respondents in future may plan any change well in advance, a similar situation has prevailed in the present year also and the utilities for e-filing of income tax returns have been made available as late as on 7th August, 2015, leaving the petitioners and other assessees with less than one third of the time that is otherwise available under the statute.

16. It may be noted that in the facts of the above case, there

was a blackout for a period of one month, whereas in the year under consideration, the utility was not made available till 7th August, 2015. Thus, it was not possible for any of the assessees who are required to file returns in Forms No.ITR-3, ITR-4, ITR-5, ITR-6 and ITR-7, to file income tax returns before such date.

17. Another notable aspect of the matter is that as contended on behalf of the petitioners, non-filing of returns before the due date would result into the assessees being deprived of their right to file the revised return or claiming loss, whereas insofar as the revenue is concerned, no hardship or prejudice is likely to be caused, inasmuch as the interest of the revenue can be taken care of by providing that the due date shall stand extended for all purposes, except for the purposes of Explanation 1 to section 234A of the Act. Under the circumstances, when no prejudice is caused to the revenue and the assessees are put to great hardship on account of the short period within which the income tax returns are to be filed, it was expected of the Board to exercise the discretionary powers vested in it under section 119 of the Act to ameliorate the difficulties faced by the assessees on account of no default on their part, at least to a certain extent, by extending the due date for filing the income tax returns for a reasonable time. In the opinion of this court, the Board should not create a situation whereby the assessees are required to knock the doors of the court year after year, more so, when on account of the delay on the part of the respondents, it is the assessees who would have to face the consequences of not filing the returns in time. The contention that no prejudice is caused to the petitioners/assessees, therefore, does not merit

acceptance.

18. Unfortunately, however, despite the aforesaid position, the Board has declined to exercise the discretion vested in it under section 119 of the Act to come to the rescue of the assessees and grant them some relief, leaving the court with no option but to direct the Board to extend the due date for filing the income tax returns under section 139 of the Act from 30th September, 2015 to 31st October, 2015 so as to alleviate to a certain extent, the hardships caused to the assessees on account of delay in providing the utilities.

19. Significantly, one of the factors which appears to have weighed with the Board while turning down the request for extension of the due date for filing returns is that as per the guidelines of ICAI, a practicing Chartered Accountant, as an individual or as a partner of a firm, can conduct only upto sixty tax audits under section 44AB of the Act and corresponding number of tax returns are required to be filed, in respect of which, the seven weeks available to them should be sufficient. In this regard it may be germane to refer to rule 12 of the rules, which prescribes the different forms under which assessees belonging to various categories enumerated thereunder are required to file their returns. Clause (c) of sub-rule (1) of rule 12 prescribes Form No.ITR-3 in case of a person being an individual or Hindu Undivided family who is a partner in a firm and where income chargeable to income-tax under the head “Profits and gains of business and profession” does not include any income except the categories enumerated therein. Clause (d) of rule 12(1) prescribes Form No. ITR-4 in

the case of a person being an individual or a Hindu undivided family or other than the individual or Hindu undivided family referred to in clause (a) or (b) or (c) or (ca) deriving income from a proprietory business or profession. Clause (e) prescribes Form No. ITR-5 in the case of a person not being an individual or a Hindu undivided family or a company or a person to which clause (g) applies. Clause (f) prescribes Form No. ITR-6 in the case of a company not being a company to which clause (g) applies and clause (g) prescribes Form No.ITR-7 in the case of a person including a company whether or not registered under section 25 of the Companies Act, 1956 which is required file return under the relevant sub-sections of section 139 of the Act mentioned thereunder. Not all the aforesaid classes of assessees are required to be audited under section 44AB of the Act. Therefore, it is not just assessees who are subject to tax audit under section 44AB of the Act who are affected by the non-extension of due date but assessees belonging to all the above categories who may not be subject to tax audit under section 44AB. The number of tax audits conducted by a Chartered Accountant may be limited to 60, but the total number of assessees that he deals with is not limited to 60, as a large number of assessees may belong to the categories which are not subject to tax audit under section 44AB of the Act.

20. The Board while not extending the due date for filing return was also of the view that due date should not be extended just for the benefit of those who have remained lax till now for no valid reason in discharging their legal obligations. It may be noted that despite the fact that ordinarily the ITR Forms which should be prescribed and made

available before the 1st of April of the assessment year, have in fact, been made available only on 7th August, 2015 and the assessees are given only seven weeks to file their tax returns. Therefore, laxity, if any, evidently is on the part of the authority which is responsible for the delay in making the utility for E-Filing the return being made available to the assessees. When the default lies at the end of the respondents, some grace could have been shown by the Board instead of taking a stand that such a trend may not be encouraged. Had it not been for the laxity on the part of the respondents in providing the utilities, there would not have been any cause for the petitioners to seek extension of the due date for filing tax returns.

21. As regards the decision of the Delhi High Court on which reliance has been placed by the learned counsel for the petitioners, it may be noted that the learned Single Judge has observed that the claim of the petitioners that it is entitled to 180 days for filing the return of income is not prescribed either in the statute or rules, whereas as noticed hereinabove, the scheme of the Act clearly indicates that ordinarily a period of 180 days is available to an assessee who is required to file the income tax return by 30th September, 2015 and consequently, the time prescribed by the Act gets curtailed on account of non-availability of the necessary utility for filing the return online. Besides, the Delhi High Court has not taken into consideration the factor that unless the utility is made available, the assessees would not be aware of the details which they are required to furnish, inasmuch as, the delay in providing the utilities is on account of the changes made in the corresponding forms. It may also be pertinent to note that the

court in paragraph 22 of the judgment has expressed the view that there is some merit, if not legal then otherwise, in the grievance of the petitioner. The court noticed that the counsel for the respondents was unable to give reasons for the forms etc. not being available at the beginning of the assessment year on 1st April of every year and the same thereby causes inconvenience to the practitioners of the subject. The court further observed that there is sufficient time available to the Government, after the Finance Act of the financial year, to finalise the forms and if no change is intended therein, to notify the same immediately. The court found no justification for delay beyond the assessment year in prescribing the said forms. Accordingly, while not granting relief to the petitioner for the current assessment year, the court directed the respondents to, with effect from the next assessment year, at least ensure that the forms etc. which are prescribed for the Audit Report and for filing the ITR are available as on 1st April of the assessment year unless there is a valid reason therefor and which should be recorded in writing by the respondents themselves, without waiting for any representations to be made. The court further observed that the respondents, while doing so, to also take a decision whether owing thereto any extension of the due date is required to be prescribed and accordingly notify the public.

22. As regards the decision of the Karnataka High Court, the court has merely relegated the petitioners therein to the CBDT for the consideration of their representation and does not lay down any proposition of law. The Rajasthan High Court has expressed the view that the decision contained in the announcement dated 9th September, 2015 being a policy

decision, the court should not interfere. The court, therefore, has not considered the non-exercise of discretionary powers under section 119 of the Act on the part of the Board despite the fact that the circumstances so warrant exercise of discretion in favour of the assessee.

23. The Punjab and Haryana High Court in the case of Vishal Garg v. Union of India (supra) has, having regard to the totality of facts and circumstances of the case, considered it appropriate to extend the due date for e-filing of returns upto 31st October, 2015. Therefore, instead of extending the due date to 30th November as prayed for in the petition, with a view to maintain consistency in the due date for e-filing of returns, this court is of the view that, the same date is required to be adopted.

24. The contention that once the Delhi High Court has taken a particular view, in relation to an all India statute, it is not permissible for this court to take a different view, does not merit acceptance in the light of the view taken by this court in N R Paper Board Limited v. Deputy Commissioner of Income tax (supra). Besides, even if such contention were to be accepted, there are conflicting decisions of different High Courts, inasmuch as, the Punjab and Haryana High Court has taken a view different from the Delhi High Court and hence, it is permissible for the court to adopt the view with which it agrees.

25. In the light of the above discussion, the petition partly succeeds and is accordingly allowed to the following extent.

The respondent Board is hereby directed to forthwith issue requisite notification under section 119 of the Act extending the due date for e-filing of the income tax returns in relation to the assessees who are required to file return of income by 30th September, 2015 to 31st October, 2015. The respondents shall henceforth, endeavour to ensure that the forms and utilities for e-filing of income tax returns are ordinarily made available on the 1st day of April of the assessment year. Rule is made absolute to the aforesaid extent with no order as to costs.

(HARSHA DEVANI, J.)

(A.G.URAIZEE,J)

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