

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1689 OF 2024

Al Jamia Mohammediyah Education Society
6/8A Hazarat Terrace Annexe, Sankli Street,
Byculla, Mumbai 400 008.

PAN NO.AAATA5693D

...Petitioner

Versus

1. Commissioner Of Income Tax (Exemptions)
Mumbai, Room No.601, 6th Floor, Cumballa
Hill, MTNL Building, Peddar Road,
Dr. Gopalrao Deshmukh Marg,
Mumbai-400 026

2. Union of India,
Through the Secretary,
Ministry of Finance, North Block,
New Delhi-110 001.

...Respondents

Mr. Sham V. Walve, with Mr. Tanzil Padvekar and Ms. Tejal
Kharkar, for Petitioner.
Mr. Dinesh Gulabani, with Mr. Prathmesh Bhosle, for Respondent-
Revenue.

CORAM: K. R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED: 15th APRIL 2024

ORAL JUDGMENT:- (*Per K.R.Shriram, J.*)

1. **Rule.** By consent, rule made returnable forthwith.
2. Petitioner, a charitable trust, which is registered under the Bombay Public Trusts Act, 1950 filed its return of income (“**ROI**”) for Assessment Year (“**AY**”) 2016-17 on 6th September 2016 declaring

income at 'Nil' and claiming a refund of Rs.70,710/-. Petitioner's accounts were audited and the audit report for AY 2016-17 was also filed. Along with the ROI, Petitioner had to file Form No.10B, which Petitioner did not file. It was filed only on 15th February 2020, with a delay of about 1257 days.

3. Petitioner filed an application under Section 119(2)(b) of the Income Tax Act, 1961 ("**the Act**") for condoning the delay in filing the Form 10B. By an order dated 25th October 2023, the application for condonation of delay came to be rejected. It is this order, which is impugned in this Petition.

4. In the application, Petitioner explained the cause for delay on the Chartered Accountant/Auditor. According to Petitioner, when it sent Form No.10B to the Department for submission after filing the return, the Departmental staff refused to acknowledge the manual submission and Petitioner was told to file the same online. This explanation was rejected because Petitioner then should have immediately uploaded the Form 10B but waited till 15th February 2020. Moreover, in view of non-filing of Form 10B, Petitioner's returns were processed on 17th March 2018 under Section 143(1) of the Act and Petitioner filed a rectification application only on 24th January 2020, which was disposed on 18th June 2020. Admittedly, the Form 10B was filed only on 15th February 2020, i.e., after filing the

rectification application. Respondent No.1 did not accept Petitioner's explanation of 'Oversight' and 'Inadvertent error', etc. as '*Sufficient Cause*' for condoning the delay. It is also observed in the impugned order that when Petitioner has been filing its returns and Form 10B for many years, Petitioner must be very well aware of the rules and regulations and, therefore, the delay cannot be condoned.

5. An affidavit in reply has been filed opposing the delay basically reiterating what is stated in the impugned order. Mr. Gulabani also made his submissions on the basis of the impugned order.

6. Admittedly, Petitioner is a charitable trust. Admittedly, Petitioner has been filing its returns and Form 10B for AY 2015-16, for AY 2017-18 to AY 2021-22 within the due dates. On this ground alone, in our view, delay condonation application should have been allowed because the failure to file returns for AY 2016-17 could be only due to human error. Even in the impugned order, there is no allegation of malafide. As held by the Gujarat High Court in *Sarvodaya Charitable Trust v. Income Tax Officer (Exemption)*¹, the approach in the cases of the present type should be equitable, balancing and judicious. Technically, strictly and liberally speaking, Respondent No.1 might be justified in denying the exemption by rejecting such condonation application, but an assessee, a public charitable trust with almost over thirty years, which otherwise

1 [2021] 125 taxmann.com 75 (Gujarat)

satisfies the condition for availing such exemption, should not be denied the same merely on the bar of limitation especially when the legislature has conferred wide discretionary powers to condone such delay on the authorities concerned. Paragraphs 30 and 31 of *Sarvodaya Charitable Trust (Supra)* reads as under:

"30. We may also refer to and rely upon a decision of the Delhi High Court in the case of G.V. Infosutions (P) Ltd. v. Dy: CIT [2019] 102 taxmann.com 397/261 Taxman 482. We may quote the relevant observation thus:

"8. The rejection of the petitioner's application under section 119(2)(b) is only on the ground that according to the Chief Commissioner's opinion the plea of omission by the auditor was not substantiated. This court has difficulty to understand what more plea or proof any assessee could have brought on record, to substantiate the inadvertence of its advisor. The net result of the impugned order is in effect that the petitioner's claim of inadvertent mistake is sought to be characterised as not bona fide. The court is of the opinion that an assessee has to take leave of its senses if it deliberately wishes to forego a substantial amount as the assessee is ascribed to have in the circumstances of this case. "Bona fide" is to be understood in the context of the circumstance of any case. Beyond a plea of the sort the petitioner raises (concededly belatedly), there can not necessarily be independent proof or material to establish that the auditor in fact acted without diligence. The petitioner did not urge any other grounds such as illness of someone etc., which could reasonably have been substantiated by independent material. In the circumstances of the case, the petitioner, in our opinion, was able to show bona fide reasons why the refund claim could not be made in time.

9. The statute or period of limitation prescribed in provisions of law meant to attach finality, and in that sense are statutes of repose; however, wherever the legislature intends relief against hardship in cases where such statutes lead to hardships, the concerned authorities-including Revenue Authorities have to construe them in a reasonable manner. That was the effect and purport of this court's decision in Indglonal Investment & Finance Ltd. (supra). This court is of the opinion that a similar approach is to be adopted in the circumstances of the case."

31. Having given our due consideration to all the relevant aspects of the matter, we are of the view that the approach in the cases of the present type should be equitable, balancing and

judicious. Technically, strictly and liberally speaking, the respondent no. 2 might be justified in denying the exemption under section 12 of the Act by rejecting such condonation application, but an assessee, a public charitable trust past 30 years who substantially satisfies the condition for availing such exemption, should not be denied the same merely on the bar of limitation especially when the legislature has conferred wide discretionary powers to condone such delay on the authorities concerned.”

7. Moreover, in our opinion, Petitioner does not appear to have been lethargic or lacking in bonafides in making the claim beyond the period of limitation which should have a relevance to the desirability and expedience for exercising such power. We are conscious that such routine exercise of powers would neither be expedient nor desirable, since the entire machinery of tax calculation, processing of assessment and further recoveries or refunds, would get thrown out of gear, if such powers are routinely exercised without considering its desirability and expedience to do so to avoid genuine hardship.

8. In a similar matter in ***Shree Jain Swetamber Murtipujak Tapagachha Sangh v. Commissioner of Income Tax (Exemptions) and Anr²*** was also a case where auditor had due to oversight not filed Form 10B. The Court held that the error on the part of auditor cannot be rejected but should be accepted as a reasonable cause shown by the trust management. In that case also, Petitioner did not *suo moto* realize its mistake and filed a condonation request only after Centralised Processing Centre (“CPC”) sent an intimation about non-filing of Form 10B.

² Writ Petition (L) No.1321 of 2024 decided on 27.3.2024.

9. Having considered the matter in its entirety, we are satisfied that the delay was not intentional or deliberate. Petitioner cannot be prejudiced on account of an ignorance or error committed by professional engaged by Petitioner. In our view, Respondent No.1 ought to have exercised the powers conferred.

10. In the circumstances, this Writ Petition has to be allowed and is hereby allowed in terms of prayer clause (a), which reads as under:

“A. That this Hon’ble Court may be pleased to issue a Writ of Certiorari or the Writ in the nature of Certiorari or any other appropriate Writ, Order or direction, calling for the records of the Petitioner’s case and after going into the legality and propriety thereof, to quash and set aside the impugned order passed under Section 119(2)(b) of the Act dated 25/10/2023 and condone the delay in filing form 10B. (Exhibit “G”)”

11. Since the delay has been condoned, Respondent shall process Petitioner’s returns in accordance with law by giving effect to this order on the basis that Form No.10B has been filed within time.

12. Petition disposed.

(DR. NEELA GOKHALE, J.)

(K. R. SHRIRAM, J.)