IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2024

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.1793 of 2024
and
W.M.P.Nos.1850 & 1852 of 2024

M/s.RBS Students Welfare Trust
(Represented by its Trustee)
Temple Complex,
No.01, Ratnagiri Road,
Ratnagiri, Kilminnal,
Tamilnadu - 632 517.
PAN : AAATR6398E ... Petitioner

-vs-

1. The Principal Chief Commissioner of Income Tax
   Exemptions
   Income Tax Department
   Civic Centre, Minto Road,
   New Delhi - 110 002.
2. The Commissioner of Income Tax
   Exemptions, Chennai
   Income Tax Department,
   No.121, Mahatma Gandhi Road,
   Nungambakkam, Chennai - 600 034.
3. The Income Tax Officer
   Ward - 1, Exemptions
   Income Tax Department,
   No.121, Mahatma Gandhi Road,
   Nungambakkam, Chennai - 600 034.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the writ petitioner on the file of the first respondent to quash the impugned order dated 01.12.2023 passed under section 119 (2)(b) of the Income Tax Act, 1961 in DIN & Order No: ITBA/COM/F/17/2023-24/1058410821 (1) pertaining to the Assessment Year : 2020-2021 and consequentially condone the delay in filing form No.10B.

For Petitioner	:	Mr.A.S.Sriraman
For Respondents	:	Mr.V.Mahalingam Senior Standing Counsel

ORDER

In respect of assessment year 2020-2021, the petitioner, the RBS Students Welfare Trust (the Trust), filed the return of income on 31.05.2021. On the same date the audit report in Form No.10B was also filed. Such report was required to the accepted by the assessee. Such acceptance was in 12.09.2023. In those circumstances, the petitioner applied under Section 119 (2) (b) of the Income Tax Act seeking condonation of delay in filing the audit report. Such application was rejected by order dated 01.12.2023, which is assailed in this writ petition.

2. Learned counsel for the petitioner submits that the petitioner is a Trust formed for the benefit of students. He further submit that the Trust has been regular in filing returns and that the Trust is entitled to exemption. By pointing out that both the returns of income and the audit report were filed on 31.05.2021, learned counsel submits that the delay in acceptance of the audit report was on account of the Covid-19 pandemic and technical glitches during the migration of the income tax e-filing services from one vendor to another. By referring to the impugned order, learned counsel submits that it is erroneously stated that Form 10B was filed on 02.09.2023 with a delay of 960 days. By inviting my attention to the acknowledgment of receipt of Form 10B, learned counsel points out that it was filed on 31.05.2023 and not on 02.09.2023. By submitting that the petitioner was denied the benefit of exemption only on account of belated filing of the audit report, learned counsel submits that the Supreme Court held that the benefit of exemption should not be denied only on the ground of belated filing, if the assessee concerned is otherwise eligible for such exemption.

3. Mr.V.Mahalingam, learned senior standing counsel, accepts notice on behalf of the respondents. He submits that there was a delay of 130 days in filing the audit report on 31.05.2021. Since such report was not accepted by the assessee in the manner specified, he submits that it could not be taken into consideration. He further submits that the petitioner should have taken steps within a reasonable time to ensure that the defect was remedied. Instead, he submits that the petitioner did not take steps in spite of a demand being raised under Section 143 (1) of the Income Tax Act on 30.11.2021. Consequently, he submits that there was an inordinate delay of 960 days, which the petitioner failed to explain satisfactorily.

4. The petitioner has placed on record proof of filing of the return of income for assessment year 2020-2021 on 31.05.2021. Such return refers to the deduction under Section 11 (1) of the Income Tax Act. The acknowledgment of receipt of Form 10B is also on record. This document indicates that it was filed on 31.01.2021. Therefore, the period of delay, as regards filing of the audit report, should be treated as about 134 days and not 960 days. The filing of the return of income as well as the

audit report was in May 2021 when the second wave of the Covid-19 pandemic paralysed the entire country. The petitioner has stated that the Managing Trustee as well as the Auditor are senior citizens. As per judgments of this Court and other High Courts, the power under Section 119 (2) (b) is required to be exercised liberally. The main consideration is whether the assessee would suffer genuine hardship. In this case, the assessee is a trust constituted for the welfare of students. In the overall facts and circumstances, the assessee would certainly be put to genuine hardship, unless the delay in filing the audit report is condoned.

5. For reasons set out above, the impugned order dated 01.12.2023 is set aside and the delay in filing the audit report is condoned. As a corollary, the third respondent is directed to receive and act on the audit report while finalizing the petitioner's assessment.

6. This writ petition is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

13.06.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

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