IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11410 OF 2024

Warkari Shikshan Sanstha,]
Alandi Devachi, Tal.-Khed,]
Dist. - Pune, Pune – 412105.] …Petitioner

VERSUS

1. Commissioner of Income Tax,]
(Exemptions), Pune,]
Income Tax Office, PMT Building,]
Swargate, Pune – 37.]

2. Union of India,]
Through the Secretary]
Ministry of Finance, North Block,]
New Delhi – 110 001.] …Respondents

APPEARANCES-

Adv Kunal Damle, a/w Adv Iraa Dube Patil, Adv Ashish Gabhale, i/b. Jay & Co., for the Petitioner.

Adv A. K. Saxena, for the Respondent-Revenue.

CORAM : M.S.Sonak & Jitendra Jain, JJ.

DATED : 21 January 2025

ORAL JUDGMENT (*Per MS Sonak J*):-

1. Heard learned counsel for the parties.

2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.

3. This Petition concerns Assessment Years 2019-2020, 2020-2021, 2021-2022 and 2022-2023. For these years, the Petitioners were delayed in filing Form 10B of the Income Tax Act ("IT Act). A joint application was filed seeking condonation of delay. However, this application has been denied by the impugned order dated 12 October 2023. Hence, this Petition.

4. At the outset, Mr Kunal Damle, learned counsel for the Petitioner, states that this Petition, in so far as it relates to Assessment Year 2020-2021, is not being pressed. He explains that the impugned order does not decide the issue of condonation for this Assessment Year since the delay was more than 365 days, and the matter has been referred to the Central Board of Direct Taxes ("CBDT"), where it is pending consideration. Thus, this Petition is now restricted to Assessment Year 2019-2020, where, according to Mr Damle, there was no delay, and Assessment Year 2021-2022 and 2022-2023, where the delay was 2 and 16 days, respectively.

5. From the record, however, we find a delay in filing the Form 10B for Assessment Year 2019-2020. This form was required to be filed along with the original return of income dated 27 August 2019. However, the same was filed on 17 July 2020, along with the revised return under Section 139(5) of the IT Act. Mr Damle relies on the extension granted for filing revised returns up to 30 September 2020 due to the COVID-19 pandemic. However, since the Form 10B had to be filed along with the original return, this contention cannot be accepted.

6. As noted earlier, a joint application was filed on 23 March 2023 seeking condonation of delay in respect of the above Assessment Years. The application refers to the Covid-19 Pandemic from March 2019 and its effects on the functioning of the educational trust. There is a reference to shortage of funds, discontinuation of staff and the difficulties in the accounting and audit works. There is a reference to the Chartered Account being from Hadapsar and the difficulties involved in the follow-up. There is a reference to shortage of skilled staff and the non-availability of any vehicle.

7. We believe the above reasons warranted consideration since they constituted sufficient cause. The delay in Assessment Year 2021-2022 and 2022-2023 was only 2 and 16 days, respectively. So far as Assessment Year 2019-2020 is concerned, the Petitioner was under the bonafide delay, and they would benefit from the extended timeline for filing a revised return. The return was filed within the extended period. However, since Form 10B had to be filed with the original return, there is a delay. For this delay, the Petitioner has shown sufficient cause.

8. The delay is not malafide, and the Petitioner has not derived any undue advantage from such a delay. Learned counsel for the Respondent submits that the Petitioner is habitually late in such matters. There is no material to sustain this contention. In any event, even if we accept this contention, we must focus on the cause shown for the relevant Assessment Years. As noted, there is sufficient cause for all the three Assessment Years, which we must now consider in this Petition.

9. The Petitioner is not some business venture but an educational institution. Even this aspect is relevant. The impact of Covid-19 Pandemic on the functioning of the Petitioner is required to be taken into consideration.

10. For all the above reasons, we set aside the impugned orders dated 12 October 2023 and condone the delay in filing Form 10B for the Assessment Year 2019-2020, 2021-2022 and 2022-2023. Further, we grant the Petitioner liberty to pursue the issue of condonation for the Assessment Year 2020-2021 before the CBDT.

11. The Rule is made absolute in the above terms without any cost order.

12. All concerned should act on an authenticated copy of this order.

(Jitendra Jain, J) **(M. S. Sonak, J)**