IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9073 OF 2025

Shamal Mohan Patil Education Society .. Petitioner

Versus

Commissioner of Income Tax,
(Exemptions) Pune & Anr. .. Respondents

Mr. Sham V. Walve a/w Tanzil Padvekar a/w Bhavik Chheda a/w Tejal Kharkar, *Advocates for the Petitioner.*

Mr. A. K. Saxena, *Advocate for the Respondents/Revenue.*

CORAM: B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.

DATE: NOVEMBER 14, 2025

P. C.

1. Rule. Respondents waive service. With the consent of the parties, Rule made returnable forthwith and heard finally.

2. The above Writ Petition challenges an order dated 18th June 2024 passed by Respondent No. 1 under Section 119(2)(b) of the Income Tax Act, 1961 (for short "**IT Act**") rejecting the Application for condonation of delay in filing Form 10B by the Petitioner for A.Y.2017-18. As a result of this, the Petitioner Trust has been denied the benefit of exemption under Section 11 of the Act.

3. Brief facts of the case are that the Petitioner is a Charitable Institution (earlier known as New Kalamboli Education Society) engaged in the field of education and runs a school with a total strength of around 5,000 students in both English and Marathi medium. The Petitioner filed its return of income on 8th March 2019 for the relevant A.Y. 2017-18 in response to a Notice issued under Section 142(1) of the Act. However, it is claimed by the Petitioner that the Audit Report in Form 10B, which although obtained on 30th September 2017, could not be filed within a prescribed time due to sheer inadvertence and miscommunication between their former and new firm of Chartered Accountants. Consequently, the Petitioner's return of income was processed under Section 143(1) of the Act *vide* Intimation dated 24th July 2020 but the benefit under Section 11 of the Act was denied to the Petitioner resulting into a demand of Rs. 3,35,78,264/-. Here it was stated that since the Petitioner had not e-filed the Audit Report in Form No. 10B along with or before filing of the Return of Income, the exemption could not be allowed.

4. The Petitioner claims that it inadvertently missed this observation in the Intimation under Section 143(1), and on advice, filed a Rectification Application under Section 154 of the Act on 31st

July 2020 for the reason that the benefit of Section 11 was denied to the Petitioner. However, the rectification request was rejected *vide* an Order dated 5th September 2020 wherein it was recorded as under (Page 85 of the Writ Petition):

> *"Reasons for Rectification :*
>
> *As per the details furnished in the return, Assessee is registered u/s 12A/12AA. Claim of exemption has been made in Sl. No. 4i to 4viii of Schedule Part B-Tl. Assessee has not E-filed the Audit Report in Form 10B along with the Return of Income or before filing the return of income.*
> *As per Section 12A(1)(b) of the Income Tax Act read with 1st Proviso to Rule 12(2) of the Income Tax Rules, the audit report Form 10B has to be E-filed along with return of income. Hence exemption u/s 11 is not allowable".*

5. The Petitioner claims that upon realising the reason for denial of exemption under Section 11 of the Act, the Petitioner belatedly uploaded its Form No. 10B online on 9th December 2020. It is not in dispute that Form No. 10B was required to be uploaded online along with the Return of Income or before filing the Return of Income i.e. by 7th November 2017 and that the Petitioner uploaded

the Form No. 10B online on 9th December 2020. As such, the delay in filing Form No. 10B is 1128 days.

6. In this factual backdrop, we have perused the record, heard Mr. Walve, learned Counsel appearing for the Petitioner-Assessee, and Mr. Saxena appearing for the Respondent-Revenue.

7. Mr. Walve submitted that in light of the delay set out above, the Petitioner filed an Application for condonation of delay in filing Form No. 10B under Section 119(2)(b) of the Act on 1st March 2024, which is placed on record by the Petitioner by way of an Additional Affidavit (Exhibit A6). In this Application, the Petitioner has relied upon the CBDT's Circular No. 10/2019 dated 22nd May 2019 which provides that delay in filing Form No. 10B in all such cases where Audit Report for the previous year has been obtained before the filing of Return of Income and has been furnished subsequent to the filing of Return of Income but before the date specified under Section 139 of the Act be condoned. It is Petitioner's case that they had filed the return of income under Section 139(4A) of the Act on 8th March 2019, which was processed under Section 143(1) of the Act and accordingly, they have complied with the

conditions stipulated in the Circular No. 10/2019. The reason for the delay was that there was a communication gap between the former and the new firm of Chartered Accountants inasmuch as the new firm of Chartered Accountants misunderstood that it was only assigned to do an audit under the Bombay Public Trust Act, 1950 and the remaining compliances relating to taxation were not assigned to them. Mr. Walve submitted that the Petitioner Trust was entirely dependent on their Chartered Accountants for tax related compliances and therefore the delay.

8. Be that as it may, Mr. Walve submitted that the requirement of filing the Audit Report along with the Return of Income is procedural in nature and an Audit Report can be admitted subsequent to filing of the return also. In this regard, he relied on the judgment rendered by the Hon'ble Gujarat High Court in ***Sarvodaya Charitable Trust vs. Income Tax Officer. (Exemption) [2021] 125 taxmann.com 75 (Gujarat)*** to support his contention. For all the aforesaid reasons, Mr. Walve submitted that the impugned order dated 18th June 2024 be set aside, and the delay in filing Form 10B be condoned.

9. On the other hand, Mr. Saxena drew our attention towards the reasoning in the Impugned Order dated 18th June 2024 which was passed by Respondent No. 1 under Section 119(2)(b) of the Act. In the Impugned Order it was observed that the reasons furnished by the Petitioner that there was a communication gap and misunderstanding between the former and the new firm of Chartered Accountants leading to a delay in filing Form No. 10B was unacceptable. The Petitioner cannot be absolved of its responsibilities towards compliances by shifting them to its auditors. It was observed that the Petitioner's Application was devoid of any supporting document to substantiate its claim and that the Petitioner has not complied with the provisions of the Act in the preceding and succeeding two A.Ys as well. Mr. Saxena supported the Impugned Order to say that even after repeated reminders, the Petitioner failed to make necessary compliances, and as such, the delay should not be condoned. He also supported the Impugned Order to say that any benefit in case of exemption must be interpreted in favour of the Revenue.

10. To counter these arguments, Mr. Walve submitted that this is not a case where Respondent No. 1 was required to decide the

grant of exemption on merits but was only required to decide whether the delay in filing Form No. 10B is condonable or not. Hence, rejecting the Petitioner's Application based upon the merits of the claim of exemption does not arise at this stage. As far as delay in filing Form No. 10B is concerned, it is not in dispute that the delay is of 1128 days. The reason for such a delay is the misunderstanding between the Chartered Accountants as to their scope of work leading to the delay. The Petitioner being a Charitable Institution is solely dependent on professionals to meet their compliance requirements and one cannot completely rule out the possibility of such delays which may be caused due to sheer inadvertence and without any *malafide* intent. This view is supported by a decision of a co-ordinate bench of this Court in ***Al Jamia Mohammediyah Education Society v. Commissioner of Income-tax (Exemptions) [2025] 482 ITR 41 (Bombay)*** wherein this Court condoned the delay in filing Form No. 10B under similar circumstances where the delay was attributable to the oversight of the Chartered Accountant and occurred due to a human error. This decision was recently carried to the Hon'ble Supreme Court by the Revenue wherein, the Hon'ble Supreme Court declined to interfere with the Order of this Court and the SLP filed by the Revenue was dismissed ***(Commissioner of Income-tax***

(Exemptions) vs. Al Jamia Mohammediyah Education Society [2025] 176 taxmann. Com 761 (SC). He therefore submitted that the Impugned Order dated 18th June 2024 be quashed and the delay be condoned.

11. At the outset, we must mention that when the matter was earlier heard on 14th July 2025, we had granted liberty to the Petitioner to explain the delay in filing the Application of condonation of delay itself. We note that the same has been filed and it can be seen at paragraph Nos. 8 and 9, that the Petitioner has furnished an explanation for delay in filing the Application for condonation of delay before Respondent No. 1. Here, it is stated that the Petitioner was following up with the Chartered Accountants as and when they received Recovery Notices and upon being guided by the Chartered Accountants, they duly filed their Application for condonation of delay. We note that this is not a case where the Petitioner was strictly mandated by law to file an Application for condonation of delay within a particular period of time. However, the CBDT subsequently came up with a Circular bearing No. 16/2024 dated 18th November 2024 prescribing a time period of 3 years within which such an Application for condonation of delay had to be

filed. Admittedly, in the present case, the Petitioner has filed an Application which was disposed of *vide* the Impugned Order much before Circular No. 16/2024 came into force, and thus, there was no impediment or strict time period within which the Petitioner was required to file such Application. Moreover, the Petitioner's Application has not been rejected on the ground of delay in approaching Respondent No. 1, but only on the ground that the Petitioner's explanation for the delay in filing Form 10B was not acceptable to Respondent No. 1.

12. We are satisfied with the explanation given in the Additional Affidavit for delay in filing Application for condonation of delay before Respondent No. 1 and proceed to decide the core issue at hand.

13. Having said that, we find that the Petitioner had brought to the Notice of Respondent No. 1 that the requirement of filing the Audit Report along with the Return of Income is procedural in nature and an Audit Report can be admitted subsequent to filing of the return also. However, it can be seen that this contention has not been dealt with in the Impugned Order. The Hon'ble Gujarat High Court in

Sarvodaya Charitable Trust vs. Income Tax Officer (Exemptions) [2021] 125 taxmann. Com 75 (Gujarat) (relying on another decision of the Hon'ble Gujarat Hight Court in ***CIT v. Gujarat Oil and Allied Industries Ltd. [1993] 201 ITR 325 (Guj.)),*** observed that the provision regarding furnishing of Audit Report with the return has to be treated as a procedural proviso. It is directory in nature and its substantial compliance would suffice.

14. We also find that not granting the benefit of Section 11 to the Petitioner would certainly cause genuine hardship to the Petitioner and may adversely affect the functioning of the educational institution where thousands of students are currently enrolled. The purpose of Section 119(2)(b) of the Act is to mitigate such genuine hardship faced by assessees and hence the phrase 'genuine hardship' is to be construed liberally. In contrast, when the delay is condoned, the highest that can happen is that the cause would be decided on merits after hearing the parties. This view is supported by the judgment of this Court in ***Western Arch Developers vs. Pr. Commissioner of Income tax- (Central) [2025] 177 taxmann.com 313 (Bombay)*** wherein one of was a member (B.P.Colabawalla, J). Thus, we find that on this count also, the delay deserves to be condoned.

15. We also rely on another judgment of this Court in ***St. Anne's Church vs. Commissioner of Income-tax (Exemptions) [2025] 178 taxmann.com 16 (Bombay)*** passed by the same bench under similar circumstances where it was observed that the Petitioner being a Charitable Trust would face grave hardship if the delay in filing Form No. 10 was not condoned and if exemption was denied to them only on this count. The Petitioner - Trust ought not to be foisted with such a liability only on account of an inadvertent error of their Chartered Accountant.

16. Thus, in view of the foregoing discussion, we quash and set aside the Impugned Order dated 18th June 2024 for A.Y. 2017-18 and condone the delay of 1128 days in filing Form No. 10B. Since the delay is now condoned, the Respondents shall treat the Form No.10B filed by the Petitioner to have been filed within time and process the Return of Income filed by the Petitioner in accordance with law within 3 months from the date of uploading of this Order on the High Court's website.

17. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

18. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR, J.] **[B. P. COLABAWALLA, J.]**

Santosh Chabukswar-Court Steno.