IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10698 OF 2025

Western Arch Developers .. Petitioner

Versus

Pr. Commissioner of Income tax-
(Central), Pune & Ors .. Respondents

Mr. Sham V. Walve, *with Mr. Sameer Dalal, Bhavik Chheda, Advocates for the Petitioner.*

Mr. Ashok Kotangle, Vishnu Chaudhari, Nikitesh Kotangle, Neha Pende i/b Smita Thakur, *Advocates for the Respondents.*

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: AUGUST 4, 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 the Order dated 13th March 2025 passed by the Respondent No. 1 (Principal Commissioner of Income Tax) under Section 119(2)(b) of the Income Tax Act, 1961 (for short *"**Act**"*) rejecting Petitioner's Application dated 2nd January 2025, for Condonation of

Delay in filing the Return of Income for Assessment Year (for short "***A.Y.***") 2024 – 25.

3. The brief facts of the case are that the Petitioner is a Partnership Firm engaged in business of construction and development. It is claimed by the Petitioner that it undertook a housing project in A.Y. 2019 – 20 and followed the project completion method of accounting. Thus, no profit was declared from housing project in the Return of Income filed up to A.Y. 2023 – 24. The Petitioner received a completion certificate in A.Y. 2024 – 25 and accordingly, it declared a profit amounting to approx. Rs. 3.6 Crores in A. Y. 2024-25 from housing project undertaken by it. It is claimed by the Petitioner that it was eligible for deduction under Section 80IBA of the Act, equivalent to 100% of the profits earned on the housing project.

4. It is claimed that the Petitioner obtained the Tax Audit Report dated 29th September 2024 in Form 3 CD and uploaded it on the Income Tax Portal. Thereafter, the Petitioner computed its total income after eligible deductions and paid the tax liability as per the adjusted total income and also obtained Form No. 29C (required for computation of Alternate Minimum Tax) on 3rd October 2024. However, the Petitioner could not file the Return of Income on or before 15th November 2024, which was the extended due date

as per Circular No. 13 / 2024 issued by the CBDT. It is claimed that the said failure to file the Return of Income within the due date was on account of ill – health of the Managing Partner of the Petitioner – Firm. Thereafter, it is claimed that the Petitioner tried to upload the Return of Income on 31st December 2024 but the Income Tax Portal displayed an error and did not allow the filing of the Return of Income.

5. As a result, the Petitioner immediately filed an Application for Condonation of Delay in filing the Return of Income for A.Y. 2024 – 25 on 2nd January 2025 stating that it accidentally missed the last date of filing Return due to the ill – health of the Managing Partner of Petitioner – Firm and that non – acceptance of the Return of Income will cause genuine hardship to the Petitioner. The Petitioner requested that the delay be condoned and the Petitioner be allowed to file the Return of Income.

6. Pursuant to the same, the Respondents called for certain details including documentary proof in support of the reasons for late filing of the Return. The Petitioner replied to the same furnishing those details and attached several Medical Certificates. Thereafter, an opportunity of hearing was granted to the Petitioner and the Petitioner again furnished an explanation with regards to the delay in filing the Return of Income.

7. Ultimately, the Impugned Order was passed on 13th March 2025 under Section 119(2)(b) of the Act by Respondent No. 1 rejecting the Petitioner's Application for condonation of delay. The ground for rejection is that since Petitioner was guided by professional Chartered Accountants who have audited the books of accounts and also filed Audit Report and Form 29C before the due date, the explanation offered by Petitioner for not filing the Return of Income within the due date is not acceptable. Another ground for rejection is that the Petitioner did not submit any documentary evidences to substantiate its claim of deduction under Section 80IBA of the Act. Therefore, the delay was not condoned.

8. After perusal of the record we find that as far as the delay in filing the Return is concerned, it is not in dispute that the extended due date of filing the Return was 15th November 2024 and the Petitioner tried to upload the return of income on the Portal on 31st December 2024. As such, there is a delay of around 45 days. The ground for rejecting the Petitioner's Application is that since Petitioner was guided by professionals, the explanation offered by Petitioner was not acceptable. We are of the opinion that just because an assessee is guided by professionals cannot mean that there is no possibility of errors or delay. Moreover, the second ground of

rejection is that the Petitioner did not submit the documentary evidences to substantiate its claim of deduction under Section 80 IBA of the Act. We are of the firm view that there is no requirement in law to prove the claim of deduction at the stage of condonation of delay. The same would be subjected to examination by the authorities during assessment which would commence only if Petitioner's Return of Income is accepted. Therefore, this reason for rejection is also unsustainable. If the delay is not condoned, there will be genuine hardship caused to the Petitioner inasmuch as the Petitioner would be unable to even claim the deduction under Section 80 IBA of the Act, which is a substantial amount. While interpreting what would constitute 'genuine hardship', this aspect is also to be borne in mind. This view is supported by a decision rendered by a co-ordinate bench of this Court in ***K. S. Bilawala vs. Principal Commissioner of Income-tax [2024] 158 taxmann.com 658 (Bombay).*** In cases like the present one (delay in filing Return of Income) the phrase "genuine hardship" is to be construed liberally and that refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and the cause of justice being defeated. As against this, when the delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

9. In view of the foregoing discussion, we set aside the Impugned Order dated 13th March 2025 and the delay in filing the Return of Income for A. Y. 2024-25 is hereby condoned. The Respondents are accordingly directed to open the tab on the Income Tax Portal to facilitate the filing of the Return of Income of the Petitioner for A.Y. 2024 – 25 within a period of 4 weeks from the date of uploading of this order. Upon filing such Return of Income, the same shall be processed in accordance with law.

10. 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.

11. 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.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**

Aswale