IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1122 OF 2025
WITH
CHAMBER ORDER (L) NO.25655 OF 2024
IN
WRIT PETITION NO.1122 OF 2025

Al Qalam Educational Trust ...Petitioner/Applicant

Versus

Commissioner of Income Tax
(Exemptions), Mumbai ...Respondent

Mr. Zaman Ali (through VC) for the Petitioner/Applicant.
Mr. Dinesh Gulabani (through VC) for the Respondent.

CORAM : M. S. Sonak &
Jitendra Jain, JJ.
DATED : 22 April 2025

PC.:- *(Per M. S. Sonak, J.)*

1. Heard learned counsel for the parties.

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

3. The Petitioner challenges the impugned order dated 9 December 2021 (Exhibit-K), which rejects its application for condonation of delay in filing Form-10B of the Income Tax Act, 1961 (the Act).

4. Mr. C. V. Pavana Kumar, Commissioner of Income-tax (Exemptions), Mumbai has filed an affidavit in this matter in which, he has explained that since the delay in this case was more than one year, only the Central Board of Direct Taxes (CBDT) had the power to consider and decide upon the Petitioner's application for condonation of delay. The affidavit states that the Petitioner's application for condonation, though addressed to CIT(Exemptions), was now forwarded to the CBDT vide letter dated 11 April 2022.

5. In this regard, a reference is required to be made to the statements in paragraph 5.14 of the affidavit filed by CIT(Exemptions), and the same reads as follows:-

> *"5.14 With reference to the contents in Para No.14 of the Writ Petition, I say that the CBDT is the Competent Authority where there is delay in filing beyond three years to decide the application on merit. In this case delay filing Form 10B is more than three years. Accordingly, assessee's application has been forwarded to the CBDT through proper channel vide letter dated 11.04.2022. However, instead of waiting for Board's decision on assessee's condonation application, the assessee filed a Writ Petition before the Hon'ble Court".*

6. Mr. Gulabani, learned counsel for the Respondent, states that the CIT(Exemptions) was not the appropriate authority to consider the Petitioner's application for condonation of delay. By accepting this contention, which is duly supported by the statement made by the CIT(Exemptions) in paragraph 5.14 of the affidavit filed in this petition, even the impugned order dated 9 December 2021 rejecting the Petitioner's application for condonation of delay will have to be set aside. If the CIT(Exemptions) was not empowered to deal with applications seeking condonation of delay over one year, by the same logic, there was no question of CIT(Exemptions) rejecting the Petitioner's application on merits.

7. Accordingly, the impugned order dated 9 December 2021 is hereby quashed and set aside. Now that Petitioner's application is already forwarded to the CBDT vide letter dated 11 April 2022, we direct the CBDT to consider and dispose of the Petitioner's application for condonation of delay as expeditiously as possible and preferably within four months from the Petitioner producing an authenticated copy of this order.

8. Suppose the Petitioner wishes to file a supplementary affidavit in support of the application for condonation of delay. In that case, the same should be filed within 15 days from today and forwarded to the CBDT. The CBDT must consider this additional affidavit if filed within 15 days from today and dispose of the Petitioner's application for condonation of delay on its own merits and in accordance with law.

9. We clarify that we have not examined whether the Petitioner has made out any sufficient cause. The CBDT will have to examine these matters in the first instance. Accordingly, all parties' contentions are left open.

10. We are sure that the CBDT will afford an opportunity of hearing to the Petitioner and the Department before disposing of the Petitioner's application for condonation of delay. A reasoned order must be communicated to the Petitioner within four months of producing an authenticated copy of this order.

11. The Rule is made absolute in the above terms without any cost order. The proceedings for the restoration of this petition do not survive, as it is pointed out that this petition was already restored. Accordingly, Chamber Order (L) No.25655 of 2024 does not survive and is disposed of.

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

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