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

WRIT PETITION NO. 2893 OF 2024

International Resources for Fairer Trade through its trustees .. Petitioner

Versus

The Union of India and Ors. .. Respondents

Adv. Jas Sanghavi, *a/w Adv. Suyog Bhave and Adv. Kshitij Vishwanath i/b PDS Legal, for the Petitioner.*

Adv. Dinesh R. Gulabani, *for the Respondents.*

CORAM: B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.
DATE: SEPTEMBER 22, 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 impugned order dated 9th November 2023, passed by Respondent No.2 (Commissioner of Income Tax [Exemptions], Mumbai).

3. The short point in this Writ Petition is that the Petitioner seeks a condonation of delay in e-verifying / accepting the audit report in Form

No.10B, which was rejected by Respondent No.2, *inter alia*, on the ground that no sufficient cause was shown for the aforesaid delay.

4. The Petitioner is a Public Charitable Trust established in the year 1995. The Petitioner received approval from Respondent No.2 under Section 12A/12AA on 9th May 1996.

5. As per Section 12A(b) of the Income Tax Act, 1961 (for short "IT Act"), where the total income of the trust or institution as computed under the IT Act without giving effect to the provisions of Sections 11 and 12 of the IT Act exceeds the maximum amount which is not chargeable to income-tax in any previous year, such trust or institution is required to get its books of accounts audited and file the audit report in Form No.10B on or before the due date for filing the Return under Section 139 of the IT Act.

6. During the year under consideration, the Petitioner also got its accounts audited and obtained the audit report dated 20th May 2017 in Form No.10B from its auditors. Further, by letter dated 20th May 2017, the said audit report was filed with the learned Assistant Charity Commissioner, Mumbai, in terms of the Bombay Public Trusts Act, 1950.

7. In the month of October 2017, at the time of filing the audit report dated 20th May 2017 on the income tax portal, the Chartered

Accountants of the Petitioner faced a technical error regarding the date of the report. Consequently, the auditors issued another audit report dated 5th October 2017 and uploaded the same on the income tax portal.

8. For the Assessment Year 2017-18, the due date of filing the Income Tax Return was 30th October 2017. The Petitioner filed its Return of Income on 27th October 2017, which was within time.

9. The problem has arisen, in the present case, because although the auditors of the Petitioner had uploaded the audit report in time, inadvertently, the said audit report in Form No.10B remained to be accepted/verified by the Petitioner prior to filing the Return of Income, i.e., on or before 27th October 2017.

10. The Petitioner received an intimation under Section 143(1)(a) of the IT Act dated 24th September 2018, denying the exemption of Rs.1,11,89,380/- which was claimed by the Petitioner on the ground that the Petitioner had not e-verified the audit report in Form No.10B within the prescribed time.

11. The Petitioner, upon becoming aware of this inadvertent error of not e-verifying the audit report, verified/accepted the audit report in Form No.10B on 28th January 2019. Further, the Petitioner filed a revised Return of Income on 28th March 2019 claiming a deduction of Rs.1,11,89,380/- under Section 11 of the IT Act.

12. The said revised Return was processed, and a fresh intimation dated 2nd January 2020 was issued under Section 143(1) of the IT Act, accepting the "Nil" income declared by the Petitioner in its Return of Income and determining a refund of Rs.1,03,800/- payable to the Petitioner.

13. This apart, on 24th August 2023, the Petitioner filed an application before Respondent No.2 seeking a condonation of 447 days delay in uploading the audit report in Form No.10B, which was rejected by the impugned order dated 9th November 2023.

14. We have heard Mr. Shah, the learned Senior Advocate appearing on behalf of the Petitioner, as well as the learned Counsel Mr. Gulabani, appearing on behalf of the Respondent.

15. The CBDT, vide its Circular No. 10/2019 dated 22nd May 2019, authorised the Commissioners of Income Tax to consider and decide applications for condonation of delay in filing Form No.10B for Assessment Years prior to A.Y. 2018-19.

16. It is not in dispute that the delay in filing Form No.10B is 447 days. Respondent No. 2 has rejected the application of the Petitioner on the ground that the oversight of the accountant is responsible for filing the same, does not constitute reasonable cause warranting a condonation of delay in filing of Form No.10B.

17. Admittedly, in the present case, the Petitioner obtained the original audit report on 20th May 2017 and the revised audit report on 5th October 2017 and had also filed the same with the learned Assistant Charity Commissioner, Mumbai. However, due to inadvertence and oversight, the audit report remained to be filed prior to filing the Return of Income dated 27th October 2017. It is stated in the Petition that the said non-filing was due to oversight on the part of the accountant responsible for the same. It is further stated that the said accountant left the employment of the Petitioner abruptly, due to which the non-filing did not come to the notice of the Petitioner till the issuance of the intimation dated 24th September 2018. In response to the above, on 28th January 2019, the Petitioner-Trust filed the audit report in Form No.10B. Further, on 29th March 2019, the Petitioner filed the revised return of income, once again, claiming the deduction under Section 11 of the IT Act.

18. Admittedly, Petitioner is a charitable trust established more than 25 years ago and has been filing its Returns and Form No.10B for all years prior to the A.Y. 2015-16 within the due dates. On this ground alone, in our view, delay condonation application should have been allowed because the failure to upload the audit report prior to filing the return, despite obtaining the same from the auditors well within time, could only be due to human error.

19. Moreover, in our opinion, the Petitioner does not appear to have been lethargic or lacking in bonafides in making the claim beyond the period of limitation, which should have a relevance to the desirability and expedience for exercising such power. We find that the observations in the impugned order that the Petitioner's approach towards income tax compliance is very casual and that the trust is a regular defaulter on the sole ground that the Petitioner-Trust has revised its returns in the past, are unsustainable.

20. It is pertinent to note that considering the above audit report, the revised return filed by the Petitioners was processed and vide intimation dated 2nd January 2020, a refund amount of Rs.1,03,800/- was determined as payable to the Petitioner. Thus, the audit report filed by the Petitioner belatedly was accepted and acted upon by the Respondents.

21. Further, we find that in the present case, if the delay is not condoned, genuine hardship would be faced by the Petitioner inasmuch as the exemption claimed by the Petitioner, and to which it would otherwise be entitled to because it is a Charitable Trust, would be denied on this technical ground.

22. In these circumstances, we are of the view that Respondent No. 2 ought to have taken a justice-oriented approach rather than a pedantic one and condoned the delay. On similar facts, in the cases of ***Sau Dwarkabai Tai Karwa Charitable Public Trust v. Commissioner of Income Tax (Exemption) [(2025) 174 taxmann.com 245 (Bombay)] and Al Jamia Mohammediyah Education Society v. Commissioner Of Income Tax [(2025) 482 ITR 41 (Bom.)]*** this Court had taken a similar view and condoned the delay in filing Form No.10B. Further, the judgment in the case of *Al Jamia Mohammediyah Education Society (supra)* was subjected to a challenge before the Hon'ble Supreme Court, who dismissed the SLP preferred by the Revenue. The order of the Hon'ble Supreme is reported in ***2025 (7) TMI 1316 – SC Order***.

23. In view of the aforesaid discussion, we quash and set aside the order dated 9th November 2023 passed by Respondent No.2 and condone the delay in filing Form No.10B by the Petitioner and direct the Respondents to accept the same.

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

25. 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.]**

Darshan Patil