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

WRIT PETITION NO.5039 OF 2024

International Resources for Fairer Trade .. Petitioner

Versus

The Union of India & Ors. .. Respondents

Mr.Prakash Shah, Senior Advocate a/w Jas Sanghavi, Suyog Bhave, Kshitij Kasi Vishwanath i/b PDS Legal, Advocates for the Petitioner.

Mr.Dinesh Gulabani (through V.C.), Advocate for the Respondents.

CORAM : B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.
DATE : OCTOBER 13, 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 the 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 uploading 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 clause 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 got its accounts audited and obtained the audit report dated 31st July 2015 in Form No. 10B from its auditors. Further, by letter dated 19th August

2015, the said audit report was also filed with the learned Assistant Charity Commissioner, Mumbai in terms of the Bombay Public Trusts Act, 1950. However, the said audit report remained to be uploaded by the Chartered Accountants on the income tax portal within the prescribed period.

7. For the Assessment Year 2015-16, the due date of filing the income tax return was 31st October 2015. The Petitioner filed its return of income on 15th September 2015 as well as a revised return on 16th September 2015, both of which were within time.

8. The problem has arisen, in the present case, because although the Petitioner had obtained the audit report in Form No. 10B on 31st July 2015, inadvertently, the said audit report in Form No. 10B remained to be uploaded and verified prior to filing the return of income, i.e., on or before 15th September 2015 and the revised return of income, i.e., on or before 16th September 2015.

9. The Petitioner submits that an intimation under Section 143(1)(a) of the IT Act dated 28th March 2017 was issued, in respect of the revised return filed on 16th September 2015 for A.Y.2015–16, denying the exemption of Rs.1,11,16,576/- which was claimed by the Petitioner on the ground that the Petitioner had not uploaded the audit report in Form No.10B within the prescribed time. The said intimation was uploaded on the income tax portal. However, the Chartered Accountant, who was handling the regular filing work of the Petitioner never informed the Petitioner about the said intimation and thereafter, left the organization of the Petitioner. Therefore, the said intimation was missed by the Petitioner, and no action was taken by the Petitioner till the issuance of an intimation for A.Y.2017-18 on 13th March 2019 highlighting the non-filing of the audit report for that Assessment Year.

10. Pursuant to the above, the Petitioner filed and verified the audit report in Form 10B for A.Y.2015-16 on 29th March 2019.

11. In such circumstances, there is a delay of 1,290 days in filing and verifying the audit report in Form 10B.

12. By its letters dated 10th June 2019 and 17th May 2022, the Petitioner requested for rectification of the intimation dated 28th March 2017 issued under Section 143(1) seeking deletion of the demand arising due to disallowance of claim for deduction of Rs.1,11,16,576/- under

Section 143(1) of the IT Act. However, no action was taken on the said rectification applications.

13. On 24th August 2023, the Petitioner filed an application before Respondent No.2 seeking a condonation of 1,290 days delay in uploading and verifying the audit report in Form 10B, which was rejected by the impugned order dated 9th November 2023 holding that the reason of oversight cited by the Petitioner does not constitute reasonable cause warranting a condonation of delay in filing of Form 10B. The impugned order also refers to a mismatch of figures in the income tax return and the audit report in Form 10B.

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

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

16. It is not in dispute that the delay in filing and verifying Form 10B is 1,290 days. Respondent No.2 has rejected the application of the Petitioner on the ground that the reason of oversight cited by the Petitioner does not constitute reasonable cause warranting a condonation of delay in filing of Form 10B.

17. Admittedly, in the present case, the Petitioner obtained the audit report on 31st July 2015 and had also filed the same with the Learned Assistant Charity Commissioner, Mumbai. However, due to the miscommunication and oversight by the chartered accountant of the Petitioner, the audit report remained to be filed/verified prior to filing the return of income dated 16th September 2015.

18. We find that the said non-filing/verification was due to oversight on the part of the chartered accountant responsible for the same. We further find that the said chartered accountant left the employment of the Petitioner abruptly, due to which the non-filing/verification did not come to the notice of the Petitioner till the issuance of the intimation dated 13th March 2019 for the subsequent A.Y.2017-18 and thereafter, on 29th March 2019, the Petitioner filed/verified the audit report in Form 10B.

19. Admittedly, the Petitioner is a charitable trust established more than 25 years ago. Admittedly, the Petitioner has been filing its returns and verifying the Form 10B for all years prior to the subject A.Y.2015-16 within the due dates. Further, there was a genuine dependence on Chartered Accountant services which has caused the said delay in filing/verification of Form 10B, and which was beyond control the Petitioner. This Court in ***Jyotsna M. Mehta V/S Principal Commissioner of Income Tax*** reported in ***2024 (166) taxmann.com 442 (Bombay)***, *inter alia*, has held as under:-

> *"6. In our opinion, the approach of PCIT appears to be quite mechanical, who ought to have been more sensitive to the cause which was brought before him when the petitioner prayed for condonation of delay. In such context, we may observe that it can never be that technicalities and rigidity of rules of law would not recognize genuine human problems of such nature, which may prevent a person from achieving such compliances. It is to cater to such situations the legislature has made a provision conferring a power to condone delay. These are all human issues and which may prevent the assessee who is otherwise diligent in filing returns, within the prescribed time. We may also observe that the PCIT is not consistent in the reasons when the cause which the petitioners has urged in their application for condonation of delay was common.*
>
> *7. We may observe that it would have been quite different if there were reasons available on record of the PCIT that the case on delay in filing returns as urged by the petitioners was false, and/or totally unacceptable. It needs no elaboration that in matters of maintaining accounts and filing of returns, the assessees are most likely to depend on the professional services of their Chartered Accountants. Once a Chartered Accountant is engaged and there is a genuine dependence on his services, such as in the present case, whose personal difficulties had caused a delay in filing of the petitioners returns, was certainly*

a cause beyond the control of the petitioners / assessees. In these circumstances, the assessee, being at no fault, should have been the primary consideration of the PCIT. It also cannot be overlooked that any professional, for reasons which are not within the confines of human control, by sheer necessity of the situation can be kept away from the professional work and despite his best efforts, it may not be possible for him to attend the same. The reasons can be manifold like illness either of himself or his family members, as a result of which he was unable to timely discharge his professional obligation. There could also be a likelihood that for such reasons, of impossibility of any services being provided/performed for his clients when tested on acceptable materials. Such human factors necessarily require a due consideration when it comes to compliances of the time limits even under the Income Tax Act. The situation in hand is akin to what a Court would consider in legal proceedings before it, in condoning delay in filing of proceedings. In dealing with such situations, the Courts would not discard an empathetic /humane view of the matter in condoning the delay in filing legal proceedings, when law confers powers to condone the delay in the litigant pursuing Court proceedings. This of course on testing the bonafides of such plea as may be urged. In our opinion, such principles which are quite paramount and jurisprudentially accepted are certainly applicable, when the assessee seeks condonation of delay in filing income tax returns, so as to remove the prejudice being caused to him, so as to regularise his returns. In fact, in this situation, to not permit an assessee to file his returns, is quite counter productive to the very object and purpose, the tax laws intend to achieve. In this view of the matter, we have no manner of doubt that the delay which is sufficiently explained in the present case would be required to be condoned."

(emphasis supplied)

20. Therefore, in our view, the delay in filing Form 10B is required to be condoned as the failure to file and verify the audit report prior to filing of the return, despite obtaining the same from the auditors within time, could be only due to human error and beyond the control of the Petitioner.

21. Moreover, in our opinion, the Petitioner does not appear to have been lethargic or lacking in *bona fides* in verifying the audit report beyond the due date 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 has revised its returns in the past, is unsustainable.

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

23. On similar facts, in the cases of ***Sau Dwarkabai Tai Karwa Charitable Public Trust Vs. Commissioner of Income Tax (Exemption) [(2025) 174 taxmann.com 245 (Bombay)]*** and ***Al Jamia Mohammediyah Education Society Versus Commissioner of Income Tax [(2025) 482 ITR 41 (Bom.)]*** this Court had taken a similar view and condoned the delay in filing Form 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 Court is reported in ***2025 (7) TMI 1316 – SC Order***.

24. 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.

25. Apart from the above, we find that the impugned order also refers to a mismatch of figures in the income tax return and the audit report in Form 10B. It is stated in the Petition that the letter dated 27th October 2023, putting forth the allegations of mismatch, was not received by the Petitioner and accordingly, no response could be furnished thereto. Further, it is submitted on behalf of the Petitioner that the said mismatch is based on an incorrect comparison of figures and in any event, would not effect the claim of exemption made by the Petitioner under Section 11 of the Act.

26. Since, there will be no effect of the said mismatch of figures in the income tax return and the audit report in Form 10B on the exemption claimed by the Petitioner under Section 11 of the Act, we refrain from making any observation with regards to the said mis-match of figures and leave it open for the assessing officer to examine the same, if required, at the stage of assessment/rectification.

27. In view of the aforesaid observations, we quash and set aside 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.

28. 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.

29. 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.]**