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

WRIT PETITION NO. 713 OF 2025

Mirae Asset Foundation .. Petitioner

Versus

Principal Commissioner of Income Tax – 6, Mumbai & Ors. .. Respondents

Mr. Tanzil Padvekar*, a/w Tejal P. Kharkar, Advocates for the Petitioner.*

Mrs. Shehnaz V. Bharucha*, Advocate for the Respondents*

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: JULY 07, 2025.

P. C.

1. Rule. The 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 passed by Respondent No.1 (The Principle Commissioner of Income Tax) under Section 119 (2)(b) of the Income Tax Act, 1961 (for short "IT Act") dated 11th December 2024. By the impugned order, the 1st Respondent refused to condone the delay of 24 days in filing Form 10B for AY 2021-22.

Consequently, the exemption claimed by the Petitioner-Foundation, and which is a Charitable Trust, was denied to the Petitioner.

3. Mrs. Bharucha, the learned Advocate appearing on behalf of the Revenue, submitted that in the facts of the present case, apart from the reasons stated in the impugned order for rejecting the application, the Assessee has not even digitally signed Form 10B, and therefore, it is an invalid Form which is filed by the Petitioner.

4. We have perused the papers and proceedings in the Writ Petition and also the impugned order dated 11th December 2024 [passed under Section 119(2)(b) of the IT Act]. It is not in dispute that the delay in filing Form 10B is only 24 days. The ground on which delay is not condoned is that even after the filing of Form 10B with a delay of 24 days, no application for condonation of delay was filed immediately and the same was submitted only about 9 months later. Therefore, the delay was not condoned.

5. As far as the condonation of delay is concerned, we find that admittedly there was only 24 days delay in filing Form 10B. It is true that the application seeking condonation of delay was filed after about 9 months. However, we find that this delay is not such that should deny the Petitioner

from filing Form 10B with a delay of 24 days. We find that if this delay is not condoned, there will be genuine hardship to the Petitioner, inasmuch as, the Petitioner would be denied the exemption otherwise claimed under the provisions of Section 11 of the IT Act and which is a substantial amount. In the view that we take, we are supported by a decision of the Hon'ble Gujarat High Court in the case of ***Sarvodaya Charitable Trust Vs. Income Tax Officer (exemption) [2021] 125 taxmann.com 75 (Gujarat)***. A Division Bench of the Gujarat High Court in *Sarvodaya Charitable Trust* (supra) took a view that in cases like the present one (delay in filing Form 10B), the approach of the Authorities ought to be equitious, balancing and judicious and availing of exemption should not be denied merely on the bar of limitation. This is more so, when the legislature has conferred wide discretionary powers to condone the delay on the authorities concerned. The relevant portion of this decision reads thus :-

> *"31. Having given our due consideration to all the relevant aspects of the matter, we are of the view that the approach in the cases of the present type should be equitious, balancing and judicious. Technically, strictly and liberally speaking, the respondent no.2 might be justified in denying the exemption under section 12 of the Act by rejecting such condonation application, but an assessee, a public charitable trust past 30 years who substantially satisfies the condonation for availing such exemption, should not be denied the same merely on the bar of limitation especially when the legislature has conferred wide discretionary powers to condone such delay on the authorities concerned.*

> *32. We may also refer to the decision of this Court in CIT v. Gujarat Oil and Allied Industries Ltd. [1993] 201 ITR 325 (Guj.), wherein it is held 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. In that case, the assessee had not produced the audit report along with the return of income but produced the same before the completion of the assessment. This Court took the view that the benefit of exemption should not be denied merely on account of delay in furnishing the same and it is permissible for the assessee to produce the audit report at a later stage either before the Income-Tax Officer or before the appellate authority by assigning sufficient cause."*

6. As far as the argument of Mrs. Bharucha that the Petitioner has not digitally signed Form 10B is concerned, we find that the said argument is factually incorrect. Form 10B filed by the Petitioner can be found at Exh.E, page 72 of the paper book. In fact, the Form has an acknowledgment number being Acknowledgment Number – 326816870110322. On Page 75 of the paper book, it is categorically stated that the Form has been digitally signed by Mr. Hinesh Rameshchandra Doshi on 11th March 2022 at 03:38 p.m. The relevant portion is reproduced hereinunder :-

"Acknowledgment Number – 326816870110322
This form has been digitally signed by HINESH RAMESHCHANDRA DOSHI having PAN AACPD2403N from IP Address 27.106.42.85 on 11-Mar-2022 03:38:35 PM *Dsc SI No and issuer C=IN,0=Verasys Technologies Pvt Ltd., OU=Certifying Authority"*

7. We, therefore, find that the argument of Mrs. Bharucha regarding Form 10B not being digitally signed and hence invalid, to be without substance.

8. In view of the foregoing discussion, we hereby quash and set aside the impugned order dated 11th December 2024 passed by Respondent No.1 under Section 119(2)(b) of the IT Act.

9. Now that the impugned order is quashed, we also hereby condone the delay in filing Form 10B by the Petitioner.

10. 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.

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.]**

Uday S. Jagtap