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

WRIT PETITION NO. 758 OF 2025

Mirae Asset Venture Investments India Pvt. Ltd. .. 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 is filed challenging the Order dated 30th December 2024 passed by Respondent No.1 under Section 119(2)(b) of the Income Tax Act, 1961 (for short "**IT Act**") refusing to condone the delay of 247 days [mentioned as 295 days in prayer clause (a) of the Petition] in filing Form 10IC.

3. The Assessment Year in question is AY 2021-22. The Petitioner, filed its Return of Income under Section 139(1) of the IT Act on 14th March 2022 (i.e. one day before the due date of filing the Return).

4. The Petitioner's Return of Income was processed under Section 143(1) vide intimation dated 13th November 2022. In the said intimation, the claim under Section 115BAA was rejected and a demand of Rs.11,25,423/- was raised on the Petitioner. This rejection was on the basis that the Petitioner had not furnished Form 10IC, which was mandatory for claiming the concessional rate of tax as set out in Section 115BAA.

5. Pursuant to this, the Petitioner immediately filed Form 10IC on 16th November 2022. Obviously, there was a delay since this Form would have to be filed along with or before the filing of the Return under Section 139(1). After filing Form 10IC belatedly, the Petitioner also filed an Application for condonation of delay [under Section 119(2)(b)] dated 16th January 2023. This Application was dismissed by the 1st Respondent vide the impugned order dated 30th December 2024, and which is assailed in the present Writ Petition.

6. In this factual background, the learned Counsel appearing on behalf of the Petitioner, submitted that apart from the fact that there was a genuine reason for the delay, brought to our attention the Circular issued by the Central Board of Direct Taxes (for short "**CBDT**"), dated 23rd October 2023, being Circular No. 19/2023 [F.No.173/32/2022-ITA-I]. He submitted that this Circular has been issued specifically for AY 2021-22 and which states that the delay in filing Form 10IC for AY 2021-22 is condoned in cases where the conditions mentioned in the said Circular are satisfied. The learned Counsel submitted that the conditions mentioned therein are admittedly satisfied by the Petitioner. Hence, the delay ought to have been condoned by the 1st Respondent as per the instructions given in the CBDT Circular. He submitted that let alone following the said Circular, the 1st Respondent has not even referred to the same in the impugned order. Consequently, he submitted that the impugned order be set aside and the delay in filing Form 10IC be condoned.

7. On the other hand, Mrs. Bharucha, the learned Counsel appearing on behalf of the Revenue, submitted that no proper reason/ justification was given for the delay in filing Form 10IC as mandated under the IT Act and the Rules framed thereunder. She submitted that even if the contention of the Petitioner is accepted, there is a considerable gap between

filing of Form 10IC and the condonation of delay Application, which remains unexplained. She submitted that the guidelines for condonation of delay under Section 119(2)(B) vide Circular No. 19/2023 dated 23rd October 2023 (relied upon by the learned Advocate for the Petitioner) were issued on a much later date. Meanwhile, the rectification application of the Petitioner dated 18th September 2023 was also rejected on 6th February 2024. The Application for condonation of delay was made only after detection by the Assessing Officer and after completing the processing of the Return of the Petitioner under Section 143(1) of the IT Act. She, therefore, submitted that in such circumstances, the Petitioner cannot rely upon the Circular to somehow have the delay condoned in filing Form 10IC. She submitted that the said Circular would apply only to cases where the Form is submitted late but before detection of the same by the Assessing Officer or completion of assessment. Consequently, she submitted that there was no merit in the above Writ Petition and the same ought to be dismissed.

8. We have heard the learned Counsel for the parties and also perused papers and proceedings in the above Writ Petition. We have also perused the impugned order dated 30th December 2024. After going through the impugned order, we find that the Application for condonation of delay has been rejected *inter alia* on the ground that the Assessee had furnished

Form 10IC on 16th November 2022 i.e. with a delay of 247 days, and even thereafter, there was no Application for condonation of delay filed immediately. The Application for condonation of delay was submitted only on 18th January 2023, which was much after raising the demand on 27th October 2022 vide intimation under Section 143(1)(a). Ironically, the impugned order does not refer to the Circular issued by the CBDT, and which is dated 23rd October 2023.

9. The Circular No. 19/2023 [F.No.173/32/2022-ITA-I], dated 23rd October 2023 can be found at page 224 of the paper book. For the sake of convenience, the said Circular is reproduced hereinunder :-

"SECTION 119, READ WITH SECTION 115BAA OF THE INCOME-TAX ACT, 1961 AND RULE 21AE OF THE INCOME-TAX RULES, 1962 – CENTRAL BOARD OF DIRECT TAXES – INSTRUCTIONS TO SUBORDINATE AUTHORITIES CONDONATION OF DELAY IN FILING FORM NO. 10-IC FOR ASSESSMENT YEAR 2021-22

CIRCULAR NO. 19/2023 [F.NO. 173/32/2022-ITA-I], DATED 23-10-2023

In exercise of the powers conferred under section 119(2)(b) of the Income-tax Act,1961 ('the Act'), the Central Board of Direct Taxes ('CBDT') by Circular No. 6/2022 of even number, dated 17-3-2022 condoned the delay in filing of Form No. 10-IC as per Rule 21AE of the Income-tax Rules, 1962 ('the Rules') for the previous year relevant to A.Y. 2020-21 in cases where the conditions stipulated in the said Circular are satisfied.

2. ***Representations have been received by CBDT stating that Form No.10-IC could not be filed for A.Y. 2021-22 within the due date or***

> ***extended due date, as the case may be. It has been requested that the delay in filing of Form No.10-IC for A.Y. 2021-22 may be condoned.***
>
> *3. On consideration of the matter, with a view to avoid genuine hardship to the domestic companies in exercising the option u/s 115BAA of the Act, CBDT in exercise of the powers conferred under section 119(2)(b) of the Act, hereby directs that :-*
>
> ***The delay in filing of Form No.10-IC as per Rule 21AE of the Rules for previous year relevant to AY 2021-22 is condoned in cases where the following conditions are satisfied:***
>
> ***(i) The return of income for relevant assessment year has been filed on or before the due date specified under section 139(1) of the Act;***
>
> ***(ii) The assessee company has opted for taxation u/s 115BAA of the Act in item (e) of "Filing Status" in "Part A-GEN" of the Form of Return of Income ITR-6; and***
>
> ***(iii) Form No. 10-IC is filed electronically on or before 31-1-2024 or 3 months from the end of the month in which this Circular is issued, whichever is later."***
>
> *(emphasis supplied)*

10. As can be seen from the Circular, there were several representations received by the CBDT stating that From 10IC could not be filed for AY 2021-22 within the due date or the extended due date and, therefore, the delay in filing Form 10IC for AY 2021-22 may be condoned. The CBDT, on consideration of the matter, and with a view to avoid genuine hardship to the domestic companies in exercising the option under Section 115BAA of the Act, directed that the delay in filing Form 10IC for AY 2021-22 be condoned, provided the three conditions mentioned therein were satisfied.

The first condition in the said Circular is that the Return of Income for relevant assessment year has to be filed on or before the due date specified under Section 139(1) of the IT Act. In the facts of the present case, it is not in dispute that the due date to file the Return [under Section 139(1)] was 15th March 2022, and the Return of Income (for AY 2021-22) has been filed on 14th March 2022. This being the case, the first condition as set out in the above Circular is satisfied. The next condition in the Circular is that the Assessee Company ought to have opted for taxation under Section 115BAA in item (*e*) of "Filing Status" in "Part A-GEN" of the Form of Return of Income ITR-6. As far as the present case is concerned, it is an undisputed fact that the Assessee Company did opt for taxation under Section 115BAA in item (*e*) of "Filing Status" in "Part A-GEN" of the form of Return of Income ITR-6. This can be found at page 99 of the paper book. Hence, even this condition is fulfilled by the Petitioner-Assessee. The third condition is that the Form 10IC has to be filed electronically on or before 31st January 2024 or 3 months from the end of the month in which the aforesaid Circular was issued, whichever was later. In the facts of the present case, it is also undisputed that Form 10IC was filed on 16th November 2022. This is evident from pages 218 and 219 of the paper book. Hence, we find that the Petitioner-Assessee has complied with all the three conditions as mentioned in the said Circular and is, therefore, entitled to have the delay condoned.

11. However, as mentioned earlier, Mrs. Bharucha sought to justify the order on the basis that the said Circular did not apply to the present Assessee because its Return of Income was already processed under Section 143(1) and a demand of approximately Rs. 11 lakhs was raised on the Petitioner. We find that this argument holds no substance for the simple reason that the CBDT Circular does not put any such condition for condoning the delay. The CBDT Circular is unambiguous and stipulates that where an Assessee complies with the conditions mentioned in the Circular, the delay in filing Form 10IC needs to be condoned. Merely because the Return is processed under Section 143(1) would not dis-entitle the Assessee from seeking condonation of delay in filing Form 10IC. Similarly, we are unable to accept the submission of Mrs. Bharucha that once the non-filing of Form 10IC within the stipulated time is on the basis of the detection by the Assessing Officer, the Circular would not apply. Even this argument is of no substance because the Circular does not make any distinction as to who detects the delay in filing Form 10IC. We, therefore, find that the arguments canvassed by Mrs. Bharucha to sustain the impugned Order dated 30th December 2024 are misconceived and unsustainable.

12. In view of the foregoing discussion, we allow the above Writ Petition in terms of the prayer clause (a), which reads thus :-

> *"A. That this Hon'ble Court may be pleased to issue a Writ of Certiorari or the Writ in the nature of Certiorari or any other appropriate Writ, Order or direction, calling for the records of the Petitioner's case and after going into the legality and propriety thereof, to quash and set aside the impugned Order passed under Section 119(2)(b) of the Act dated 30/12/2024 and condone the delay of 295 days on filing form 10-IC (EXHIBIT "F") and direct the Respondents to process Petitioner's return in accordance with law by giving effect to the order on the basis that Form No.10-IC has been filed within time."*

13. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However, in the facts and circumstances of the case, there shall be no order as to costs.

14. 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.]**