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

WRIT PETITION NO. 1901 OF 2025

The Bombay St. Xavier's Society .. Petitioner

Versus

Commissioner of Income tax
(Exemption) and Ors. .. Respondents

Ms. Vasanti Patel*, for the Petitioner.*

Adv. Prathmesh P. Bhosale*, for the Respondents.*

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: SEPTEMBER 2, 2025

P. C.

1. The above Writ Petition challenges the impugned order dated 6th February 2025, passed by Respondent No.1 for the Assessment Year 2022-23 under Section 119(2)(b) of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] rejecting the Petitioner's application dated 16th March 2023 filed for condonation of delay of 31 days. By the impugned order, Respondent No.1 has refused to condone the delay in filing Form No. 10B for A.Y. 2022-23. Consequently, the exemption claimed by the Petitioner under

Section 11 of the Act has been denied to the Petitioner which is a Charitable Trust.

2. The Petitioner is running St. Xavier's High School, Secondary, Primary, Kinder Garten and the Petitioner Society. The Petitioner is a Charitable Trust and an educational institution. The Petitioner, in furtherance of its educational object, is running St. Xavier's High School for promoting education and awarding scholarships to deserving students. The Petitioner trust is duly registered under the Maharashtra Public Trusts Act, 1950, having PAN AATT3643A, and regularly filing its Return of Income. The Petitioner is registered under Section 12A(I)(ac)(i) of the Act vide registration no. AAATR3643AE19760 dated 24th September 2021, and 12-A(a) of the Act vide order dated 23rd September 1976. The petitioner has been assessed to income-tax since 1976.

3. The Petitioner filed its Return of Income for the A.Y. 2022-23 on 7th November 2022 i.e. within the time limit prescribed under Section 139(1) of the Act as extended by the CBDT from time to time. The due date for filing the audit report in Form No. 10B in terms of the provisions of Section 12A(1)(b) was 7th October 2022. The audit report in Form No. 10B was filed by the Petitioner on 7th November 2022 (i.e. the same day on which the Return of

Income was filed), resulting in a delay of about 31 days. The assessment for A.Y. 2022-23 was processed under Section 143(1) of the Act on 8th March 2023, disallowing the exemption claimed by the Petitioner under Section 11 of the Act. This was on the basis that Form No.10B was not filed within the prescribed time-frame.

4. Accordingly, the Petitioner filed an application on 16th March 2023 before Respondent No. 1 seeking condonation of delay in filing Form No. 10B. It was submitted that the Petitioner could not file the said Form No. 10B in due time due to the serious illness of the Petitioner's accountant who was responsible for ensuring timely filing of tax related documents and the illness of the accountant was substantiated by a medical certificate. The Petitioner further submitted that the Petitioner is running St. Xavier's High School, Secondary, Primary Kinder Garten and the main Society and the accounts of the parent Society and of the Secondary, Primary and Kinder Garten Schools were maintained by multiple accountants. The accounts of the Petitioner are incorporated in the main society accounts and consolidated accounts are prepared. The accountant of the main society was not keeping good health and hence he could not come to work on a daily basis and this fact was supported by the evidence filed along with the application. Further, the accounts of the society were maintained on a computer whose mother

board and hardware were not functioning properly in the second week of August 2022, and the computer could not be used. The computer was repaired only by second week of the September 2022 which also caused the delay in completing the consolidated accounts of the Petitioner and submitting the same to the Chartered Accountants for finalising the audit report and signing of the financial statements for the financial year ending 31st March 2022. This fact was also supported by the evidence filed along with the application. Accordingly, Form No. 10B was e-filed on 7th November 2022 before filing of the Return of Income for the A.Y. 2022-23 which was e-filed on the extended due date i.e. 7th November 2022. It was also stated that the same was available on record when the said Return of Income was processed under Section 143(1) of the Act at CPC on 8th March 2023.

5. Respondent No. 1 however vide the impugned order dated 6th February 2025 rejected the application for condonation of delay on the ground that, the Petitioner has not been able to adduce any reasonable cause which prevented it from filing the audit report within the specified date.

6. In this backdrop, the Counsel for the Petitioner submitted that Respondent No. 1 has not doubted or denied any of the facts as stated by the Petitioner. In fact, there is not even a mention that the delay of 31 days is

caused because of any wilful/intentional default on the part of the Petitioner. The fact that the accountant was not keeping good health and could not come to work on a daily basis is also not disputed by Respondent No. 1. The evidence filed in support thereof is also not doubted by Respondent No. 1. Further, the fact that the computer whose mother board and hardware were not functioning properly and had to be repaired is also not disputed by Respondent No. 1. The delay was caused on account of prolonged ill health of the accountant (as stated above) and, who was responsible for maintaining the financial records and co-ordinating the preparation for filing the audit report. Further, the delay in finalisation of accounts was also due to failure of the computer mother board which rendered the accounting system inoperative. This failure was beyond the Petitioner's control and not due to any wilful neglect. The delay was purely technical and there was no loss of revenue and nor any attempt to evade tax.

7. In support of her arguments, the Counsel for the Petitioner relied upon the judgments of this Court in the case of ***Mirae Asset Foundation Vs. Pr. Commissioner of Income-tax (Writ Petition No. 713 of 2025), Sau. Dwarkabai tai Karwa Charitable Trust Vs. Commissioner of Income-tax (Exemption) ([2025] 174 taxmann.com 245 (Bombay))*** and ***Kotak Family Foundation Vs.***

Commissioner of Income-tax (Exemption) ([2025] 176 taxmann.com 56 (Bombay)) as well as the judgment 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))***. It was contended by the learned Counsel that it is a fairly settled legal position that filing of audit report in Form No. 10B is directory in nature i.e. the requirement of furnishing the audit report by the due date is merely procedural and the benefits of Section 11 cannot be denied only on account of the delay in filing of the said audit report, especially when such report was available at the time of processing/assessment.

8. On the other hand, the learned Counsel for the Respondent however, defended the action of the Revenue and stated that the Petitioner has failed to make out a case for condonation of delay as discussed by Respondent No.1 in his order.

9. Having heard the learned Counsel for the parties, we agree with the contentions of the Petitioner. We find that admittedly, there was only a 31 day delay in filing Form No. 10B. In the present case, when one considers that Respondent No.1 never doubted the factual situation put forth by the Petitioner to explain the delay, Respondent No.1 ought to have condoned the

delay. 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 Act and which is a substantial amount.

10. We are of the view that Respondent No.1 ought to have taken a justice oriented approach rather than a pedantic one, and condoned the delay. We also find that in similar facts, this Court in the case of *Mirae Asset Foundation (supra), Sau. Dwarkabai tai Karwa Charitable Trust (supra)* and *Kotak Family Foundation (supra)* has taken a similar view and condoned the delay. Even the Hon'ble Gujarat High Court in the case of *Sarvodaya Charitable Trust (supra)* took the view that in cases like the present one (delay in filing Form No. 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.*
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> *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."*

11. In view of the foregoing discussion, we hereby quash and set aside the impugned order dated 6th February 2025 passed by Respondent No.1 under Section 119(2)(b) of the Act.

12. Now that the impugned order is quashed, we also hereby condone the delay in filing Form No. 10B by the Petitioner.

13. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. 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.]**

Darshan Patil