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

WRIT PETITION NO. 1903 OF 2025

Sha Hurgowan Anandji Desai Charities .. Petitioner

Versus

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

Ms. Vasanti Patel, *for the Petitioner.*

Adv. Prathmesh 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 a Charitable Trust established for charitable and religious purposes and is registered as a Public Charitable Trust under the provisions of the Maharashtra Public Trust Act, 1950 with the office of the Charity Commissioner, Greater Mumbai vide PTR No. A-482 (Mumbai) dated 7th October 1952, having PAN: AAATS0405R. The Petitioner is registered under Section 12A(1)(ac)(i) of the Act, vide registration No. AAATS0405RE19760 dated 23rd September 2021 and 12-A(a) of the Act vide order dated 9th January 1976. The Trust gives educational and medical aid to the poor and the needy. It provides financial help to widows and also runs a boarding institution at Matunga where students are provided with free of charge lodging and boarding.

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 because the accountant who handles the accounts and office admin work of the Trust was suffering from a heart ailment from the month of August 2022 that restrained him to travel and hence he could not attend office on a regular basis. Further, the Petitioner had undertaken redevelopment work for reconstruction of the boarding building for poor and needy students. This also resulted in extra admin work and took a lot of time of the accountant to handle various paper work/documents related to the above work. The above fact was substantiated by a medical leave application from the accountant, and in view thereof, the Petitioner could not submit the accounts to the chartered accountant/auditors for finalising the audit report and signing of the financial statements for the financial year ending 31st March 2022. 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 audit report in Form No. 10B 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. Accordingly, the Petitioners prayed for condonation of delay of 31 days in filing the audit report in Form No. 10B.

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 accountant was not keeping good health and could not attend the office is also not disputed by Respondent No.1. The evidence filed in support thereof is also not doubted by Respondent No.1. The delay was caused on account of serious health issues 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. 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 filling 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