IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2035 OF 2025

St. Anne's Church, Mumbai .. Petitioner

Versus

Commissioner of Income Tax,
(Exemption) & Ors. .. Respondents

Adv. Sukh Sagar Syal a/w Adv. Sameer G. Dalal for the Petitioner.

Adv. Prathmesh P. Bhosle for the Respondents.

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.

DATE: AUGUST 5, 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 is filed seeking to quash and set aside the order dated 31st March, 2025 passed by Respondent No. 1 rejecting the Petitioners' application for condonation of delay in filing Form No.10 for Assessment Year 2017-18. The other relief sought is a direction to Respondent No. 1 to condone the delay and allow the Petitioners' claim for accumulation of Rs. 1,58,13,048 under Section 11(2) of the Income Tax Act.

3. The present matter is in relation to Assessment Year 2017-18. The Petitioner filed its Return of Income Tax on 30th October, 2017 and filed its revised Return of Income on 16th March, 2018. The Petitioner uploaded Form No. 10 on the Income Tax portal on 24th March, 2018. After this, an Assessment order was passed on 5th December, 2019 denying the claim for exemption made by the Petitioner -Trust under Section 11 of the IT Act on the ground that the said Form No. 10 should have been filed before the due date of filing of the original return. Since, this was the only ground on which the exemption was denied, within one month of passing of this order, the Petitioner preferred an Application for condonation of delay before Respondent No. 1 under Section 119(2)(b) of the Income Tax Act. In this Application, the Petitioner sought the condonation of delay of 142 days in filing Form No. 10.

4. Respondent No. 1, by the impugned order, refused to condone the delay on the ground that no "reasonable cause" was shown for the aforesaid delay. Respondent No. 1 came to the conclusion that there was no proof of the bald assertions made by the Petitioner regarding the delay in filing Form No.10.

5. From the record we find that the delay has been explained by the Petitioner by stating that the delay has occurred because the Chartered Accountant of the Trust inadvertently did not file Form No.10 along with the Return of Income. Though this assertion was made before Respondent No.1, no affidavit of the Chartered Accountant was filed before him. However, in this Writ Petition, the Petitioner has annexed an affidavit of the Chartered Accountant dated 12th May, 2025 (page 188 of the paper book) where Chartered Accountant has categorically stated that the Trustees of the Petitioner Trust signed Form No.10 in the paper format which was put up at the meeting held by the Trustees on 27th September, 2017.

6. In fact in the affidavit it is stated that while presenting the accounts for A.Y. 2017-18, the Chartered Accountant brought to the attention of the Trustees the fact that the Trust has not spent the required amount of 85% of the receipts and there was a short fall in the expenditure on the objects, amounting to Rs. 1,58,13,048. In this affidavit, the Chartered Accountant further stated that though he filed the Return of Income on 30th October, 2017, (before the due date) he inadvertently missed out on the submission of Form No.10 in the electronic format as this was a recently introduced requirement.

7. Having carefully perused the Affidavit filed by the Chartered Accountant of the Petitioner-Trust, we are of the view that the Petitioner Trust would suffer grave hardship if the delay is not condoned and the exemption is denied to them only on this Court. The Petitioner Trust, which is a charitable Trust, ought not to be foisted with such a liability because of the inadvertent error of its Chartered Accountant.

8. Considering the facts and circumstances of the case, we are of the view that the delay ought to be condoned. We accordingly quashed and set aside the impugned order dated 31st March, 2025 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 on the part of the Petitioner in filing Form No.10.

10. Rule is made absolute in the above terms and 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.]**

Mansi shelke