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

WRIT PETITION NO. 2046 OF 2025

Bharat Eudcation Society .. Petitioner.

Versus

The Income Tax Officer,
Exemption -1(1) & Others .. Respondents.

Adv. Nitesh Joshi with Adv. Atul K. Jasani, for the Petitioner.

Adv. Prathamesh P. Bhosle, for the Respondents.

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: AUGUST 11, 2025

P. C.

1 **RULE**. With the consent of the parties, Rule made returnable forthwith and heard finally.

2 The above Writ Petition has been filed challenging the Order dated 21st April 2025 passed by Respondent No.4 (Central Board of Direct Taxes) under Section 119(2)(b) of the Income Tax Act, 1961 refusing to condone the delay in filing the Revised Return of Income by the Petitioner.

3 The brief facts of this case and which are necessary for deciding the present Writ Petition, are thus:-

4 The Petitioner, since the year 1959, has been running several Educational Institutions ranging from Junior KG to standard XII and has approximately above 9000 students.

5 The Petitioner, for Assessment Year 2015-16, filed its Return of Income on 30th September 2015. In the Income and Expenditure Account for the said year, the Petitioner reflected receipts of Rs.8.97 crores and the aggregate revenue expenditure on its objects, including administrative expenditure, of Rs. 6.89 crores. The said expenditure included expenditure on properties of Rs.89,56,610, establishment expenses of Rs.51,35,542/- audit fees of Rs.5 lakhs and depreciation of Rs.47,12,836 (aggregating to Rs.1,93,04,988). This represented the amount actually spent by the Petitioner during the year on the Revenue Account. However, in the original Return of Income filed on 30th September 2015, the amount of Rs.1,93,04,988/- was wrongly reflected as deemed to have been applied for charitable purposes in accordance with Clause 2 of Explanation I below Section 11 (1).

6 On 22nd October 2016, the Petitioner received an intimation under Section 143 (1) in respect of the aforesaid Return of Income and a tax demand of Rs.78,07,983 was raised on the Petitioner. It was also clarified in

the said intimation [under Section 143 (1)] that if the assessee is not satisfied with the adjustments made, it could file a Rectification Application.

7 Accordingly, on 31st December 2016, the Petitioner filed a Rectification Application. The said Rectification Application was dismissed on the ground that the Petitioner had not exercised its option in writing before the due date for claiming the deduction in respect of the amount deemed to have been applied for charitable purposes. The time to file the Revised Return of Income for the assessment year in question expired on 31st March 2017.

8 Be that as it may, since the 1st Rectification Application was dismissed, the Petitioner filed a 2nd Rectification Application with the concerned Officer. The 2nd Rectification Application was also dismissed on 30th May 2017 and the same was communicated to the Petitioner's treasurer on his e-mail on 30th May 2017.

9 It is the case of the Petitioner that the Petitioner's treasurer is not tech-savvy and the e-mails received by the treasurer are looked into by the employees who did not bring the aforesaid e-mail to his attention. It is for this reason that the Petitioner-Trust was under a bonafide impression that the 2nd Rectification Application was pending. Since there was no decision on the 2nd Rectification Application, the Petitioner, after taking legal

advice, filed an application before the CBDT, seeking a condonation of delay in filing the Revised Return of Income. It is on this application that the impugned order is passed.

10 In this factual back drop, the learned Counsel appearing on behalf of the Petitioner submitted that the 4th Respondent ought to have taken a justice oriented approach and condoned the delay. He submitted that the explanation for the delay has not only been set out in the Petition but also in the further Affidavit filed on behalf of the Petitioner dated 23rd July 2025. The learned Counsel brought to our attention the averments made in this Affidavit [from paragraph 7 onwards] and submitted that the delay occurred due to the inadvertence of the staff of the Petitioner-Trust who did not bring the relevant order passed on the 2nd Rectification Application to the notice of the treasurer. The Petitioner-Trust ought not to be penalized for this inadvertence, as grave hardship, would be caused to the Trust because a huge tax liability will be imposed upon them due to this inadvertence. The learned Counsel for the Petitioner pointed out that this Trust provides education to above 9,000 students and even the fees they charge to the students, are nominal fees taking into consideration that they come from lower income backgrounds. For all the aforesaid reasons, the learned Counsel submitted that the impugned order be set aside and the delay in filing the Revised Return of Income be condoned.

11 On the other hand, the learned Counsel appearing on behalf of the Revenue, submitted that no fault can be found with the impugned order. He submitted that apart from making a bald assertion that the treasurer is not tech-savvy and his staff did not bring the order dismissing the 2nd Rectification Application to his notice, there is no other explanation given by the Petitioner for such an inordinate delay. It is on this basis that the 4th Respondent came to the conclusion that no sufficient cause has been shown for condoning the delay, and therefore rightly dismissed the application filed by the Petitioner. The learned Counsel further submitted that by no stretch of the imagination can one term this order as perverse which would require interference by us under Article 226 of the Constitution of India. Consequently, he submitted that the Writ Petition be dismissed.

12 We have heard the learned Counsel for the parties at some length. We have also perused the papers and proceedings in the above Writ Petition. Undoubtedly, there is a delay, and a considerable one, on the part of the Petitioner to file its Revised Return of Income. As mentioned earlier, the date of filing the Revised Return of Income expired on 31st March 2017. The application seeking a condonation of delay in filing the Revised Return of Income was filed on 23rd February 2021. In effect, there was a delay of 3 years 10 months and 23 days. The explanation for this delay is set out in paragraph

7 of the Affidavit of the Petitioner, dated 23rd July 2025. For the sake of convenience, paragraph 7 is reproduced hereunder:-

> "*7. With respect to paragraph 7 of the affidavit in reply, I say that two independent contentions have been raised therein; viz-*
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> *a. That no reasonable cause has been shown by the Petitioner for not filing the revised return of income on or before 31.03.2017. Further, the application for condonation of delay in accordance with section 119 of the Act has been filed on 23.02.2021 and the said delay has also not been explained. With respect to the same, it is submitted that-*
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> *i. As per paragraph 3 of Circular No. 9/2015 dated 09.06.2015, no such application for condonation of delay shall be entertained beyond six years from the end of the assessment year for which such application/claim has been made. In the present case, this period of six years from the end of assessment year 2015-16 has expired on 31.03.2022, while, the application for condonation of such delay was filed with the Respondent No. 4 on 23.02.2021. Hence, there is no delay in the filing of the application in the present case.*
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> *ii. The Petitioner was pursuing with the remedy of filing rectification applications being dated 31.12.2016 and 18.05.2017 based on the suggestion contained in the Intimation Order dated 22.10.2016 passed by the CPC under section 143(1) of the Income-tax Act.*
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> *iii. That though the second rectification application stood disposed of by Order dated 30.05.2017 which order was also communicated over email of the Petitioner's Treasurer, it escaped our attention. As explained in greater detail in the petition, the Treasurer attending to this aspect of the matter is not tech savvy. His staff who normally accesses the emails did not appreciate the relevance of the same and by inadvertence did not draw*

the attention of the Treasurer to the same. Therefore, it carried the impression that the second rectification application remained pending till it visited the ITBA Portal of the Income-tax Department after receiving the Order dated 23.02.2024 passed by the Respondent No. 4 in the first round of proceedings. The Petitioner also carried this impression in view of transfer of the rectification rights by the CPC to the Respondent No. 1.

iv. That since the Petitioner bonafide believed that its second rectification application continued to remain pending it sought professional advise, when, it was suggested to file the present application for condonation of delay in filing of the revised return of income before the Respondent No. 4. Consequent thereto, on 23.02.2021 it has filed the present application.

v. The reasonable cause for not filing the revised return of income on or before 31.03.2017 or not filing the present application with the Respondent No. 4 till 23.02.2021 is as referred to hereinabove. In the impugned Order dated 21.04.2025 and the affidavit in reply, this conduct of the Petitioner has been referred to as grossly negligent and hence, failing to establish the reasonable cause. I submit that the Petitioner is a charitable institution. It was not aware of the intricacies in the procedural aspects of the Income-tax law. Unfortunately, it has also not sought appropriate professional advise at the relevant point of time, but only later. In such circumstances, a lenient view may be taken in the matter. If found appropriate, this Hon'ble Court may consider the explanation as given by the Petitioner from the lens of a normal litigant and whether its conduct shows any malafides. The Petitioner has not gained on account of the above referred delay. In such circumstances, this Hon'ble Court may be pleased to hold that a reasonable cause existed for the delay.

13 To put it in a nut shell, the delay has been caused because the Petitioner-Trust was under a bonafide impression that the 2nd Rectification

Application filed by them was still pending. Since the Petitioner was under that impression, and since according to the Petitioner, there was no resolution of the 2nd Rectification Application, on the basis of legal advice, it filed the application for condonation of delay before the CBDT under Section 119 (2)(b) of the Income Tax Act, 1961. The Petitioner has fairly admitted that they were under this mistaken impression (non disposal of the 2nd Rectification Application) because the Order dated 30th May 2017 (dismissing the 2nd Rectification Application) though sent on e-mail to the treasurer of the Petitioner-Trust, was not noticed by his staff who normally access the e-mail and who did not appreciate the relevance of the same by bringing it to the notice of the treasurer. When we look at the explanation given by the Petitioner-Trust and considering the grave hardship that would be caused to them if the delay is not condoned, we are of the view that the 4th Respondent, in the peculiar facts and circumstances of the present case, ought to have condoned the delay. It has time and again been held that the whilst disposing of applications for condonation of delay under Section 119 (2)(b) of the Act, the authority concerned ought to take a justice oriented approach rather than a pedantic one. It has also been held that when the Court or Authority on the first instance refuses to condone the delay, then, in such a case, the superior Court would be free to consider the cause shown for delay afresh and come to its own finding.

14 In support of what we have stated above, we place reliance on the decision of a Division Bench of this Court in the case of ***Artist Tree (P) Ltd., v/s. Central Board of Direct Taxes & Ors., [(2014) 369 ITR 691 (Bom)].*** The relevant portion of this decision read thus:-

> *"14:- In case of Bombay Mercantile Cooperative Bank Ltd. (supra), this Court again observed that it is well-settled that in matters of condonation of delay highly pedantic approach should be eschewed and a justice-oriented should be adopted. It also observed that a party should not be made to suffer on account of technicalities.*
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> *20:- Mr. Pinto submitted that inordinate delay of two years in filing the return of income lands the petitioner in the arena of laches and therefore, no relief should be granted to the petitioner. The principle on which the relief is denied to the party on grounds of delay or laches is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the Court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time [Dehri Rohtas Light Railway Co. Ltd. vs. District Board & Ors. (1992) 2 SCC 598). This does not mean or imply that the applicant seeking condonation of delay is absolved of the requirement to establish genuine hardship and sufficient cause. Similarly, the length of delay is not invariably the crucial factor. What is really important is the acceptability of the explanation offered. In every case of delay, there may be some lapse on the part of the party concerned. That by itself is not ordinarily sufficient to turn down the plea or to shut the doors against him. If the explanation offered does not smack of mala fides or it is not put forth as a part of dilatory strategy, the Court is expected to show utmost consideration to the applicant, particularly because refusal to condone delay would result in foreclosing an applicant from even putting forth his cause. Once the Court accepts the explanation as sufficient, it is the*

> *result of positive exercise of discretion and normally the superior Court should not disturb such exercise, unless the same was on wholly untenable grounds or arbitrary or perverse. But, it is a different matter when Court or authority of the first instance refuses to condone the delay. In such a case, the superior Court would be free to consider t*he cause shown for the delay afresh and come to its own finding (N. Balakrishnan vs. M. Krishnamurthy (1998) 7 SCC 123]."
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> *(emphasis supplied)*

15 In light of the aforesaid discussion, we are of the opinion that the CBDT ought to have taken a liberal view with reference to the explanation offered by the Petitioner for the delay, and especially when a case of genuine hardship was made out. The refusal by the CBDT (the 4th Respondent) to condone the delay was a result of an unduly restricted approach. In the facts of the present case, the delay was neither deliberate nor on account of any negligence or malafides. Once we come to this conclusion, we are of the view that the impugned order passed by the CBDT refusing to condone the delay in filing the Revised Return of Income for Assessment Year 2015-16 is liable to be set aside. It is accordingly so ordered.

16 Since we have set aside the Order of the CBDT, we also hereby condone the delay in filing the Revised Return of Income for Assessment Year 2015-16.

17 Now that the delay is condoned, the Revenue-Authorities shall open the portal to enable the Petitioner to file its Revised Return of Income. This exercise shall be completed within a period of 4 weeks from today.

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

19 Though we have disposed of the above Writ Petition, we place it on board for reporting compliance on 8th September 2025.

20 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.]**