

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

WRIT PETITION NO.2057 OF 2025

Little Flower Education Society

.. Petitioner

Versus

The Commissioner of Income Tax (Exemptions)
Mumbai and Ors.

.. Respondents

Mr.Dharan Gandhi a/w Aanchal Vyas, Advocates for the
Petitioner.

Mr.Prathamesh Bhosle, Advocate for the Respondents.

**CORAM : B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**
DATE : AUGUST 25, 2025

P. C.

1. Rule. Respondents waive service. With the consent of parties, Rule made returnable forthwith and heard finally.

2. The above Writ Petition has been filed challenging the legality of the order dated 11th February 2025 passed under Section 119(2)(b) of the Income Tax Act, 1961 for A.Y.2020-2021. By the impugned order, the CIT (Exemptions), Mumbai (Respondent No.1)

rejected the Application filed by the Petitioner seeking a condonation of delay in filing Form 10B by relying upon a Circular issued by the CBDT, being Circular No.16/2024 dated 18th November 2024. This Circular stipulates that no Application for delay in filing of Form No.9A/10/10B/10BB shall be entertained beyond the period of three years from the end of the Assessment Year for which such Application is made. The Circular also makes it clear that this time limit would apply for any Applications that are filed on or after the date of the Circular, namely, 18th November 2024. The CIT (Exemptions) dismissed the Application filed by the Petitioner under Section 119(2)(b) relying upon this Circular because admittedly, application seeking condonation of delay was filed after 18th November 2024 and was beyond the period of three years from the end of the Assessment Year in question. The second challenge laid in the above Petition is to paragraph 3 of the Circular itself, which mandates that no Application for condonation of delay shall be entertained if it is beyond the period of three years from the end of the Assessment Year in question.

3. The Petitioner is an educational trust and is registered under the Bombay Public Trust Act, 1950. The Petitioner has been carrying out educational activities since 1972. It is running a school and

college in the Ghatkopar West area of Mumbai city and provides education from nursery till class twelve. At present about 3000 students are studying in the Petitioner's institution. It is registered under section 12AA of the Act.

4. The year under consideration is AY 2020-2021. The due dates to file return of income were extended from time to time, due to difficulties arising out of the COVID-19 pandemic and the lockdowns imposed.

5. The Petitioner filed its return of income within the extended time limit of 15th February 2021 offering "Nil" income to tax by claiming benefits under section 11 of the Act. For this purpose, the Petitioner was required to conduct an audit of its books of account and submit a statutory audit report u/s 12A(1)(b) of the Act in Form No.10B. The Petitioner had filed its audit report along with the return income on 15th February 2021.

6. Subsequently, the return of the Petitioner was processed under section 143(1) of the Act and an intimation was issued on 30th November 2021 raising a demand of Rs.78,51,920/-, including interest,

after computing the total income of the Petitioner at Rs.2,07,89,948/-. The exemption under section 11 was denied in the said intimation. Further, it was mentioned that “*No forms filed*”. There was, undisputedly, no mention of late filing of the audit report in Form 10B.

7. It is stated by the Petitioner that the above intimation was not noticed by the Petitioner. Sometimes, in October 2023, the Chartered Accountant, while going through the Portal, came across a demand for the AY 2020-21. On verification, he found out about the intimation issued u/s 143(1), wherein the benefit of section 11 was denied. No reasons were provided in the intimation u/s 143(1) of the Act except for stating “No forms filed”. Since Form No. 10B was already filed, there was no reason to deny the benefit of section 11 to the Petitioner. Accordingly, a rectification request was raised by way of a grievance on the Income Tax portal on 12th January 2024.

8. The said grievance was resolved on 30th July 2024 with the comment “*Rectification proceedings are in process further the ITBA portal is showing that “You cannot compute income for this case as prior record has not been pulled in ITBA yet. Hence the e nivaran is being transferred to further necessary action”.*

9. It is stated that only on 22nd January 2025 the Petitioner received an email from the Centralised Processing Centre, wherein it was stated that the demand has been raised as the prescribed form [Form 10B] was not filed within due date. Further, reference was made to Circular No.16/2024 dated 18th November 2024 and attention was drawn to the powers for condonation of delay.

10. Considering the mail received, on 04th February 2025, the Petitioner filed an application with Respondent No. 1 for condonation of delay in filing of return of income. It was explained that the Petitioner filed the return of income on 15th February 2021 and on the same day it also filed Form 10B. It was submitted that the due date to file the audit report was one month prior to the date of filing of the return of income and accordingly, the report was filed late by 31 days. The Petitioner submitted that such delay occurred because of difficulties faced due to COVID lockdown. Further, it was also submitted that AY 2020-21 was the first year, when the due date to upload audit report was preponed by one month from the date of filing of the return of income. This change went inadvertently unnoticed. It was submitted that the return was

processed u/s 143(1)(a) and the demand was raised of Rs. 78,51,920/- including interest, which has caused serious hardships to the Petitioner.

11. This application for condonation of delay was disposed of vide the impugned order dated 11th February 2025, and which is challenged in the present petition.

12. When this matter was heard on 08th July 2025, the Petitioner was asked to justify the delay in filing the application before CIT(Exemptions), Mumbai, as the pleadings in the petition were not sufficient. Accordingly, vide order dated 08th July 2025, the Petitioner was directed to file an additional Affidavit sufficiently explaining the delay of 3 years and 11 months in filing the Application [under Section 119(2)(b)] for condonation of delay. We had also made it clear the challenge to the paragraph 3 of the Circular No.16/2024 dated 18th November 2024 would be examined, only if we are satisfied with the explanation given. In the meanwhile, the Respondents were directed not to take any steps to recover the demand raised in case of the Petitioner for AY 2020-21.

13. Subsequently, on 22nd July 2025, an affidavit affirmed by Ms. Genevieve D'souza, the trustee of the Petitioner, has been filed. In the said affidavit, a detailed justification is given for the delay in filing the application under Section 119(2)(b). It has been averred in the said affidavit that though the Petitioner was sent an intimation dated 30th November 2021 under section 143(1) of the Act, by email, the same went unnoticed, because of the COVID pandemic, during which time, schools were not running and the administrative staff was also not coming regularly. Further there were issues with the internet connection in the school premises. For these reasons the intimation under Section 143(1) was not brought to the notice of the Chartered Accountant. It was only subsequently that the Chartered Accountant found out that the benefit of section 11 was denied and therefore, the demand was raised. In the intimation under Section 143(1), at no place any reasons were given for denial of exemption under section 11. However on page 13 of the said intimation, for 'forms' it was mentioned 'no forms filed'. This, according to the Petitioner was incorrect because Form 10B was already filed on 15th February 2021. This being a mistake apparent from the record, the Petitioner filed a grievance on the portal on 12th January 2024, and a request was made for rectification of the intimation and to cancel the demand. The said grievance was resolved on 30th July 2024 and the

resolution specified that the rectification proceedings are in process. The Petitioner was waiting for redressal of its grievance in this regard. Till such time, neither the Chartered Accountant nor the trustees were aware or had any belief that the denial of exemption was because of late filing of Form 10B. It is, therefore, averred that no attempts were made to rectify the late filing of Form 10B by about 31 days. The Petitioner and the Chartered Accountant became aware for the first time that the deduction was denied due to late filing of the audit report, when they received an email on 22nd January 2025 that the reason for denial of benefit under section 11 is because of late filing of the audit report. Further, it was in the same email, that the Petitioner was advised to get the delay condoned under Section 119(2)(b) of the Act. It is averred that immediately thereafter, the Petitioner filed the application under consideration.

14. We were satisfied with the reasons given in the additional affidavit justifying the delay in filing of the application of condonation of delay before Respondent No.1. It is apparent that until the mail received on 22nd January 2025, the Petitioner was unaware that the exemption under section 11 was denied due to belated filing of Form No. 10B. This Court, thereafter, proceeded to hear the challenge to the validity of

paragraph 3 of the Circular No.16/2024 dated 18th November 2024. At that time, the learned Counsel for the Respondents sought time to take instructions in the matter. Hence, the matter was adjourned.

15. Thereafter, Respondent No. 1 filed an additional affidavit affirmed on 11th August 2025. In the said affidavit, it has been stated that the restriction contained in paragraph 3 of the Circular No.16/2024 dated 18th November 2024 to entertain any application for condonation of delay in filing of Form 9A/10/10B/10BB would apply only to field authorities. If any application is to be filed beyond three years from the end of the relevant assessment year, then such an application can be filed before the Central Board of Direct Taxes ('CBDT'). It is the CBDT who will deal with such applications filed beyond the period of three years and that the assessee is not remediless. Accordingly, it has been contended in the additional affidavit that the Petitioner may be directed to file an application before the CBDT for resolution of its grievance.

16. Mr. Gandhi, learned counsel for the Petitioner submitted that instead of sending the Petitioner to CBDT, this Court can condone the delay in filing of Form 10B. He submitted that the delay in filing of Form No. 10B is only 31 days and that the Petitioner has given bonafide

reasons for such delay. It was also submitted that the same was due to change in law, which was effective from the said year and also due to the difficulties arising out of the lockdown imposed due to the COVID pandemic. In such circumstances, he prayed that the delay in filing of Form No. 10B be condoned by this Court itself, instead of relegating the Petitioner to approach the CBDT.

17. On other hand, Mr. Bhosle, learned Counsel for the Respondents submitted that no infirmity can be found with the Respondent No.1's order dated 11.02.2025 as the Respondent No.1 has acted in accordance with the CBDT circular No. 16 of 2024 dated 18.11.2024. He submitted that the Petitioner has filed application for condonation of delay in filing in Form 10B after a period of 3 years from the end of the relevant assessment year. He further submitted that the Petitioner ought to have filed its application within a reasonable time from the filing of the Form 10B. He further submitted that the Petitioner cannot claim ignorance of law. He submitted that taking into consideration the difficulties caused due to the Covid-19 pandemic, the due dates for filing return and tax audit report were extended from time to time. On the basis of the additional affidavit of the Respondent No.1,

he prayed that the Petitioner be relegated to the CBDT which will hear the Petitioner's application for condonation of delay in filing Form 10B.

18. We have heard the learned counsel for the parties.

19. We find that due to the clarification issued by the Respondents that an application for condonation of delay in filing of Form 9A/10/10B/10BB beyond three years from the end of the relevant assessment year can be made before the CBDT, there is no further requirement for us to deal with the challenge to paragraph 3 of the Circular No.16/2024 dated 18th November 2024.

20. Having said that, in the facts of the present case, we do not deem it appropriate to send the Petitioner to the CBDT. This is because we are satisfied that there is a reasonable cause for delay of 31 days in filing of Form No. 10B by the Petitioner. Firstly, the delay is merely of 31 days. Further, we note that AY 2020-21 was the first year when the due date to file the audit report was preponed by one month. Earlier, the time limits to upload audit report in Form 10B coincided with the due date to file the return of income. However, with effect from AY 2020-21, the due date to file the audit report in Form 10B was preponed by one

month. In other words, the audit report was required to be filed one month before the due date to file the return of income. The same was inadvertently not noticed by the Petitioner or the Chartered Accountant. There is no reason to disbelieve such an explanation as the audit report in Form No. 10B was admittedly filed along with the return of income. This is coupled with the fact that during such time, there was a lockdown announced by the Government. It should not be forgotten that we are dealing with a period when the COVID 19 pandemic was still prevalent. The school run by the Petitioner was closed during the entire year 2020-21 for students and the school administrative offices were also not working continuously in the year 2020-21 because of the lockdown. It is a known fact that during such time, time limits for various compliances were extended by CBDT from time to time. So much so that even the Hon'ble Supreme Court had *suo moto* extended the time limits to file appeals/applications under various laws from time to time in *Suo Motu Writ Petition (C) No. 3 of 2020*. Thus, in the facts of the present case, we are satisfied that the reasons given by the Petitioner for delay in filing of Form No. 10B are bonafide.

21. Moreover, not condoning such delay would cause genuine hardships to the Petitioner inasmuch as the Petitioner has been denied

exemption under section 11 of the Act and a demand of Rs. 78,51,920/- has been raised for belated filing of the audit report in Form No. 10B. One of the relevant considerations for condoning delay under section 119(2)(b) of the Act is to consider genuine hardships which an assessee will face if delay is not condoned. We derive support from the decision of this Court in case of ***Sitaldas K. Motwani vs. Director General of Income-tax (International Taxation), New Delhi reported in [2010] 323 ITR 223 (Bombay)***. Para 15 of the said decision is reproduced hereunder:-

“15. The phrase "genuine hardship" used in section 119(2)(b) should have been construed liberally even when the petitioner has complied with all the conditions mentioned in Circular dated 12-10-1993. The Legislature has conferred the power to condone delay to enable the authorities to do substantive justice to the parties by disposing of the matters on merit. The expression "genuine" has received a liberal meaning in view of the law laid down by the Apex Court referred to hereinabove and while considering this aspect, the authorities are expected to bare in mind that ordinarily the applicant, applying for condonation of delay does not stand to benefit by lodging its claim late. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In

fact he runs a serious risk. The approach of the authorities should be justice-oriented so as to advance cause of justice. If refund is legitimately due to the applicant, mere delay should not defeat the claim for refund."

22. In somewhat similar circumstances, this Court had condoned the delay in filing of Form No. 10B in the case of ***Mirae Asset Foundation vs. Principal Commissioner of Income-tax - 6, Mumbai in Writ Petition No. 713 of 2025***. Paragraph 5 of the said order is reproduced hereunder:

"5. As far as the condonation of delay is concerned, we find that admittedly there was only 24 days delay in filing Form 10B. It is true that the application seeking condonation of delay was filed after about 9 months. However, we find that this delay is not such that should deny the Petitioner from filing Form 10B with a delay of 24 days. 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 IT Act and which is a substantial amount. In the view that we take, we are supported by a decision of the Hon'ble Gujarat High Court in the case of Sarvodaya Charitable Trust v. ITO (exemption) [2021] 125 taxmann.com 75/278 Taxman 148 (Gujarat). A Division Bench of the Gujarat High Court in Sarvodaya Charitable Trust (supra) took a view that in cases like the present one (delay in filing Form 10B), the approach of the Authorities ought to be equitable, 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 equitable, 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.

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."*

23. In light of the above discussion, we quash and set aside the impugned order passed under section 119(2)(b) of the Act dated 11.02.2025 and condone the delay of 31 days in filing of Form No. 10B for AY 2020-21.

24. Since the delay has been condoned, the respondent shall once again process the petitioner's returns in accordance with law by giving effect to this order on the basis that Form 10B has been filed within time.

25. 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.

26. 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.]