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

WRIT PETITION NO.2071 OF 2025

Bipinkumar Electric Corporation Charitable .. Petitioner

Versus

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

Mr.Siddhesh Bhole a/w Ruturaj Gurjar, Kartik Pillay i/b SSB Legal & Advisory, Advocates for the Petitioner.

Mr.Prathamesh P. Bhosle, Advocate for the Respondents.

CORAM : B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.
DATE : OCTOBER 13, 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 an order dated 15th March 2025 passed by Respondent No.1 rejecting the Petitioner's application for condonation of delay in filing Form No.9A for the Assessment Year 2017-18. The other relief sought is a direction to Respondent No.1 to condone the delay and allow the

Petitioner's claim for accumulation of Rs.11,63,068/- in terms of Section 11(1) clause (2) of the Income Tax Act, 1961.

3. The present matter pertains to the Assessment Year 2017-18. The Petitioner filed its Return of Income on 1st November 2017. The Petitioner uploaded Form No.9A after Respondent No.2 intimated improper filing of Income Tax Return on 2nd November 2018. Thereafter, the Petitioner rectified and filed revised Income Tax Return on the Income Tax portal on 20th November 2018. After this, Respondent No.2 issued an intimation dated 10th November 2019 denying the benefit of exemption amounting to Rs.11,63,068/- under Clause (2) to Explanation 1 of Section 11(1) of the Act on account of delay in filing Form 9A for the year under consideration. In light of the 2nd Respondent's intimation, the Petitioner filed an application on 10th August 2021 under Section 119(2)(b) of the Act before Respondent No.1 seeking condonation of delay in filing Form 9A for A.Y.2017-18, alongwith relevant documentary evidence. In this Application, the Petitioner sought for a condonation of delay of 384 days in filing Form No.9A.

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.9A.

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.9A 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 22nd April 2025 (page 89 of the Writ Petition) where the Chartered Accountant has categorically acknowledged that he inadvertently missed out on the submission of Form No.9A while filing the Income Tax Return.

6. Having carefully perused the affidavit filed by the erstwhile 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 count. The

Petitioner-Trust, which is a non-government charitable Trust, ought not to be foisted with such a liability because of the inadvertent error of its Chartered Accountant.

7. We also find that in similar facts, this Court in the case of ***Mirae Asset Foundation V/S Pr. Commissioner of Income-tax (Writ Petition No.713 of 2025)*** and ***Sau Dwarkabai tai Karwa Charitable Trust V/S Commissioner of Income-tax (Exemption) [(2025) 174 taxmann.com 245 (Bombay)]*** and ***Kotak Family Foundation V/S Commissioner of Income-tax (Exemption) [(2025) 176 taxmann.com 56 (Bombay)]*** has taken a similar view and condoned the delay. This Court has also relied on the judgment of the Hon'ble Gujarat High Court in the case of ***Sarvodaya Charitable Trust V/S Income Tax Officer (exemption) [(2021) 125 taxmann.com 75 (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 10), 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."*

8. Considering the facts and circumstances of the case, we are of the view that the delay ought to be condoned. We accordingly quash and set aside the impugned order dated 15th 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.9A and direct the Respondents to give effect to this order.

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

[AMIT S. JAMSANDEKAR, J.] **[B. P. COLABAWALLA, J.]**