IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2427 OF 2025

Lakhi Trust .. Petitioner

Versus

The Income Tax Officer
Exemption Ward – 1 (4) Mumbai & ors. .. Respondents

Mr. Subhash S. Shetty*, i/b. Mr. Atul K. Jasani, Advocates for the Petitioner.*

Mr. Prathamesh P. Bhosle*, Advocate for the Respondent.*

CORAM: B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.
DATE: OCTOBER 6, 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 challenges the order dated 18th February, 2025, passed by the Respondent No. 2 under Section 119(2)(b) of the Income-tax Act, 1961 ("the Act"), rejecting the Petitioner's application dated 10th December, 2018, for condonation of delay in filing Form No. 9A for the Assessment Year 2016-2017. Respondent No. 2 has by the impugned order,

refused to condone the delay of 784 days in filing Form No. 9A. Consequently, the Petitioner's claim for deemed application of income under clause (2) of the Explanation to sub-section (1) of Section 11 of the Act has been denied to the Petitioner.

3. The Petitioner is a charitable trust set up in 1987 and registered with the Director of Income Tax (Exemption), Mumbai, under section 12A of the Act in 1988. The Trust was also registered in 1987 with the Charity Commissioner, Mumbai and is also registered under Section 80G of the Act. Since then, it has been regularly filing its return of income and complying with the other provisions of the Act. The Petitioner carries on various charitable activities such as relief for the poor, education, medical relief etc. for the last more than 38 years.

4. For the Assessment Year 2016-2017, the Petitioner filed its return of income on 25th July, 2016, declaring a total income as Rs. Nil, by claiming deemed application of income of Rs. 1,21,01,010/- under Section 11(1) of the Act. As per the amendment made by the Finance Act, 2015, with effect from 1st April, 2016 [i.e., applicable to Assessment Year 2016-2017 onwards], the Petitioner is required to file new Form No. 9A exercising the option for deemed application of income under sub-section (1) of section 11 of the Act.

The Petitioner filed its return of income on 25th July, 2016, i.e., within the time limit prescribed under section 139(1) of the Act, declaring its total income as Rs. Nil, along with Form No. 10, as in the past, but inadvertently failed to file Form No. 9A.

5. During the assessment proceedings, as soon as the Petitioner realized the inadvertent error, it filed Form No. 9A in the course of assessment and also filed the condonation application before Respondent No. 2 to condone the unintended delay in filing Form No. 9A. However, the Respondent No. 1, passed an assessment order under section 143(3) of the Act on 12th December, 2018, computing the Petitioner's total income at Rs. 1,21,01,010/- and raised a tax demand of Rs. 51,93,031/-, by rejecting its claim for deemed application under Section 11(1) of the Act on the ground that the Petitioner had not filed Form No. 9A exercising the option for deemed application of income within the time prescribed.

6. Respondent No. 2, by his order dated 18th February, 2025, rejected the Petitioners application dated 10th December, 2018 for condonation of delay in filing Form 9A on the ground that the Petitioner has not been able to adduce any reasonable cause which prevented it from filing Form No. 9A within the specified date.

7. In this factual backdrop, the counsel for the Petitioner submitted that Respondent No. 2 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 was caused because of any willful/intentional default on the part of the Petitioner. The Petitioner had filed Form No. 10, as in the past, along with return of income within the prescribed time but inadvertently failed to file Form No. 9A. Respondent No.2 ought to have appreciated that there was a change in law during the year under consideration, and it was the first year where the requirement to file Form 9A was introduced. It is because of this that Form 9A was not filed due to oversight. When the Petitioner had filed Form 10 and the return in time, there was no reason not to file Form 9A. The delay was not intentional or deliberate but purely technical, and there was neither any loss of revenue nor any attempt to evade tax.

8. The Counsel for the Petitioner submitted that the following Circulars issued by the Respondent No. 3 (CBDT), under Section 119(2)(b) of the Act authorized the Commissioner of Income-tax to condone the delay in filing of Form No. 9A and Form No. 10 for the Assessment Year 2016-2017 or any subsequent assessment years.

i) CBDT Circular No. 7 of 2018 dated 20-12-2018

ii) CBDT Circular No. 30 of 2019 dated 17-12-2019

iii) CBDT Circular No. 3 of 2020 dated 03-01-2020

iv) CBDT Circular No. 17 of 2022 dated 19-01-2022

9. It was submitted that the issuance of these Circulars shows the intention of the Board to allow the Commissioner of Income-Tax to liberally condone the delay in filing Form No. 9A and Form No. 10. However, Respondent No. 2 had adopted a hyper technical and pedantic approach, which has caused great prejudice to the Petitioner. Respondent No. 2 ought to have adopted a lenient and pragmatic view of the matter and condoned the delay, was the submission.

10. In support of his arguments, the Counsel for the Petitioner has relied upon the judgments of this Court in the following cases:-

i. KSB Care Charitable Trust Vs. Commissioner of Income-tax (Exemption) W. P. (L) No. 23591 of 2025, decided on 22.9.2025.

ii. Al Jamia Mohammediyah Education Society Vs. Commissioner of Income-tax (Exemptions) ([2024] 298 Taxman 650 (Bom).)

SLP against the above decision has been dismissed by the Hon'ble Supreme Court in ***Commissioner of Income-tax (Exemption) Vs. Al Jamia Mohammediyah Education Society [2025] 176 taxmann.com761 (SC).***

iii. ***Bharat Education Society Vs. The Income Tax Officer, (Exemption) 1(1) & Others (W.P. No. 2046 of 2025 decided on 11/8/2025).***

iv. ***Artist Tree (P) Ltd., Vs. Central Board of Direct Taxes & Ors., (2014) 369 ITR 691 (Bom)***

11. In addition to this what is stated earlier, the Counsel for Petitioner further submitted that Form No. 9A having been filed before Respondent No. 1 during the course of the assessment proceedings, and before the completion thereof, the same should have been taken into account and given effect to, and the Respondents were not justified in rejecting the same. The Petitioner relies upon the following judgments in support of the above proposition:

CIT Vs. Nagpur Hotel Owners Association (2001) 247 ITR 201 (S.C.)

CIT Vs. Sakal Relief Fund (2017) 248 Taxman 31 (Bom)

12. For all the aforesaid reasons, the learned Counsel for the Petitioner submitted that the above Writ Petition be allowed.

13. On the other hand, the Counsel for the Respondents defended the action of the Revenue and submitted that the Petitioner has failed to make out a case for condonation of delay, as discussed by Respondent No. 2 in his order. It was submitted that the Petitioner had failed to provide reasonable cause for its failure to file Form No. 9A within the time specified. It was also submitted that the impugned order passed by Respondent No. 2 is in consonance with the Circulars issued by Board from time to time under Section 119(2)(b) of the Act. The Counsel for the Respondent further submitted that the judgments relied upon by the Petitioner are distinguishable on facts, and therefore, not applicable to the present case. Consequently, he submitted that there was no merit in the above Writ Petition and the same be dismissed with costs.

14. We have heard the learned Counsel for the parties. We have also perused the materials placed on record and the case laws relied upon. Admittedly, Assessment Year 2016-2017 was the first year wherein filing of Form No. 9A was prescribed by the amendment made by the Finance Act, 2015. Hence, the possibility of the Petitioner having inadvertently failed to

file the same cannot be ruled out. Precisely for this reason, the Board issued various Circulars empowering the Commissioner of Income-Tax to condone the delay in filing of Form No. 9A and Form 10 in genuine cases and to decide the issue on merits. Further, Form No. 9A having been filed during the course of assessment proceedings, the same should have been considered. We find that the Petitioner is a charitable Trust carrying on various Charitable activities for the last 38 years, and if this delay is not condoned, there will be genuine hardship to the Petitioner, inasmuch as the Petitioner would be saddled with a tax liability of Rs. 51,93,031/-, even though it has substantially complied with the provisions of Section 11 of the Act.

15. We also find that in similar facts, this Court in the case of ***Mirae Asset Foundation v. Pr. Commissioner of Income-tax (WP No. 713 of 2025) and Sau Dwarkabai tai Karwa Charitable Trust v. Commissioner of Income-tax (Exemption) [2025] 174 taxmann.com 245 (Bombay) and Kotak Family Foundation v. Commissioner of Income-tax (Exemption) [2025] 176 taxmann.com 56 (Bombay)*** has taken a similar view and condoned the delay. Further the Hon'ble Gujarat High Court in the case of ***Sarvodaya Charitable Trust Vs. Income Tax Officer (exemption) [2021] 125 taxmann.com 75 (Gujarat)*** has taken a view that in cases like the present one, 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 the decision of the Hon'ble Gujrat High Court in the case of ***Sarvodaya Charitable Trust (supra)*** *is reproduced hereunder :-*

> *'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 he Act by rejecting such condonation application, but as 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 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."*

16. In view of the foregoing discussion, we quash and set aside the impugned order dated 18th February, 2025 passed by Respondent No. 2

under Section 119(2)(b) of the Act and condone the delay in filing Form 9A by the Petitioner.

17. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. No order as to costs.

18. 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.]**

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