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

WRIT PETITION NO. 2632 OF 2025

People's Mobile Hospitals .. Petitioner

Versus

Commissioner of Income tax (Exemption)
and Ors. .. Respondents

***Adv. Atul Jasani**, i/b Ms. Vasanti Patel, for the Petitioner.*

***Adv. Prathamesh P. Bhosle**, for the Respondents*

CORAM: B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.
DATE: SEPTEMBER 15, 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 challenges the impugned order dated 3rd March 2025, passed by Respondent No.1 for the Assessment Year 2022-23 under Section 119(2)(b) of the Income Tax Act, 1961 (for short "the Act"), rejecting the Petitioner's application dated 8th March 2023 filed on 16th March 2023 seeking a condonation of delay of 84 days in filing Form No.10B.

Consequently, the exemption claimed by the Petitioner under Section 11 of the Act has been denied to the Petitioner, which is a Charitable Trust.

3. The Petitioner is a Charitable Trust established exclusively for medical purposes and is registered as a Public Charitable Trust under the provisions of the Maharashtra Public Trusts Act, 1950, with the office of the Charity Commissioner, Greater Mumbai, vide PTR No.F-124 (Bom) dated 21st May 1953. Since then, it has been regularly filing its Return of Income and complying with the other provisions of the Act. The Petitioner, having PAN as AAAAP0083B, is registered under Section 12A(1)(ac)(i) of the Act vide registration No. AAAAP0083BE19753 dated 24th September 2021 and 12A(a) of the Act vide order dated 19th August 1975.

4. The primary object of the Trust is to provide medical care and services to the community, especially to the poor, needy and afflicted who are in dire need of medical services and can ill afford the treatment. The Petitioner, in furtherance of its medical object, is running a People's Mobile Hospital at Worli and provides the following medical services at their day care hospital: Medical, Surgical, Gynaecology, Opthalmic, Dental, Cardiology, ENT, Physiotherapy, Pathology and Bacteriology, X-ray, Ophthalmic Day care, Operation Theatre and OPD for Opthalmic patients, Sonography, Skin, Mammography, Haemodialysis, Complete check-up and complete heart check-up, OPG.

5. The Petitioner filed the Return of Income for the A.Y. 2022-23 belatedly on 30th December 2022, i.e. after the due date, viz. 7th November 2022 under Section 139(1) of the Act as extended by the CBDT from time to time, i.e. under Section 139(4) of the Act. The due date for filing the audit report in Form No.10B in terms of the provisions of Section 12A(1)(b) was 7th October 2022. The audit report in Form No.10B was filed by the Petitioner on 30th December 2022, resulting in a delay of about 84 days. Since there was a delay in filing Form No.10B, the assessment for A.Y. 2022-23, was completed under Section 143(1) of the Act disallowing the exemption under Section 11 claimed by the Petitioner.

6. Since there was a delay in filing Form No.10B, the Petitioner filed an application on 16th March 2023 before Respondent No.1 seeking a condonation of delay in filing the said Form. It was submitted that the Petitioner could upload the audit report only by 30th December 2022, i.e. 84 days after the due date. The Petitioner could not file the said Form No.10B in due time as the former accountant of the Petitioner, who handled the accounts and accounting matters, had left the job during the second Covid wave in 2021. The Petitioner appointed a part-time accountant, who also left the job, and they managed to appoint a new permanent accountant only in March 2022. The new accountant lacked experience and knowledge in handling accounting and compliance matters of charitable institutions and took time to familiarise himself with the accounts and settle down. These reasons caused a delay in completing the accounts and submitting the same to the Chartered Accountants for finalising the audit report and signing of the financial statements for the financial year ending 31st March 2022. Accordingly, Form No.10B was e-filed on 30th December 2022 before filing of the Return of Income for the A.Y. 2022-23, which was also e-filed on 30th December 2022.

7. It was also stated that the audit report in Form No.10B was available on record when the said Return of Income was processed under Section 143(1) of the Act at CPC on 8th March 2023. Accordingly, the Petitioner prayed for condonation of delay of 84 days in filing the audit report in Form No.10B.

8. Respondent No.1, however, vide the impugned order dated 3rd March 2025, rejected the application for condonation of delay on the ground that the Petitioner has not been able to adduce any reasonable cause which prevented it from filing the audit report within the specified date.

9. In this factual backdrop, the Counsel for the Petitioner submitted that Respondent No.1 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 of 84 days is caused because of any wilful/intentional default on the part of the Petitioner. The fact that the former accountant of the Petitioner, who handled the accounts and accounting matters, had left the job during the second Covid wave in 2021 and the Petitioner appointed a part-time accountant, who also left the job, and they managed to appoint a new permanent accountant only in March 2022, is also not disputed by Respondent No.1. The evidence filed in support thereof is also not doubted by Respondent No.1. The delay was caused on account of change in accountants, who were responsible for maintaining the financial records and co-ordinating the preparation for filing the audit report, as stated above. This failure was beyond the Petitioner's control and not due to any wilful neglect. The delay was purely technical, and there was no loss of revenue, nor any attempt to evade tax, was the submission.

10. The Counsel for the Petitioner has relied upon the judgments of this Court in the case of ***Mirae Asset Foundation v. Pr. Commissioner of Income-tax (Writ Petition No. 713 of 2025), 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)] as well as the judgment of the Hon'ble Gujarat High Court in the case of ***Sarvodaya Charitable Trust v. Income Tax Officer (Exemption) [(2021) 125 taxmann.com 75 (Gujarat)]***. It was contended by the learned Counsel that it is a fairly settled legal position that filing of audit report in Form No.10B is directory in nature i.e. the requirement of furnishing the audit report by the due date is merely procedural and the benefits of Section 11 cannot be denied only on account of the delay in filing of the said audit report, especially when such report was available at the time of processing/assessment.

11. On the other hand, the Counsel for the Respondent, however, defended the action of the Revenue and stated that the Petitioner has failed to make out a case for condonation of delay as discussed by Respondent No.1 in his order.

12. Having heard the parties, *prima facie*, we agree with the contentions of the Petitioner. We find that admittedly there was only 84 days delay in filing Form No.10B. However, we find that this delay is not such that it should deny the Petitioner from filing Form No.10B. 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 Act, and which is a substantial amount.

13. We are of the view that Respondent No.1 ought to have taken a justice-oriented approach rather than a pedantic one, and condoned the delay. We also find that in similar facts, this Court in the case of *Mirae Asset Foundation (supra), Sau Dwarkabai tai Karwa Charitable Trust (supra) and Kotak Family Foundation (supra)* has taken a similar view and condoned the delay. Even a Division Bench of the Gujarat High Court in *Sarvodaya Charitable Trust (supra)* took the view that in cases like the present one (delay in filing Form No.10B), 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."*

14. In view of the foregoing discussion, we hereby quash and set aside the impugned order dated 3rd March 2025 passed by Respondent No.1 under Section 119(2)(b) of the Act.

15. Now that the impugned order is quashed, we also hereby condone the delay in filing Form No.10B by the Petitioner.

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

17. 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.]**

Darshan Patil