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

WRIT PETITION NO.2657 OF 2025

Dinesh Surendra Kotecha & Anr. .. Petitioner

Versus

The Union of India & Ors. .. Respondents

Mr.Prakash Shah, Senior Advocate a/w Jas Sanghavi, Suyog Bhave i/b PDS Legal, Advocates for the Petitioner.

Mr.Prathamesh 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 parties, Rule made returnable forthwith and heard finally.

2. The above Writ Petition challenges the legality and validity of the impugned order dated 31st March 2025 passed by Respondent No.2 [Commissioner of Income Tax (Exemptions), Mumbai] under Section 119(2)(b) of the Income Tax Act, 1961 (for short "**Act**"). By the said order, Respondent No. 2 has rejected the application dated

20.03.2025 filed by the Petitioner-Trust seeking a condonation of delay of 70 days in filing Form No. 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 condonation of 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. Respondent No. 2 dismissed the application filed by the Petitioner under Section 119(2)(b) relying upon this Circular because admittedly, the 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.

3. The Petitioner is a charitable trust established in the year 1984 and registered under the Maharashtra Public Trusts Act, 1950. The Petitioner-Trust provides medical services to the general public at a very nominal rate in the Kandivali West of Mumbai, Maharashtra.

4. For A.Y. 2020-21, the due dates to file the return of income and audit report were extended from time to time, due to difficulties arising out of the COVID-19 pandemic and the lockdowns imposed. The extended limit to file the return of income for the A.Y. 2020-21 was 15th February 2021. Similarly, the CBDT had extended the time limit to file the audit report to 15th January 2021.

5. The Petitioner-Trust filed its Return of Income on 26th March 2021 offering “Nil” income to tax by claiming benefits under Section 11 of the Act. For this purpose, the Petitioner-Trust 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. Further, the Petitioner-Trust had filed its audit report in Form No. 10B along with the return income, i.e., on 26th March 2021.

6. In such circumstances, there was a delay of 70 days in filing the audit report in Form No.10B.

7. 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.8,87,450/-, including interest, after computing the total income of the trust at Rs.28,41,124/-. The exemption under section 11 was denied in the said intimation. There was, undisputedly, no mention of late filing of the audit report in Form No.10B for denying the exemption.

8. On 29th July 2022, vide a Rectification order under Section 154 of the Act, the intimation dated 30th November 2021, was rectified computing the net amount payable by the Petitioner as Rs.8,87,450/- including interest.

9. By way of an additional affidavit dated 11th October 2025, affirmed by Mr.Dinesh Kotecha, Trustee of the Petitioner-trust, a detailed justification is given for the delay in filing the audit report in Form 10B as well as the application for condonation of delay. It has been averred in the said affidavit that, during the relevant period, out of the total of five trustees, the day-to-day affairs of the Petitioner-Trust were looked after by two trustees. The other three trustees were not involved in the day-to-day affairs of the Trust. The said two trustees, owing to their professional commitments, frequently travelled overseas and were unable to devote adequate attention to the income tax matters and mainly relied upon their Chartered Accountant. The Petitioners were under the belief that the filing of the audit report in Form 10B, along with the return of income, was sufficient compliance of the relevant provisions. Further, the intimation dated 30th November 2021 and the subsequent rectification order went unnoticed, because of the COVID-19 pandemic, during which the administrative staff of the Petitioner-Trust was not coming regularly. For these reasons, the intimation and rectification order were not brought to the notice of the Chartered Accountant.

10. It is further stated that the said two trustees retired and two new trustees assumed charge in 2025. Post their appointment, the new trustees undertook a review of the records of the Petitioner-Trust, including the records available on the income tax portal. During the said review, the intimation dated 30.11.2021 and the rectification order dated 29.07.2022 came to their notice, and thus, it was only in the month of March 2025 that the Petitioner-Trust became aware that the exemption under Section 11 of the Act had been denied due to a delay of 70 days in filing the audit report.

11. Consequently, the trustees approached the auditor of the Petitioner-Trust and sought his advice on the intimation received under section 143(1) of the Act and the delay in filing the audit report in Form 10B. Based on the advice of the auditor, on 20th March 2025, the

Petitioner-Trust filed an application before Respondent No. 2 to condone the delay of 70 days in filing the audit report in Form 10B.

12. The application for condonation of delay was rejected by the impugned Order dated 31st March 2025, on the sole ground that the application was not maintainable since it was filed beyond three years from the end of the relevant Assessment Year. This was because of paragraph 3 of the Circular No.16/2024 dated 18th November 2024.

13. Respondent No.2 has filed an affidavit-in-reply dated 16th September, 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 assessees are not remediless. Accordingly, it has been contended in the affidavit that the Petitioner may be directed to file an application before the CBDT for resolution of its grievance.

14. We have heard Mr. Shah, learned Senior Advocate appearing on behalf of the Petitioner, as well as Mr. Bhosle, learned Counsel appearing on behalf of Respondents.

15. 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, and in view of the order that we proposed to make, there is no need to deal with the question of the legality of paragraph 3 of the Circular No.16/2024 dated 18th November 2024 as raised in the grounds in the above Petition.

16. 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 the delay of 70 days in filing the Audit Report in Form No.10B by the Petitioner. Firstly, the delay is merely of 70 days. Further, we note that A.Y.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 No. 10B coincided with the due date to file the return of income. However, with effect from A.Y. 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 the explanation given for delay in filing the audit report in Form No. 10B as admittedly it was filed along with the return of income. This is coupled with the fact that during the relevant time, the Petitioner-trust was effectively operating in the absence of key trustees as well as permanent accounting staff and it was only pursuant to a review of records carried out by the newly appointed trustees in the month of March 2025, that the Petitioner became aware of the denial of exemption under Section 11 of the Act owing to the delay in filing the audit report.

17. Moreover, not condoning such delay would cause genuine hardship to the Petitioner inasmuch as the Petitioner has been denied exemption under Section 11 of the Act and a demand of Rs.8,87,450/- 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 the delay is not condoned.

18. 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)***. Paragraph 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.*

19. In a similar matter, in the case of ***Little Flower Education Society Versus The Commissioner of Income Tax (Exemptions) Mumbai reported in 2025 (9) TMI 658 – Bombay High Court*** this Court had condoned the delay in filing of Form No.10B. The Petitioner therein had filed its application for condonation of delay in filing Form No.10B beyond a period of three years from the end of the Assessment Year in question (A.Y. 2020-21).

20. 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 [Writ Petition No. 713 of 2025 decided on 7th July 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 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.*

21. In light of the above discussion, we quash and set aside the impugned order passed under Section 119(2)(b) of the Act dated 31^{st}

March 2025 and condone the delay of 70 days in filing of Form No. 10B for A.Y. 2020-21.

22. Since the delay has been condoned, the Respondents 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.

23. 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.

24. 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.]**