IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3821 OF 2025

GMO Emerging Markets Fund,USA .. Petitioner
Versus
Deputy Commissioner of Income Tax, (International Taxation Circle) (2)(3)(2) & Ors .. Respondents

Mr. Deepak Chopra (through VC)*, with Mr. Ankul Goyal, Atul K. Jasani, Advocates for the Petitioner.*

Mr. Prathamesh P. Bhosle*, Advocates for the Respondents.*

CORAM: B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.
DATE: NOVEMBER 4, 2025

P. C.

1. The above Writ Petition is filed challenging the orders dated 21st June 2024 passed by the 1st Respondent for the Assessment Years 2010-11 and 2011-12. By the said impugned orders, the Assessing Officer rejected the Rectification Applications filed by the Petitioner under Section 154 of the Income Tax Act, 1961 (for short "***I. T. Act***"). Since both the orders [for the Assessment Year 2010-11 as well as Assessment Year 2011-12] are identical in nature, we, for the sake of convenience, reproduce the order passed in Assessment Year 2010-11:-

"Please refer to your request dated 17.06.2024, for condonation of delay in filing rectification application u/s 154 of the Income Tax Act 1961 (the "Act") for AY 2010-11, filed with this office.

Section 119 of the Act inter-alia states that the Central Board of Direct Taxes (CBDT), if it considers it desirable or expedient so to do for avoiding genuine hardship in any case, by general or special order, authorise any income-tax authority, to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified under this Act for making such application or claim and deal with the same on merits in accordance with law.

Vide Circular No. 9/2015 [F.NO.312/22/2015-OT], dated 9-6-2015, amended by Circular No. 7/2023 [F.NO. 312/63/2023-OT]; Dated 31-5-2023, CBDT has made Pr.CsIT/CsIT, CCsIT and Pr. CCsIT competent authorities to decide applications for condonation of delay in filing Returns of Income (RsOI) claiming refund and RsOI claiming carry forward of loss and setoff thereof. Further, monetary limits of Rs. 50 Lakhs, Rs. 2 Cr. and Rs. 3 Cr. respectively for one AY has been prescribed for each of these competent authority. Claim above Rs. 3 Cr. are to be considered by CBDT.

In this respect, it may be noted that no power has been conferred to this office for deciding application for condonation of delay in filing rectification application u/s 154 of the Act. Accordingly, your aforesaid application dated 17.06.2024 is hereby rejected".

2. At the outset, we must state that we do not find anything wrong in the order passed by the Assessing Officer. It can hardly be disputed that the Assessing Officer had no power to condone the delay in view of Section 154 (7) of the I. T. Act, 1961. However, we find that the Petitioner is not remediless. They can certainly approach the Central Board of Direct Taxes

("***CBDT***") under Section 119 (2) (b) of the I. T. Act, 1961 and seek a condonation of delay. Once this is the case, we direct the Petitioner to approach the CBDT under Section 119 (2) (b) and seek a condonation of delay in filing their Rectification Applications. The CBDT is requested to hear the Petitioner's applications for condonation of delay (for the Assessment Year 2010-11 as well as Assessment Year 2011-12) as expeditiously as possible and preferably within a period of three months from the date of filing of such application.

3. We may hasten to add that we have not examined the merits of the matter which shall be considered by the CBDT on its own merits when considering the application of the Petitioner for condonation of delay.

4. The Writ Petition is disposed of with the aforesaid directions. However, there shall be no order as to costs.

5. 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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