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W.P.No.2231 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2025

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.2231 of 2025

and

W.M.P.Nos.2575, 2576 & 2577 of 2025

Swamy Vivekananda Rural Welfare
And Educational Trust
136/3A Veeraganur Main Road
Thulukkanur, Pudupet Attur
Salem – 636 141, Tamilnadu
PAN No. AAHTS3628P

... Petitioner

Vs.

1. Commissioner of Income Tax (Exemptions)
Aayakar Building, Annexe Building
No.121, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034
Tamil Nadu.
2. Income Tax Officer
Exemptions Ward
Salem, Tamilnadu.
3. DBS Bank India Limited
Erstwhile Lakshmi Vilas Bank
LVB, 339-L, 1st Floor, Ranipet
Cuddalore Main Road,
Attur – 636102.



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4. Bank of Baroda
1139/430, Seetharam Complex,
South Udayar Palayam
S/c Main Road, Attur - 636102.

5. Canara Bank
508/2, Kamarajanar Road
Attur – 636102.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, quashing the order u/s 119(2)(b) of the Income Tax Act, 1961 passed by the 1st Respondent in ITBA/COM/F/17/2024-25/1071659119(1) dated 29.12.2024 in PAN AAHTS3628P and directing the 1st Respondent to condone the delay in filing the Form 10B (Audit Report) for the Assessment Year 2019-20.

For Petitioner : Mr.G.Vardini Karthik

For R1 & R2 : Mr.V.J.Arulraj
Senior Standing Counsel

ORDER

In this Writ Petition, the petitioner has challenged the impugned Order dated 29.12.2024 passed by the 1st Respondent / Commissioner of Income Tax (Exemptions), whereby the petitioner's application dated 25.03.2024 for



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condoning the delay in filing Form 10B under Section 12A(1)(b) along with the return of income under Section 139(1) of the Income Tax Act, 1961, has been rejected.

2. The dispute pertains to the Assessment Year 2019-2020. The petitioner had filed the return of income on 25.07.2019, much prior to the last date prescribed for filing of the return, i.e., 30.09.2019. However, under Section 12A(1)(b) as it stood during the relevant period, the petitioner was also required to file an audit report in Form 10B along with the Return of Income. It was however not filed by the petitioner within a prescribed time.

3. During the material period, Section 12A(1)(b) of the Income Tax Act, 1961 read as under:

“12A(1) The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:-

*(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and **the person in receipt of the***



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income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.”

4. The petitioner filed the Audit Report in Form 10B only on 13.01.2020 with a delay of 171 days. Subsequently, the petitioner's return of income, filed on 25.07.2019, was processed, and an intimation under Section 143(1) of the Act was sent to the petitioner on 09.06.2020. It appears that the petitioner's bank account was also frozen on account of the aforesaid intimation under Section 143(1) dated 09.06.2020.

5. In this background, the petitioner filed an application on 27.03.2024 under Section 119(2)(b) of the Income Tax Act, 1961, for condoning the delay in filing the audit report in Form 10B under Section 12A(1)(b) of the Act.

6. By the impugned order, the 1st respondent rejected the application filed for condonation of delay, following the mandate of CBDT Circular No.2/2020, dated 03.01.2020, with the following observations:

“4.1 I have carefully examined the facts of the case and the



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submissions of the assessee. Further, the CBDT vide Circular No.2/2020, dated 03-01-2020 in para 5 & 6 has directed as under:

“it has also been decided by the CBDT that where there is delay of upto 365 days in filing Form No.10B for the AY 2018-19 or for any subsequent AYs, the Commissioners of Income Tax are hereby authorized to admit such belated applications of condonation of delay u/s 119(2) of the IT Act and decide on merits.

The Commissioner of Income Tax shall, while entertaining such belated applications in filing Form No.10B, satisfy themselves that the assessee was prevented by reasonable cause from filing such application within the stipulated time.”

4.2 It is noticed that the assessee has filed return of Income u/s 139(1) of the Act on 25.07.2019 and Form No.10B on 13.01.2020 (with a delay of 73 days). The assessee stated that return was filed much before the due date and Form 10B was filed before receipt of intimation u/s 143(1). The above submission of the assessee is not acceptable. The assessee / Chartered Accountant has filed the Return of Income within due date u/s 139(4A), but the assessee has not filed the Audit report within the due date. The ITR can be prepared only after finalization of accounts by the Chartered Accountant of the Trust. The preparation and E-filing of Audit Reports is a statutory responsibility of the Chartered Accountant who is registered as a Tax Professional on the e-filing portal of the Department. When the ITR has been filed on 25.07.2019 u/s 139(4A) by the assessee Trust, it is not known what prevented the assessee / Chartered Accountant from filing the form 10B within the due date.

4.3 The reason for the delay submitted by the assessee is that the death of the elder brother of the then secretary of the trust Mr. Balamurugan and subsequently the death of his father. But from the submission of the assessee it is seen that the Death certificates are dated 11.03.2019 and 24.05.2021 which are not relevant to the due date of filing of audit report (due date: 30.10.2019) for the AY:2019-20. Moreover, as stated earlier, when the return was filed within the due date after finalization of accounts, the assessee could have filed



the audit report within the due date. Hence the reason submitted by the assessee does not have any merit.

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4.4 It is also seen that the assessee has filed the Form 10B belatedly on 13.01.2020 for the AY 2018-19 and the petition for condoning the delay was rejected by this office as the delay was more than 365 days. Hence, the assessee has been habitual delayer filer. The statutory compliances have to be duly complied with and the assessee should have ensured that adequate steps are taken so that the law is complied with well within time. The same had to be looked after or adequately managed by the management of the Trust or Chartered Accountants who has been made responsible for statutory compliances.

4.5 From the above, it is seen that the period of delay in filing Form 10B is not properly explained by the assessee Trust and is not supported by cogent evidence. The legislature has provided time limits for certain obligation under the act and these time limits have to be observed to be able to claim exemption u/s 11 and 12.

5. In view of the facts and circumstances cited above, it is very clear that the assessee has not put forward any reasonable cause beyond its control which prevented the assessee from filing Form 10B within the due date specified in the Act. Hence, the applicant's petition dated 25.03.2024 seeking condonation of delay under section 119(2) (b) in filing Form 10B for the AY 2019-20 is hereby rejected."

7. The learned counsel for the petitioner would submit that the delay in filing Form 10B under Section 12A(1)(b) was neither willful nor wanton. It is further submitted that the time to file Form 10B under Section 12A(1)(b) should be construed to be directory and not mandatory, and substantial benefit should not be denied. In this connection, the learned counsel placed



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reliance on the following decisions:

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“Association of Indian Panelboard Manufacturer vs. Deputy Commissioner of Income-tax [2023] 157 taxmann.com 550 (Gujarat).

RBS Students Welfare Trust in WP No. 1793/2024 dated 13.06.2024 (Reference is invited to para 3-5 of the order.

Social Security Scheme of GICEA v. CIT (Exemptions) reported in [2023] 147 taxmann.com 283 (Gujarat) (Reference is invited to para 5 of the judgment).

Sarvodaya Charitable Trust v. ITO (Exemption) reported in [2021] 125 taxmann.com 75/278 Taxman 148 (Gujarat) (Reference is invited to para 31 and 32).

CIT (Exemptions) v. Laxmanarayan Dev Shrishan Seva Khendra reported in [2024] 167 Taxmann.com 548 (Gujarat) (Reference is invited to para 7 & 8).

Saraswati Vidyalaya v. CIT (Exemptions), in W.P.No.27477 of 2024 dated 26.02.2025.”

8. It is further submitted by the learned counsel for the petitioner that during the period in dispute, the petitioner had 834 students from L.K.G. to XII Std. Out of which, 595 students were accommodated from L.K.G. to VIII Std, and 113 of those students were admitted under the Right to Education Scheme, guaranteed under Article 21A of the Constitution of India, read with the Right of Children to Free and Compulsory Education Act, 2009.



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9. On the other hand, the learned Senior Standing Counsel for R1 & R2 placed reliance on the decision of the Hon'ble Supreme Court in ***Principal Commissioner of Income-tax v. Wipro Ltd [2022] 140 taxmann.com 223(SC)***, wherein, the Hon'ble Supreme Court held as under:

“11. Now so far as the reliance placed upon the decision of this Court in the case of G.M. Knitting Industries (P.) Ltd. (supra), relied upon by the learned counsel appearing on behalf of the assessee is concerned, section 10B (8) is an exemption provision which cannot be compared with claiming an additional depreciation under section 32(1) (ii-a) of the Act. As per the settled position of law, an assessee claiming exemption has to strictly and literally comply with the exemption provisions. Therefore, the said decision shall not be applicable to the facts of the case on hand, while considering the exemption provisions. Even otherwise, Chapter III and Chapter VIA of the Act operate in different realms and principles of Chapter III, which deals with "incomes which do not form a part of total income", cannot be equated with mechanism provided for deductions in Chapter VIA, which deals with "deductions to be made in computing total income". Therefore, none of the decisions which are relied upon on behalf of the assessee on interpretation of Chapter VIA shall be applicable while considering the claim under section 10B(8) of the IT Act.

12. Even the submission on behalf of the assessee that the assessee had a substantive statutory right under section 10B(8) to opt out of section 10B which cannot be nullified by construing the purely procedural time requirement regarding the filing of the declaration under section 10B(8) as being mandatory also has no substance. As observed hereinabove, the exemption provisions are to be strictly and literally complied with and the same cannot be construed as procedural requirement.



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13. So far as the submission on behalf of the assessee that against the decision of the Delhi High Court in the case of Moser Baer India Ltd. (supra), a special leave petition has been dismissed as withdrawn and the revenue cannot be permitted to take a contrary view is concerned, it is to be noted that the special leave petition against the decision of the Delhi High Court in the case of Moser Baer India Ltd. (supra) has been dismissed as withdrawn due to there being low tax effect and the question of law has specifically been kept open. Therefore, withdrawal of the special leave petition against the decision of the Delhi High Court in the case of Moser Boer (supra) cannot be held against the revenue.

14. In view of the above discussion and for the reasons stated above, we are of the opinion that the High Court has committed a grave error in observing and holding that the requirement of furnishing a declaration under section 10B(8) of the IT Act is mandatory, but the time limit within which the declaration is to be filed is not mandatory but is directory. The same is erroneous and contrary to the unambiguous language contained in section 10B(8) of the IT Act. We hold that for claiming the benefit under section 10B(8) of the IT Act, the twin conditions of furnishing a declaration before the assessing officer and that too before the due date of filing the original return of income under section 139(1) are to be satisfied and both are mandatorily to be complied with. Accordingly, the question of law is answered in favour of the Revenue and against the assessee. The orders passed by the High Court as well as ITAT taking a contrary view are hereby set aside and it is held that the assessee shall not be entitled to the benefit under section 10B(8) of the IT Act on non-compliance of the twin conditions as provided under section 10B(8) of the IT Act, as observed hereinabove. The present Appeal is accordingly Allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.”

10. However, it is noticed that the above decision of the Hon’ble



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Supreme Court has been distinguished by the Gujarat High Court in

Sarvodaya Charitable Trust v. ITO (Exemption), [2021] 125 taxmann.com

75 (Gujarat) referred to supra, wherein, it has been held as under:

“6. Considering the language of the provision of Section 10B(8) of the Act, the Hon’ble Supreme Court held that it was mandatory on part of the assessee to file declaration before the due date of filing of return under Sub-section (1) of Section 139 of the Act, whereas, in the facts of the said case the assessee filed such undertaking along with the revised return under Sub-section (5) of Section 139 of the Act and in such facts, the Hon’ble Supreme Court held that the twin conditions prescribed under Section 10B(8) of the Act was mandatory to be fulfilled and it cannot be said that though the declaration is mandatory, the filing of such declaration within the due date of filing of return under Sub-section (1) of Section 139 of the Act would be directory.”

11. This Court has consistently taken the view under similar circumstances that the respondent department ought to condone the delay in filing the audit report, if the assessee is otherwise entitled to the substantial benefits of the Act. Even in cases where no report was filed, this Court has held that while confirming the demand or tax liability payable by the assessee, all attendant statutory benefits should be extended to the assessee in terms of the decision of the Hon’ble Supreme Court in ***Formica India Division vs. CCE [1995 (77) ELT 511 (SC)]***.



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12. An assessee should not be deprived of substantial benefits, if the substantial benefits are otherwise available, but for a failure to comply with procedural requirements, as the tax authorities are duty bound to recover only those taxes which are otherwise due for an assessee as has been held in ***Unichem Laboratories Ltd. v. Collector of Central Excise, Bombay [2002 (145) ELT 502 (SC)]***.

13. In this case, although the reasons stated by the petitioner for condoning the delay are not proper, the benefit under Section 12A cannot be denied to the petitioner, if the petitioner is otherwise entitled to such benefit. Considering the fact that there was negligible delay on the part of the petitioner in filing Form 10B as required under Section 12A(1)(b) of the Income Tax Act, 1961, the petitioner is directed to pay a costs of Rs.25,000/- to the Blue Cross of India, Chennai, within a period of 30 days from the date of receipt of a copy of this order.

14. In case, the petitioner pays the aforesaid costs within the stipulated time, the jurisdictional Assessing Officer shall pass a fresh intimation under Section 143(1) of the Income Tax Act, 1961.



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15. Accordingly, this Writ Petition stands allowed with the observations. Consequently, connected miscellaneous petitions are closed.

No costs.

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Neutral Citation : Yes / No

To

1. The Commissioner of Income Tax (Exemptions)
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No.121, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034, Tamilnadu.
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C.SARAVANAN, J.

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