IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.02.2025

CORAM

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.Nos.27477 & 27485 of 2024
and W.M.P.Nos.29984, 29985, 29993 & 29995 of 2024

Saraswathi Vidyalaya,
Rep. by its Chairman,
238, Arcot Road,
Vadapalani, Chennai – 600 026. .. Petitioner in both W.Ps

Vs.

1.The Commissioner of Income Tax (Exemption),
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

2.Income Tax Officer (Exemption) Ward-3,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034. .. Respondent in both W.Ps

Prayer in W.P.No.27477 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue Writ of Certiorarified Mandamus, to call for the records of the petitioner on the file of the 1st respondent and quash the impugned order passed under Section 119(2)(b) of the Income

Tax Act, 1961, in DIN & Order No.:ITBA/COM/F/17/2024-25/1067200751(1) dated 31.07.2024 for the assessment year 2020-21 in PAN:AABTS1178E and direct the 1st respondent to accept the Audit Report in Form No.10B filed on 18.02.2021 and grant exemption under Section 11 of the Income Tax.

Prayer in W.P.No.27477 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue Writ of Certiorarified Mandamus, to call for the records of the petitioner on the file of the 1st respondent and quash the impugned order passed under Section 119(2)(b) of the Income Tax Act, 1961, in DIN & Order No.:ITBA/COM/F/17/2024-25/1067200751(1) dated 31.07.2024 for the assessment year 2022-23 in PAN:AABTS1178E and direct the 1st respondent to accept the Audit Report in Form No.10B filed on 19.11.2022 and grant exemption under Section 11 of the Income Tax.

In both W.Ps

For Petitioner : Mr.R.Vijayaraghavan
For Respondent : Mr.K.Rajasekar
Junior Standing Counsel
Mr.V.Mahalingam
Senior Standing Counsel

COMMON ORDER

These writ petitions have been filed by the petitioner challenging the impugned orders passed by the 1st respondent rejecting the application filed to condone the delay in filing Form No.10B for the Assessment Years 2020-2021 and 2022-2023.

2.Learned counsel appearing for the petitioner would submit that as per the provisions of 12A(1)(b) of the Income Tax Act, 1961, (hereinafter referred as 'the IT Act'), with effect from Assessment Year 2020-2021, Audit Reports have to be filed one month before the due date for filing Return of Income.

2.2.As far as the Assessment Year 2020-2021 is concerned, initially, the due date for filing return of income was 31.10.2020 and therefore, the audit report in Form No.10B had to be filed on or before 30.09.2020. Thereafter, the due date for filing return of income was extended upto 15.02.2021, by the Central Board of Direct Taxes. As a result, the last date for filing audit report for the said year became 15.01.2021. The petitioner herein uploaded the audit report in Form No.10B on 18.02.2021, with a delay of 34 days from the extended date and the same was e-verified on 31.03.2021. Since there was a delay in filing Form No.10B, the intimation under Section 143(1) of IT Act, dated 24.12.2021, has been sent by the Centralized Processing Center, Bangalore, denying the exemption under Section 11of the IT Act and a demand of Rs.2,46,17,780/- has been raised.

2.3.As far as the Assessment Year 2022-2023 is concerned, initially, the due date for filing return of income was 31.10.2022 and therefore, the audit report in Form No.10B had to be filed on or before 30.09.2022. Thereafter, the due date for filing return of income was extended upto 07.11.2022, by the Central Board of Direct Taxes. As a result, the last date for filing audit report for the said year became 07.10.2022. The petitioner filed Form No.10B on 30.09.2022, within the due date and the same was e-verified on 19.11.2022. Subsequently, a revised Form No.10B was filed on 19.11.2022, resulting in a delay of 43 days. Since there was a delay in filing Form No.10B, the intimation under Section 143(1) dated 04.04.2023, has been sent by the Centralized Processing Center, Bangalore, denying the exemption under Section 11 of the IT Act, and a demand of Rs.2,21,05,180/- has been raised. Thereafter, the bank account of the petitioner has been attached by the 2nd respondent.

2.4.Since the Central Board of Direct Taxes vide Circular No.2 of 2022 dated 03.01.2020 had authorised the 1st respondent herein to admit the belated applications where there is delay upto 365 days in filing Form No.10B, the petitioner filed a petition under Section 119(2) of the IT Act before the 1st respondent for condonation of delay in filing audit report in Form No.10B on the reason that Covid-19 lockdown had restricted the regular operation of school movement and the delay is not intentional and with regard to the Assessment year 2022-2023, the audit report has been uploaded well before the due date and only the revised Form No.10B was filed belatedly on 19.11.2022. However, the 1st respondent vide proceedings dated 31.07.2024, rejected the applications filed by the petitioner for condonation of delay in filing Form No.10B for the Assessment Years 2020-2021 and 2022-2023. Therefore, the counsel for the petitioner would submit that though the 1st respondent has power to condone the delay of 365 days, he has rejected the petitioner's applications. Further, unless and otherwise, the delay is condone the petitioner will be put into an irreparable loss.

3.Per contra, learned Junior Standing Counsel appearing for the respondents would submit that the reasons stated by the petitioner for the delay in filing Form No.10B are generic reasons that the delay is due to technical issue. Since the petitioner has not submitted any genuine hardship faced by them, which prevented them from filing the Form No.10B for the Assessment Years 2020-2021 and 2022-2023, their applications got rejected.

4.Heard the learned counsel for the petitioner as well as the learned Junior Standing Counsel appearing for the respondents and perused the materials available on records.

5.Considering the submissions made by either side, it is seen that, as far as the Assessment Year 2020-2021 is concerned, the reason assigned for the delay in filing audit report in Form No.10B was due to Covid-19 Pandemic. The Hon'ble Apex Court has rendered judgments to grant limitation from 25.03.2020 to 28.02.2022. Therefore, the reason assigned by the petitioner citing Covid-19 Pandemic would come under genuine hardship. However, the 1st respondent had failed to consider the same and passed order rejecting the application of the petitioner for condonation of delay in filing the audit report.

6.As far as the Assessment Year 2022-2023 is concerned, the audit report in Form No.10B is filed within the time on 30.09.2022 and the same was e-verified on 19.11.2022 and since there was an inadvertent error in the audit report, the revised audit report was filed on 19.11.2022, which shows that the delay is not intentional and the same would be the case under genuine hardship. It is obligatory to permit the assessees to avail the benefits of exemption prescribed under the provision of law. Refusing to condone the delay could result into a meritorious matter being thrown out at the very threshold defeating the cause of justice. If the assessees are denied the exemption under Section 11 of the IT Act arbitrarily by citing the absence of genuine hardship, ultimately, it will be a burden to them, which would put them into an irreparable loss. Therefore, this Court is of the view that it would be appropriate to condone the delay in filing the audit report for the Assessment Years 2020-2021 and 2022-2023. Accordingly, the orders impugned herein are set aside and the delay in filing the audit report in Form 10B for the Assessment Years 2020-2021 and 2022-2023 are hereby condoned. With regard to the Bank attachment and other reliefs, the petitioner shall make a representation before the Assessing Officer, who shall consider the same and pass orders in accordance with law.

7.With the above observations, these writ petitions are disposed of. No cost. Consequently, the connected miscellaneous petitions are also closed.

26.02.2025

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Index : Yes/No
Neutral Citation: Yes/No

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KRISHNAN RAMASAMY, J.

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