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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 373/2025

COMMISSIONER OF INCOME TAX (EXEMPTIONS) DELHI

.....Appellant

Through: Mr. Puneet Rai, SSC with Mr. Ashvini Kr., Mr. Rishabh Nangia, Mr. Gibran, JSC.

versus

DELHI MAHARASHTRIYA EDUCATIONAL AND CULTURAL SOCIETY .....Respondent

Through: Mr. Vivek Sarin, Ms. Divyanshi Singh, Mr. Dhruv Dev Gupta, Mr. Satish C. Kaushik, Mr. Abhishek Jain, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

O R D E R

% 02.09.2025

CM APPL. 54999/2025(condonation of delay in filing)
CM APPL. 55000/2025(condonation of delay in re-filing)

1. For the reasons stated in the application, the delay of 3 days in re-filing and the delay of 56 days in filing the appeal is condoned.

2. The applications are disposed of.

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3. The appeal has been filed under Section 260A of the Income Tax Act, 1961, (‘**the Act**’) challenging the order dated 23.12.2024 of the Income Tax Appellate Tribunal (‘**ITAT**’) in ITA No. 3195/Del/2024 relatable to the Assessment Year (‘**AY’)** 2018-2019.

4. The challenge by the assessee is to the order of the Commissioner of Income Tax (Exemption), Delhi (‘**CIT (Exemption)**’) dated 14.06.2024 whereby, the CIT (Exemption) has rejected the petition/application filed by the respondent herein seeking condonation of delay under Section 119(2)(b) of the Act in filing Form 10B of the Assessment Year (‘**AY**’) 2018-19.

5. Suffice to state that the ITAT has allowed the appeal filed by the respondent by stating in Paragraph 05 as under:

> *“Considered the submissions of both the parties and material placed on record. Admittedly in this matter, the return of income was filed on 31.10.2018, Form 10B was filed on 16.11 .2018 and we observed that the time for filing the Form 10B was extended for this assessment year to 31.10.2018 vide CBDT Circular dated 08.10.2018. Further we observed that the assessee has filed the Audit Report (Form 10 B) dated 31.10.2018 in the paper book. It clearly shows that the Form 10B was available with the assessee while filing the return of income. However, it was actually filed only on 16.11.2018 with a delay of 16 days in the IT Portal . This is only a procedural lapse and cannot penalize the assessee overlooking the charitable works carried on by the assessee. We, therefore, respectfully relying on various case law submitted in case law compilation and our observation above, we condone the delay of 16 days and deem it just and proper to direct the ld. Assessing Officer to consider Form 10 available on record at the time of processing the return of income. Ld. Assessing Officer is, therefore, directed to consider Form 10B available on record and to pass appropriate orders.”*

6. Mr. Abhishek Maratha, learned counsel for the appellant, by drawing our attention to the proposed questions of law framed in the appeal, would submit that the appeal before the ITAT was not maintainable as the order is not an appealable order.

7. The learned counsel for the respondent has not shown anything contrary to contend that the appeal before the ITAT was maintainable. In other words, the appeal against the order dated 14.06.2024 of the CIT (Exemption) was not maintainable before the ITAT.

8. The connected submission of Mr. Abhishek Maratha is in respect of substantial question no. (ii), which according to him needs to be answered in favour of the appellant for the simple reason that as the appeal itself was not maintainable, the ITAT could not have condoned the delay of 16 days for filing the Form 10B.

9. Noting the above submissions, admit.

10. The following substantial questions of law arise for consideration in this appeal:

> *"(1) Whether, on the facts and circumstances of the case, the Hon'ble ITAT has erred in accepting the appeal application filed by the assessee against the rejection order for condonation of delay in filing Form 10B passed by the Ld. CIT(E), New Delhi u/s 119(2)(b) of the Act without having jurisdiction?*
> *(2) Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT has erred in ignoring the fact that the rejection order passed u/s 119(2)(b) for delay in filing form 10B is not an appealable order before the Hon'ble ITAT, as per section 253 of the Income Tax Act?"*

11. In view of the submissions of the learned counsel for the parties as noted above, we allow the appeal and set aside the order passed by the ITAT as the appeal filed by the respondent before the ITAT challenging the order dated 14.06.2024 (for the AY 2018-19) of the CIT (Exemption) was not maintainable and as such the Tribunal could not have entertained the appeal and decided the same in the manner it has done.

12. Consequentially, the order passed by the ITAT on the merits of the issue raised by the respondent in the appeal is also set aside.

13. Accordingly, the appeal is allowed. The substantial questions of law are decided in favour of the appellant/revenue and against the respondent.

14. Since the challenge was against the order dated 14.06.2024, which was not maintainable, liberty shall be with the petitioner to seek such

remedy as available in law.

15. During the course of hearing, the learned counsel for the respondent has stated that the pursuant to the order of the ITAT the respondents have issued an appeal effect order dated 01.07.2025 and also amount of Rs. 17,12,511/- has been credited in the account of the respondent/assessee.

16. It is made clear that the period during which the respondent was prosecuting the appeal before the ITAT and also this writ petition, the same shall not be taken into consideration for the purpose of computing delay/laches/limitation.

V. KAMESWAR RAO, J

VINOD KUMAR, J

SEPTEMBER 2, 2025
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