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

**WRIT PETITION NO. 3 OF 2026**

Dawat E Islami Hind

.. Petitioner

**Versus**

Commissioner of Income Tax  
(Exemptions), Mumbai and Anr.

.. Respondents

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***Adv. Mohamed Nawaz Haindaday***, i/b M/s. Shahid Hussain, for  
the Petitioner.

***Adv. Pritish Chatterjee***, for the Respondent-Revenue.

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**CORAM: B. P. COLABAWALLA &  
FIRDOSH P. POONIWALLA, JJ.  
DATE: FEBRUARY 9, 2026**

**P. C.**

**1.** Rule. Respondents waive service. With the consent of the Parties, Rule made returnable forthwith and heard finally.

**2.** This Writ Petition challenges an order dated 07/10/2025 passed by Respondent No.1 under Section 119(2)(b) of the Income Tax Act, 1961 (for short "**IT Act**") rejecting the Application for condonation of delay in filing Form 10B by the Petitioner for A. Y. 2018-19. Resultantly, the Petitioner has been denied benefit of exemption under Section 11 of the IT Act.

**3.** Brief facts of the case are that the Petitioner is a public religious-cum-charitable Trust carrying out various activities, including providing aid and relief to the poor and needy, education, aid in education, and such other various relief activities. The said activities are carried out from donations received by it during any financial year. The Petitioner filed its Return of Income under Section 139 for A. Y. 2018-19 on 20/12/2018. The Petitioner also filed its Audit Report in Form 10B on 20/12/2018. The due date for filing returns for A. Y. 2018-19 was 31/10/2018. The Petitioner has claimed that the Audit Report in Form No.10B could not be filed by the due date for various reasons, including the shortage of duly qualified accountants to collate information into Financial Statements, resulting in a delay in submitting the financial records for audit to its Chartered Accountants. Consequently, due to the delay in filing of the Audit Report in Form 10B, the Petitioner was denied the benefit of exemption under Section 11 vide a intimation under Section 143(1)(a) of the IT Act. Subsequently, a demand of Rs.10,30,95,810/- was raised on the Petitioner Trust.

**4.** It is not in dispute that the Audit Report in Form 10B was required to be uploaded online along with the Return of Income or before filing the Return of Income, i.e. by 31/10/2018 and that the Audit Report was

filed online on 20/12/2018. As such, there is a delay of 50 days in the filing of Form 10B.

5. In this factual backdrop, we have perused the records and heard Mr. Haindaday, learned Counsel appearing for the Petitioner and Mr. Prithish Chatterjee appearing for the Respondent Revenue.

6. Mr. Haindaday submits that pursuant to the delay as set out above, the Petitioner filed an application for condonation of delay in filing Form 10B on 09/08/2023, which is at Exhibit D to the Writ Petition. In this Application, the Petitioner has relied upon CBDT's Circular No. 16/2022 dated 19/07/2022, which provides that in the event of a delay not exceeding 365 days, the Commissioner of Income Tax may decide the application for condonation of delay on merits.

7. It is the Petitioner's case that they had duly explained the reasons for the delay and had stated true and clear facts without attributing the delay to any fictitious reason, or attribute the delay to its Chartered Accountants. The delay was purely out of issues beyond the control of the Petitioner, and the Petitioner took all steps to ensure that it could file its Audit Report at the earliest.

8. Mr. Haindaday submits that vide the impugned order dated 07/10/2025, which was passed after more than 2 years, Respondent No.1 has referred to the Petitioner's delays of earlier assessment years in filing of Form 10B, which were for the period A. Y. 2013-14 up to A. Y. 2017-18. Respondent No.1, however, ignored the submission of the Petitioner that from the period A. Y. 2019-20 up to A. Y. 2022-23, the Return of Income as well as Form 10B were filed within time.

9. Be that as it may, Mr. Haindaday submitted that the requirement of filing Form 10B along with the Return of Income is procedural and the Audit Report can be admitted even subsequent to the filing of the Return of Income. In this regard he has relied upon the judgement of the Hon'ble Gujarat High Court in ***Sarvodaya Charitable Trust vs. Income Tax Officer (Exemption) [2021] 125 taxmann.com 75 (Gujarat)*** to support his contention.

10. Mr. Haindaday submits that clause (b) of Section 119(2) is a beneficial provision aimed at providing relief. Adverting to Circular No. 16/2022 dated 19/07/2022, he submits that the circular read with Section 119(2)(b) provides for the delegatee of the Authority referred to in Section 119 [such delegatee being Respondent No.1, and the Authority being CBDT], to exercise the delegated authority in terms of the said Section. Mr. Haindaday

relies upon a decision of the Hon'ble High Court of Delhi in ***Sun Pharmaceutical Industries Ltd. Vs. Income Tax Officer [2025] 171 taxmann.com 469 (Delhi) para 41*** which analyses Section 119 as being demonstrative of the statute conferring power upon the Board to relax a prescription or enlarge a period of limitation as opposed to imposing or introducing a restriction or for that matter constricting a period within which a right may be exercised under the IT Act.

**11.** We note that though the Petitioner was not strictly mandated to file an Application for condonation of delay within a particular period of time, which was subsequently introduced vide Circular No. 16/2024 dated 18/11/2024 prescribing a time period of 3 years within which such an Application for condonation of delay had to be made, but as pointed out by Mr. Haindaday, the Circular No. 16/2022 dated 19/07/2022, upon which the Petitioner places reliance, strictly mandates disposal of an application for condonation made to it within three months of receipt. The impugned order was passed more than 2 years from the date of the Application for condonation for delay having been made.

**12.** The Revenue has filed its Affidavit in Reply to the Petition dated 09/01/2026. Mr. Pritish Chatterjee, the learned Counsel for the Respondents, while opposing the grant of relief to the Petitioner, contends

that the Petitioner is a habitual defaulter in compliance with respect to the filing of Form 10B. Mr. Chatterjee draws our attention to a tabulation in paragraph 7 of the Reply, highlighting the delays in filing of Form 10B for the period from A. Y. 2013-14 to A. Y. 2017-18. Mr. Chatterjee would submit that the impugned order is well-reasoned and is issued after considering the submissions of the Petitioner and documents on record. He finally submits that the impugned order rightly rejected the application for condonation of delay.

**13.** We asked the Counsel for the Petitioner to provide clarification on the delays for the earlier assessment years and the resultant effect of the delays, including the outcome of any applications for condonation of delays made for the said assessment years.

**14.** The Petitioner in compliance with our directions filed a detailed Affidavit in Rejoinder dated 06/02/2026 rebutting Respondent No.1's reply. We do not consider it necessary to discuss the contents of the Rejoinder except on the issue of delays in the assessment years prior to the period of the impugned order.

**15.** Mr. Haindaday draws our attention to the provision of Section 12A which deals with the requirement of filing of Audit Report and the result

of non-compliance. He submits that the law as applicable for the period which the Respondents allege delay on the part of the Petitioner in fact did not provide for any due date. Clause (b) of sub-section (1) of Section 12A reads as under:

*“(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 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.”*

*[Emphasis is ours]*

**16.** The requirement with respect to the Audit Report was with respect to its filing along with the Return of Income for the relevant assessment year. The Petitioner submits that as long as the Audit Report was filed along with the Income Tax Returns, it was sufficient compliance with the law and cannot be held otherwise. The Petitioner has annexed a tabular statement detailing the due date of filing of ITR, date of filing of ITR and date of filing of Audit Report in Form 10B and submits that there has been no delay as alleged by the Respondents.

**17.** The Petitioner submits that the due date with respect to filing of Audit Report was first introduced by the Finance Act, 2017 with effect from 1st April 2018. Finance Act, 2017 inserted clause (ba) in sub-section (1) Section 12A which reads as under:-

***Following clause (ba) shall be inserted after clause (b) of sub-section (1) of section 12A by the Finance Act, 2017, w.e.f. 1-4-2018 :***

***“(ba) the person in receipt of the income has furnished the return of income for the previous year in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under that section.”***

*[Emphasis supplied]*

**18.** The newly inserted clause (ba) in Section 12A(1) attributed a due date to the filing of Form 10B by linking it to the due date of filing of ITR [Section 139(4A) read with Section 139(1)]. By virtue of this amendment, the Petitioner submits, there was a delay of 50 days in filing of Form 10B for A. Y. 2018-19 for which it sought condonation.

**19.** The scheme of Section 119 of the IT Act, lays special emphasis on clause (b) of sub-section (2) read with sub-section (1). The important terms used are also relevant to understand the essence of the benevolent purpose provided in Section 119. Sub-section (1) contains the words “**proper administration of this Act**” whereas clause (b) of sub-section (2) contains

the words “**for avoiding genuine hardship**”. The Hon’ble Supreme Court in *UCO Bank, Calcutta v. Commissioner of Income Tax, W. B. [(1999) 4 SCC 599 : (1999) 237 ITR 889 : 1999 SCC OnLine SC 580 at page 605]* analysed the status of circulars issued under Section 119. Paragraph 9 of the judgment reads as follows:

*“119. (1) The Central Board of Direct Taxes may, from time to time, issue such orders, instructions and directions to other Income Tax Authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board:*

*Provided that no such orders, instructions or directions shall be issued—*

*(a) so as to require any Income Tax Authority to make a particular assessment or to dispose of a particular case in a particular manner; or*

*(b) so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions.”*

*Under sub-section (2) of Section 119, without prejudice to the generality of the Board's power set out in sub-section (1), a specific power is given to the Board for the purpose of proper and efficient management of the work of assessment and collection of revenue to issue from time to time general or special orders in respect of any class of incomes or class of cases setting forth directions or instructions, not being prejudicial to assesseees, as the guidelines, principles or procedures to be followed in the work relating to assessment. Such instructions may be by way of relaxation of any of the provisions of the sections specified there or otherwise. The Board thus has power, inter alia, to tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing circulars in exercise of its statutory powers under Section 119 of the Income Tax Act which are binding on the authorities in the administration*

*of the Act. Under Section 119(2)(a), however, the circulars as contemplated therein cannot be adverse to the assessee. Thus, the authority which wields the power for its own advantage under the Act is given the right to forego the advantage when required to wield it in a manner it considers just by relaxing the rigour of the law or in other permissible manner as laid down in Section 119. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases which can be properly categorised as belonging to a class, can thus be given the benefit of relaxation of law by issuing circulars binding on the taxing authorities.”*

*[Emphasis supplied]*

20. The Delhi High Court in ***Dr. K. Jagadeesan V. Central Board of Direct Taxes and Others [(1998) 231 ITR 755 : 1998 SCC OnLine Del 996 : (1998) 150 CTR 379]*** has, while discussing the provisos to sub-section (1) of Section 119, held that the power under clause (b) of sub-section (2) does not circumvent or restrict the discretionary power of an authority with respect to assessments. Powers delegated to the Board are for avoiding genuine hardship occasioned by the rigorous application of the rule of limitation in specified matters and for avoiding genuine hardship by relaxing any requirement in any provisions. Paragraph 11 of the said judgment is reproduced as under:

*“11. Section 119, as it stands, contemplates orders, instructions and directions to the income-tax authorities*

*being issued by the Board for the proper administration of the Act. They are the policy decisions and thus of general nature which are covered by section 119(1). The proviso makes it clear that the Board does not have power to circumvent the statutory powers or discretion of an income-tax authority by reference to a particular assessment or a particular case. The only cases in which the orders touching any individual case can be issued are provided by clauses (b) and (c) of sub-section (2) [as it now stands]. They are for avoiding genuine hardship occasioned by rigorous application of the rule of limitation in specified matters and for avoiding genuine hardship in any case, by relaxing any requirement contained in any of the provisions of Chapter IV or VIA relating to deduction claimed thereunder. The categories of such "any case" do not cover the cases of prosecution and composition."*

**21.** Considering the law as applicable for the earlier relevant Assessment Years, we find that Respondent No.1 failed in application of mind while dealing with the condonation of delay. As discussed above, the Respondent No.1 ought to have followed the exercise of delegated authority in terms of the law delegating such authority. The law, read with the relevant circular, mandated that the benefits of an enabling provision ought to percolate to the Assessee so as to save it from the rigours of law. In the present case, considering that the delay was merely fifty days, and further considering that the main ingredient on which Respondent No.1 based its rejection of the application was a perceived delay in earlier years, we find that there has been a gross violation of the directions under Section 119(2)(b) read with the Circular for the relevant period issued thereunder. Respondent No.1

was necessarily bound to follow the law both in letter and spirit and not cause its exercise of discretion to be coloured by non-existent conditions.

**22.** The Hon'ble Gujarat High Court in ***Sarvodaya Charitable Trust vs. Income Tax Officer (Exemption) [2021] 125 taxmann.com 75 (Gujarat)*** has observed that the provision regarding furnishing of Audit Report with the Return of Income has to be treated as a procedural provision. It is a directory in nature and its substantial compliance would suffice.

**23.** We also find that not granting the benefit of Section 11 to the Petitioner would certainly cause genuine hardship to the Petitioner and may adversely affect the functioning of its activities which provide relief to thousands of students who are utilising its educational aid and schools run by it. The purpose of Section 119(2)(b) is to mitigate such genuine hardship faced by the Assesseees and hence the phrase "genuine hardship" is to be construed liberally. In contrast, when the delay is condoned, especially a delay of merely 50 days, the highest that can happen is that the case would be decided on merits after hearing the parties. This view is supported by the judgment of this Court in ***Western Arch Developers vs. Pr. Commissioner of Income Tax-(Centra) [2025] 177 taxmann.com***

**313 (Bombay)** wherein one of us was a member (B. P. Colabawalla, J.).

Thus, we find that on this count also, the delay deserves to be condoned.

**24.** We also rely on another judgement of this Court in ***St. Anne's Church vs. Commissioner of Income-tax (Exemptions) [2025] 178 taxmann.com 16 (Bombay)*** passed by the same bench under similar circumstances where it was observed that the Petitioner being a Charitable Trust would face grave hardship if the delay in filing Form No.10 was not condoned and if exemption was denied to them only on this count. The Petitioner-Trust ought not to be foisted with such a liability on account of an inadvertent delay.

**25.** Thus, in view of the foregoing discussion, we quash and set aside the impugned order dated 07/10/2025 for A. Y. 2018-19 and condone the delay of 50 days in filing Form No.10B. Since the delay is now condoned, the Respondents shall treat the Form No.10B filed by the Petitioner to have been filed within time and process the Return of Income filed by the Petitioner in accordance with law within 3 months from the date of uploading this Order on the High Court's website.

**26.** 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.

**27.** 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.

**[FIRDOSH P. POONIWALLA, J.]**

**[B. P. COLABAWALLA, J.]**