



W.P.No.20037 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2026

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.20037 of 2023

and

W.M.P.Nos.19386 and 19388 of 2023

M/s.Sindhi Educational Society (Madras)
(Represented by its General Secretary)
No.402A, Block No.02, Ivth Floor,
Shivalaya Building, Ethiraj Salai,
Egmore, Chennai 600 008.
PAN:AABTS0129B

... Petitioner

Vs.

1. The Principal Commissioner of Income Tax,
Central-2, Chennai
Income Tax Department
No.108, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034.
2. The Assistant Commissioner of Income Tax,
Central Circle 2(3), Chennai
Income Tax Department,
No.108, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the Writ Petitioner on the file of the First Respondent to quash the impugned order dated 17.05.2023 passed u/s 119(2)(b) of the Income Tx Act, 1961 in DIN & Order No:ITBA/COM/F/17/2023-24/1052907775(1)



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pertaining to the Assessment Year:2015-2016 and consequentially condone the delay in filing form no.10.

For Petitioner : Mr.A.S.Sriraman

For Respondents : Mr.A.M.R.Jayapratab,
Junior Standing Counsel

ORDER

The petitioner is before this Court challenging the impugned order dated 17.05.2023 passed under Section 119(2)(b) of the Income Tax Act. By the impugned order, the petitioner's request to file Form-10 for the assessment year 2015-2016 on 15.04.2017, with a delay of 530 days, has been rejected.

2. The operative portion of the impugned order is reproduced below:

The assessee is a Society registered under Section 12AA of the Income-tax Act, 1961, filed petition for condonation of delay u/s 119(2)(b) on 28.03.2023, requesting to condone the delay in filing of Form 10 for the assessment year 2015-16.

2. Assessee e-filed the return of income for the assessment year 2015-16 along with Form



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10B on 31.10.2015. However, assessee filed Form 10 on 25.04.2017. The return of income was processed u/s 143(1) by CPC and a net demand of Rs.1,68,87,870/- was raised. Subsequently, assessee filed application for rectification u/s 154 of the IT Act which was rejected by the CPC saying that 'Exemption u/s 11 was not allowed since assessee did not filed Form 10 within the due date for filing the return of income as per Proviso to rule 122 read with Rule 17 of Income-tax Rules'.

3. In the petition filed by the assessee, it has been stated that the Assessing Officer denied the benefit of Section 11 to the Society due to late in filing of Form 10 and raised a demand of Rs.1,68,87,870/-. However, the return of income and Auditor's Report in Form 10B have been filed within the due date u/s 139(1) of the Income-tax Act. The delay in filing Form 10 is due to a change in accounting team of the Society and it was intentional.

4. On perusal of the petition of the assessee filed on 28.03.2023, it is seen that the petition is filed beyond six years from the end of the assessment year. In this regard, it would be pertinent to note that the instruction to specified income-tax authorities on the condonation of delay in claiming refund/carry forward of loss/set-off, after expiry of the period mandated by the Act, was issued by the Board in Circular No.9/2015 dated 09.06.2015, and Para 3 of the Circular is reproduced as under:-

“3. No condonation application for claim of refund/loss shall be entertained beyond six years from the end of the Assessment Year for which



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such application/claim is made. This limit of six years shall be applicable to all authorities having powers to condone the delay as per the above prescribed monetary limits, including the Board. A condonation application should be disposed of within six months from the end of the month in which the application is received by the competent authority, as far as possible.”

5. The Asst.Year involved is A.Y 2015-16 and according to the CBDT Circular, the requisition to condone the delay should have been filed on or before 31.03.2022 whereas the application was filed before the undersigned on 28.03.2023. Hence, the condonation petition filed by the assessee society on 28.03.2023 cannot be considered by this office. It is beyond the powers vested in the office of Principal Commissioner of Income-tax, as the petition of the assessee society is beyond six years from the end of the Assessment Year for which such application/claim is made.

6. In the light of the above, the petition preferred by the assessee is hereby rejected.”

3. The facts on record reveal that, for the assessment year 2016-2017, the return of income was filed on 13.10.2015, and on the same day, the petitioner also filed the audit report in Form 10B. However, Form 10 was filed only on 15.04.2017, with a delay of 530 days.



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4. In the interregnum, a survey was conducted, pursuant to which the assessment order came to be passed on 22.02.2022. Aggrieved by the same, the petitioner filed an appeal before the Commissioner of Income Tax (Appeals) on 29.08.2013, which culminated in an order in favour of the petitioner on 27.09.2022.

5. Aggrieved by the said order, the Department has also filed an appeal before the Income Tax Appellate Tribunal in ITA Nos.975 to 981/Chny/2022.

6. It is informed today that the appeal was dismissed on 15.09.2023 i.e., subsequent to the filing of the present writ petition on 26.06.2023.

7. The counter affidavit filed by the respondent merely states that the Department's appeal against the order of the Commissioner of Income Tax (Appeals) dated 27.09.2022 was pending.



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8. The relevant portion of the counter affidavit is reproduced

below:-

5.The CIT(A) allowed the assessee's appeal deleting the additions made in the order of assessment dated 22.02.2022. The said order of CIT(A) is challenged by the department before Hon'ble ITAT and the same is still pending.....

9. It is noticed that the application for condonation of delay in filing Form 10 was filed only on 28.03.2023, seeking condonation of a delay of 530 days. The application itself was filed after six years from the end of the relevant assessment year and was rejected by the first respondent by placing reliance on Circular No.9/2015 dated 09.06.2015.

10. Since the substantial benefit available to the assessee as a trust registered under Section 12A of the Income Tax Act cannot be denied for a mere technical breach, the delay in filing Form 10 on 15.04.2017 ought to have been condoned. The reasoning assigned in the impugned order cannot be sustained.



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11. Therefore, the impugned order deserves to be set aside and the writ petition is allowed. Consequently, the petitioner shall, however, comply with the provisions of Section 11 of the Income Tax Act, 1961, and the Assessing Officer shall pass a consequential speaking order, giving effect to the condonation of delay in filing Form 10 as ordered herein.

12. Accordingly, the writ petition is allowed. No costs.

Connected W.M.Ps are closed.

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Neutral Citations: Yes/No

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