INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCHES, MUMBAI
BENCH: J (SMC)

BEFORE HON'BLE NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER AND HON'BLE MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER

ITA No.3378/MUM/2026
निर्धारण वर्ष/Assmt. Year: 2016-17
Permanent Account Number: AAATD 1386 J

Dr. Ernest Borges Memorial Fund, CTS 341, Dr. Ernest Borges Memorial Home, M K Marg, Kalanagar, Bandra East, Mumbai, Maharashtra - 400051	**Vs.**	**ITO (Exemption) 1(2)** 620,6th Floor, MTNL Building, Cumballa Hills, Pedder Road, Murtijapur, Maharashtra - 400026
(अपीलार्थी / Appellant)		**(प्रत्यर्थी / Respondent)**

निर्धारिती द्वारा/Assessee represented by:	**Shri Shashank Mehta, Ld. Advocate**
राजस्व द्वारा/Revenue represented by:	**Ms. Jayshree Thakur, Ld. Sr. D.R.**

सुनवाई की तारीख / Date of conclusion of hearing:	**23.07.2026**
घोषणा की तारीख / Date of pronouncement:	**29.07.2026**

आदेश / ORDER

PER: NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER:

This appeal has been preferred by the Assessee against the order dated 21.01.2026, impugned herein, passed by the Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2016-17.

2. Brief facts relevant for adjudication of the instant appeal are that the Assessee filed its original return of income on **27.10.2016**, declaring total income at **Nil** after claiming exemption u/s. 11 of the Act. The Assessee subsequently revised its return of income and claimed deemed application of income amounting to **Rs.31,22,955/-** by exercising the option contemplated under clause (2) of the Explanation to section 11(1) of the Act r.w.r. 17 of the Income-tax Rules, 1962 {in short 'Rules'}.

3. The return was subsequently selected for complete scrutiny under CASS and statutory notices were issued to the Assessee.

4. The Assessing Officer (in short, "the AO") observed that the Assessee had also claimed accumulation of income amounting to **Rs.1,06,79,808/-** u/s. 11(2) of the Act. According to the AO, filing of the prescribed **Form No.10 was mandatory** for claiming accumulation u/s. 11(2), whereas **Form No.9A** was required for exercising the option of deemed application of income. The AO, thus considering the fact that the prescribed form had not been filed within the stipulated period, denied the Assessee's claim of deemed application of income amounting to **Rs.31,22,955/-** and added the same to its total income.

5. Thus, the Assessee being aggrieved challenged the aforesaid addition by filing the first appeal before the Ld. Commissioner. During the appellate proceedings, the Assessee informed the Ld. Commissioner that its application for condonation of delay in filing Form No.9A is pending before the Ld. PCIT (Exemptions) u/s. 119(2)(b) of the Act.

6. The Ld. Commissioner, taking into consideration **CBDT** Circular **No.7/2018 dated 20.12.2018**, directed the AO to afford an opportunity to the Assessee to furnish the order to be passed by the Ld. PCIT (Exemptions). The AO was directed to allow the claim of deemed application of income amounting to **Rs.31,22,955/-** in case the delay in filing Form No.9A is to be condoned and, alternatively, to sustain the disallowance, in case the condonation application will be rejected.

7. Before us, the Assessee submits that its application for condonation of delay filed before the Ld. PCIT (Exemptions) has been rejected. However, the Assessee contends that the remedy available u/s. 119(2)(b) of the Act, is an additional administrative remedy and rejection thereof does not take away or curtail the statutory powers of the appellate authorities to adjudicate the Assessee's claim on merits.

8. The Assessee further submits that Form No.9A was filed electronically during the subsistence of the assessment proceedings and that the delay occurred during A.Y. 2016-17, which was the first year of the newly introduced electronic filing requirement.

9. On the contrary, the Ld. DR opposes the Assessee's claim and submits that the application for condonation of delay in filing Form No.9A has already been rejected by the Ld. PCIT (Exemptions). Therefore, according the Assessee is not entitled to the benefit of deemed application of income and the Ld. Commissioner has no power to condone the delay under section 119(2)(b) of the Act.

10. We have heard the parties, perused the material available on record and considered the rival submissions. The question that emerges for consideration is **"whether the rejection of the Assessee's application u/s. 119(2)(b) of the Act bars the appellate authorities from independently examining the Assessee's substantive claim for exemption and deemed application of income under section 11 of the Act"**.

11. Section 119(2)(b) of the Act empowers the CBDT to authorise specified income-tax authorities, other than the Joint Commissioner (Appeals) or Commissioner (Appeals), to admit belated applications or claims in cases involving genuine hardship. Thus, the Ld. Commissioner does not exercise the administrative power delegated by the CBDT under section 119(2)(b) of the Act.

12. However, the administrative remedy available u/s. 119(2)(b) is additional in nature and does not take away the appellate remedy otherwise available to the Assessee under the Act. Therefore, rejection of an application by the competent administrative authority does not, by itself, preclude the appellate authority from examining, whether the Assessee has substantially complied with the statutory requirements and is otherwise entitled to the exemption claimed.

13. We observe that the Hon'ble Gujarat High Court in *Association of* ***Indian Panelboard Manufacturer v. DCIT*****,** R/Tax Appeal No.655 of 2022, decided on 21.03.2023, holds that an application contemplated u/s. 119(2)(b) of the Act constitutes an additional remedy and cannot be regarded as a compulsory remedy. Consequently, a circular issued u/s. 119 of the Act cannot be construed as taking away the appellate remedy available to the Assessee. The Hon'ble High Court further holds that though the filing of the prescribed report is a substantive requirement, the mode and stage of filing constitute procedural requirements.

14. We further observe as demonstrated by the ld. Counsel that the Hon'ble Jurisdictional High Court in the case of **Lakhi Trust vs. Income Tax Officer (Exemption) – Ward (1)(4)** (2025) 307 Taxman 557 (Bom.)(HC) has also considered the particular assessment year as involved in the instant case for the **AY 2016-17**, when new provisions of Form No. 9A were introduced vide amendment made by the Finance Act, 2015 and therefore, the Hon'ble High Court has noted the fact that the possibility of the petitioner having inadvertently failed to file Form No. 9A cannot be ruled out. Precisely for this reason, the Board issued various circulars empowering the Commissioner of Income Tax to condone the delay in filing Form No. 9A and Form No. 10 in genuine cases and to decide the issue on merits. The Hon'ble High Court further observed that, we find the petitioner is a charitable trust carrying on various charitable activities for the last 38 years and if this delay is not condoned, there will be genuine hardship to the petitioner, inasmuch as the petitioner would be saddled with the tax liability of **Rs.51,93,031/-**, even though it has substantially complied with the provision of Section 11 of the Act.

15. The Hon'ble High Court has also taken into consideration various judgments and similar views expressed by various Courts while condoning the delay, specifically in the case of ***Sarvodaya Charitable Trust vs. ITO (Exemption)*** [(2021) 125 taxmann.com 75/278 Taxman 148 (Gujarat)], wherein the Hon'ble High Court has made it clear that, in cases like the present one, the approach of the authorities ought to be equitable, balanced and judicious, and the benefit of exemption should not be denied merely on the ground of limitation. This is more so when the legislature has conferred wide discretionary powers upon the authorities concerned to condone the delay. For better understanding and ready reference, the conclusion drawn by the Hon'ble High Court is reproduced hereinbelow:

> *"14. We have heard the learned Counsel for the parties. We have also perused the materials placed on record and the case laws relied upon. Admittedly, Assessment Year 2016-2017 was the first year wherein filing of Form No. 9A was prescribed by the amendment made by the Finance Act, 2015. Hence, the possibility of the Petitioner having inadvertently failed to file the same cannot be ruled out. Precisely for this reason, the Board issued various Circulars empowering the Commissioner of Income-Tax to condone the delay in filing of Form No. 9A and Form 10 in genuine cases and to decide the issue on merits. Further, Form No. 9A having*

been filed during the course of assessment proceedings, the same should have been considered. We find that the Petitioner is a charitable Trust carrying on various Charitable activities for the last 38 years, and if this delay is not condoned, there will be genuine hardship to the Petitioner, inasmuch as the Petitioner would be saddled with a tax liability of Rs. 51,93,031/-, even though it has substantially complied with the provisions of Section 11 of the Act.

15. We also find that in similar facts, this Court in the case of Mirae Asset Foundation v. Pr. Commissioner of Income-tax [2025] 176 taxmann.com 345/306 Taxman 3 (Bombay)/(WP No. 713 of 2025) and Sau Dwarkabai Tai Karwa Charitable Public Trust v. CIT (Exemptions) [2025] 174 taxmann.com 245 (Bombay)and Kotak Family Foundation v. CIT (Exemption) [2025] 176 taxmann.com 56/306 Taxman 57 (Bombay) has taken a similar view and condoned the delay. Further the Hon'ble Gujarat High Court in the case of Sarvodaya Charitable Trust v. ITO (Exemption) [2021] 125 taxmann.com 75/278 Taxman 148 (Gujarat) has taken a view that in cases like the present one, the approach of the Authorities ought to be equitious, balancing and judicious and availing of exemption should not be denied merely on the bar of limitation. This is more so, when the legislature has conferred wide discretionary powers to condone the delay on the authorities concerned. The relevant portion of the decision of the Hon'ble Gujrat High Court in the case of Sarvodaya Charitable Trust (supra) is reproduced hereunder :-

> *'31. Having given our due consideration to all the relevant aspects of the matter,* ***we are of the view that the approach in the cases of the present type should be equitious, balancing and judicious.*** *Technically, strictly and liberally speaking, the respondent no.2 might be justified in denying the exemption under section 12 of he Act by rejecting such condonation application, but as assessee, a public charitable trust past 30 years who substantially satisfies the condonation for availing such exemption, should not be denied the same merely on the bar of limitation especially when the legislature has conferred wide discretionary powers to condone such delay on the authorities concerned.*
>
> *32. We may also refer to the decision of this Court in CIT v. Gujarat Oil and Allied Industries Ltd. [1993] 201 ITR 325 (Guj.), wherein it is held that the provision regarding furnishing of audit report with the return has to be treated as a procedural proviso. It is directory in nature and its substantial compliance would suffice. In that case, the assessee had not produced the audit report along with the return of income but produced the audit report along with the return of income but produced the same before the completion of the assessment. This Court took the view that the benefit of exemption should not be denied merely on account of delay in furnishing the same and it is permissible for the assessee to produce the audit report at a later stage either before the Income-Tax Officer or before the appellate authority by assigning sufficient cause."*

16. In view of the foregoing discussion, we quash and set aside the impugned order dated 18th February, 2025 passed by Respondent No. 2 *under Section 119(2)(b) of the Act and condone the delay in filing Form 9A by the Petitioner.*

17. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. No order as to costs.

18. 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."

16. Coming to the facts of the instant case, the Assessee filed its original return of income on **27.10.2016** and the revised the same on **29.03.2017**. Further the Assessee filed Form No.9A electronically on **19.01.2017**, which goes to show that the Form 9A was available during the subsistence of the assessment proceedings.

17. It is also relevant fact that **A.Y. 2016-17** was the first year, in which the requirement of electronic filing of Form No.9A was introduced. The possibility of an inadvertent or bona fide omission on the part of the Assessee, therefore, cannot be ruled out. The delay was approximately three months and no material is brought on record to suggest that the delay was deliberate, mala fide or intended to obtain any undue benefit.

18. Thus, considering the peculiar facts and circumstances in totality, the fact that Form No.9A was filed during the assessment proceedings, the relatively short delay involved and the judicial precedents referred to above, we are satisfied that sufficient cause exists for the delay in filing Form No.9A. **Thus, the delay of approximately three months in filing Form No.9A, is accordingly condoned.**

19. Resultantly, the AO is directed to treat Form No.9A filed by the Assessee as valid and to allow the claim of deemed application of income amounting to **Rs.31,22,955/-**, subject to verification of the other statutory conditions prescribed u/s. 11 of the Act. Suffice it to say that a reasonable opportunity of being heard shall be afforded to the Assessee.

20. In the result, **Assessee's appeal**, is **allowed in the above terms**.

Order pronounced in the open court on 29.07.2026.

Sd/-	**Sd/-**
MAKARAND VASANT MAHADEOKAR	**NARENDER KUMAR CHOUDHRY**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

(Tarun Kushwaha)
Sr. Private Secretary

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.