



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

WRIT PETITION (L) NO.17883 OF 2025

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Kotak Family Foundation

.. Petitioner.

Versus

Commissioner of Income-tax
(Exemption) & Others

.. Respondents.

**Adv. Madhur Agrawal with Adv. Punit Shah i/b. Adv. Atul K. Jasani
for the Petitioner.**

Adv. Prathamesh Bhosle, for the Respondents.

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**

DATE: JUNE 24, 2025

P. C.

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

2 The above Petition challenges the impugned order dated 10th February, 2025 passed by Respondent No.1 (Commissioner of Income Tax [Exemption]), Mumbai.

3 By the impugned order, the application filed by the Petitioner seeking a condonation of delay in e-verifying / accepting the audit report in

Form 10B, was rejected by the 1st Respondent, *inter alia*, on the ground that no sufficient cause was shown for the aforesaid delay.

4 The facts of this case would reveal that the Petitioner is a Public Charitable Trust established under a Trust Deed dated 2nd May, 2017. The Petitioner – Trust has also received approval from the 1st Respondent under Sections 12A/ 12AA on 16th January, 2018 and under Section 80G on 13th August, 2018.

5 For the Assessment Year 2021-22, the due date of filing the income tax return was 15th February, 2022 as per Central Board of Direct Taxes (“CBDT”) Press Release dated 11th January, 2022 and which had extended the due date for filing the return of income in view of the Covid-19 pandemic. The Petitioner-Trust filed its return of income on 30th December, 2021 which was within time.

6 As per clause 2 of the Explanation to Section 11(1) of the Income Tax Act, 1961 (“IT Act”), where a charitable institution or trust could not apply 85% of its income for charitable purposes during previous year, the charitable institution or trust could apply in Form 9A electronically to the Assessing Officer before the expiry of the due date for filing of income tax return under Section 139 (1) of the IT Act for accumulation of the said income to be applied in subsequent years.

7 During the year under consideration, the Petitioner exercised this option by filing Form No.9A electronically on 22nd December, 2021 (i.e. before the due date for filing the return under Section 139 of the IT Act).

8 Further, the Petitioner also got its account audited and the audit report in Form 10B was uploaded online by the auditor of the Petitioner on 29th December, 2021 i.e. one day before the filing of return under Section 139 (1) of the IT Act.

9 The problem has arisen because apart from uploading the audit report, the assessee is also required to e-verify/ accept the said audit report. Since all this was done during the Covid-19 pandemic and the trustees/ employees of the Petitioner-Trust were working from home, due to inadvertence, the e-verification/ acceptance of the audit report in Form 10B, and which was already filed by the auditor in time, was not done by the Petitioner-Trust within the stipulated time.

10 It appears that the Petitioner received an intimation under Section 143(1)(a) of the IT Act dated 8th September, 2022 issued by Respondent No.2, denying the exemption of Rs.58,02,006/- which was claimed by the Petitioner. The ground on which the exemption was denied was that the Petitioner had not e-filed the audit report in Form 10B within

the prescribed time i.e. one month prior to the due date of furnishing of return of income. As soon as the Petitioner became aware of this inadvertent error of not e-verifying the audit report, the Petitioner verified/ accepted the audit report in Form 10B on 9th September, 2022.

11 Subsequent to the e-verification/ acceptance of the audit report in Form 10B by the Petitioner, Respondent No.2 issued a fresh intimation dated 26th September, 2022 under Section 143 (1) of the IT Act, accepting the 'Nil' income declared by the Petitioner in its return of income. In other words, Respondent No.2 thereby accepted the e-verification of the audit report by the Petitioner. However, Respondent No.2, on 7th March, 2023 without granting any opportunity of being heard to the Petitioner, *suo moto* passed an order under Section 154 of the Act denying the exemption to the Petitioner [under Section 11 read with Section 12/12A of the IT Act], for non-submission of the audit report in Form 10B within the time prescribed. It is in these circumstances that on 29th March, 2023, the Petitioner filed an application before Respondent No.1, seeking a condonation of delay in acceptance/ verification of the audit report in Form 10B and which was rejected by the impugned order. This has given rise to the present Petition.

12 We have heard Mr. Agrawal, the learned Counsel appearing on behalf of the Petitioner as well as the learned Counsel Mr. Bhosale, appearing

on behalf of the Respondents. It has been brought to our attention that CBDT vide its Circular No. 16/2022 dated 19th July, 2022 authorized the Commissioner of Income Tax for considering and deciding the applications for condonation of delay in filing Form 10B for the Assessment Year 2018-19 or for any subsequent Assessment Years, where there is delay of up to 365 days. In the facts of the present case, if one not to apply the decision of the Hon'ble Supreme Court in *Cognizance for Extensions of Limitation, In re ([2022] 134 taxmann.com 307 (SC))* whereby time was extended due to the Covid-19 pandemic, then the delay would be 254 days. If we are to apply the extension granted by the Hon'ble Supreme Court, then admittedly, the delay is of 101 days. When one takes these facts into consideration, coupled with the fact that serious prejudice and hardship would be caused to the Petitioner if the delay is not condoned, and which was purely out of an inadvertence, we are of the view that the 1st Respondent was wholly unjustified in not condoning the delay.

13 In fact, the 1st Respondent, in the impugned order, refers to CBDT Circular No. 16/2024 dated 18th November, 2024 under which the Commissioner of Income Tax has been granted the power to condone the delay in filing Form Nos. 9A/10/10B/10BB for Assessment Year 2018-19 or any subsequent assessment years, in cases where the delay is upto 365 days, and decide on its merits. The CBDT Circular has further stipulated that the

Commissioner of Income Tax, while considering such condonation, shall satisfy himself that the Applicant was prevented by reasonable cause from filing such Form within the stipulated time and that the case is of genuine hardship on merits. In the facts of the present case, if the delay is not condoned, genuine hardship would be faced by the Petitioner inasmuch as the exemption claimed by the Petitioner, and to which it would otherwise be entitled to because it's a charitable trust, would be denied on this technical ground. In these circumstances, we are of the view that the 1st Respondent ought to have taken a justice oriented approach rather than a pedantic one and condoned the delay. We also find that in the similar facts, this Court in the case of *Sau Dwarkabai Tai Karwa Charitable Public Trust v/s. Commissioner of Income-tax (Exemption)* reported in *[2025] 174 taxmann.com 245 (Bombay)* has taken a similar view and condoned the delay. In fact, in the aforesaid case, it was in relation to the very same Assessment Year as in the present case, namely, Assessment Year 2021-22.

14 In view of the aforesaid discussion and the reasons stated above, we allow the above Writ Petition in terms of prayer clause (a) which reads thus:-

“that this Hon’ble Court be pleased to issue a Writ of Certiorari or any other writ order or direction under Article 226 of the Constitution of India calling for the records of the case leading to the passing of the impugned order dated 10th February 2025 (Exhibit S) and after going through the same and examining the question of legality thereof quash,

Page 6 of 7
JUNE 24, 2025

S.R.JOSHI

cancel and set aside the impugned order dated 10th February, 2025 (Exhibit S)".

15 Now that the impugned order is quashed, we also hereby condone the delay in filing Form 10B by the Petitioner.

16 Rule is made absolute in the above terms and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

17 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.]