

Sivestar Educational Trust vs Commissioner Of Income Tax (Exemption)

ID: F2J-C-2199 Court: Madras High Court
Case: W.P.No.6814 of 2025 Date: 2025-10-28

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Madras High Court Sivestar Educational Trust vs Commissioner Of Income Tax (Exemption) on 28 October, 2025 Author: C.Saravanan Bench: C.Saravanan W.P.No.6814 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.6814 of 2025

Sivestar Educational Trust, Represented by its Managing Trustee L.Govindaraju ... Petitioner

Vs.

Commissioner of Income Tax (Exemption), Income Tax Department, Aayakar Bhawan-Annexe Building, No.121, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034. ... Respondent

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

Respondent contained in its order passed under Section 119(2)(b) of the

Income Tax Act, 1961, DIN & Order No.ITBA/COM/F/17/2024-

25/1070699638(1), dated 28.11.2024 and all proceedings in furtherance

thereto order and quash the same as arbitrary, unjust and illegal and

consequently direct the Respondent to condone the delay in filing Form 10B

for the Assessment Year 2018-2019 for PAN: AAJTS3220K.

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For Petitioner : Mr.Suhrith Parthasarathy

For Respondent : Mr.V.J.Arul Raj Senior Standing Counsel

ORDER

Heard the learned counsel for the Petitioner and the learned Senior Standing Counsel for the Respondent.

2. In this Writ Petition, the Petitioner has challenged the impugned Order dated 28.11.2024 passed by the Respondent namely the Commissioner of Income Tax (Exemption) under Section 119(2)(b) of the Income Tax Act, 1961.

3. By the impugned Order dated 28.11.2024, the application filed by the Petitioner on 06.11.2023 for condoning the delay in filing Form 10B as is required under Section 44AB of the Income Tax Act, 1961 has been rejected with the following observations:-

“5. Decision: I have carefully examined the facts of the case and the submissions of the assessee. The CBDT vide Circular No.2/2020, dated 03.01.2020 in Paragraph Nos.5 and 6 has directed as under:-

“It has also been decided by the _____ Page No. 2 of 15 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 03/11/2025 09:37:09 pm) W.P.No.6814 of 2025 CBDT that where there is delay of upto 365 days in filing Form No.10B for the Assessment Year 2018-2019 or for any subsequent Assessment Years, the Commissioners of Income Tax are hereby authorized to admit such belated applications of condonation of delay under Section 119(2) of the Income Tax Act and decide on merits.

The Commissioner of Income Tax shall, while entertaining such belated applications in filing Form No.10B, satisfy themselves that the assessee was prevented by reasonable cause from filing such application within the stipulated time.” 5.1. The facts of the assessee's case has been analysed in the light of the parameters laid down in the above CBDT's Circular. The assessee has submitted that for the Assessment Year 2018-2019 due to the “Gaja Cyclone” the Trust could not file the statutory form viz., Form 10B and furnished some information about the “Gaja Cyclone” from Wikipedia and copy of Masters Attendance Register for the month of November 2018. From the submissions it is seen that the “Gaja Cyclone” was formed on November 10, 2018 and dissipated on 22nd November 2018, but the due date for filing the Audit Report was 31.10.2018 which is well before the formation of Cyclone. From the copy of Attendance Register, it is seen that the School viz., S.E.T.Vidhyadevi Higher Secondary School run by the

Trust was closed only from 15th November 2018 to 22nd November 2018. The assessee has not submitted any clinching evidence to prove that its School was affected by “Gaja Cyclone” during the month of November 2024 _____ Page No. 3 of 15 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 03/11/2025 09:37:09 pm) W.P.No.6814 of 2025 except a general write up on “Gaja Cyclone” and extracts from Wikipedia. 5.2. The Government extended the due date of filing of return from 30.09.2018 to 31.10.2018 for the Assessment Year 2018-2019. The assessee could have very well finalized the accounts and filed both the return and Audit Report well within the time. The preparation and E-filing of Audit Reports is a statutory responsibility of the Chartered Accountant who is registered as a Tax Professional on the E-filing portal of the Department. The vague reasons stated by the assessee are only an afterthought and the assessee has not established any reasonable cause for the delay in filing Form 10B for the Assessment Year 2018-2019. 5.3. The statutory compliances has to be duly complied with and the assessee should have ensured that adequate steps are taken, so that the law is complied with well within time. The same had to be looked after or adequately managed by the management of the Trust or Chartered Accountants who has been made responsible for statutory compliance.

6. In view of the facts and circumstances cited above, it is very clear that the assessee has not put forward any reasonable cause beyond its control which prevented the assessee from filing Form 10B on the due date specified in the Act. Hence, the applicant's petition filed on 06.11.2023 seeking condonation of delay under Section 119(2)(b) in filing Form 10B for the Assessment Year 2018-2019 is hereby rejected.” _____ Page No. 4 of 15 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 03/11/2025 09:37:09 pm) W.P.No.6814 of 2025

4. In this case, the Petitioner was registered as a “Trust” under Section 12A of the Income Tax Act, 1961 on 30.03.2017. As a “Trust”, the Petitioner was required to not only file the Return of Income by the due date under Section 139 of the Income Tax Act, 1961 but was also required to file Form 10B in terms of Section 44AB of the Income Tax Act, 1961.

5. Originally, the last date for filing Form 10B was prescribed as 30.09.2018 which was later extended to 31.10.2018. However, the Petitioner filed the same along with the Return of Income on 31.03.2019 with a delay of 151 days from 31.10.2018.

6. It appears that an intimation under Section 143(1) of the Income Tax Act, 1961 was issued on 17.10.2019 to finalize the Return of Income filed on 31.03.2019.

7. It is, in this background, the Petitioner filed an application before the Respondent under Section 119(2)(b) of the Income Tax Act, 1961 for condoning the delay of 151 days in filing Form 10B as is required under _____ Page No. 5 of 15 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 03/11/2025 09:37:09 pm) W.P.No.6814 of 2025 Section 44AB of the Income Tax Act, 1961 for the purpose of Section 12A(1)(b) of the Income Tax Act, 1961.

8. The case of the Petitioner is that there were extenuating circumstances both before the date prescribed for filing Form 10B and thereafter. The Respondent/Commissioner of Income Tax (Exemption) has however rejected the same by placing reliance on the informations gathered from Wikipedia and copy of Masters Attendance Register for the Month of November 2018 stating the reasons that the Petitioner could not file Form 10B by the due date and not accepted for the reasons stated in the above extracted portion of the impugned Order.

9. Learned counsel for the Petitioner has placed reliance on the following decisions of this Court: i. M/s.RBS Students Welfare Trust, Represented by its Trustee Vs. The Principal Chief Commissioner of Income Tax (Exemptions), New Delhi and others in W.P.No.1793 of 2024 dated 13.06.2024.

ii. M/s.Coromondel Cabeles Private Limited, Chennai and others Vs. The Assistant Commissioner of Income Tax, _____ Page No. 6 of 15 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 03/11/2025 09:37:09 pm) W.P.No.6814 of 2025 Chennai and others in T.C.A.Nos.294 of 2018 etc., batch dated 09.05.2025.

iii. St.Thomas Charitable Trust, Represented by Managing Trustee Aby Paul Vs. The Commissioner of Income Tax (Exemption), Chennai in W.P.No.20515 of 2025 dated 27.06.2025.

10. Paragraph No.97 in Coromondel Cabeles Private Limited (cited supra), the Division Bench of this Court held as under:-

“97. In “Commissioner of Sales Tax Vs. Auriya Chambers of Commerce”, (1986) 3 SCC 50 : 1986 SCC (Tax) 449 : (1987) 167 ITR 458 : (1986) 62 STC 327, the Hon'ble Supreme Court held that the rules or procedures are hand-maids of justice not its mistress. Relevant portion of the judgement is extracted hereunder:-

“29. It is true that except special provisions indicated before, there is no specific provision which prescribes a procedure for applying for refund in such a case. But the rules or procedures are handmaids of justice not its mistress. It is apparent in the scheme of the Act that sales tax is leviable only on valid transaction. If excess amount is realised, refund is also contemplated by the scheme of the Act. In this case undoubtedly sales tax on forward contracts have been illegally recovered on a mistaken view _____ Page No. 7 of 15 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 03/11/2025 09:37:09 pm) W.P.No.6814 of 2025 of law. The same is lying with the government. The assessee or the dealer has claimed for the refund in the revision. In certain circumstances refund specifically has been mentioned. There is no prohibition against refund except the prohibition of two years under the proviso of Section 29. In this case that two years prohibition is not applicable because the law was declared by this Court in Budit Prakash Jai Prakash case on May 3, 1954 and the revision was filed in 1955 and it was dismissed in 1958 on the ground that it had been filed after a long delay. Thereafter, the assessee had filed an application before the Sales Tax Officer for refund. The refund claimed for the first time on May 24, 1959. The Sales Tax Officer had dismissed the application as barred by limitation under Article 96 of the First Schedule of the Indian Limitation Act, 1908.”

11. Learned Senior Standing Counsel for the Respondent has placed reliance on the following cases rendered in the context of the delay in filing the returns: i. B.U.Bhandari Nandgude Patil Associates Vs. Central Board of Direct Taxes, [2018] 91 taxmann.com 241 (Delhi).

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12. Paragraph Nos.11 and 12 in Wipro Limited (cited supra), the Division Bench of this Court held as under:- “11. Now so far as the reliance placed upon the decision of this Court in the case of G.M.Knitting Industries (P.) Ltd. (supra), relied upon by the learned counsel appearing on behalf of the assessee is concerned, section 10B(8) is an exemption provision which cannot be compared with claiming an additional depreciation under section

32(1) (ii-a) of the Act. As per the settled position of law, an assessee claiming exemption has to strictly and literally comply with the exemption provisions. Therefore, the said decision shall not be applicable to the facts of the case on hand, while considering the exemption provisions. Even otherwise, Chapter II and Chapter VIA of the Act operate in different realms and principles of Chapter III, which deals with “incomes which do not form a part of total income”, cannot be equated with _____ Page No. 9 of 15 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 03/11/2025 09:37:09 pm) W.P.No.6814 of 2025 mechanism provided for deductions in Chapter VIA, which deals with “deductions to be made in computing total income”. Therefore, none of the decisions which are relied upon on behalf of the assessee on interpretation of Chapter VIA shall be applicable while considering the claim under Section 10B(8) of the IT Act.

12. Even the submission on behalf of the assessee that the assessee had a substantive statutory right under Section 10B(8) to opt out of section 10B which cannot be nullified by constructing the purely procedural time requirement regarding the filing of the declaration under section 10B(8) as being mandatory also has no substance. As observed hereinabove, the exemption provisions are to be strictly and literally complied with and the same cannot be construed as procedural requirement.”

13. I have considered the arguments advanced by the learned counsel for the Petitioner and the learned Senior Standing Counsel for the Respondent.

14. Court is of the view, the Petitioner did not gain anything by not filing Form 10B in time. Ultimately, the Income Tax Department is expected to collect just tax that are due from an Assessee, if an Assessee is entitled for any deductions.

15. The delay in filing the declarations or the documents that are _____ Page No. 10 of 15 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 03/11/2025 09:37:09 pm) W.P.No.6814 of 2025 required statutorily should not come in the way in case an Assessee is otherwise entitled to such exemptions / deductions.

16. Even if such declarations / documents are not filed, the Hon'ble Supreme Court has ultimately held that while confirming the demand, all the attendant benefits that are available to an Assessee has to be extended. In this connection, a reference is made to the decision of the Hon'ble Supreme Court in Formica India Division, Bombay, Burma Trading Corporation Limited Vs. Collector of Central Excise and others, 1995 Supp (3) SCC 552/1995 (77) ELT 511.

17. That apart, the Hon'ble Supreme Court has repeatedly held that procedures are rules makers, handmaids of justice and not mistress of law. In this connection, a reference is made to the decision of the Hon'ble Supreme Court in Commissioner of Sales Tax Vs. Auriya Chambers of Commerce, (1986) 3 SCC 50.

18. In Unichem Laboratories Vs. Commissioner of Central Excise, _____ Page No. 11 of 15 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 03/11/2025 09:37:09 pm) W.P.No.6814 of 2025 (2002) 7 SCC 145, the Hon'ble Supreme Court held that it is not on the part of the duty of the Department to collect or to retain the tax amount, which is not due to it, and is legitimately due to an assessee. Specifically, a reference is made to Paragraph No.12, wherein the Hon'ble Supreme Court held as under:-

“12. For the aforementioned reasons, we are of the view that denial of benefit of the notification to the appellant was unfair. There can be no doubt that the authorities functioning under the Act must, as are in duty bound, to protect the interest of the Revenue by levying and collecting the duty in accordance with law — no less and also no more. It is no part of their duty to deprive an assessee of the benefit available to him in law with a view to augment the quantum of duty for the benefit of the Revenue. They must act reasonably and fairly.”

19. In this case, the Petitioner was registered as a “Trust” in the year 2017. Effectively, the Petitioner would have carried on operation as a “Trust” from 01.04.2017 onwards, which would fall under the Assessment Year 2018-2019.

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20. The failure is in the year 1st Year of its operation. Therefore, the delay in filing Form 10B as is required under Section 44AB for the purpose of Section 12A(1)(b) of the Income Tax Act, 1961 should not come in the legitimate way of any exemptions or deductions that may be available to the Petitioner.

21. Considering the same, this Court is inclined to allow this Writ Petition on terms subject to the Petitioner donating sum of Rs.25,000/- (Rupees Twenty Five Thousand only) by way of Demand Draft, directly to the Chairman / Honorary Secretary, Blue Cross of India (BCI), Blue Cross Avenue, No.72, Velacherry Road, Guindy, Chennai – 600 032, within a period of 30 days from today.

22. In case the Petitioner complies with the above stipulation, it will be construed that the impugned Order has been quashed and the Writ Petition is allowed in which case, the Assessing Officer/Assessing Unit is directed to complete the assessment in accordance with law. _____ Page No. 13 of 15 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 03/11/2025 09:37:09 pm) W.P.No.6814 of 2025

23. This Writ Petition stands allowed with the above observations.

24. For Reporting Compliance, list on 27.11.2025. 28.10.2025 Neutral Citation : Yes / No arb To:

Commissioner of Income Tax (Exemption), Income Tax Department, Aayakar Bhawan-Annexe Building, No.121, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034.

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arb W.P.No.6814 of 2025 28.10.2025 _____ Page No. 15 of 15 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 03/11/2025 09:37:09 pm)