



2025:DHC:3039-DB



112

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 29.04.2025*+ **W.P.(C) 143/2025 & CM No.673/2025**FIITJEE FOUNDATION FOR EDUCATION  
RESEARCH AND TRAININGS

.....Petitioner

Through: Mr. Rajan Bhatia, Adv.

Versus

COMMISSIONER OF INCOME TAX (EXEMPTION)....Respondent

Through: Mr. Abhishek Maratha Mr. Apoorv  
Agarwal, Mr. Parth Samwal, Ms.  
Nupur Sharma, Mr. Gaurav Singh,  
Mr. Bhanukaran Singh Jodha, Mr.  
Himanshu Gaur & Ms. Muskaan  
Goel, Advs.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE TEJAS KARIA****VIBHU BAKHRU, J. (Oral)**

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 02.08.2024 [**impugned order**] passed by respondent under Section 119(2)(b) of the Income Tax Act, 1961 [**Act**] whereby the petitioner's application for condonation of delay in filing Form 10B for Assessment Year [**AY**] 2022-23 was rejected.

2. The petitioner contends that the delay of one month in filing the Form 10B was due to the mitigating circumstances that were duly established on record. The petitioner further contends that notwithstanding the fact that the delay of one month was on account of genuine hardship, the learned Commissioner of Income Tax (Exemption) [**CIT(E)**] has rejected the petitioner's request for condonation of delay in filing the requisite form.



2025:DHC:3039-DB



3. According to the petitioner, the impugned order is arbitrary and unreasonable on account of failure on the part of learned CIT(E) to exercise the jurisdiction vested with it as the delegatee of the Central Board of Direct Taxes [CBDT].

4. The petitioner is a charitable organisation and it is not disputed that the petitioner has been availing exemption under Sections 11,12,12A and other provisions of the Act for prior financial years. In order to avail exemption under Section 11 of the Act, the petitioner is required to furnish an audit report in Form 10B at least one month prior to the due date of furnishing the return of income under Section 139(1) of the Act.

5. In the present case, the petitioner filed its return of income in respect of AY 2022-23 on 07.11.2022 within the prescribed time for filing the return under Section 139(1) of the Act, as extended in terms of the Circular issued by CBDT. The petitioner had also filed the report in Form 10B on 07.11.2022. The same was filed after the delay of one month. In terms of Section 12A(1)(b)(ii) read with Section 44AB of the Act, Form 10B is required to be filed one month in advance before filing the return, that is on or before 07.10.2022. In view of the above, the Central Processing Centre had issued an intimation dated 04.04.2023 under Section 143(1) of the Act making an adjustment on account of denial of exemption under Section 11 of the Act and accordingly computed the demand of tax payable by the Assessee at ₹18,12,06,760/-. The petitioner preferred an appeal against the said intimation dated 04.04.2023, which is pending before the Commissioner of Income Tax (Appeals) [CIT(A)]. Thereafter, the petitioner's return of income for AY 2022-23 was picked up for scrutiny and notice dated 01.06.2023 under Section 143(2) of the Act was issued by the

*W.P.(C) 143/2025*



National Faceless Assessment Centre [NFAC]. One of the reasons why petitioner's income was picked up for scrutiny was that the petitioner had not filed Form 10B within the stipulated period. It is in the aforesaid context that on 07.08.2023, the petitioner filed an application under Section 119(2)(b) of the Act explaining the reasons for the delay. The petitioner explained that its audit had got delayed on account of medical issues in the family of its accountant.

6. Whilst the petitioner's application was pending, the NFAC completed the assessment of the petitioner's income chargeable to tax in respect of AY 2022-23 under Section 143(3) of the Act in terms of an assessment order dated 25.03.2024.

7. In the meantime, the learned CIT(E) continued to make enquiries by issuing notices seeking explanation from the petitioner in respect of its application for condonation of delay of one month under Section 119(2)(b) of the Act. The petitioner responded to each of the said notices and provided the necessary clarification. However, notwithstanding the petitioner's explanation regarding its hardship, the learned CIT(E) passed the impugned order rejecting the petitioner's application which is impugned in the present petition.

8. At the outset, it is necessary to note that there is no cavil that the petitioner's activities are within the scope of charitable purposes as defined under Section 2(15) of the Act. The petitioner has been regularly filing its return of income for the past several years and has been granted exemption in terms of the Act. It is also not in dispute that the petitioner had also furnished all the material to establish that it is otherwise entitled to exemption on account of its receipts being applied for its charitable objects.



2025:DHC:3039-DB



9. It is also material to note that the delay in filing Form 10B is not such that will indicate that the petitioner was lax or completely negligent in discharging the statutory compliances. It is material to note the reasons why filing of Form 10B had been delayed. Undisputedly, Form 10B is required to be based on audited accounts. In the present case, the audit of the petitioner's final account was delayed on account of ill health of the son of the petitioner's accountant. The petitioner had explained that during the month of September, 2022 the petitioner's accountant was unavailable and therefore, the audit of the petitioner society in respect of financial year ending 31.03.2022 was completed on 07.11.2022. The petitioner filed the Form 10B immediately on the said date.

10. In order to establish that the hardship faced by the petitioner is genuine, the petitioner had forwarded the report of a doctor [Doctor V.S.R. Murthy] who was treating the son [named Siddharth & aged 14 years] of the petitioner's accountant at the material time.

11. Additionally, the petitioner also forwarded the report of the Deccan Hospital where the son of the petitioner's accountant had undergone treatment. Although the said report refers to Master Aaryaman Singh, the petitioner had explained that Siddhartha Singh and Aaryaman Singh is the one and the same person. There is sufficient material on record to establish that the petitioner's contention that the son of its accountant was suffering from Dengue during the month of September, 2022 and there is no ground to disbelieve that the petitioner that its accountant was unavailable during the said period for the aforesaid reason.



12. The provisions of Section 119(2)(b) of the Act enables the concerned authority to condone the delay in cases of genuine hardship. In *Sitaldas K. Motwani v. Director-General of Income Tax & Anr.: 323 ITR 223 (Bom)*, the Bombay High Court has taken a view that expression “genuine hardship” as used in Section 119(2)(b) of the Act must be accorded liberal interpretation. We consider it apposite to set out the following extract of the said decision:

“15. The phrase “genuine hardship” used in Section 119(2)(b) should have been construed liberally even when the petitioner has complied with all the conditions mentioned in Circular dated 12th October, 1993. The Legislature has conferred the power to condone delay to enable the authorities to do substantive justice to the parties by disposing of the matters on merit. The expression "genuine" has received a liberal meaning in view of the law laid down by the Apex Court referred to hereinabove and while considering this aspect, the authorities are expected to bear in mind that ordinarily the applicant, applying for condonation of delay does not stand to benefit by lodging its claim late. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a nondeliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. The approach of the authorities should be justice oriented so as to advance cause of justice. If refund is legitimately due to the applicant, mere delay should not defeat the claim for refund.

16. Whether the refund claim is correct and genuine, the authority must satisfy itself that the applicant has a prima facie correct and genuine claim, does not mean that the authority should examine the merits of the refund claim closely and come to a



conclusion that the applicant's claim is bound to succeed. This would amount to prejudging the case on merits. All that the authority has to see is that on the face of it the person applying for refund after condonation of delay has a case which needs consideration and which is not bound to fail by virtue of some apparent defect. At this stage, the authority is not expected to go deep into the niceties of law. While determining whether refund claim is correct and genuine, the relevant consideration is whether on the evidence led, it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence.”

13. It is a well settled principle that every power is coupled with a duty to exercise the same. There may not be any ground to accord a wider interpretation to the expression ‘genuine hardship’ but it cannot be disputed that in cases where an assessee is able to establish genuine hardship, the concerned authority must exercise its power accorded for the said purpose.

14. The impugned order indicates the documents furnished by the petitioner and also sets out the explanation provided by the petitioner. The same are reproduced below:

“3. On perusal of the application it is seen that the delay in filing the audit report by the assessee was owing to the fact that the accountant of the society who was assisting in the statutory audit of the society was not available during the month of September 2022 since her son was suffering from dengue. In support of this reason, the applicant has attached the following:

- (a) A copy of a prescription by Dr. VSR Murthy dated 12/9/2022 in the case of one Siddhartha aged 14 years,
- (b) A copy of a blood report of Siddharth dated 15/9/2022,
- (c) A copy of a X Ray report of one Aryamaan Singh aged 14 years dated 28/9/2022,
- (d) A copy of a prescription by Dr. Vamsi Krishna P dated 30/9/2022 in the case of one Aryamaan Singh aged 14 years, and
- (e) A copy of a blood report of Aryamaan Singh dated 28/9/2022



2025:DHC:3039-DB



4. From the application of the assessee it was not clear how Siddharth and Aryamaan Singh were connected with the reason for delay in filing its Audit report. Accordingly the assessee was asked to explain the same vide notice dated 27/03/2024.

The assessee, *vide* its reply dated 15/04/2024, furnished the following documents:

- a. Copy of an undated certificate issued by the Assessee
- b. Copy of Form 16 issued by the assessee to Archana Singh
- c. Copy of the birth certificate of Siddhartha Singh, s/o Mrs Archana Singh
- d. Copy of undated certificate issued by Mrs Archana Singh reiterating the contents of the certificate at (a) above.”

15. The learned CIT(E) had also noted the various decisions rendered by the courts for the purpose of guiding its discretion. However, we find that the learned CIT(E) had reached an erroneous conclusion in the present case that the delay in filing the audit report is not justified as it is without reasonable cause.

16. In the peculiar facts and circumstances of the case, the present petition is allowed. The learned CIT(E) is directed to issue an appropriate order for condoning the thirty days delay on the part of the petitioner in filing Form 10B in respect of AY 2022-23.

17. The petition is disposed of in the aforesaid terms. Pending application is also disposed of.

**VIBHU BAKHRU, J**

**TEJAS KARIA, J**

**APRIL 29, 2025**

‘gsr’

W.P.(C) 143/2025

[Click here to check corrigendum, if any](#)

Page 7 of 7