

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1061 OF 2020

Little Angels Education Society ... Petitioner
Vs.
Union of India and others ... Respondents

WITH

WRIT PETITION NO.1288 OF 2020

Rev. C. F. Andrews Education Society (Regd.) ... Petitioner
Vs.
Union of India and others ... Respondents

Dr. K. Shivaram, Senior Advocate a/w. Shashi Bekal for Petitioner.
Mr. Sham Walve for Respondents.

**CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.**

Reserved on : FEBRUARY 15, 2021

Pronounced on: MARCH 25, 2021

Judgment and Order : (Per Ujjal Bhuyan, J.)

This order will dispose off both writ petition Nos.1061 and 1288 of 2020.

2. We have heard Dr. K. Shivaram, learned senior counsel for the two petitioners and Mr. Sham Walve, learned standing counsel revenue for the respondents.

3. In Writ Petition No.1061 of 2020, Little Angels Education Society, Santacruz (West), Mumbai is the petitioner whereas in Writ Petition No.1288 of 2020, Rev. C. F. Andrews Education Society,

Santacruz (East), Mumbai is the petitioner. Both the petitioners are charitable trusts providing education to students belonging to middle class families through various schools situated in Mumbai. Both the petitioners are assessed to income tax under the Income Tax Act, 1961 (briefly 'the Act' hereinafter).

4. Challenge made in both the writ petitions is to the orders dated 19.02.2020 passed by the Commissioner of Income Tax (Exemptions), Mumbai declining to condone the delay in filing Form No.10B of the Act for the assessment year 2018-2019.

5. Since facts are identical in both the petitions, for the sake of convenience we may refer to the facts pleaded in Writ Petition No.1061 of 2020.

6. It is stated that for the assessment year 2018-19, petitioner filed return of income on 25.07.2018 declaring *nil* income. Form No.10B was obtained on 15.08.2018 from the auditor. It is stated instead of uploading Form No.10B in the income tax portal, petitioner uploaded Form No.10BB because of mistake of the chartered accountant and accountant.

7. Centralized Processing Centre (CPC) of the Income Tax Department informed the petitioner *vide* letter dated 26.07.2019 about proposed adjustment in the income tax return for the assessment year 2018-19. Subsequently, petitioner received an intimation / order dated 17.10.2019 from the CPC under section 143(1) of the Act raising a demand of Rs.1,46,01,489.00 as payable by the petitioner for the assessment year 2018-19 by denying exemptions under sections 11 and 12 of the Act. This has been challenged by the petitioner in appeal before

the Commissioner of Income Tax (Appeals).

8. Petitioner uploaded Form No.10B on the income tax portal on 06.11.2019 and also filed an application for condonation of delay. As a matter of fact, petitioner filed Form No.10B for assessment years 2017-18 and 2018-19.

9. Respondent No.2 i.e., Central Board of Direct Taxes issued Circular No.2 of 2020 dated 03.01.2020 empowering the Commissioner of Income Tax (Exemptions) to condone the delay in filing Form No.10B for a period upto 365 days from the assessment year 2018-19 onwards.

10. Commissioner of Income Tax (Exemptions), Mumbai requested the petitioner *vide* letter dated 04.02.2020 to furnish documents in connection with the application for condonation of delay for the assessment year 2018-19 which was complied with by the petitioner.

11. However, *vide* the impugned order dated 19.02.2020, Commissioner of Income Tax (Exemptions), Mumbai rejected the application of the petitioner for condonation of delay for the assessment year 2018-19. The said order was passed following Circular No.2 / 2020 of the Central Board of Direct Taxes (for short 'CBDT').

12. Petitioner has stated that it had filed an application for condonation of delay in filing Form No.10B for the assessment year 2017-18 which was allowed by the Commissioner of Income Tax (Exemptions) by condoning the delay.

13. Aggrieved, the related writ petition has been filed for quashing of order dated 19.02.2020 and for a direction to the Commissioner of Income Tax (Exemptions) to condone the delay in filing Form No.10B for the assessment year 2018-19.

14. Respondents have filed reply affidavit. It is stated that petitioner had filed return of income under section 139(1) of the Act on 15.08.2018 and revised return of income on 30.03.2019. Form No.10B was filed on 06.11.2019 which was after lapse of more than 365 days from the due date of filing of return of income. Reference has been made to the Circular No.2 of 2020 dated 03.01.2020 to contend that Commissioners of Income Tax are authorized to condone the delay in filing of Form No.10B upto 365 days for the assessment year 2018-19 and subsequent years. In the case of the petitioner, the delay was more than 365 days. Therefore, no fault can be found in the action of the Commissioner in rejecting the application of the petitioner for condonation of delay in filing Form No.10B. Circular of the CBDT is binding on all lower authorities. There is thus no infirmity in the impugned order. Writ petition should be dismissed.

15. While Dr. Shivaram, learned senior counsel for the petitioner submits that approach of the Commissioner of Income Tax (Exemptions) is too technical, Mr. Walve, learned standing counsel revenue however justifies the approach adopted by the Commissioner. Referring to section 119(2)(b), Dr. Shivaram submits that this Court in *Sitaldas K. Motwani Vs. Director General of Income Tax*, **323 ITR 223** had observed that the phrase 'genuine hardship' appearing in section 119(2)(b) should be construed liberally. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred because the other side cannot claim to have a vested right in

injustice being done on account of a non-deliberate delay. He submits that in a number of judgments this Court had remanded the proceedings back to the Commissioner.

16. Submissions made by learned counsel for the parties have been considered.

17. Section 11 which deals with income from property held for charitable or religious purposes provides that the categories of income mentioned thereunder shall not be included in the total income of the previous year of the person in receipt of the income. On the other hand, section 12 deals with income of trusts or institutions from contributions. Section 12A lays down the conditions for applicability of sections 11 and 12. As per Rule 17B the report of audit of accounts of a trust or institution which is required to be furnished electronically under clause (b) of section 12A shall be in Form No.10B. In other words, where the total income of the trust or institute as computed under the Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income tax in any previous year, the accounts of the trust or institution for that year should be audited by an accountant as defined in the explanation below sub-section (2) of section 288 which should then be furnished along with the return of income for the relevant assessment year.

18. Before we advert to the impugned order, it would be apposite to deal with section 119 of the Act which confers power upon the CBDT to issue instructions and directions to other income tax authorities as it may deem fit for proper administration of the Act which are required to be observed and followed by the income tax authorities. Section 119(2)(b)

is relevant and the same is extracted hereunder:-

“Section 119(2)

(a) ...

(b) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorise any income-tax authority, not being a Commissioner (Appeals) to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law.”

19. From the above, we find that CBDT if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases by general or special order, authorize any income tax authority, not being a Commissioner (Appeals), to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after the expiry of the period specified under the Act for making such application or claim and deal with the same on merit in accordance with law. Thus, in an appropriate case CBDT can pass a general order or a special order; by such an order it can authorize any income tax authority not being a Commissioner (Appeals) which would include Commissioner of Income Tax (Exemptions); to admit an application or claim for any exemption etc. after expiry of the period specified under the Act; and to deal with the same on merit in accordance with law.

20. Having noticed the above, we may now examine Circular No.2 / 2020 dated 03.01.2020 issued by the CBDT. The subject of the circular is condonation of delay under section 119(2)(b) of the Act in filing of

Form No.10B for the assessment year 2018-19 and subsequent years. Referring to the earlier circulars issued by the CBDT, it was noticed that the delay in filing Form No.10B for the assessment year 2016-17 and assessment year 2017-18 in all such cases where the audit report for the previous year had been obtained before filing of return of income and had been furnished subsequent to the filing of the return of income but before the dates specified under section 139 of the Act should be condoned; in all other cases of belated applications in filing Form No.10B for assessment years prior to assessment year 2018-19, Commissioners of Income Tax have been authorized to admit and dispose of such applications by 31.03.2020. While entertaining such belated applications, Commissioners should satisfy themselves that the assesseees were prevented by reasonable cause from filing such application within the stipulated time. By the Circular No.2 / 2020, the following portions have been added:-

“5. In addition to the above, it has also been decided by the CBDT that where there is delay of upto 365 days in filing Form No.10B for Assessment Year 2018-19 or for any subsequent Assessment years, the Commissioner of Income-tax are hereby authorized to admit such belated applications of condonation of delay u/s. 119(2) of the IT Act and decide on merits.

6. The Commissioners 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.”

21. As per the above it has been decided by the CBDT that when there is delay of upto 365 days in filing Form No.10B for assessment

year 2018-19 or for any subsequent assessment years, Commissioners of Income Tax have been authorized to admit such belated applications for condonation of delay under section 119(2) of the Act and to decide the same on merit. It has further been clarified that while entertaining such belated applications, Commissioners of Income Tax should satisfy themselves that the assessee was prevented by reasonable cause from filing such applications within the stipulated time. Thus, by the above Circular No.2 of 2020, CBDT has issued general order under section 119(2)(b) empowering the Commissioners of Income Tax to condone delay in filing Form No.10B for the assessment year 2018-19 or for any subsequent assessment years.

22. Let us now deal with the impugned order dated 19.02.2020 passed by the Commissioner of Income Tax (Exemptions), Mumbai. The same reads as under:-

“The assessee has filed application for condonation of delay in filing Form No.10B for A.Y. 2018-19 on 07.11.2019. It was stated in the application that due to oversight on part of the Chartered Accountant Form 10B was delayed in e-filing. The assessee has requested for condonation of delay in filing Form No.10B.

2. On perusal of application for condonation of delay of assessee as well as relevant provisions of the Income Tax Act, 1961 (the Act), Circulars & Notifications, it is observed that the power u/s. 119(2)(b) of the Act lies with the CBDT. However, for the condonation of delay u/s.119(2)(b) of the Income-tax Act, 1961 in filing of Form No.10B for A.Y.2018-19 and subsequent years, has been delegated to the Commissioner of Income-tax (Exemptions), vide Circular No.02/2020 in F.No.197/55/2018-ITA-I dated 03rd January, 2020. The relevant excerpts from the circulars is reproduced as under:

“5. In addition to the above, it has also been decided by the CBDT that where there is delay of upto 365 days in filing Form No.10B for Assessment Year 2018-19 or for any subsequent Assessment Years, the Commissioners of Income-tax are hereby authorized to admit such belated applications of condonation of delay u/s.119(2) of the Act and decide on merits.”

3. As per para 5 of the above Circular dated 03.01.2020, it is very clear that the delay of upto 365 days in filing of Form No.10B for Assessment Year 2018-19 and subsequent Assessment Years, the Commissioners of Income-tax are authorized to admit such belated applications of condonation of delay u/s 119(2) of the Act and decide on merits.

3.1. In this case, the assessee has filed its return of income u/s. 139(1) on 15.08.2018 and revised return of income u/s.139(5) on 30.03.2019. Further, the original and revised Form No.10B was filed on 06.11.2019. The details and the documentary evidences filed by assessee have been examined during the course of proceedings. It is seen that the Form No.10B is filed electronically after lapse of more more than 365 days of the due date of the filing of return of income i.e. 31.10.2018. The case of the assessee is not covered under para 5 of the CBDT Circular dated 03.01.2020 wherein the CBDT has delegated the power to the Commissioner of Income-tax to admit belated applications of condonation of delay u/s. 119(2) of the Act only upto 365 days in filing of Form No.10B and decide on merits.

4. In view of the above, the application for condonation of delay for A.Y.2018-19 is hereby rejected.”

23. Commissioner noted that petitioner had filed return of income on 15.08.2018 and revised return of income on 30.03.2019. Form No.10B was filed on 06.11.2019. Form No.10B was required to be filed within the due date of filing of return, in this case 31.10.2018. There was thus delay of more than 365 days in filing Form No.10B. Referring to the Circular dated 03.01.2020, Commissioner noted that CBDT has delegated the power to the Commissioner to admit belated applications in filing Form No.10B for the assessment year 2018-19 and onwards for a period of only upto 365 days. Since in this case the delay is more than 365 days, Commissioner expressed inability to condone the delay and hence rejected the application for condonation of delay.

24. We do not find any error or infirmity in the view taken by the CBDT *vide* Circular No.2 / 2020 or by the Commissioner while passing the impugned order dated 19.02.2020. Fixing a period of one year's delay i.e., 365 days of delay for condonation of delay in filing Form No.10B for the assessment year 2018-19 and onwards cannot be said to be arbitrary or irrational. Therefore the general order passed by the CBDT in this regard under section 119(2)(b) cannot be faulted. However, there is also nothing in section 119(2)(b) preventing or precluding CBDT from passing a special order in any given case from condoning the delay in filing Form No.10B beyond 365 days despite passing a general order.

25. That being the position and having regard to the mandate of section 119(2)(b), we feel that even at this stage, petitioner may approach CBDT under the aforesaid provision seeking a special order to the Commissioner of Income Tax (Exemptions), Mumbai to condone the delay in filing Form No.10B for the assessment year 2018-19 which is

beyond 365 days and thereafter to deal with the said claim on merit and in accordance with law.

26. Thus, having regard to the above and upon due consideration we deem it appropriate to issue the following directions:-

1. Petitioner shall file an application before the CBDT under section 119(2)(b) of the Act to authorize the Commissioner of Income Tax (Exemptions), Mumbai to condone the delay in filing Form No.10B for the assessment year 2018-19 and to deal with the same on merit in accordance with law;
2. If such application is filed by the petitioner within a period of three weeks from today, CBDT shall pass an appropriate order in terms of direction No.1 above within a period of four weeks from the date of receipt of such application with due intimation to the petitioner.

27. Ordered accordingly.

28. The above directions in paragraph No.26 shall also cover Writ Petition No.1288 of 2020.

29. Both the writ petitions are accordingly disposed of. However, there shall be no order as to cost.

(MILIND N. JADHAV, J.)

(UJJAL BHUYAN, J.)

