



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

WRIT PETITION NO.5420 OF 2024

The Borivli Education Society

...Petitioner

Versus

Commissioner of Income-Tax
(Exemption), Mumbai & Ors.

...Respondents

Dr. K. Shivaram, Senior Counsel a/w Mr. Rahul Hakani and Ms. Neelam
C. Jadhav for the Petitioner.

Mr. Dinesh R. Gulabani a/w Ms. Vibha D. Gulabani for the Respondents.

CORAM : M. S. Sonak &
Jitendra Jain, JJ.

DATED : 17 February 2025

ORAL JUDGMENT (Per M. S. Sonak, J.):-

1. Heard learned counsel for the parties.
2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.
3. This petition concerns assessment year 2014-2015. The Petitioner challenges the impugned orders dated 10 October 2024 and 13 November 2024 made by the first respondent rejecting the Petitioner's application for condonation of delay of 2732 days in filing Form 10B for claiming exemption under Section 11 of the Income Tax Act, 1961 ("IT Act").
4. Admittedly, the Petitioner had obtained and filed Form 10B manually within the prescribed period. Mr. Gulabani, learned counsel for the Revenue, did not dispute this position fairly. Even otherwise, the records support this position.

5. At the same time, the records also bear out, and Dr. Shivaram, senior advocate for the Petitioner, admitted that this Form 10B remained to be uploaded electronically. The Petitioner was established to administer educational institutions from 1954 to 1955. The Chartered Accountant representing the Petitioner accepted that she was under the *bona fide* impression that electronic filing was not mandatory. The Chartered Accountant has also filed an affidavit in this regard.

6. The third respondent issued an intimation under Section 143(1) dated 16 March 2016, denying the Petitioner's claim for exemption under Section 11. However, this intimation gave no reasons for the denial of exemption. The Petitioner has alleged that even this intimation was without issuing the mandatorily required show cause notice.

7. Upon enquiries, the Petitioner was informed that the exemption was rejected due to the non-filing of Form 10B electronically. Soon thereafter, the Petitioner, by way of abundant caution, filed online rectification applications dated 25 May 2016 and 6 March 2017. These were summarily rejected, again, without even minimum compliance with principles of natural justice. The Petitioner applied Section 154 before the Jurisdictional Assessing Officer on 2 July 2018 and has pleaded that this application is pending to date.

8. The Petitioner was also served with a notice under Section 139(9) on 8 January 2016 regarding the alleged non-disclosure of corpus and non-corpus fund in schedule J. To remedy this, the Petitioner again filed a return of income on 16 January 2019, and in this return, the Petitioner disclosed that the audit report in Form 10B was physically filed within time. All this shows that the Petitioner, based upon the *bona fide* advice of their Chartered Accountant, believed that

the filing of Form 10B manually or physically was substantial compliance with the law.

9. At the hearing on the rectification application, the Assessing Officer informed the Petitioner about the requirement of uploading Form 10B electronically on the portal. Immediately, i.e. on 24 March 2022, the Petitioner uploaded Form 10B on the portal. As a matter of abundant caution, an application for condonation of delay was filed. Along with this application, the Chartered Accountant filed her affidavit regarding the *bona fide* impression that she carried and the advice that she tendered to the Petitioner based upon this *bona fide* impression.

10. The TRO (Exemption) issued notice dated 24 July 2024 to the Petitioner requesting certain particulars. The Petitioner complied with this via a letter dated 29 July 2024. Even this time, without compliance with principles of natural justice, the Petitioner's application was rejected by an order dated 10 October 2024. The Petitioner again filed a rectification application on 12 November 2024, which was also dismissed on 13 November 2024 without any opportunity of hearing to the Petitioner or its representative.

11. Based on the aforesaid facts and circumstances, we are satisfied that the Petitioner filed Form 10B manually or physically within the prescribed period. True, Form 10B was not uploaded electronically. At the same time, the Petitioner was not intimated for a long time that this was the requirement for which the exemption was being denied. Belatedly, the Petitioner was informed that this was one of the reasons. Therefore, the Petitioner took expedient steps.

12. The Petitioner also explained that she had nothing to gain from non-compliance. The non-compliance, if any, was due to the advice of a professional Chartered Accountant. Even the Chartered

Accountant filed an affidavit explaining her *bona fides* and the factum of the advice. After the Petitioner became aware of the reasons, she took several steps and ultimately uploaded Form 10B electronically. Still, the application for condonation of delay has been rejected without adequate compliance with the principles of natural justice and fair play.

13. In all such matters, there is bound to be some lapse on the part of the assessee seeking condonation. However, the delay should be condoned as long as such lapse is not *mala fide* and the assessee has not derived any undue advantage out of his own lapse. Besides, in such matters, though the length of the delay is one of the considerations, it is not sole consideration. The quality of the explanation offered is crucial, and the focus must be the quality of the cause shown in the explanation.

14. Besides, in this case, though the delay appears considerable, there is some merit in Dr. Shivaram's contentions that the delay should be construed from the day Petitioner was informed of the real reason for the denial of exemption. After it was informed of the real reason, the Petitioner's conduct cannot be said to be either informed with lethargy or indolence. The Petitioner took several steps and time and again pointed out that Form 10B was already filed manually within the prescribed time.

15. We note that even before the CIT (Exemption), the Petitioner categorically pleaded and made good their submissions about Form 10B being filed manually within the prescribed time limit. This was a crucial circumstance when considering the Petitioner's conduct and its application for condonation of delay. The possession of the certification is a mandatory requirement. The mode of proof may not always be. In any event, no dispute is raised about the Petitioner submitting the

prescribed form within the prescribed period manually or physically. The impugned order, however, takes no cognisance of this crucial circumstances.

16. For all the above reasons and upon cumulative consideration of the facts and circumstances of the about which there was no serious dispute, we are satisfied that discretion should have been exercised, and the delay should be condoned.

17. Accordingly, we set aside the impugned orders dated 10 October 2024 and 13 November 2024 and condone the delay in electronically uploading Form 10B after noting that his form was already filed in the physical form within the prescribed period, i.e. on 30 September 2014, about which there is no dispute whatsoever.

18. The Rule is made absolute in the above terms without any cost order. All concerned are to act on an authenticated copy of this order.

(Jitendra Jain, J.)

(M. S. Sonak, J.)