

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

WRIT PETITION No.8950 OF 2024

Between:

M/s. Global Organisation for Development,
Represented by its authorised signatory Arun Raj Manda
Having Office at
SRT-34, Ram Nagar, Musheerabad,
Hyderabad-500044,
Telangana.

... Petitioner

And

1. Commissioner of Income Tax (Exemption)
Aaykar Bhawan Opposite LB Stadium,
Basheer Bagh, Hyderabad,
Telangana 500004.

2. Union of India
Represented by its Secretary to the Government
Ministry of Finance New Delhi 110001.

... Respondents

DATE OF ORDER PRONOUNCED: 08.04.2024

Submitted for approval.

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU

- 1 Whether Reporters of Local newspapers may be allowed to see the order? Yes/No

- 2 Whether the copies of order may be marked to Law Reporters/Journals Yes/No

- 3 Whether Their Ladyship/Lordship wish to see the fair copy of the order? Yes/No

P.SAM KOSHY, J

SAMBASIVA RAO NAIDU, J

*** THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU
+ WRIT PETITION No.8950 OF 2024**

% Dated 08.04.2024

M/s. Global Organisation for Development,
Represented by its authorised signatory Arun Raj
Manda Having Office at
SRT-34, Ram Nagar, Musheerabad,
Hyderabad-500044,
Telangana.

... Petitioner

And

1. \$Commissioner of Income Tax (Exemption)
Aaykar Bhawan Opposite LB Stadium,
Basheer Bagh, Hyderabad,
Telangana 500004.

2. Union of India

Represented by its Secretary to the Government
Ministry of Finance New Delhi 110001.

...Respondents

! Counsel for the Petitioner: Sri Karan Talwar

^ Counsel for the Respondents: Sri A. Radha Krishna
and Sri Gadi Praveen Kumar

>HEAD NOTE:

? Cases referred

¹ 2023 (12) TMI 1186

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU
WRIT PETITION No.8950 OF 2024

ORDER: *(per Hon'ble Sri Justice P.SAM KOSHY)*

The present writ petition is filed assailing the order dated 12.01.2024 passed by the 1st respondent, whereby the application under Section 119(2)(b) of the Income Tax Act, 1961 (for short, the Act) has been rejected.

2. The Assessment Years involved are 2018-19 and 2020-21. The petitioner is a non-profit society bearing registration No.10174/1999. They are actively engaged in various social service initiatives aimed at enhancing societal wellbeing and the primary nature of work being carried out towards the child care. The petitioner runs a large Child Care Institutions catering to "Children in need of Care and Protection", which is registered with the Government of Telangana, Department of Women and Child Welfare. It has a capacity of 50 children and provides for all basic needs for foster holistic development of the children. The petitioner is an establishment, which has received the tax exemption under Section 12A of the act. It is a society, which is in operation for about 20 years now.

5

3. Given the fact that the petitioner is exempted under Section 12A of the act, they were required to submit Form 10B along with the Auditor's Report. For the aforesaid two Assessment Years 2018-19 and 2020-21, there were certain delay on the part of the petitioner in furnishing the aforesaid Form 10B along with the Auditor's report. For the Assessment Year 2018-19, the delay was 161 days and for the Assessment year 2020-21, the delay was only of 3 days. The petitioner immediately upon getting the Auditor's report, submitted Form 10B along with an application under Section 119(2)(b) of the act, seeking for condonation of delay in the submission of Form 10B. Along with the application for condonation of delay under Section 119(2)(b) of the act, the petitioner specifically had mentioned that for the Assessment Year 2018-19, where there was a delay of 161 days, the delay occurred at the hands of the Chartered Accountant Office engaged by the petitioner. Likewise, again for the Assessment Year 2020-21, where there was a delay of only 3 days, the reason for the delay assigned was that the Auditor's office on account of acute professional pressures as the number of staff in the Auditor's Office were infected with the Covid-19 Virus and therefore, the Auditor's report could not be furnished within the reasonable period of time. In spite of these two

specific explanation being⁶ provided by the petitioner in their application under Section 119(2)(b) of the act, the respondent No.1 vide impugned order, dated 12.01.2024 rejected the same.

4. Learned counsel for the petitioner contended that the impugned order, on the face of it, reflects to have been decided in a mechanical manner. According to the learned counsel for the petitioner, a plain reading of the impugned order itself would reveal that there has been no discussion whatsoever on the explanation which the petitioner has provided which resulted in the delay in the submission of Form-10B. Thus, according to the petitioner, the impugned order is a non-speaking and an unreasoned order. It was also the contention of the learned counsel for the petitioner that the CBDT Circular No.2/2020 [F.No.197/55/2018-ITA-I], dated 03.01.2020, specifically empowers the commissioner of Income Tax to admit belated applications and Form 10B, if there is a delay up to 365 days and decide the matter itself on merits. This aspect also has not been dealt with by the 1st respondent while passing the impugned order and therefore, the impugned order also is contrary to the aforesaid Circular dated 03.01.2020.

5. Learned counsel for the ⁷petitioner relied upon a decision of the Division Bench of this High Court in the case of ***M/s. Shilparamam Arts, Crafts and Cultural Society, Hyderabad Vs. Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income Tax Officer***¹ in W.P.No.31360 of 2023 dated 24.11.2023, wherein under somewhat similar circumstances, this Court had allowed the writ petition and remitted the matter back for deciding the matter on merits.

6. Learned Standing counsel for the Income Tax Department on the other hand opposing the petition submits that the perusal of the application under Section 119(2)(b) of the act, would reveal that except for one line explanation provided by the petitioner, where the reason for the delay has been attributed upon the office of the Chartered Accountant or the office of the Audit entrusted with the accounts of the petitioner's establishment. It does not appear to be any plausible explanation justifying the delay that occurred in the submission of Form 10B on the part of the petitioner. He further contends that the impugned order itself would reveal that the authority concerned has taken note of certain judicial precedents on

¹ 2023 (12) TMI 1186

the issue and have found⁸ explanation not to be satisfactory while rejecting the said application and thus, prayed for rejection of the writ petition.

7. Having heard the contentions put forth by the parties and on perusal of the record, admittedly the petitioner is an establishment which has got exemption under Section 12A of the Act. It is in operation for the last 25 years. There does not seem to be any default on the part of the petitioner for all these years for some reason for the Assessment Year 2018-19, Form 10B could not be submitted within the stipulated period and there was a delay of 161 days in filing of the same. Similarly, for the Assessment Year 2020-21 also, certain unavoidable circumstances, Form 10B could not be furnished within the stipulated period and there was a delay of 3 days in the submission of the same. For both the aforesaid years, the petitioner has submitted Form 10B and subsequently also moved an appropriate application under Section 119 (2)(b) of the Act seeking for condonation of the delay in the submission of the Form 10B. The reasons assigned for the two Assessment Years along with the period of delay are reproduced hereunder:

For the Assessment Year 2018-19:

“14. Delay in Number of Days: 161 days

15. Reason for such delay: There was an unexpected delay at the CA office due to which Form 10B was filed late.”

For the Assessment Year 2020-21:

“14. Delay in Number of Days: 03 days

15. Reason for such delay: The delay was occurred at the auditor’s office on account of acute professional pressures with a number of staff members affected by Covid.”

8. It would also be relevant at this juncture to take note of the CBDT Circular No.2/2020 [F.No.197/55/2018-ITA-I], dated 03.01.2020, wherein dealing with the aspect of condonation of delay in filing Form 10B, the CBDT had passed the following order:

“4. Accordingly, the CBDT issued Circular No. 10/2019 circulated through F.No. 197/55/2018-ITA-1 in supersession of cartier circular/Instruction issued in this regard, and with a view to expedite the disposal of applications filed by such trust or institution for condoning the delay in filing Form No. 10B and in the exercise of the powers conferred under section 119(2) of the Act, the Central Board of Direct Taxes vide Circular No. 10/2019 dated 23rd May, 2019 and Circular No. 28/2019 dated 27th September, 2019 both issued vide F.No. 197/55/2018-ITA-1 has directed that:-

(i) The delay in filing of Form No. 10B for A.Y. 2016-17 and A.Y. 2017-18, in all such cases where the Audit Report for the previous year has been obtained before the filing of return of income and has been furnished subsequent to the filing of the return of income but before the

date specified¹⁰ under section 139 of the Act is condoned.

(ii) In all other cases of belated applications in filing Form No. 10B for years prior to AY. 2018-19, The commissioner of Income-tax are authorized to admit and dispose off by 31-3-2020 such applications for condonation of delay u/s 119(2)(b) of the Act. The Commissioner will while entertaining such belated applications in filing Form No. 10B shall satisfy themselves that the assessee was prevented by reasonable cause from filing such application within the stipulated time.

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 under section 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.”

9. The plain reading of Clause 5 of the said Circular in very categorical terms reflects that this CBDT had conferred/authorized Commissioners of Income Tax for entertaining the application under Section 119 (2)(b) of the act seeking condonation of delay in filing Form 10B, if the delay was less than 365 days. The reading of the aforesaid clause 5 also gives a clear indication that the said power stands conferred/authorized upon the Commissioners of Income Tax with a specific purpose of entering the

applications under Section ¹¹ 119 (2)(b) of the act in a more liberal and pragmatic manner, provided a reasonable clause and plausible explanation has been provided by the assessee.

10. Keeping in view the aforesaid instructions of the CBDT, if now looking into the impugned order what is apparent is that the impugned order does not indicate anything in respect of the contents of the application under Section 119(2)(b) of the act filed by the petitioner seeking for condonation of delay. There is no discussion on the explanation so provided being provided in Column Nos.14 and 15 of the said application under Section 119 (2)(b) of the act. Once when the assessee provides for an explanation, it is incumbent upon the authorities concerned to consider the explanation and give a specific finding whether the explanation so provided is satisfactory or whether the explanation provides reasonable cause which prevented the petitioner in filing Form 10B within the stipulated period of time.

11. The judgment of this High Court in the case of **M/s.Shilparam** (supra) decided on 24.11.2023 dealing with the provisions of Section 119(2)(b) of the act in para Nos.17 to 22 held as under:

17. Now if we look into the statutory provisions, what is reflected is that the provisions under Section 119(2)(b) has been enacted with a specific purpose empowering the authorities concerned to condone the delay on the part of the assessee in furnishing or in submitting of the returns or an appropriate application within a reasonable period of time. The said provision of law does not provide for any specific period of time within which the application for condonation of delay needs to be filed. The said provision has also been enacted to ensure that genuine hardship which an assessee may face can be avoided by condoning the delay if any that has occurred and an appropriate application seeking for condonation of delay is filed.

18. The High Court of Gujarat in the case of *Sarvodaya Charitable Trust v. Income Tax Officer. (Exemption)* [2021] 124 taxmann.com 75 (Gujarat) dealing with similar issue under the provisions of law in paragraph Nos. 31 and 32 held as under:

"31. Having given our due consideration to all the relevant aspects of the matter, we are of the view that the approach in the cases of the present type should be equitable, balancing and judicious. Technically, strictly and liberally speaking, the respondent No. 2 might be justified in denying the exemption under section 12 of The Act by rejecting such condonation application, but an assessee, a public charitable trust past 30 years who substantially satisfies the condition for availing such exemption, should not be denied the same merely on the bar of limitation especially when the legislature has conferred wide discretionary powers to condone such delay on the authorities concerned.

32. We may also refer to the decision of this Court in *CIT v. Gujarat Oil and Allied Industries Ltd.* [1993] 201 ITR 325 (Guj.), wherein it is held that the provision regarding furnishing of audit report with the return has to be treated as a procedural proviso. It is directory in nature and its substantial

compliance would suffice. In that case, the assessee had not produced the audit report along with the return of income but produced the same before the completion of the assessment. This Court took the view that the benefit of exemption should not be denied merely on account of delay in furnishing the same and it is permissible for the assessee to produce the audit report at a later stage either before the Income-tax Officer or before the appellate authority by assigning sufficient cause."

19. The High Court of Gujarat further in the case of *COMMISSIONER OF INCOME-TAX v. GUJARAT OIL AND ALLIED INDUSTRIES* [1993] 201 ITR 325 (Guj) held as under:

"In our view, the aforesaid reasoning of the Allahabad High Court and the Patna High Court would squarely apply to the facts of the present case. The provision about furnishing of the auditors' report along with the return has to be treated as a procedural provision, directory in nature, and its substantial compliance should suffice, meaning thereby that such report should be made available by the assessee to the Assessing Officer latest when the question of framing of assessment is taken up by the Income-tax Officer and when he applies his mind to the claim of the assessee and if by that time, the assessee has put his house in order and has furnished the report of the auditor for supporting the return, he can be said to have satisfied the requirement of section 80J(6A) of the Act.

20. A similar view is available from the High Court of Punjab and Haryana in the case of *COMMISSIONER OF INCOME TAX v. SHAHZEDANAND CHARITY TRUST* 228 ITR 292(P&H), where again the Division bench of High Court of Punjab and Haryana dealing with similar facts and circumstances of the case referring to the circular of the Income Tax Department itself held as under:

“The provisions of section 80J(6A) and section 12A of the Act are pari material. The ratio of the law laid down in CIT v. Jaideep Industries [1989] 180 ITR 81111 (P&H) would have been applicable to the facts of the present case as well had the Central Board of Direct Taxes not issued the circular dated February 9, 1978, reproduced in the earlier part of the judgment. As per the circular it is not mandatory under Section 12A(b) to file the audit report along with the return of income. Normally, a charitable or religious trust or institution is expected to file the auditor’s report along with the return but in cases where for reasons beyond the control of the assessee some delay has occurred in filing the said report, the Income-tax Officer, for reasons to be recorded, has been authorized to condone the delay in furnishing the auditor’s report and accept the same at a belated stage. It has been clarified that the exemption available to the trust under section 11 may not be denied merely on account of delay in furnishing the auditor’s report. The word “shall” occurring in section 12A cannot, under the circumstances, be read as a “must” making it mandatory for the trust to furnish the auditor’s report along with the filing of the return. If for certain unavoidable circumstances, the assessee is unable to furnish the auditor’s report along with return then the same can be furnished at a later date with the permission of the Assessing Officer who may permit the assessee to do so after recording his reasons for so doing. Counsel appearing for the Revenue then argued that as per the circular, the auditor’s report could only be furnished up to the stage of framing of assessment as the power to condone the delay for accepting the auditor’s report at a later date has only been given to the Income-tax Officer and not thereafter, i.e., at the appellate stage. We find no merit in this submission. The Central Board of Direct

Taxes by issuing the circular dated February 9, 1978, has treated the provisions regarding furnishing of the auditor's report along with the return to be procedural and, there-fore, directory in nature. By showing sufficient cause, the auditor's report could be produced at any later stage either before the Income-tax Officer or before the appellate authority."

21. Coming to the decisions relied upon by the learned counsel for the respondent-Department, those decisions were rendered under entirely different contextual background and thus in both the cases it was not a situation where the income tax return was filed and the audit report also stood uploaded more than 2.5 years much before the Assessing Officer had passed the assessment order. Therefore, the said judgments cannot be applied in a straight jacket manner to the facts of the present case.

22. For the aforesaid reasons, we are inclined to allow the writ petition setting aside the impugned order dated 31.07.2023. As a result, the consequential order passed subsequent to the rejection of the application under Section 119(2)(b) of the Act would also get automatically quashed and the application of the petitioner for condonation of delay stands allowed. Wherefore the respondent No. 3 would be required to pass an appropriate consequential order in accordance with law."

12. It is informed that there is no further challenge to the department.

13. Given the aforesaid facts and circumstances of the case and also taking into consideration the view of this very High Court in the case of **M/s.Shilparam (supra)** under similar factual backdrop coupled with the fact that the impugned order under Ex.P1 does not discuss in any

manner, the explanation so¹⁶ provided by the petitioner which prevented them from filing Form 10B within the stipulated time. Further, the impugned order, except for the references for judicial precedents is totally silent as to whether the petitioner did submit Form 10B and whether they did give letter dated 18.12.2023 seeking for condonation of delay under Section 119(2)(b) of the act in submitting Form 10B.

14. Therefore, we are of the considered opinion that the impugned order, as in the case of **M/s.Shilparam** (supra) decided by the Division Bench of this Court would also not be sustainable and the same deserves to be set aside.

15. We are particularly surprised at the action on the part of the 1st respondent in not even considering the letter dated 18.12.2023 seeking condonation of delay for the Assessment Year 2020-21, where the delay was only of meager 3 days. We are surprised more particularly for the reasons 2020-21 was the period when the entire universe was under the influence of the Covid-19 pandemic. In the given circumstances, if the power which otherwise is conferred upon the Commissioner of Income Tax for condonation of delay of 365 days is not entertained in a more pragmatic manner, there could not have been a better

case available with the ¹⁷ department for condoning the said delay. This further forces this Bench to draw an inference that the impugned order has been passed in a mechanical manner and without proper application of mind and in the process, they have also not considered the explanation provided.

16. For all the said reasons, the order dated 12.01.2024 Annexure P1 is ordered to be set aside, the delay on the part of the petitioner in submitting Form 10B is ordered to be condoned and the matter stands remitted back to the 1st respondent, who in turn is directed to pass appropriate orders on merits.

17. The Writ Petition for the aforesaid extent stands allowed. No order as to costs.

Consequently, miscellaneous applications, if any pending shall stand closed.

P.SAM KOSHY, J

SAMBASIVA RAO NAIDU, J

April 08, 2024.

Note: LR copy to be marked.

TU