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

WRIT PETITION NO. 470 OF 2024

Nav Chetna Charitable Trust
Having its registered office at
C/O D. G. Khetan International School,
Off. S. V. Road, Sunder Nagar,
Malad (W), Mumbai – 400 064.
PAN No: AAATN5098F … Petitioner

Versus

1. Commissioner of Income Tax (Exemption)
   Room no.601, 6th Floor,
   Cumballa Hill MTNL TE Building,
   Peddar Road, Mumbai – 400 026.

2. Assistant Commissioner of Income Tax,
   Exemption Circle 2, Mumbai
   Room no.603, 6th Floor,
   Cumballa Hill MTNL TE Building,
   Peddar Road, Mumbai – 400 026.

3. The Central Board of Direct Taxes,
   Room no.13, 5th Floor,
   Jeevan Vihar Building, Sansad Marg,
   New Delhi – 110001. … Respondents

Mr. Ajay Singh, for the petitioner.
Mr. Dinesh R. Gulabani, for respondents.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

RESERVED ON : 18 November 2024
PRONOUNCED ON: 20 December 2024

Judgment (Per Advait M. Sethna, J.)

1. Rule, made returnable forthwith. Respondents waive service. By consent of the parties, heard finally.

2. This is a petition filed by the petitioner under Article 226 of the Constitution of India. It challenges an order dated 28 September 2023 ("***impugned order***" for short) passed by the Commissioner of Income Tax (Exemption) i.e., respondent no.1. The substantive prayers in the petition are reproduced below:

> *"a. that this Hon'ble Court may be pleased to issue under Article 226 of the Constitution of India an appropriate direction, order or a writ, calling for the records of the case and after satisfying itself as to the legality thereof quash and set aside the order dated 28.09.2023 passed by the Respondent No. 1 under section 119(2)(b) of the Income tax Act, 1961, being Ex.- 'K' and admit/accept the Form no 9A (Exh: 'E')hereto;*
>
> *b. that this Hon'ble Court may be pleased to issue under Article 226 of the Constitution of India an appropriate direction, order or a writ, calling for the records of the case and after satisfying itself as to the legality thereof quash and set aside the order passed by the Respondent No. 1 dated 28/09/2023, being Ex.- 'K' and direct the Respondents 1 & 2 to admit/accept the Form no 9A (Exh: 'E'))hereto."*

A) Issue before the Court:-

3. The issue that arises for consideration in this petition is whether

the respondent No.1 was legally justified in rejecting the application for condonation of delay of 799 days filed by the petitioner in filing Form 9A for the Assessment Year ("***A.Y.***" for short) 2017-2018, when there is a power coupled with statutory discretion conferred upon the commissioners/competent authority under Section 119(2)(b), of the Income Tax Act, 1961 ("***IT Act***" for short) authorizing them to admit belated filing of Form 9A.

B) Factual Matrix:-

The relevant facts necessary for adjudication of the present proceedings are:

4. The petitioner is a trust registered with the Charity Commissioner, Mumbai vide registration No. E-2145, dated 1 January 2004 under section 12A of the IT Act, also having another registration No. INS-TR 38017, dated 29 January 2004. The respondent No.1 is the Commissioner of Income Tax (Exemption) who passed the impugned order.

5. The objects as stipulated in the Trust Deed dated 17 October 2003 of the petitioner concerns activities to establish, promote, set up, run, maintain and grant-aid and other financial assistance to educational institutions for development of human knowledge. In furtherance of such objects of the trust, the petitioner established D. G. Khetan International School, B. H. Gadia International School, B. K. Gadia, A Level Junior

College and J. Kumar International School at Malad (West) in the year 2006. Since the year 2006, respondents have accepted the petitioner's status as a charitable institution.

6. The petitioner trust filed its Nil return of income dated 12 October 2017 under Section 139(1) of the IT Act along with Form 10B for the A.Y. 2017-2018, after claiming exemption under Section 11 of the IT Act. The petitioner also filed its revised return on 29 December 2018, claiming exemption under Section 11 of the IT Act.

7. During the course of assessment proceedings, the petitioner uploaded a revised computation of income dated 09 November 2019 with a view to rectify certain computation mistakes namely (i) Claim of depreciation of Rs. 19,25,787 on fixed assets under Section 11(6) of the IT Act; (ii) Expenses claimed towards capital expenditure along with deduction of Rs. 57,28,869/- i.e., by way of exercising option under clause (2) to 'Explanation 1' to Section 11(1) of the IT Act, being interest amount accrued but not received. The assessment in the petitioner's case was completed on 11 December 2019 resulting in the assessment order of the said date.

8. The petitioner filed Form 9A on 20 December 2019 on the Income Tax portal, alongwith an application for condonation of delay in filing the said Form 9A. According to the petitioner, it was able to file the

said Form 9A only on 20 December 2019 due to change in procedure, from manual to electronic filing which was the main reason for such delay. In this regard, the petitioner was guided by Central Board of Direct Taxes ("***CBDT***" for short) Circular No. 7 of 2018, dated 20 December 2018 for the A.Y. 2016-2017 issued under Section 119(2)(b) of the IT Act. The said provision empowers the Commissioner to admit belated application for condonation of delay in filing Form 9A and decide such application on merits, in situations where the assessee was prevented by reasonable cause from filing such applications in Form 9A and Form 10, within the stipulated time. Following the above, the CBDT issued another Circular No. 30 of 2019 under Section 119 (2)(b) of the IT Act dated 17 December 2019 extending the applicability of the earlier Circular to the assessment year in question i.e. A.Y. 2017-2018. In fact Form 9A in the present case was filed by the petitioner on 20 December 2019 on the Income Tax portal i.e., just after 3 days of the issuance of the CBDT Circular dated 17 December 2020. Further the CBDT then issued Circular No. 6 of 2019, dated 19 February 2020 in the context of condonation of delay under Section 119(2)(b) of the IT Act applicable for the A.Y. 2018-2019. This was on similar reasoning/basis set out in the earlier CBDT Circulars applicable for A.Y. 2016-2017 and A.Y. 2017-2018, respectively.

9. Pursuant to the above, the petitioner filed its submission before

the respondent No.1 on 30 January 2023, 13 September 2023 and 21 September 2023 along with the following details, as sought for by the respondents.

> *"a. Copy of Registration certificates u/s 12A;*
>
> *b. Copy of Trust Deed.*
>
> *c. Copy of audit reports in Form 10B.*
>
> *d. Copy of Form no. 9A submitted electronically on 20/12/2019.*
>
> *e. Copy of Resolution passed in meeting of the trustees held on 01/10/2017 through which decision of accumulation is taken.*
>
> *f. Affidavit of Shri Purshottam Khetan (Trustee).*
>
> *g. All the investments made out of income accumulated in the form of fixed deposits with the banks were also submitted."*

10. Further to the above, the impugned order dated 28 September 2023 passed under section 119(2)(b) of the IT Act for the A.Y. 2017-2018 was passed by the respondent No.1 rejecting the application of the petitioner for condonation of delay in filing Form 9A. Such rejection by the said respondent was mainly on the ground that (a) wrong claim was made by the petitioner in the return of income dated 12 October 2017 filed under Section 139(1) of the IT Act in regard to depreciation of Rs. 19,25,787 and capital expenditure which was accordingly disallowed to the extent of Rs.57,28,869/- as claimed by the petitioner under Section 11(1)-clause 2 of 'Explanation 1' of the IT Act; (b) Form 9A along with application for

condonation of delay were filed belatedly in respect of the petitioner's return of income filed on 12 October 2017; (c) such delay in filing Form 9A was not mere procedural lapse on the part of the petitioner that lead to belated filing of Form 9A.

11. The petitioner being aggrieved by the impugned order filed the present petition before this Court on 19 December 2023, praying for setting aside the impugned order passed by the jurisdictional assessing officer dated 28 September 2023 in the light of the facts and grounds set out in the petition and the submissions advanced before us.

C) Rival submissions:-

Case of the Petitioner:

12. Mr. Ajay Singh, learned counsel for the petitioner at the very outset, submitted that the impugned order which rejected the case of the petitioner in filing Form 9A belatedly and also disallowing the claims made by the petitioner, is irrational, unfair, unjust and illegal.

13. Mr. Singh would then place reliance on the revised computation of income submitted by the petitioner on 9 November 2019, during the course of assessment proceedings, to respondent no. 2. By this, the petitioner attempted to rectify certain computation mistakes namely claim of depreciation of Rs. 19,25,787/- on fixed assets under section 11 (6) of the IT

Act; expenses claimed towards capital expenditure, as also deduction claimed of Rs. 57,28,869/- (in exercise of option under clause (2) of Explanation (1) to section 11(1) of the IT Act) being interest accrued but not received. However, due to change of procedure in filing Form 9A, the above facts couldn't be placed by the petitioner within time. Mr. Singh would urge that the petitioner's claim of deduction under section 11(1) explanation arose subsequent to rectification of incorrect claim made in the return of income of depreciation and capital expenditure. At that juncture, time limit for submission of Form 9A had expired, though the claim was raised by the petitioner by filing revised computation before the assessing officer. It was solely due to change in procedure from manual to electronic filing, that prevented petitioner from filing Form 9A on time. Thus, the Petitioner's bona fides are evident. It is apparent that the petitioner had no intent to not disclose the above, but for the delay in filing Form 9A was neither deliberate nor intentional, which the assessing officer in the impugned order failed to take cognizance of.

14. Mr. Singh would contend that the impugned order has completely misconstrued and misinterpreted the Circulars issued by CBDT, under section 119(2)(b) of the IT Act, from time to time. In this regard, he would place reliance on Circular No.7 dated 20 December 2018 issued by the CBDT, whereby the belated Form 9A was directed to be admitted for A.Y.

2016-2017, considering the fact that the assesses were unable to file the said Form within the reasonable time as stipulated under the provisions of IT Act.

15. Mr. Singh then placed reliance on another Circular of CBDT No. 30/2019 dated 17 December 2019 which also extended the time limit for filing Form 9A, in respect of AY 2017-2018. So also, the CBDT vide Circular No.6 of 2020 dated 19 February 2020 extended such time limit for A.Y. 2018-2019 including powers authorizing the commissioner of income tax to consider application of condonation of delay in filing such Form 9A & 10 for the respective years. Relying on the said Circular issued by the CBDT from time to time, he would urge that the said Circulars specifically authorised the Commissioners of Income Tax to admit belated application in Form 9A and Form 10, in respect of such assessment years as stated in the said Circulars. This was in situations where such Form 9A was filed after expiry of the time allowed under the relevant provisions of the IT Act. He would submit that the impugned order completely fails to address this vital aspect and hence suffers from non-application of mind.

16. Mr. Singh would then submit that the impugned order is wholly unjust, unfair let alone improper and untenable. This is in as much as it fails to consider that Form 9A along with application for condonation of delay was, in fact, filed by the petitioner on 20 December 2019 on the Income Tax

Portal, pursuant to CBDT Circular No.30 of 2019 dated 17 December 2019, which extended the benefit of filing belated returns, for A.Y. 2017-2018. Mr. Singh would contend that the said Form 9A was filed by the petitioner within just 3 days from the extension granted vide Circular No.30 of 2019 dated 17 December 2019. According to him, had the impugned order considered this aspect which clearly bring about the bona fides of the petitioner to comply with the belated filing of Form 9A would not have been rejected in such summary manner.

17. Mr. Singh would then refer to and rely upon Section 119(2)(b) of the IT Act in support of his reliance on the aforementioned Circulars issued by the CBDT from time to time. He points out that there is clear reference to Section 119(2)(b) in all of the Circulars of CBDT mentioned (*Supra*). This is to contend that the said Section specifically empowers the income tax authorities to consider any application or claim which would include return of income filed for any exemption after expiry of the stipulated period. This is to mitigate the genuine hardship caused to the assessees in appropriate situations and circumstances. Thus, the impugned order passed under section 119(2)(b) rejecting the case of the petitioner for condonation of delay in filing Form 9A, failed to correctly construe and interpret such statutory provisions under Section 119(2)(b) of the IT Act, causing irreparable prejudice to the petitioner-Trust.

18. Mr. Singh would further submit grievance of the petitioner is genuine and bona fide for the respondent No.1 to have exercise its discretion duly conferred under Section 119(2) of the IT Act in condoning delay of the petitioner in filing Form 9A. In this context, Mr. Singh would rely on a chart submitted during the course of hearing, which reads thus:

Sr. No.	Particulars	As per assessment order	As per revised computation by Assessee	Reference
1	Total Income as per Income & Expenditure	206220844	206220844	0
2	Interest accrued – Amount deemed to be applied during previous year – clause (2) of 'Explanation 1' to section 11(1)		-5728869	Note No 1
	Net Total Income	206220844	200491975	
3	Revenue Expenditure Rs. 158354099/-			
	Less: Depreciation of Rs. 19,25,787/-	-156428312	-156428312	Note No 2
4	Capital Expenditure (Rs. 1,95,20,255/-) Less : Disallowed Rs.66,59,725/-	-12860530	-12860530	Note No 3
	Gross total Income	36932002	31203133	
5	Less : Accumulated U/s 11(1) @ 15%	30933127	30933127	
	Taxable Income	5998875	270006	
Note No.1	Deduction claimed for the interest accrued on FDR not received during the year u/s 11(1) of the Income Tax Act			Page No. 70

Note No.2	Depreciation on the cost of assets claimed as application withdrawn			Page No. 70
Note No.3	The amount capital expenditure claimed Rs. 19520,255/- (utilization of Rs. 66,59,725/- included of earlier year) instead of Rs. 1,28,60,530/-.			Page No. 70]

In support of the above, he would submit that had the assessing officer taken a view to condone delay in filing Form 9A of the petitioner, the total taxable income would have reduced from Rs.59,98,875/- to Rs. 2,70,006/-. Further, such reduction in the petitioner's taxable income is justified, taking into account the interest on Fixed Deposit Receipt accrued during the previous year, depreciation on the cost of asset claimed by the petitioner and deduction in respect of the capital expenditure, all of which were wrongly disallowed by the respondents. This was not considered by the assessing officer in the impugned order as such delay in filing Form 9A by the petitioner was intentional, deliberate and not a mere procedural lapse.

19. Mr. Singh in support of the petitioner's case would rely on a judgment of the Delhi High Court in the case of ***Bar Council of India vs. Commissioner of Income Tax (Exemption)***[1]. He placed reliance on paragraphs 6 to 9 of the said decision which relied upon the Circulars of CBDT dated 17 December 2019 and 31 January 2020 to contend that the

[1] [2024] 158 taxmann. Com 311 (Delhi).

Commissioner of Income Tax was authorized to admit belated delay condonation application under Section 119(2) of the IT Act where the delay is upto 365 days. He would thus submit that the respondents in the present case have failed to exercise such discretion statutorily conferred, to condone delay of the petitioner in filing its Form 9A, contrary to such decision of the Bar Council of India (*Supra*).

20. The petitioner would then refer to the decision of the coordinate bench of this Court in the case of ***Al Jamia Mohammediyah Education Society v. Commissioner of Income-tax (Exemptions)***[2]. In the said case, this Court was dealing with a situation where the assessee-trust belatedly submitted Form 10B along with its return on account of oversight by their Chartered Accountant. This Court considered the Instructions issued by the CBDT to its subordinate authorities, in this regard. In view thereof, for the AY 2016-2017, this Court was pleased to condone the delay of approximately 1257 days in filing Form 10B, mainly on the ground that the petitioner did not appear to have been lethargic or lacking in bona fides in making the claim beyond the period of limitation which should have a direct bearing on the discretion to be exercised by the income tax authorities. According to Mr. Singh said judgment would clearly apply to the facts of the present case. On the basis of which the impugned order should be set aside.

[2] [2024] 298 Taxman 650 (Bombay).

21. Mr. Singh would then rely on the decision of a coordinate bench of this Court in the case of ***Shree Jain Swetamber Murtipujak Tapagachha Sangh vs. CIT (Exemption)***[3]. In similar facts and circumstances, this Court in the said case considered that the assesee-trust filed Form 10B beyond due date. The assessee's auditor admitted to such oversight on the ground that he did not consider provision of Rule 17 of the Income Tax Rules, 1962. He was under a bona fide impression that since the fact of accumulation of receipts was reported in audit report in Form 10B, a separate statement was not required. The Court held that in view of the fact that the delay was not intentional, the assesse could not be prejudiced on account of ignorance of rules of procedure admitted by the professional engaged by the assessee, to condone the delay on part of that assessee. Mr. Singh would submit that the said decision would squarely apply to the given case.

Submission of the Respondents:-

22. On the other hand, Mr. Dinesh Gulabani, learned counsel for the respondents supported the impugned order and vehemently opposed all contentions urged on behalf of the petitioner. In this regard, he placed reliance on the affidavit-in-reply dated 03 April 2024 filed by one Mr. C. V. Pavana Kumar, Commissioner of Income Tax, where the case of the respondents had been elaborately dealt with.

[3] 2024] taxmann.coom 114 (Bombay).

23. Mr. Gulabani would submit that in the original and revised return of income filed by the petitioner, it had not claimed any deduction in respect of the amount deemed to be applied as per clause 2 of 'Explanation 1' to Section 11(1) for which filing of Form 9A is mandatory. Also, under the Income Tax Rules it is mandatory for petitioner-trust to apply 85% of its income for charitable/religious purposes every year. In the event, the trust is unable to do so, it has the option of deemed application for certain type of income. Accordingly, in terms of 'Explanation 2' to Section 11(1) if in the previous year, a charitable trust is not able to utilize its 85% of its income due to the fact that such income has not been received in the previous year or for any other reason, then the trust has the option to apply such income in the year of receipt or in the year immediately following the year of approval of income. Rule 17 of the IT Rules stipulates that the option for deemed application ought to be exercised by the petitioner in Form 9A, which was to be furnished electronically, before the due date specified under Section 139(1) of the IT Act. In the instant case, the petitioner has neither determined nor claimed such amount of deemed application in its audit report furnished in Form 10B, return of income so filed by it, nor electronically filed Form 9A before filing its return of income on 12 October 2017. Resultantly, the petitioner's case was rightly selected for scrutiny by the respondents.

24. It was further submitted that during the assessment proceedings, the assessing officer specifically enquired as to whether the petitioner had filed the Form 9A electronically and not manually as mandated by change of procedure. The petitioner had filed its Form 9A on 20 December 2019 along with an application for condonation of delay in respect of its return of income filed on 12 October 2017 under Section 139(1) of the IT Act. Thus, there was a gross delay of 799 days attributable to the petitioner in submitting Form 9A, to be filed electronically as per the change in procedure. The said affidavit-in-reply of the respondents does not controvert the fact that the petitioner on becoming aware of its mistake in filing its return manually, it was so filed on the income tax portal on 20 December 2019, at the earliest opportunity.

25. The respondents in support of the impugned order contend that the petitioner had accepted the mistake in respect of claiming depreciation amounting to Rs.19,25,787/- which was thus correctly disallowed. Further, the petitioner in a query raised by the respondents in regard to furnishing details of capital expenditure amounting to Rs.1,95,20,255/- the petitioner responded that the actual capital expenditure was revised to Rs.1,28,60,530/-. In view thereof, according to the respondents, the assessing officer correctly disallowed the capital expenditure amounting to Rs.66,59,725/- and consequently rightly initiated the penalty proceedings

under Section 270A of the IT Act for misreporting of income by the petitioner-trust. According to the respondents, the approach of the petitioner towards compliance under the IT Act is extremely casual.

26. Accordingly to the respondents, the petitioner was not taking the compliance under the IT Act seriously. It was that the petitioner had failed to furnish any proof, documentary or otherwise in support of its case for condonation of delay in filing Form 9A. The petitioner failed to even file the said Form 9A within time, electronically, as required due to change in procedure. It sat over such compliance and filed it belatedly on 20 December 2019 after a gross delay of 799 days. In this context, the case of the petitioner that the delay is, at the highest, a procedural lapse, is not acceptable in the facts of the present case. This is in as much as, the petitioner neither determined nor claimed such amount of deemed application in its audit report in Form 10B nor electronically Form 9A belatedly until 20 December 2019 in respect of return of income which was already filed on 12 October 2017. The petitioner had claimed such deduction only during the course of assessment proceedings, only when the assessing officer, specifically asked for the same, which lacks bonafides.

27. Mr. Gulabani then emphatically urged that the reliance of the petitioner on the Circulars issued by the CBDT from time to time cited

(*Supra*) are of no assistance to the petitioner. This is in as much as the petitioner failed to produce all the relevant documents/information sought by the respondents from the petitioner to enable the respondents to arrive at the requisite satisfaction about the reasonableness and genuineness of the petitioner's case. Further, the petitioner omitted to provide any plausible explanation to condone such gross delay of 799 days in filing Form 9A. Moreover, even in the petition there is no ground to support genuine hardship which prevented the petitioner from filing Form 9A in time. Thus, the petitioner failed to furnish any justification whatsoever to condone the colossal delay of 799 days in filing Form 9A as result of which the impugned order against the petitioner was correctly passed, in accordance with law.

E) Rejoinder of the Petitioner:-

28. To summarize this, Mr. Singh would rely on an affidavit-in-rejoinder dated 4 July 2024 of one Mr. Suresh Keshavdeo Bhageria, Trustee of the petitioner which is on record. He would adopt the contents of the rejoinder. The impugned order should be read and interpreted as it stands. The case of the respondents cannot be propped up and or improved by way of an affidavit and/or pleadings. He would thus submit that the reply affidavit of the respondent does not take the case of the petitioner, any further and would support rejection of the impugned order and thus prays

for grant of reliefs as set out in the petition.

F) Analysis and Conclusion:-

29. On the factual conspectus of the present case, we have noticed that the petitioner Trust had filed its Nil return of income along with Form 10B for the assessment year in question, i.e., 2017-2018 on 12 October 2017, claiming exemption under section 11 of the IT Act. Thereafter, the petitioner filed a revised return on 29 December 2018 which was selected for scrutiny, pursuant to which the respondent No.1 issued a notice dated 10 October 2019 to the petitioner under Section 142(1) of the IT Act along with an annexure of requisition of details, from the petitioner. In the said revised return of income the petitioner claimed depreciation of Rs. 19,25,787/- on assets purchased during the year and claimed it as an application of its income. Similarly, expenses towards capital expenditure was revised to Rs.1,28,60,530/-. It is pertinent to note that the petitioner during the assessment proceeding for A.Y. 2017-2018 uploaded a revised note dated 9 November 2019 on the Income Tax Portal along with revised computation of income rectifying the mistake in such computation, namely claim of depreciation of Rs.19,25,787/- on fixed assets under Section 11(6) of the IT Act; expenses towards capital expenditure was revised to Rs. 1,28,60,530/- along with deduction under Section 11(1) 'Explanation 1' clause (2) of

Rs.57,28,869/- being interest income accrued but not received. We find that such note of revised computation of income duly furnished/uploaded by the petitioner on 9 November 2019. However, it was not considered in the impugned assessment order. The jurisdictional assessing officer completely lost sight of the fact that at the time when the petitioner claimed deductions towards depreciation and capital expenditure under Section 11(1) of the IT Act by filing the said revised computation, the time limit for submission of Form 9A had lapsed, due to change of procedure. The petitioner filed |Form 9A though belatedly for reasons not attributable to the petitioner. It appears from the impugned order that the jurisdictional assessing officer wrongly linked and mixed up such issue of belated filing of Form 9A with disallowance of the petitioners claim of deduction towards depreciation and capital expenditure under Section 11 (1) of the IT act, made by the petitioner in the assessment proceedings.

30. A perusal of record reveals that the petitioner had filed Form 9A dated 20 December 2019 under Rule 17(1) of the Income Tax Rules, 1962 under the heading "Application for exercise of option under clause (2) of Explanation to sub-section (1) of Section 11 of the IT Act". Rule 17(1) of the Income Tax Rules, 1962 reads thus:-

> *"17(1) The option to be exercised in accordance with the provisions of the* Explanation *to sub-section (1) of section 11 of the Act in*

> *respect of income of any previous year relevant to the assessment year beginning on or after the 1st day of April, 2016 shall be in Form No. 9A and shall be furnished before the expiry of the time allowed under sub-section (1) of section 139 of the Act for furnishing the return of income of the relevant assessment year."*

Pursuant to the filing of such Form 9A under Rule 17(1), by the petitioners though belatedly, it had duly submitted letters dated 30 January 2023, 13 September 2023 and 21 September 2023 addressed to the respondent no.1 justifying such delay. However, a perusal of the Impugned Order for the A.Y. 2017-2018 dated 20 September 2023 indicates that the jurisdictional assessing officer has totally lost sight of the first two letters of the petitioner dated 30 January 2023 and 13 September 2023. Though the Impugned Order refers to the letter of the petitioner dated 21 September 2023, there is no finding much less reasoning reflected in the order except to harp on the issue that the delay in filing Form 9A belatedly, was not a procedural lapse and thus, cannot be condoned. We do not find force in such hyper technical approach taken by the assessing officer in rejecting the belated filing of Form 9A by the petitioner, for the reasons which are deliberated in our judgment hereinafter.

31. We find that in the impugned order, the jurisdictional assessing officer failed to take note of a crucial fact the application for condoning delay in filing Form 9A, was filed on 20 December 2019. The petitioner adopted

this course pursuant to the CBDT Circular No. 30/2019 dated 17 December 2019, extending the relief for condoning delay in filing such Form 9A, also for the assessment year in question i.e. 2017-2018. Thus, the assessing officer ought to have applied his mind to the fact that merely within 3 days from date of extension granted to file such Form 9A vide the CBDT Circular cited (*Supra*) the petitioner did file it on 20 December 2019, along with its application for delay condonation. It is further pertinent to note that the insistence in the impugned order seeking actual proof from the petitioner in filing Form 9A before the assessing officer, was itself legally unfounded as such requirement was itself done away with under Rule 17 w.e.f. 1 April 2016. The Impugned Order dated 28 September 2023, thus suffers from perversity on account of non-consideration of such fundamental factual and legal position, though available before him, when he passed the said order.

32. We have perused Section 119(2)(b) of the IT Act which deals Extracted below is the said section.

> *"(a)….*
>
> *119(2)(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*
>
> *88[a Joint Commissioner (Appeals) or] 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"

33. A perusal of the above statutory provision makes it clear that the legislature has specifically conferred power to the Commissioner of Income Tax to admit an application to claim any exemption, refund or relief after the expiry of the specified period under the IT Act which shall be dealt with in accordance with law. We may note that such provision has been introduced with a view to avoid genuine hardship to the assesses who have come forward with an intent to pay tax and abide by the mandate of the IT Act, but for reasons beyond control are prevented from adhering to statutory timelines. We have also carefully perused the Circular of CBDT No. 7 of 2018 dated 20 December 2018 referring to the Finance Act 2015 amending sections 11 and 13 of the IT Act with effect from 1 April 2016, i.e, A.Y. 2016-2017. The relevant portion of the said Circular dated 20 December 2018 which was issued with a view to condone delay applications filed by trusts under Section 119(2)(b) of the IT Act reads thus:

"5.Accordingly, in supersession of earlier Circular/Instruction issued in this regard, with a view to expedite the disposal of applications filed by trusts for condoning the delay and in exercise of the powers conferred under section 119(2)(b) of the Act, the Central Board of Direct Taxes hereby authorizes the Commissioners of Income-tax, to admit belated applications in Form No. 9A and Form No.10 in respect of AY 2016-17 where such Form No. 9A and Form No.10 are filed after the expiry of the time allowed under the relevant

provisions of the Act.

6. *The Commissioners will, while entertaining such belated applications in Form No. 9A and Form No.10, satisfy themselves that the assessee was prevented by reasonable cause from fling of applications in Form No. 9A and Form No.10 within the stipulated time. Further, in respect of Form No. 10 the Commissioners shall also satisfy themselves that the amount accumulated or set apart has been invested or deposited in any one or more of the forms or modes specified in sub-section (5) of section 11 of the Act."*

34. The above Circular issued by way of delegated legislation empowered Commissioner of Income Tax to consider and condone applications for delay in filing Form 9A within time, on ground of sufficient cause. We may also refer to another Circular of CBDT Circular No. 30 of 2019 dated 17 December 2019 which reads thus:

"Sub: Condonation of delay u/s 119(2)(b) of the Act in filing of Form.9A and Form No.10 for Assessment Year 2017-18- extension of applicability of Circular No.7 of 2018- Reg.

In partial modification of this office Circular No.7 of 2018, dated 20th December, 2018 issued vide F No. 197/155/2018-ITA-I on the above mentioned subject, it is decided to extend the applicability of this Circular to Assessment Year 2017-18."

35. A perusal of the above unequivocally brings out clear legislative intent to extend the applicability of the earlier Circular dated 20 December 2018 for A.Y. 2016-2017 to assessment year in question i.e., A.Y. 2017-2018. Thus, even under the said Circular No. 30 of 2019, dated 17 December 2019

the delay in filing Form 9A and Form 10 for A.Y. 2017-2018, could be condoned. This followed issuance of another Circular No. 6 of 2020 dated 19 February 2020 applicable to A.Y. 2018-2019, relevant portion of which reads thus:

> *"2. Accordingly, in continuation of earlier Circulars issued in this regard, with the riew to prevent hardship to the assessee and in exercise of powers conferred under section 119(2)(b) of the Act, the CBDT has decided that where the application for condonation of delay in filing Form 9A and Form 10 has been filed, and the Return of Income has been file on or before 31st March of the respective assessment years i.e. Assessment Years 2016-17, 2017-18 and 2018-19, the Commissioners of Income-tax (Exemptions) are authorised u/s 119(2)(b) of the Act, to admit such belated applications for condonation of delay in filing Return of Income and decide on merit."*

36. The above re-enforces the legislative intent to permit condonation of delay in filing Form 9A and 10 under Section 119(2)(b) authorizing Commissioners of Income Tax to admit such applications and decide on merit, in cases where the assesses were prevented to file the said forms in time, after showing sufficient cause. Thus, the legislative intent discernible from above Circulars of CBDT issued from time to time under Section 119(2)(b), providing for condonation of delay in filing Form 9A and 10 by the assesses with unambiguous language and purport to avoid, prevent, mitigate hardship to them. It is on such basis that the petitioner addressed letters/application to the respondent No. 1, dated 30 January 2023,

13 September 2023, 21 September 2023 (*Supra*) to condone delay in filing Form 9A under section 119(2)(b) of the IT Act. However, the reasoning and justification of the petitioner brought out in the said letters have been overlooked by the jurisdictional assessing officer in his order impugned dated 28 September 2023, mainly on the ground that non filing of Form 9A is not a procedural lapse. We do not subscribe to such pedantic and narrow approach of the assessing officer that runs contrary to Section 119(2)(b) of the IT Act read with the CBDT Circulars cited (*Supra*). Such approach of the respondents as in this case, would in fact, instead of mitigating hardship to assesses in genuine cases, would augment the same. Such approach would discourage genuine assesses from coming forward to file their return of income, if their genuine applications, like the present one, are rejected in such arbitrary manner on mere *ipse dixit* of the assessing officer. The reasoning in the impugned order, in our view, is not in sync, harmony with the clear legislative intent to avoid hardship under Section 119 (2)(b) and the Circulars issued under the said provision.

37. In the context of the above, we would refer to the decision of this Court dated 4 September 2024 passed in the case of ***Jyotsna M. Mehta vs. Principal Commissioner of Income-tax 19 & Ors.***[4] of which one of the member (G.S.Kulkarni, J.) was a member. Analyzing the provision of Section

[4]. 2024 SCC OnLine Bom 2946.

119 of the IT Act, this Court had made an elaborate observation that a bona fide delay on the part of the Chartered Accountant which prevented him from filing return of the petitioner was accepted by the Court to be sufficient ground for condoning delay, under the statutory provision. The relevant observations in this regard to be noted are in paragraphs 6, 7 and 8 of the judgment in ***Jyotsna Mehta Ors***. (*Supra*) which read thus :-

> *"6. In our opinion, the approach of PCIT appears to be quite mechanical, who ought to have been more sensitive to the cause which was brought before him when the petitioner prayed for condonation of delay. In such context, we may observe that it can never be that technicalities and rigidity of rules of law would not recognize genuine human problems of such nature, which may prevent a person from achieving such compliances. It is to cater to such situations the legislature has made a provision conferring a power to condone delay. These are all human issues and which may prevent the assessee who is otherwise diligent in filing returns, within the prescribed time. We may also observe that the PCIT is not consistent in the reasons when the cause which the petitioners has urged in their application for condonation of delay was common.*
>
> *7. We may observe that it would have been quite different if there were reasons available on record of the PCIT that the case on delay in filing returns as urged by the petitioners was false, and/or totally unacceptable. It needs no elaboration that in matters of maintaining accounts and filing of returns, the assessees are most likely to depend on the professional services of their Chartered Accountants. Once a Chartered Accountant is engaged and there is a genuine dependence on his services, such as in the present case, whose personal difficulties had caused a delay in filing of the petitioners returns, was certainly a*

cause beyond the control of the petitioners / assessees. In these circumstances, the assessee, being at no fault, should have been the primary consideration of the PCIT. It also cannot be overlooked that any professional, for reasons which are not within the confines of human control, by sheer necessity of the situation can be kept away from the professional work and despite his best efforts, it may not be possible for him to attend the same. The reasons can be manifold like illness either of himself or his family members, as a result of which he was unable to timely discharge his professional obligation. There could also be a likelihood that for such reasons, of impossibility of any services being provided/performed for his clients when tested on acceptable materials. Such human factors necessarily require a due consideration when it comes to compliances of the time limits even under the Income Tax Act. The situation in hand is akin to what a Court would consider in legal proceedings before it, in condoning delay in filing of proceedings. In dealing with such situations, the Courts would not discard an empathetic /humane view of the matter in condoning the delay in filing legal proceedings, when law confers powers to condone the delay in the litigant pursuing Court proceedings. This of course on testing the bonafides of such plea as may be urged. In our opinion, such principles which are quite paramount and jurisprudentially accepted are certainly applicable, when the assessee seeks condonation of delay in filing income tax returns, so as to remove the prejudice being caused to him, so as to regularise his returns. In fact, in this situation, to not permit an assessee to file his returns, is quite counter productive to the very object and purpose, the tax laws intend to achieve. In this view of the matter, we have no manner of doubt that the delay which is sufficiently explained in the present case would be required to be condoned.

8. Resultantly, the impugned order is quashed and set aside. The respondents are directed to permit the petitioners to file returns

without penalty, fees and interest, if any, within a period of two weeks from today. All contentions of the parties on the merits of the returns are expressly kept open."

In so far as the present case is concerned, there is undoubtedly a delay in filing Form 9A on part of the petitioner, however, as observed by us above, such delay appears to be completely bona fide. The principles which are paramount and jurisprudentially accepted in the case of Jyotsna Mehta (*Supra*) in our opinion mandates their application in the present facts in condoning delay under the umbrella of section 119 (2)(b) of the IT Act. It is pertinent to reiterate that in a fact situation as the present, to dissuade an assessee to file return can be counter-productive to the very object and purpose, the tax laws intend to accomplish. In cases such as this, where the delay is sufficiently explained the same ought to be condoned.

38. We also note a decision of this Court in the case of M/s. ***Neumec Builders Pvt. Ltd. vs. the C.B.D.T., New Delhi & Ors.***[5], dated 8 October 2024 of which one of us (G.S. Kulkarni, J.) was a member, adopted the view taken by this Court in the case of *Jyotsna Mehta* cited (*Supra*). *Neumec Builders* cited (*Supra*) was a case where this Court was confronted with an issue of delayed filing of Form 10-IC within the prescribed period by the petitioner along with an application for condonation of delay, which was not decided by the assessing officer. In similar facts, this Court adopted the

[5]. 2024 SCC OnLine Bom 2946.

decision of *Jyotsna Mehta* cited (*Supra*) and condoned the delay of the petitioner. In the facts and circumstances of the given case, we find no reason to take a different view, as in the decisions referred to above, in deciding the issue of condonation of delay on the part of the petitioner, in filing Form 9A which was rejected by the impugned order of the jurisdictional assessing officer 28 September 2023.

39. We would now advert to the decision cited by Mr. Singh in the case of Bar Council of India cited *(Supra)*. The relevant portion of the said judgment as applicable to the present case read thus :-

> *" 7. The CBDT Circular No. 7/2018 dated 20-12-2018 records that representations had been received qua Forms No. 9A and 10 not having been filed within specified time for AY 2016-17, which was the first year of e- filing qua those forms; and that in supersession of earlier circular in that regard with a view to expedite the disposal of such representations, the CBDT authorized the Commissioners of Income-tax to admit the belated applications in Forms No. 9A and 10 in respect of AY 2016-17 where such forms were filed after expiry of the prescribed period, in case the Commissioners were satisfied that the assessee was prevented by reasonable cause from filing the said forms within the stipulated period.*
>
> *7.1 By way of further circular No. 30/2019 dated 17-12-2019, similar directions were issued by CBDT for the AY 2017-18 as well. Subsequently, by way of CBDT Circular No. 03/2020 dated 3-1-2020, the Commissioners were authorized to admit the belated delay condonation applications under section 119(2) of the Act where delay is upto 365 days.*

7.2 More recently, by way of similar CBDT Circular No. 17/2022 dated 17-7-2022, the Commissioners were authorized to condone delay beyond 365 days upto 03 years in filing Forms 9A and 10 for AY 2018-19.

8. For AY 2017-18 also, the petitioner/assessee had filed a similar application seeking condonation of delay in filing Form 10, which was allowed by the Commissioner Income-tax vide order dated 26-12-2019 correctly, laying emphasis that the mandate of Section 119(2)(b) of the Act is to mitigate the genuine hardship of assessee in certain circumstances and authorization to the Commissioners to admit the belated Form 10. In the said order dated 26-12-2019, the Commissioner Income-tax condoned the delay in filing Form 10 (which was electronically filed on 5-3-2019) for AY 2017-18. Similarly for AY 2018-19 also, delay on the part of the petitioner in filing Form 10 was condoned in view of the underlying principle of the above mentioned circulars to liberally condone such delays in order to mitigate hardships of the assessees.

9. As mentioned above, the delay in filing Form 10 in the present case occurred because the amendments went unnoticed by the officials of the petitioner. The assessment year 2016-17 was the first occasion subsequent to those amendments. Therefore, we find no reason to disbelieve the explanation furnished by the petitioner to explain the delay in filing Form 10. Further, we are unable to fathom as to what benefit would accrue to the petitioner by delaying the filing of Form 10. In our opinion the discretion conferred for condoning the delay was not correctly exercised by the Commissioner Income Tax."

40. In our view, the above decision would squarely apply as far as the principles made applicable to the issue of an application for condonation of delay by the assessee is concerned. As held in that case, in the facts of the

present case we are unable to fathom as to what benefit would accrue to the petitioner by the belated filing of Form 9A and or what harm it would cause to respondent revenue. Moreover, as held by the Delhi High Court in (para 7.2) the CBDT by a recent Circular No.17 of 2022 dated 17 July 2022, provided that the Commissioners were authorised to condone delay beyond 365 days upto 3 years in filing Form 9A and 10 for the A.Y. 2018-19. In the present case, the delay is of 799 days on the part of the petitioner in filing Form 9A supported by sufficient cause, deserves to be condoned. We have noted the reliance of Mr. Singh on the decisions of coordinate benches of this Court also in Al Jamia Mohammediyah Education Society cited *(Supra)* and Shree Jain Swetamber Murtipujak Tapagachha Sangh cited *(Supra)* where the Court was, in similar facts and legal principles pleased to condone the delay in filing Form 10. This was particularly when such delay was not deliberate and condoning such delay would cause no prejudice to the respondents.

41. We are afraid that we are not able to accept the submissions advanced by Mr. Gulabani for the respondents, as accepting it would run contrary to the pith and substance of Section 119(2)(b) of the IT Act dovetailed with the statutory scheme in the context of CBDT Circulars cited (*Supra*) issued from time to time under Section 119(2)(b) of IT Act. Also, the only primary reason in the impugned order that belated filing of Form 9A by the petitioner-trust is not a procedural lapse, is in the present facts a hyper

technical and pedantic approach which cannot be countenanced. Such would be paradoxical to the clear intent of the legislature as evident from Section 119(2)(b) of the IT Act read with the Circulars issued by CBDT cited (*Supra*) aimed that mitigating, preventing hardship to the genuine assesses, in such situations.

42. In our view, the powers and statutory discretion conferred on the commissioners to condone delay under Section 119(2)(b) of the IT Act ought to be judiciously exercised so that undue hardship to the assessee is avoided. Instead, the impugned order makes it evident that the assessing officer has mixed up issues of the petitioner claiming deductions towards deprecation and capital expenditure made and duly disclosed by it during the assessment proceedings with intentional delay in belated filing of Form 9A attributed to the petitioner. In fact the chart relied on by the petitioner reproduced (*Supra*) setting out the revised computation of income by the assessee of Rs. 2,70,006/- as against that of Rs. 59,98,875/- not being accepted by the respondents in light of delayed filing of Form 9A by the petitioner, would lead to undue financial burden, hardship foisted upon the petitioner-trust. Such vital aspect ought to have weighed with the respondents in considering and deciding the aspect of hardship, while rejecting its application for condonation of delay.

43. Thus, we find that the decisions relied upon by the petitioner cited (*Supra*) could not be distinguished by Mr. Gulabani for the respondents in their applicability to the present case. In fact, the legal, jurisprudential principles reiterated in the said decisions, in our opinion, are clearly applicable to the case in hand. A contrary view would militate against the true meaning, purport and language of Section 119(2)(b) of the IT Act which aims at mitigating hardships and ensuring substantial justice to genuine assessee who should not be non-suited purely on hyper technical ground and *ipse dixit* of the assessing officer. It is thus not possible for us to sustain the impugned order of the jurisdictional assessing officer dated 28 September 2023.

44. In light of the above discussion, we are inclined to allow this petition. Accordingly, the petition is required to be allowed.

45. Rule is made absolute in terms of prayer clauses (a) and (b). No order as to costs.

(ADVAIT M. SETHNA, J.) (G. S. KULKARNI , J.)