IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 8977 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 9370 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 9760 of 2020

==
TRUST FOR REACHING THE UNREACHED THROUGH TRUSTEE, NIMITTABEN N BHATT
Versus
COMMISSIONER OF INCOME TAX (EXEMPTIONS), AHMEDABAD
==
Appearance:
MR. HARDIK V VORA(7123) for the Petitioner(s) No. 1 MRS.
MAUNA M BHATT(174) for the Respondent(s) No. 1
==

CORAM: **HONOURABLE MR. JUSTICE J.B.PARDIWALA** and

HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 22/12/2020

COMMON ORAL ORDER
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. As the issues raised in all the captioned writ-applications are the same, those were heard analogously and are being disposed of by this common judgment and order.

2. For the sake of convenience, the Special Civil Application No.8977 of 2020 is treated as the lead matter.

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3. By this writ-application under Article 226 of the Constitution of India, the writ-applicant, a public charitable trust, has prayed for the following reliefs :

"(a) A writ of certiorari or any other writ, order or direction in the nature of certiorari quashing the order dated 26.08.2019 rejecting application for condonation of delay u/s.119(2)(b) of the Act;

(b) A writ of mandamus or any other writ, order or direction in the nature of mandamus directing the respondent to allow filing of Form 10 belatedly;

(c) Pass any other order(s) as this Hon'ble Court may deem fit and more appropriate in order to grant interim relief to the petitioner;

(d) Any other and further relief deemed just and proper be granted in the interest of justice;

(e) To provide for the cost of this petition."

2. The facts giving rise to this writ-application may be summarised as under :

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3. The writ-applicant is a public charitable trust. The writ-applicant seeks to challenge the order passed by the respondent dated 26th August 2019 under Section 119(2)(b) of the Income Tax Act, 1961 (for short, 'the Act 1961'), rejecting the application filed by the writ-applicant for condonation of delay in filing the Form no.10 of the Act 1961 for the Assessment Year 2014-15.

4. It is the case of the writ-applicant that being a public charitable trust, it is registered with the Charity Commissioner as well as with the Income Tax authorities under Section 12A of the Act 1961 past more than 30 years. The books of accounts of the writ-applicant are being audited regularly and the return of income is also filed without any issues.

5. The auditor of the writ-applicant filed the audit report in the Form no.10B under Section 12A(b) of the Act 1961 on 1st September 2014. The writ-applicant had also filed the return of income for the Assessment Year 2014-15 on 27th September 2014. However, as there was some defect, the writ-applicant filed a revised return of income for the Assessment Year 2014-15 on 22nd November 2014, declaring the total income NIL and claiming refund of Rs.1,92,850=00 after declaring exemption of Rs.73,43,699=00 under Section 11(1) of the Act 1961 and Rs.17,50,000=00 under Section 11(2) of the Act 1961. The document was required to be confirmed by the writ-applicant using the online account. Unfortunately, the trustees of the trust failed to confirm the same and, as a result, the audit report did not get e-filed along with the return of income.

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6. It is the case of the writ-applicant that the return of income was processed under Section 143(1) of the Act on 14th January 2016 by the respondent, rejecting the benefit of exemption to the writ-applicant and a demand notice for Rs.2,17,210=00 came to be issued. The notice referred to above stated the reason for demand on account of non e-filing of the Form no.10 along with the return of income and suggested that the same may be filed with a request to condone the delay.

7. It is the case of the writ-applicant that the aforesaid notice ultimately brought the fact to their knowledge as regards the non e-filing of the Form no.10 of the Act 1961 along with the return of income.

8. On receipt of the demand notice referred to above, the writ-applicant e-filed the Form no.10 claiming exemption under Section 11(2) of the Act 1961 for Rs.17,50,000=00 and requested to condone the delay in filing the Form no.10 vide letter dated 11th February 2019 addressed to the respondent.

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9. It is the case of the writ-applicant that the respondent issued a notice dated 2nd April 2019, to show-cause why the application for condonation under Section 119(2)(b) of the Act 1961 filed by the writ-applicant should not be rejected as no genuine hardship had been shown which prevented it from filing the Form no.10.

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10. On 9th April 2019, the writ-applicant replied to the show-cause notice issued by the respondent, explaining the entire chain of events and requested to condone the delay. However, the application ultimately came to be rejected vide order dated 19th August 2019.

11. It appears from the materials on record that relying on the Circular No.273 dated 3rd June 1980 issued by the Central Board of Direct Taxes as the writ-applicant could not fulfil the conditions mentioned in the said Circular, vide order dated 26th August 2019, the application for condonation of delay came to be rejected.

12. Being dissatisfied with the order referred to above passed by the respondent, the writ-applicant is here before this Court with the present writ-application.

SUBMISSIONS ON BEHALF OF THE WRIT-APPLICANT :

13. Mr.H.V.Vora, the learned counsel appearing for the writ-applicant vehemently submitted that the impugned order passed by the respondent is patently errorneous in law. According to Mr.Vora, the respondent ought to have appreciated that it was a bonafide mistake on the part of the trustees who believed that it was the auditor who was obliged to upload all the required documents without any follow-up action on their part. Mr.Vora would submit that it was only after the exemption was disallowed and demand was raised that the issue came to the knowledge of the writ-applicant. It is argued that the delay in

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filing the Form no.10 was caused due to the factors beyond the control of the writ-applicant.

14. It is also pointed out that the writ-applicant filed the Form no.10 immediately upon having come to know that it could not be filed in accordance with law.

15. Mr.Vora would submit that the respondent ought to have adopted a liberal approach for the purpose of condoning the rather than adopting a highly pedantic approach.

16. Mr.Vora, in support of his above noted submissions, has placed reliance on the following decisions :

(1) Shri Chandraprabhuji Maharaj Jain vs. DCIT (Exemptions)-II, Chennai (Tax Appeal No.517 of 2019);

(2) G.V.Infosutions (P.) Ltd. vs. Dy. CIT, Circle 10(2), reported in (2019) 261 taxmann.com 482 (Delhi).

17. In such circumstances referred to above, Mr.Vora prays that there being merit in his writ-application, the same may be allowed and the impugned order be quashed and set-aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT :

18. On the other hand, this writ-application has been vehemently opposed by Ms.Mauna Bhatt, the learned senior

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standing counsel appearing for the Revenue. Ms.Bhatt would submit that no error, not to speak of any error of law, could be said to have been committed by the respondent in passing the impugned order.

19. Ms.Bhatt would submit that although the eturn of income for the Assessment Year 2014-15 was filed, yet the writ-applicant failed to e-file the Form no.10 along with the return. It is argued that the respondent has thought fit, in exercise of his discretion, not to condone the delay and such discretion cannot be said to have been exercised arbitrarily or unjudiciously.

20. Ms.Bhatt would submit that in the case on hand, the Commissioner has recorded cogent reasons while declining to condone the delay. She would submit that the facts of the present case and the facts involved in the decision of the Madras High Court and the Delhi High Court upon which reliance is placed on behalf of the writ-applicant are distinct. She would submit that the powers should be exercised cautiously with due care and circumspection and not in a routine manner only to extend the limitation provided by the Act. Ms.Bhatt has expressed a strong apprehension about a difficulty that may arise if ultimately the impugned order is quashed and the Form no.10 is ordered to be taken on record. According to her, as per the proviso to Section 142(2) of the Act, no notice can be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished. She would submit that the said date has elapsed. Similarly, according to

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Ms.Bhatt, no notice under Section 142(1) of the Act can be issued as the time limit for passing the assessment order under Section 143(3) of the Act has also expired. She would argue that even after the writ-applicant is allowed to file the Form no.10 along with the return of income, the veracity thereof is required to be ascertained. It will also have to be ascertained, whether the writ-applicant is eligible to the benefits/exemption under Section 11 of the Act. She would submit that the time limit as aforesaid has expired.

21. In the last, Ms.Bhatt submitted that if ultimately this Court is convinced that sufficient cause has been assigned by the writ-applicant for the purpose of condonation of delay, then this Court may clarify that despite the time period having expired, it shall be open for the department to issue notice under Section 143(2) of the Act or Section 142(1) of the Act, as the case may be.

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22. In such circumstances referred to above, Ms.Bhatt prays that there being no merit in this writ-application, the same may be rejected.

ANALYSIS :

24. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is, whether the respondent committed any error in passing the impugned order.

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25. For the purpose of seeking condonation of delay, the writ-applicant moved an application filed under Section 119(2) of the Act addressed to the Principal Commissioner of Income Tax (Exemption), Ahmedabad, stating as under :

"Sub: Request for condonation of delay under section 119(2) (b) in filing form No.10 (Rule 17(2) of the I.T. Act 1961 for AY 2014-15.

Ref : Trust for Reaching the Unreached (PAN : AAATT1777H)

Dear Sir,

With reference to above referred subject, and under the instruction of our client, TRUST FOR REACHING THE UNREACHED we would like to state that :

The object of the Trust ic charitable in nature since incorporation of the trust in the year 1987. The Trust is running various educational and health centers for providing help to the needy and poor persons. Moreover the trust is also carrying out the welfare activities to ensure better livelihood for the poor disable and weaker section of the society. We would like to state that the assessee has filed return of income for the relevant assessment year declaring

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NIL total income and claiming refund of Rs.1,92,845/- vide acknowledgement no.370510010270914 dated 27.09.2014.

We would like to state that as per the provisions of the section 11(2) of the I.T. Act 1961 – Accumulation and Setting a part of the trust income for specific purpose, the assessee has set apart the income of the trust in the the forms or modes specified in section 11(5) "Where 85% of the income of charitable trust as referred above is not applied to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to charitable or religious purposes in India, such income so accumulated or set apart will not attract tax liability. We would like to state that the assessee has set apart Rs.17,50,000/- for the relevant assessment year and has also utilized it in the subsequent years itself. However the assessee has genuinely skipped to file Form 10 as per the provisions of the I.T. Act 1961 as the assessee during the period was massively involved in the activities of charitable, religious and educational purpose within the city as well as in the outskirts of the city. We would also like to state that in order to improve the conditions of the poor and the uneducated sector of the society, the Trust along with the Trustees themselves and the entire staff of the trust including the accounts and administration team were involved in such activities. We would like to state that the assessee had genuinely faced hardships and the intention of the assessee was not deliberate and malafide for not filing the form Form 10 as per the provisions of the I.T. Act 1961. However after coming to know the facts the assessee

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has filed Form 10 as per the provisions of the Act 1961 for the relevant assessment year on 11.02.2019. We are enclosing herewith the copy of Form 10 filed for your kind perusal.

We would like to state that the income declared by the assessee while filing the return of income is correct and the refund claimed is also correct and genuine as well as the delay in filing the form 10 is also due to genuine hardships. We would further like to state that the income of the assessee is not assessable in the hands of any other person under any other provisions of the Act 1961 and the refund has arisen as a result of excess of tax deducted at source as per the provisions of the Act 1961. We would like to state that if the permission for filing the Form 10 is not granted by your goodselves then it will rise to high demand resulting into shortfall of funds for achieving the objects of the trust and development of the society also.

Considering all these facts we would like to request you to accept the Form 10 and condone the delay in filing of Form 10 for AY 2014-15 and grant us the permission for filing the same."

26. The respondent, however, declined to condone the delay and rejected the said application by the impugned order dated 26th August 2019 (Annexure-D to the writ-application), assigning the following reasons in the impugned order :

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"ORDER U/S.119(2)(b) OF THE INCOME-TAX ACT, 1961

The applicant, Trust for Reaching the Unreached, Vadodara has filed an application dated 11.2.2019, for condonation of delay in filing the form No.10 of the I.T. Act, 1961 for the A.Y. 2014-15. In its application it is stated that the trust is established since 1987 and is running various educational and health centres for providing help to the needy and poor persons. Moreover the trust is also carrying out the welfare activities to ensure better livelihood for the poor, disabled and weaker section of the society. It has further submitted that the return for A.Y. 2014-15 was filed on 27.9.2014 vide acknowledgement no.370510010270914 claiming refund of Rs.1,92,845/-. During the A.Y. 2014-15, it had accumulated an amount of Rs.17,50,000/- and has also utilized it in the subsequent year itself. As the Trust was massively involved in the activities of charitable, religious and educational purpose within the city as well as in the outskirts of the city, it genuinely skipped to file Form 10 as per the provisions of the Act. After coming to know the facts the assessee filed Form 10 on 11.2.2019. It has further submitted that there was neither malafide intention nor any deliberate act in the lapse. In view of the said reasons it has requested to condone the delay vide its application under consideration.

2. The assessee trust was issued letter dated 2.4.2019 to show cause as to why the application for condonation should not be rejected as no genuine hardships is shown which prevented it from filing Form 10 on time. It was requested to file the reply on 15.4.2019. The AR of the

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assessee on 15.4.2019 filed written submission to the show-cause letter in Dak. In its reply it has reiterated the facts mentioned in the original application. Additionally it stated that the work of filing of Income Tax Return and other related forms were entrusted to a Tax consultant who did not file Form 10 due to ignorance. If condonation is not granted then it will lead to high demand resulting into shortfall of funds for achieving the objects of the trust and development of the society also.

3. On going through the records it has been noticed that the application has been filed by CNK & Associates LLP, Chartered Accountants, Vadodara for the assessee Trust and also the submission filed in Dak on 15.4.2019 in compliance to the notice issued by this office. However, no such authorization for and on behalf of the assessee Trust has been filed in favour of CNK Associates LLP, Chartered Accountants. Thus, technically also the petition does not survive for consideration as the above said CA firm has not been authorized by the assessee to act in the matter under consideration.

4. Without prejudice to the above, on merits the application of the assessee Trust is decided on merits as under. From the details available on record it is seen that return of income for A.Y. 2014-15 was filed on 27.9.2014 which turned out defective. Thereafter, it filed revised return on 22.11.2014 which is processed u/s 143(1) on 14.1.2016 resulting into demand of Rs.2,17,210/-. After receipt of recovery letter dated 26.12.2018, the assessee e-filed Form

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10 for claiming exemption u/s 11(2) of the Act for Rs.17,50,000/- on 11.2.2019 which is after 37 months from the processing of Return of Income. The assessee in its reply filed on 15.4.2019 has failed to prove genuine hardship on account of which it could not file Form no.10 on time. As stated by them, the trust is running various educational and health centres for providing help to the needy and poor persons since its inception i.e. from 1987, means trust is very old and well aware about the legal provisions of I.T. Act. This was not the new provision which came to be implemented first time in the year under consideration.

5. The assessee's contention that the income tax work was handed over to a Tax Consultant who was not having exposure in the area of work and he had not filed the Form 10, is found unsubstantiated. No such details and evidences have been placed on record to support said contention. Further it cannot be the reasonable cause to accept the condonation petition for such a huge period of almost 5 years. Moreover, the assessee has not submitted any details and evidences showing that the provisions of section 11(5) r.w.s. 11(2) are fully complied with more particularly the investment of accumulated funds was in specified modes only. Thus compliance of the provisions of section 11(5) are not proved by the assessee. Even no details of the utilization of accumulated funds for the specified objects have been placed on record by the assessee. In this regard CBDT has issued a circular no.273 dated 3.6.1980 whereby some of the following conditions are to be fulfilled by the assessee for condonation of delay.

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(b) That the failure to give notice to the Income-Tax Officer under section 11(2) of the Act and investment of the money in the prescribed securities was due only to oversight.

(c) That the trustees or the settler have not been benefited by such failure directly or indirectly.

(d) That the trust agrees to deposit its funds in the prescribed securities prior to the issue of the Government sanction extending the time under section 11(2); and

The assessee has not given such particulars and evidences to show that above conditions are duly fulfilled. Thus the pre-conditions of said circular does not get fulfilled.

6. In view of the above and after having considered the facts and in exercise of the powers conferred on me u/s 119(2)(b) of the Act, I hereby reject the application for condonation of delay in filing the Form No.10 for the A.Y. 2014-15."

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27. Mr.Vora, the learned counsel is right in his submission that a fair and dispassionate view of the facts ought to have persuaded the respondent, who possesses wide discretion in the matter under Section 119 of the Act, to condone the delay and allow the assessee to avail the said exemption under Section 12 of the Act being a public charitable trust.

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28. We should look into the position of law as regards the subject matter of this writ-application :

(i) In Artist Tree Pvt. Ltd. vs. Central Board of Direct Taxes and others, (2014) 369 ITR 691 (Bombay). The relevant paragraphs 11 to 14 and 23 of the said judgment are quoted below for ready reference :

> *"11. The expression 'genuine hardship' came up for consideration of the Supreme Court in the case of B.M.Malani (supra), wherein, by reference to New Collins Concise English Dictionary, the Supreme Court accepted the position that "genuine" means not fake or counterfeit, real, not pretending (not bogus or merely a ruse). Further, a genuine hardship would, inter alia, mean a genuine difficulty. The ingredients of genuine hardship, must be determined keeping in view the dictionary meaning thereof and legal conspectus attending thereto. For the said purpose, another well known principle, namely, that a person cannot take advantage of his own wrong, may also have to be borne in mind. Compulsion to pay any unjust dues per se would cause hardship. But a question as to whether the default in payment of the amount was due to circumstances beyond the control of the assessee, also bears consideration.*
>
> *12. In the case of R. Seshammal (supra), the Madras High Court was pleased to observe as under (page 187 of 237 ITR):*

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"This is hardly the manner in which the State is expected to deal with the citizens, who in their anxiety to comply with all the requirements of the Act pay monies as advance tax to the State, even though the monies were not actually required to be paid by them and there after seek refund of the monies so paid by mistake after the proceedings under the Act are dropped by the authorities concerned. The State is not entitled to plead the hyper technical plea of limitation in such a situation to avoid return of the amounts. Section 119 of the Act vests ample power in the Board to render justice in such a situation. The Board has acted arbitrarily in rejecting the petitioner's request for refund."

13. In the case of Sitaldas Motwani (supra), this court has held that the expression "genuine hardship" used in section 119(2)(b) of the said Act should be construed liberally, particularly in matters of entertaining of applications seeking condonation of delay. This court was pleased to observe as under (page 228 of 323 ITR):

"The phrase 'genuine hardship' used in section 119(2)(b) should have been construed liberally even when the petitioner has complied with all the conditions mentioned in Circular dated October 12, 1993. The Legislature has conferred the power to condone delay to enable the authorities to do substantive justice to the parties by disposing of the matters on the merits. The expression 'genuine' has received a liberal

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meaning in view of the law laid down by the apex court referred to hereinabove and while considering this aspect, the authorities are expected to bear in mind that ordinarily the applicant, applying for condonation of delay does not stand to benefit by lodging its claim late. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold an cause of justice being defeated. As against this, when delay is condoned the highest that can happen is that a cause would be decided on the merits after hearing the parties. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have a vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. The approach of the authorities should be justice oriented so as to advance the cause of justice. If refund is legitimately due to the applicant, mere delay should not defeat the claim for refund."

14. In the case of Bombay Mercantile Co-operative Bank Ltd. (supra), this court again observed that it is well settled that in matters of condonation of delay highly pedantic approach should be eschewed and a justice-oriented should be adopted. It also observed that a party should not be made to suffer on account of technicalities.

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23. In the light of the aforesaid discussion, we are of the opinion that an acceptable explanation was offered by the petitioner and a case of genuine hardship was made out. The refusal by the Central Board of Direct Taxes to condone the delay was a result of adoption of an unduly restrictive approach. The Central Board of Direct Taxes appears to have proceeded on the basis that the delay was deliberate, when from the explanation offered by the petitioner, it is clear that the delay was neither deliberate nor on account of culpable negligence or any mala fides. Therefore, the impugned order dated May 16, 2006, made by the Central Board of Direct Taxes refusing to condone the delay in filing the return of income for the assessment year 1997-98 is liable to be set aside."

(ii) In Jay Vijay Express Carriers vs. Commissioner of Income Tax-III, (2013) 34 taxmann.com.61 (Gujarat), in relevant paragraph 16 of the said judgment, this Court held as under :

"16. In our opinion, in the present case, there would be genuine hardship, if the time limit is not extended as otherwise, the entire claim of Rs.17,84,323/- would be destroyed. The petitioner would neither get deduction in the assessment year 2005-06 nor in the year 2008- 09 as per then prevailing Section 40(a)(ia) of the Act. In our opinion, the petitioner was neither lethargic nor lacking in bona fides in making the claim beyond the period of limitation, which should have a relevance to the desirability and expedience

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for exercising such power. Before proceeding further we may caution that undoubtedly such powers are not to be exercised in routine manner to extend limitation provided by the Act for various stages. We are conscious that such routine exercise of powers would neither be expedient nor desirable, since the entire machinery of tax calculation, processing of assessment and further recoveries or refunds, would get thrown out of gear, if such powers are routinely exercised without considering its desirability and expedience to do so for avoiding genuine hardship. In the present case, however, considering special facts, we are of the opinion that the Commissioner ought to have exercised such powers. It is true that the Appellate Commissioner recorded that the petitioner did not remain present in the appellate proceedings. However that by itself would not take away the petitioner's case for genuine hardship nor contrary to what is vehemently contended before us by the counsel for the Revenue, convince us to hold that filing of revised return beyond limitation lacked bona fides."

(iii) In the case of State of Jharkhand and others vs. Ambay Cements and another, (2005 Sales Tax Cases Vol.129). The relevant extract of the said judgment is quoted from the Head Note below for ready reference :

"An exception or an exempting provision in a taxing statute should be construed strictly. If the condition under which an exemption is granted stands changed on account of any subsequent event the exemption would not operate. (see paras 23 and 24)

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Whenever the statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory. If the statute provide that a particular thing should be done, it should be done in the manner prescribed and not in any other way (see para 26)."

(iv) In the case of B.M.Malani vs. Commissioner of Income Tax and another, (2008) 219 CTR 313), the Court observed :

"8. The term 'genuine' as per the New Collins Concise English Dictionary is defined as under :

> *"'Genuine' means not fake or counterfeit, real, not pretending (not bogus or merely a ruse)."*

For interpretation of the aforementioned provision, the principle of purposive construction should be resorted to. Levy of interest although is statutory in nature, inter alia for recompensating the Revenue from loss suffered by non-deposit of tax by the assessee within the time specified therefor. The said principle should also be applied for the purpose of determining as to whether any hardship had been caused or not. A genuine hardship would, inter alia, mean a genuine difficulty. That per se would not lead to a conclusion that a person having large assets would never be in difficulty as he can sell those assets and pay the amount of interest levied.

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The ingredients of genuine hardship must be determined keeping in view the dictionary meaning thereof and the legal conspectus attending thereto. For the said purpose, another well-known principle, namely, a person cannot take advantage of his own wrong, may also have to be borne in mind. The said principle, it is conceded, has not been applied by the Courts below in this case, but we may take note of a few precedents operating in the field to highlight the aforementioned proposition of law. (See Priyanka Overseas (P) Ltd. & Anr. Vs. Union of India & Ors.1991 Suppl.(1)SCC 102, para 39, Union of India & Ors. Vs. Maj.Gen.(Retd.) Madan Lal Yadav (1996)4 SCC 127 at 142, paras 28 and 29, Ashok Kapil Vs. Sana Ullah (dead) & Ors. (1996) 6 SCC 342 at 345, para 7, Sushil Kumar vs. Rakesh Kumar (2003) 8 SCC 673 at 692, para 65, first sentence, Kusheshwar Prasad Singh vs. State of Bihar & Ors. (2007) 11 SCC 447, paras 13, 14 and 16)."

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29. Section 119 of the Act is couched in very wide terms. The same is quoted below for ready reference :

Instructions to subordinate authorities:

"119. (1) the Board may, from time to time, issue such orders, instructions and directions to other income- tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and

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follow such orders, instructions and directions of the Board:

xxx xxx xxx

(2) Without prejudice to the generality of the foregoing power:-

(a) xxx xxx xxx

(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, 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 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:"

30. We may also refer to a decision of the Karnataka High Court in the case of Dr. (Smt.) Sujatha Ramesh vs. Central Board of Direct Taxes, New Delhi, (2017)87 taxmann.com 228 (Karnataka), wherein the Court has observed as under :

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"12. It is true that the so called reasons assigned by the respondent Central Board of Direct Taxes (CBDT) in the impugned order, on the face of it, do not appear to be whimsical or arbitrary reasons and it is equally true that such investment could be made by assessee very well before the cut off date also when she was physically present in India or even when she had gone back to USA on 20th February 2013. Nonetheless, the delay of six months in

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the circumstances in which it occurred, especially, in view of the fact that the investment condition was undisputably met by the assessee could have been condoned taking a judicious and holistic view of the facts. The wide powers of the Central Board of Direct Taxes or other higher authorities of the Department to whom such powers can be delegated under Section 119 of the Act, need not always take only a pro revenue approach in such matters. Their approach in such cases should be equitious, balancing and judicious which should reflect the application of mind to the facts of the case and before denying the genuine claim of the assessee on the grounds of mere delay in making such claim, something more than the user of innocuous terms as employed in the present case, should be forthcoming. Technically, strictly and literally speaking, the Board might be justified in denying the exemption from capital gains tax by rejecting such condonation application, but an assessee, 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 highest executive authority of the Central Board of Direct Taxes under the Act.

13. The general and wide powers given to the Board in this regard, "if it considers it desirable or expedient so to do for avoiding genuine hardship in any case.....", not only gives wide powers to the Board, but confers upon it a obligation to consider facts relevant for condonation of delay as well as the merit of the claim simultaneously. If the claim of

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exemption or other claim on merits is eminently a fit case for making such claim, it should not normally be defeated on the bar of limitation, particularly, when the delay or the time period for which condonation is sought is not abnormally large. It will of course depend upon the facts of the each case, where such a time period or the merit of the claim deserves such exercise of discretion in favour of the assessee under Section 119(2)(b) of the Act or not and therefore, no straight jacket formula or guidelines can be laid down in this regard. However, such orders passed by the Central Board of Direct Taxes being a quasi-judicial order is always open to judicial review by the higher constitutional courts. If the good conscience of the Courts is pricked, even though such orders rejecting the claims on the bar of limitation may appear to be prima facie tenable, the Courts may exercise their jurisdiction to set aside such orders and allow the claims on merits, setting aside the bar of limitation.

14. The present case is one of such nature, where the Court finds that the substantial conditions for claiming the exemption from capital gain tax stood satisfied and the prescribed investment was made by the assessee in the Bonds of the National Highways Authority, for the minimum lock-in period of three years also is an undisputed fact, and therefore, the delay in making such investment of six months deserved to be condoned, in view of the fact that, the assessee-petitioner, a Doctor by profession was traveling from India to USA a long distance country where she normally resided and came to India not only to meet her

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family members, but to sell the immoveable property belonging to her and sought to avail the genuine exemption from such tax liability upon making the investment in the prescribed investment in the form of Bonds of Infrastructure which she did make in the National Highways Authority."

31. We may also refer to and rely upon a decision of the Delhi High Court in the case of G.V.Infosutions Pvt. Ltd. vs. Deputy Commissioner of Income Tax, Circle 10(2) and others, reported in (2019) 261 taxmann.com 482 (Delhi). We may quote the relevant observations thus :

"8. The rejection of the petitioner's application under Section 119(2)(b) is only on the ground that according to the Chief Commissioner's opinion the plea of omission by the auditor was not substantiated. This court has difficulty to understand what more plea or proof any assessee could have brought on record, to substantiate the inadvertence of its advisor. The net result of the impugned order is in effect that the petitioner's claim of inadvertent mistake is sought to be characterised as not bonafide. The court is of the opinion that an assessee has to take leave of its senses if it deliberately wishes to forego a substantial amount as the assessee is ascribed to have in the circumstances of this case. "Bonafide" is to be understood in the context of the circumstance of any case. Beyond a plea of the sort the petitioner raises (concededly belatedly), there can not necessarily be independent proof or material to establish that the auditor in fact acted without diligence. The

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petitioner did not urge any other grounds such as illness of someone etc., which could reasonably have been substantiated by independent material. In the circumstances of the case, the petitioner, in our opinion, was able to show bonafide reasons why the refund claim could not be made in time.

9. The statute or period of limitation prescribed in provisions of law meant to attach finality, and in that sense are statutes of repose; however, wherever the legislature intends relief against hardship in cases where such statutes lead to hardships, the concerned authorities - including Revenue Authorities have to construe them in a reasonable manner. That was the effect and purport of this court's decision in Indglonal Investment & Finance Ltd. (supra). This court is of the opinion that a similar approach is to be adopted in the circumstances of the case."

32. 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 equitious, balancing and judicious. Technically, strictly and liberally speaking, the respondent 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.

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33. We may also refer to the decision of this Court in CIT v. Gujarat Oil and Allied Industries Limited, (1993) 201 ITR 325 (Gujarat), 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 beore the Income Tax Officer or before the appellate authority by assigning sufficient cause.

34. In the result, this writ-application succeeds and is hereby allowed. The impugned order passed by the respondent dated 26th August 2019 (Annexure-D to this writ-application) is hereby quashed and set-aside. The delay condonation application filed by the writ-applicant before the respondent is hereby allowed.

35. In view of the above, the connected two writ-applications also succeed and are hereby allowed. The impugned orders therein are quashed and set-aside and the delay condonation applications stand allowed.

36. It is declared that the writ-applicants are entitled to seek exemption under Section 12 of the Act. The authorities below are

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directed to give effect to such exemption to the assessees and pass necessary consequential orders in this regard. However, as fairly submitted by Mr.Vora, the grant of benefit of exemption under Section 12 of the Act shall be subject to Section 143(2) and Section 142(1) respectively of the Act 1961.

(J. B. PARDIWALA, J.)

(ILESH J. VORA, J.)

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