IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 9560 of 2025

CNR No. ODHC010169792025

Novel Sidharth English Medium Educational Trust, Paninala, Koraput ..…... ***Petitioners (s)***

Mr. Rudra Prasad Kar, Sr. Adv.
along with Mr. Pranaya Kumar Mishra, Adv.

-Versus-

Central Board of Direct Taxes (CBDT), Department of Revenue & Ors. .. ….. ***Opposite Party (s)***

Mr. Avinash Kedia, Jr. Standing Counsel

CORAM:
HON'BLE DR. JUSTICE SANJEEB K PANIGRAHI
HON'BLE MR. JUSTICE MURAHARI SRI RAMAN

ORDER
03.11.2026

Order No.
01.

1. Mr. Rudra Prasad Kar, learned Senior Advocate enters appearance on behalf of the petitioner and files his appearance memo in Court today, which is taken on record.

2. Challenging the order dated 6th January, 2025 (Annexure-1) rejecting the petition for condonation of delay filed under Section 119(2)(b) of the Income Tax Act, 1961 for filing the audit report in Form 10B prescribed under Rule 17B of the Income Tax Rules, 1962 (for short, "IT Rules") for claiming exemption from payment of income tax under Section 12A of the Income Tax Act,

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1961 (for brevity, "IT Act") for the Assessment Year 2020-21 by the Commissioner of Income Tax (Exemption), Hyderabad ("CIT", abbreviated), the Petitioner has approached this Court by way of filing this writ petition under Articles 226 & 227 of the Constitution of India.

3. Learned Senior Advocate appearing for the Petitioner submitted that despite sufficient cause being shown, Opposite Party No.2 has rejected the application for condonation of delay of 137 days in filing the audit report. It is submitted that the delay was caused due to Covid-19 Pandemic, which was not appreciated by the said authority.

3.1. Learned Senior Advocate advanced and valiantly argued that reasons given by the CIT to disallow the exemption claimed in the returns are not sustainable. Though the audit reports in Form 10B could not be filed even before the assessment, the same was filed on 31st May, 2021. The audit report was due for submission on 15th January, 2021. Thus, there was only 137 days delay. The approach of the CIT indicates pedantic; rather utilizing his judicial discretion he should have been pragmatic in his approach. He, therefore, submitted that under Section 119(2)(b) of the Income Tax Act by virtue of Circular No.10 of 2019, dated 22.05.2019 and circular No.16 of 2024 dated 18.11.2024, the CIT has been delegated with power to exercise discretion while dealing with the application for condonation of delay in filing the Form 10B for the Assessment Year 2020-21. Despite such discretion is conferred on the CIT, the reason for the delay being not

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appreciated appropriately, the order is susceptible to be interfered with in the present proceeding, as such the same is liable to be set aside.

3.2. He strenuously urged that serious prejudice would ensue to the Petitioner if 137 days delay is not condoned as the audit report under Section 12A read with Rule 17B is required to be considered by the competent authority for the purpose of claiming benefits under the IT Act.

3.3. To buttress his argument, he placed reliance on the decision of the Gujarat High Court in ***Sarvodaya Charitable Trust vs. Income Tax Officer (Exemption),***[1] and contended that the provision relating furnishing of audit report with the return is to be treated as procedural and the same could be filed even before the assessment.

4. Mr. Avinash Kedia, learned Junior Standing Counsel for the Income Tax Department submitted that the CIT exercising his discretion under Section 119(2)(b) of the IT Act rejected the application for condonation of delay having found no sufficient cause shown by the Petitioner. He submitted that genuine hardship being not demonstrated by the Petitioner, the rejection of petition for condonation of delay is not unjustified.

5. Heard learned Senior Advocate appearing for the Petitioner and learned Junior Standing Counsel for Income Tax Department.

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[1] ***(2021)18 ITR-OL 253 (Guj)***

6. Considering the rival submissions made by the learned counsel for the respective parties, this Court is satisfied that there is no dispute with regard to delay of 137 days in submitting the audit report in Form-10B prescribed under Rule 17B of the IT Rules in order to claim benefit under Section 12A of the IT Act for the Assessment Years 2020-2021.

6.1. This Court is of the considered view that the benefit of exemption should not have been denied merely on account of delay in furnishing audit report, which could be produced at a later stage either before the Assessing Officer or the Appellate Authority by assigning sufficient cause. This Court also takes cognizance of the fact that at an around 13.03.2022, Covid-19 Pandemic was continuing and it is believed that the contention of the Advocate for the Petitioner that on account of suffering from Covid-19 the audit report could not be furnished. Such a stance of the petitioner sounds genuine since no objection is raised by the learned Senior Standing Counsel for the Income Tax against such statement.

6.2. This Court, taking note of such identical plea and taking cognizance of Covid-19 Pandemic situation at and around the date of filing of audit report in 2022, has elaborately discussed the factors of consideration of petition for condonation of delay in the case of Action Research for Health and Socio-economic Development vs. Central Board of Direct Taxes (CBDT) and others, W.P.(C) No.8035 of 2025 which stood disposed of vide judgment dated 25.04.2025.

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6.3. Considering the facts and situation of the said case and applying the legal position discussed in similar fact-situation as obtained in Action Research for Health and Socio-economic Development (supra), this Court is of the opinion that the Commissioner of Income Tax (Exemption), Hyderabad has not applied his conscientious mind in proper perspective. Taking cognizance of well-established principle that when technical consideration and cause of substantial justice are pitted against each other, it is the substantial justice which is to prevail, this Court holds that mere technicality should not have been ground for claim of exemption under Section 12A of the IT Act. Thus, the CIT has failed to consider the application for condonation of delay in its right earnest under the provisions of Section 119(2)(b) of the Income Tax Act, 1961 read with power conferred by virtue of Circular No.10/2019, dated 22.05.2019 and circular No.16 of 2024 dated 18.11.2024.

6.4. Ergo, finding that there was "genuine hardship" faced by the petitioner during the relevant period and refusal to condone the delay invoking power under Section 119(2) of the IT Act being arbitrary exercise of discretion having regard to the fact-situation, Order 6th January, 2025 passed by the Commissioner of Income Tax (Exemption), Hyderabad-opposite party No.2 (Annexure-1) is hereby set aside. The matter is remitted to the authority concerned (O.P. No.3) to consider the audit report in Form 10B furnished under Rule 17B of the Income Tax Rules to claim exemption under Section 12A of the Income Tax Act and in consequence

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thereof, the opposite party no.3 is directed to grant all consequential relief to the petitioner by taking into account the Audit Report in Form 10B pertaining to the Assessment Year 2020-21, submitted on 31st May, 2021, as if the same is filed within period specified, invoking Section 119(2)(b) of the Income Tax Act, 1961.

6.5. With the observation made supra and directions issued, the writ petition stands disposed of. As a result of the disposal of the writ petition, all pending interlocutory applications, if any, shall stand disposed of.

(Dr. Sanjeeb K Panigrahi)
Judge

(Murahari Sri Raman)
Judge

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