

### **Exemption cannot be denied merely on account of delay in furnishing Audit Report**

The Hon'ble Gujarat High Court in ***Trust For Reaching The Unreached Through Trustee v/s CIT [R/Special Civil Application No. 8977, 9370, 9760 of 2020 dated December 22, 2020]*** quashed and set aside the order rejecting the application for condonation of delay filed for exemption and held that an assessee being a public charitable trust who satisfied all the conditions to claim exemption under Section 12 of the Income Tax Act, 1961 ("**IT Act**") could not be denied exemption merely on account of delay in furnishing the Audit Report.

#### **Facts:**

Trust For Reaching The Unreached ("**the Applicant**") is a public charitable trust and its books of accounts are audited and return of income is filed regularly. The auditor of the Applicant filed the Audit Report in the Form No. 10B under Section 12A(b) of the IT Act on September 1, 2014. The Applicant had also filed the return of income for the Assessment Year ("**AY**") 2014-15 on September 27, 2014.

However, a revised return of income for the AY 2014-15 was filed on November 22, 2014, declaring the total income as NIL and claiming refund of Rs. 1,92,850/. The document was required to be confirmed by the Applicant using the online account. Unfortunately, the trustees of the Applicant failed to confirm the same and, as a result, the Audit Report did not get e-filed along with the return of income.

The return of income was then processed under Section 143(1) of the IT Act and the benefit of exemption to the Applicant was rejected and a demand notice for INR 2,17,210/- was issued, due to non e-filing of the claiming exemption in Form No. 10 along with the return of income. On receiving the demand notice, the Applicant e-filed the Form No. 10 claiming exemption and requested to condone the delay in filing the Form No. 10 vide a letter.

Subsequently, the Commissioner of Income Tax ("**the Respondent**") issued a Show Cause Notice dated April 2, 2019 ("**SCN**") as to why the application for condonation under Section 119(2)(b) of the IT Act filed by the Applicant should not be rejected as no genuine hardship had been shown which prevented it from filing the Form No. 10. The Applicant replied to the SCN issued by the Respondent explaining the chain of events and requested to condone the delay but the application was rejected vide order dated August 26, 2019 ("**Impugned Order**").

Being aggrieved by the Impugned Order, the Applicant has filed the present writ-application.

**Issue:**

Whether exemption under Section 11 of the IT Act can be disallowed merely on the grounds that there was a delay in filing of Audit Report under Form No. 10?

**Held:-**

The Hon'ble Gujarat High Court in ***[R/Special Civil Application No. 8977, 9370, 9760 of 2020 dated December 22, 2020]*** has held as under:

- Agreed with the contention of the Applicant 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(2)(b) of the IT Act, to condone the delay and allow the assessee to avail the exemption under Section 12 of the IT Act being a public charitable trust.
- Observed that, the approach in such cases should be equitable, balancing and judicious. The Respondent might be justified in denying the exemption under Section 12 of the IT Act by rejecting such condonation application, but the Applicant, 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.
- Relied upon the judgement of the Hon'ble Gujarat High Court in ***CIT v. Gujarat Oil and Allied Industries Limited [(1993) 201 ITR 325 (Gujarat), dated September 8, 1992]*** wherein it was 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.
- Held that, the benefit of exemption should not be denied merely on account of delay in furnishing the same and it is permissible for the Applicant to produce the Audit Report at a later stage either before the Income Tax Officer or before the appellate authority by assigning sufficient cause.
- Quashed and set aside the Impugned order. Allowed the application filed by the Applicant for delay condonation of delay.

**Relevant Provisions:-**

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**Section 119(2)(b) of the IT Act:**

*“119. Instructions to sub-ordinate authorities*

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

*(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 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;”*

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