IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 14175 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI Sd/-

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Approved for Reporting	Yes	No
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MAHERNAGAR CO-OP. HOUSING SERVICE SOCIETY LTD.
Versus
CHIEF COMMISSIONER OF INCOME TAX, SURAT

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Appearance:
JAIMIN A GANDHI(8065) for the Petitioner(s) No. 1
KARAN G SANGHANI(7945) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 10/11/2025
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. Amendment filed by learned advocate Mr.Gandhi is allowed in terms of draft. The same shall be carried out forthwith.

2. In view of a short question involved in the present writ petition, the same is taken for final hearing today.

3. ***RULE***. Learned advocate Mr.Sanghani waives service of notice of rule for and on behalf of the respondent-Department.

4. In the present writ petition, the petitioner-Society has made following prayers:

"11.(A) The Hon'ble Court may be pleased to quash and set aside the order dated 27/06/2024 (Annexure A) passed by the Respondent and condone the delay of 29 days in filing return of income for A.Y. 2018-19.

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(D). The Hon'ble Court may be pleased to quash and set-aside the intimation order dated 16/05/2019 passed u/s 143(1) (annexure D) and permit the petitioner to file fresh return of income within 1 month for A.Y. 2018-19."

5. Learned advocate Mr.Gandhi appearing for the petitioner-Society has submitted that by the impugned order, the respondent-Department has denied to condone delay of 29 days caused in filing the return of income under the provision of section 139(1) of the Income Tax Act, 1961 (for short "the Act") for the Assessment Year 2018-19. In support of his submissions, he has placed reliance on the Circular No.13 of 2023 dated 26.07.2023, which deals with the condonation of delay in filing the return of income for the purpose of permitting deduction under section 80P of the Act.

6. Learned advocate Mr.Gandhi has also pointed out the Audit Report dated 06.03.2019 prepared by the Sub-auditor of the Cooperative Societies, Surat for the period from 01.04.2014 to 31.03.2018 and it is admitted that the Sub-auditor of the Cooperative Societies did not make any appointment of the Auditor till 31.10.2018 and hence, the Return of Income (ROI) was not filed within prescribed time limit. He has

submitted that subsequently, on an advice of the Income Tax Consultant, the petitioner-Society filed return of income on 29.11.2018, without waiting further for completion of audit however, the respondent-Department issued intimation order under section 143(1) of the Act dated 16.05.2019 holding that the gross total income in the hand of the petitioner-Society is Rs.3,62,115/- and thereafter, disallowed deduction under section 80P of the Act. It is submitted that the petitioner-Society filed an application on 16.02.2024 for the purpose of condoning delay under section 119(2)(b) of the Act for filing return of income for the Assessment Year 2018-19 and also to claim deduction under section 80P of the Act, however, the same has been rejected by the impugned order.

7. Learned advocate Mr.Gandhi has submitted that the aforesaid facts of non-appointment of the Auditor and the filing of the Audit Report in the year 2019 is not denied by the respondent-Department and hence, the impugned order may be quashed and set aside and the respondents may be directed to re-examine the application of the petitioner-Society seeking condonation of delay and also set aside the order dated 16.05.2019 passed under section 143(1) of the Act and they may be allowed to file a fresh return of income.

8. In response to the aforesaid submissions, learned Senior Standing Counsel Mr.Sanghani appearing for the respondent-Department has submitted that the present writ petition may not be allowed since unquestionably, the petitioner-Society has filed its return and the same is further also assessed. It is submitted that shelter taken by the petitioner-Society under the Audit Report is inappropriate since the petitioner-Society is a habitual late filer of the return of income. He has referred to the contents of the affidavit-in-reply and has submitted that it was the duty of the petitioner-Society to get its account audited in time and file its return within a due time limit and since it has failed to establish that, the order under section 119(2)(b) of the Act may not be set aside. He has submitted that it cannot be said that the petitioner-Society has faced genuine hardships on merits.

9. We have heard the learned advocates appearing for the respective parties at length and also perused the documents, as pointed out by them.

10. The entire case of the respective parties hinges on the provisions of Section 119(2)(b) of the Act. The same are as under:

"119. Instructions to subordinate 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 11[any income-tax authority, not being [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;"

11. It is not in dispute that the Audit Report of the Sub-auditor of Cooperative Societies, Surat is dated 06.03.2019 and Audit is undertaken for the period from 01.04.2014 to 31.03.2018, which is apparent from the said report. Thus, for the consolidated four years' Audit Report has been prepared on 06.03.2019. The petitioner-Society in the writ petition more particularly, in paragraph Nos.3 and 4 has categorically stated on affidavit that the Sub-auditor of Cooperative Societies did not make the appointment of the Auditor till 31.10.2018 and on the advice of the Income Tax Consultant, the petitioner-Society filed its return of income on 29.11.2018. Such assertions made in the writ petition have not been denied by the respondent-department. Thus, in wake of the fact that the Auditor Report is of the year 2019, the respondent-department ought to have allowed the application filed by the petitioner-Society

for condonation of delay instead of rejecting the same.

12. At this stage, we may refer to the provisions of the Circular No.13 of 2023 dated 26.07.2023 more particularly, paragraph No.6(ii). The same are as under:

> *"6. In the content of para-5 above, the CCsIT/DGsIT while deciding such applications for condonation of delay in furnishing return of income, shall satisfy themselves that the applicant's case is a fit case for condonation under the existing provisions of the Act. The CCsIT/DGsIT shall examine the following while deciding such applications-*
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> *(i) *** *** ****
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> *(ii) where delay in furnishing return of income was caused due to delay in getting the accounts audited by statutory auditors appointed under the respective state Law under which such person is required to get his accounts audited, the date of completion of audit vis-a-vis the due date of furnishing the return of income under sub-section (1) of section 139 of the Act; and"*

13. In our considered opinion, paragraph No.6(ii) of the Circular dated 26.07.2023 will come to the rescue of the petitioner-society. The delay of getting the accounts audited and filing of Audit Report belatedly by the Sub-auditor appointed by the State will come within the purview of the provisions of paragraph No.6(ii) of the said Circular. Thus, the respondent-Department was supposed to invoke the provisions of the aforesaid Circular and in wake of the undisputed

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fact of the Audit Report having been prepared in the year 2019, the petitioner's application was ought to be allowed as indubitably, filing of the report in the year 2019 belatedly by the Sub-auditor can be said to be genuine predicament.

14. Hence, we hereby quash and set aside the order dated 27.06.2024 rejecting the application of the petitioner-Society seeking condonation of delay of 29 days caused in filing the return of income. As a sequel thereof, we quash and set aside the intimation order dated 16.05.2019 passed by the respondent-Department under section 143(1) of the Act. The respondent-Department shall allow the petitioner-Society to file a fresh return of income within a period of one month for the Assessment Year 2018-19, as per section 139(1) of the Act.

15. The present writ petition stands allowed. Rule made absolute.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(PRANAV TRIVEDI,J)

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