



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 2148 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

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Approved for Reporting	Yes	No
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RAR PROPERTIES
 Versus
 PRINCIPAL COMMISSIONER OF INCOME TAX

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Appearance:

MR B S SOPARKAR(6851) for the Petitioner(s) No. 1
 MS MAITHILI D MEHTA(3206) for the Respondent(s) No. 1

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

Date : 23/03/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE PRANAV TRIVEDI)

1. Heard learned advocate Mr. B.S. Soparkar for the petitioner and learned Senior Standing Counsel Ms. Maithili Mehta for the respondent.
2. Rule returnable forthwith. Learned Senior Standing Counsel Ms. Maithili Mehta waives service of notice on behalf of the respondent.
3. By this petition under Article 226 of the Constitution of India, the petitioner has prayed to quash and set aside the order dated 26.11.2025 passed by the respondent - Principal Commissioner of Income Tax, Ahmedabad-3 (hereinafter referred to as the "respondent") under Section 119 (2)(b) of the Income Tax Act, 1961 (for short "the Act") whereby the



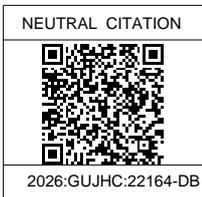
application to condone the delay occurred in filing the return of income by the petitioner for the Assessment Year 2023-24 is rejected on the ground that there is no genuine hardship demonstrated by the petitioner.

3. The brief facts of the case are as under :

3.1. The petitioner is a Firm *inter alia* engaged in the business of development of Special Economic Zone. It is the case of the petitioner that during the year under consideration i.e. Assessment Year 2023-24, the due date of filing the return of income under Section 139(1) of the Act was 31.07.2023 whereby the books of accounts were required to be audited by an accountant in terms of Section 44AB of the Act. It is the case of the petitioner that the petitioner believed under the advice of the accountant that it would be required to get the books of accounts audited by an accountant in terms of Section 44AB of the Act and therefore, it did not file its return of income by 31.07.2023.

3.2. It is the case of the petitioner that proviso to Section 44AB(a) of the Act entails the petitioner not to get the books of accounts audited by the accountant. Therefore, in wake of such realization, the petitioner filed the return of income for the Assessment Year 2023-24 claiming deduction under Section 80-IAB of the Act to the tune of Rs.52,92,631/-. It is the case of the petitioner that return was processed and intimation was issued under Section 143(1) of the Act on 02.02.2024 wherein the claim of exemption under Section 80-IAB of the Act was disallowed and demand of Rs.7,94,090/- was also raised on account of delayed filing of return of income.

3.3. Thereafter in view of the intimation issued under Section 143(1) of the Act, the petitioner filed an application under Section 119 (2)(b) of the Act on 01.03.2024 to condone the delay in filing the return of income. However, the respondent rejected the said application vide impugned order dated 26.11.2025 on the premise that the petitioner had failed to

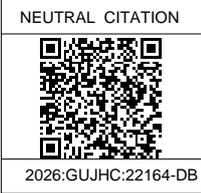


provide reasonable justification for delay in filing the return of income and there is no genuine hardship. Hence, the impugned order dated 26.11.2025 is impugned in the present writ petition.

4. Learned advocate Mr. B.S. Soparkar appearing for the petitioner has submitted that the petitioner filed an application under Section 119(2) (b) of the Act seeking condonation of delay of 87 days in filing the return of income for the Assessment Year 2023-24. The delay occurred due to *bona fide* mistake and incorrect advice rendered by the accountant of the Firm. It is submitted by learned advocate for the petitioner that the rejection of the said application by the petitioner had resulted into denial of the petitioner's claim for deduction under Section 80-IAB of the Act and thereby causing genuine hardship.

4.1. Learned advocate Mr. Soparkar has further submitted that power under Section 119 (2)(b) of the Act is required to be exercised liberally while determining "genuine hardship" with a view to advance substantive justice by deciding the matters on merits. However, the respondent has failed to appreciate that an applicant does not stand to gain by filing a belated claim and refusal to condone the delay may result in a meritorious claim being rejected at the threshold. It is further submitted that technical considerations of delay ought not to defeat the substantial justice, more particularly in the absence of any deliberate, negligent or *mala fide* conduct. In the present case also, the delay was occasioned solely due to an inadvertent error and incorrect advice of the accountant of the Firm. Therefore, non-condonation would lead to denial of the statutory benefit under Section 80-IAB of the Act causing genuine hardship to the petitioner. It is, therefore, submitted that the respondent ought to have adopted justice oriented and liberal approach consistent with settled legal principles.

4.2. It is further submitted that when explanation offered and hardship



demonstrated is genuine, the respondent ought to have accepted the application for condonation. Learned advocate Mr. Soparkar has placed reliance on the provision of Section 44AB of the Act. It was submitted by the learned advocate for the petitioner that at first glance to the language adopted under Section 44AB of the Act, the petitioner was justified in thinking that in the tax audit report as emphasized under Section 44AB of the Act, the scheduled limit was above Rs.1 crore. However, looking to the amended proviso, the petitioner realized that the scheduled limit would go beyond Rs.10 crores and therefore, there was no requirement for the assessee to file the return of income and the petitioner straightway filed the return of income on 26.10.2023.

4.3. Learned advocate Mr. Soparkar has placed reliance on the decision of this Court in case of *Jay Vijay Express Carriers v. Commissioner of Income Tax-III* reported in [2013] 34 Taxmann.com 61 (Gujarat) and on the decision of *Kerala High Court in case of Pala Marketing Co-operative Society Ltd. v. Union of India & Ors.,* reported in [2000] 311 ITR 177 (Kerala).

5. *Per contra*, learned Senior Standing Counsel Ms. Maithili Mehta appearing for the respondent has submitted that the petitioner has failed to showcase any genuine difficulty. It was submitted that there is no documentary evidence to showcase that the petitioner in fact faced any genuine hardship. In wake of such submissions, learned Senior Standing Counsel Ms. Mehta has submitted that there is no infirmity in the order passed by the respondent and she was not in a position to controvert the fact that mere misconstruction of the procedure contemplated under Section 44AB of the Act would result in denial of the claim under Section 80-IAB of the Act, thereby causing genuine hardship to the petitioner.

6. Heard the learned advocates appearing for the respective parties and perused the material on record. It is pertinent to note that the



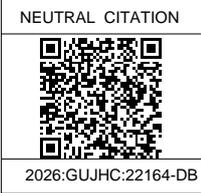
respondent has given the following reasons while rejecting the application of the petitioner :

“4. The Central Board of Direct Taxes has issued circular No.: 11/2024 dated 01.10.2024, which contained the instructions to the sub-ordinate authorities in respect of condonation of delay for the purpose of exercise of powers under section 119 of the Act. It deals with the aspect of avoiding genuine hardships to the assessee in respect of certain applications which made by him to the authority. It includes aspect of condonation of delay in filing of Return claiming refund and Return claiming carry forward of loss and set off thereon u/s 119(2)(b) of the IT Act.

5. From the CPC intimation u/s. 143(1) of the Act, it is seen that the assessee had claimed deduction u/s. 80 IAB amounting to Rs. 52,92,631/- in the return, which not been allowed. Tax demand and consequential interest has been calculated. The assessee application is silent on this aspect.

6. In light of relevant provisions of the Act and CBDT Circular referred supra, the facts of assessee's case are examined. It is observed that reasons provided for delay in filing return of income being that the accountant of the firm was unaware whether the audit u/s. 44AB of IT Act was required or not in terms of the sales made during F.Y. 2022-23, is general in nature and without any merits. Further, the assessee failed to submit documentary evidences to justify delay in filing return of income or evidences as submitted by assessee no where prove "genuine hardship" as faced by assessee as discussed in Section 119(2) (b) as well as CBDT Circular and decisions referred supra. Hence, the assessee has failed to provide any reasonable justification for delay in filing the return of income for AY 2023-24. Also in the application and ITR filed by assessee there is no claim of refund and as such the case of assessee covered by Circular 11/2024 which allows claim of refund and set off/carried losses which remain to be claimed owing to genuine hardships faced by assesseees.”

6.1. On perusal of the above findings it is apparent that the respondent has ignored the fact that the misconstruction of the provisions by the accountant of the firm resulting into non-consideration of the genuine case of the petitioner would result into genuine hardship as the petitioner would be unable to get benefit under Section 80-IAB of the Act. It is not in dispute that during the time period of getting the books of accounts audited i.e. conducting tax audit as required under Section 44AB of the Act, the petitioner came into knowledge that provision of Section 44AB of the Act will come into play and would be applicable and therefore, there



was no need of tax audit of the books of accounts. It is not in dispute that the petitioner has a case of getting benefit of Rs.52,92,634/- as deduction under Section 80 IAB of the Act. In such circumstances when the petitioner is entitled to deduction of the amount so mentioned, which is not denied in the impugned order, we are of the opinion that rejection of application to condone the delay by the respondent on the ground that the petitioner did not showcase any genuine hardship was not tenable and it would amount to unjust enrichment by the State by not allowing the deduction due to the petitioner. It is further observed that misconstruction of the proviso, which compelled the petitioner to undergo tax audit, though otherwise not required, cannot be held to be fatal to the case of the petitioner. Such misconstruction cannot entitle the respondent to reject the application for condonation and consequently deny the claim under Section 80-IAB of the Act to the petitioner.

7. In view of the above, the impugned order dated 26.11.2025 passed by the respondent is hereby quashed and set aside and the respondent is directed to pass a fresh *de novo* order condoning the delay occurred in filing the return of income by the petitioner for the Assessment Year 2023-24. Such exercise shall be completed within a period of twelve weeks from the date of receipt of copy of this order. Rule is made absolute to the aforesaid extent with no order as to cost.

(A. S. SUPEHIA, J)

(PRANAV TRIVEDI, J)

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