

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 20021 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

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Approved for Reporting	Yes	No

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RAJGRIN INFRALINK LLP

Versus

THE PRINCIPAL COMMISSIONER OF INCOME TAX 1 SURAT

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Appearance:

MR SN SOPARKAR, SENIOR ADVOCATE with MR B S SOPARKAR(6851)
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

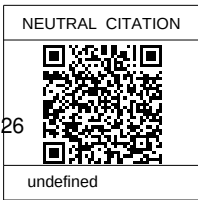
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 28/09/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

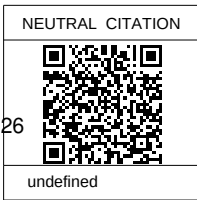
1. The present writ petition has been filed by the petitioner seeking quashing and setting aside of the order dated 27.10.2023 passed under Section 119(2)(b) of the Income-Tax Act, 1961 (for short 'the Act') rejecting the application of the petitioner seeking condonation of delay of 25 days in filing the return of income for Assessment Year (for short 'A.Y.') 2020-21.



2. At the outset, learned Senior Advocate Mr.S.N. Soparkar appearing for the petitioner submitted that this Court, in the judgment dated 02.12.2025 passed in Special Civil Application No.19799 of 2023 in the case of the present petitioner has quashed and set aside the order rejecting the application seeking condonation of delay filed under the provision of Section 119(2)(b) of the Act for the A.Y. 2021-2022. It is submitted that the only difference is with regard to the delay of 13 days which was examined by this Court in Special Civil Application No.19799 of 2023 whereas in the present case the delay is of 25 days. Thus, it is urged that the similar order may be passed.

3. Opposing the foregoing submissions as well as the present writ petition, learned Senior Standing Counsel Mr.Karan G. Sanghani has submitted that there is a quintessential difference/aspect from the earlier case of the petitioner which was examined by this Court in the writ petition being Special Civil Application No.19799 of 2023, and the present case is that the respondent Assessing Officer has passed the assessment order on 29.09.2022 denying the claim of the petitioner which is subject matter of challenge before the Commissioner of Income-tax (Appeals). It is urged that in the present case the application under Section 119(2)(b) of the Act has been filed after the assessment order has been passed, and since the petitioner has filed the Appeal before the Commissioner of Income-tax (Appeals) challenging the assessment order, the impugned order may not be set aside.

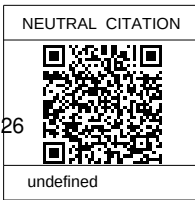
4. In rejoinder, learned Senior Advocate Mr.Soparkar has submitted that the ground taken on behalf of the respondent by learned Senior



Standing Counsel is misconceived as the petitioner / assessee has acquired the knowledge of rejection of the claim of deduction under Section 80 IBA of the Act Rs.19,30,28,003/- on passing of the assessment order, and since the Commissioner of Income-tax (Appeals) does not have the power of condoning the delay, the petitioner has filed the present writ petition.

5. It is submitted that this Court can only set aside the order passed by the respondent authority in rejecting the application filed under Section 119(2)(b) of the Act, and hence the pendency of the Appeal before the Commissioner of Income-tax (Appeals) challenging the assessment order for disallowing two claims cannot act as a predicament before this Court in setting aside the impugned order. Moreover, he has urged that the petitioner is not seeking any order on merits so far as claim under deduction under Section 80IBA of the Act is concerned.

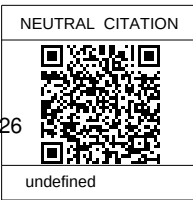
6. We have heard the learned advocates appearing for the respective parties at length. In response to a specific query raised by us to the learned Senior Standing Counsel Mr.Sanghani as to whether the Commissioner of Income-tax (Appeals) has any power of condoning the delay in filing the return and examining the claim of deduction under Section 80IBA of the Act; he has fairly pointed out that the Commissioner of Income-tax (Appeals) has no power to condone the delay and the said power only rests with the Board viz., Central Board of Direct Taxes. Thus, in view of the fair stand taken before us, we are of the opinion that this Court can always examine the issue with regard to the examination of the order rejecting an application filed by the assessee seeking condonation of delay under the provision of Section 119(2)(b) of



the Act, and merely because the assessment order is passed, the same will not in any manner restrict the power of this Court to examine the validity of the order passed on the application filed under Section 119(2)(b) of the Act.

7. The brief facts which has constrained the petitioner / assessee to file the writ petition is that due to late filing of his return under Section 139(1) of the Act on 31.10.2020 because of COVID outbreak, the petitioner filed its return on 25.03.2021 for A.Y. 2020-21 offering income of Rs.1,09,87,600/-. The case of the petitioner was selected for scrutiny assessment under Section 143(3) of the Act read with Section 144B of the Act and the assessment order was passed on 29.09.2022. The claim of the petitioner for deduction of Rs.19,30,28,003/- under Section 80IBA of the Act was rejected on the ground of belated filing of the return along with the claim of amount of Rs.19,19,37,063/- relating to the under-recognition of Revenue which was also disallowed by the Assessing Officer.

8. The petitioner being aggrieved of the assessment order filed the Appeal before the Commissioner of Income-tax (Appeals) on both the disallowance which is pending. When the petitioner became aware that the Commissioner of Income-tax (Appeals) has no power of condoning the delay in filing of return which has resulted into the disallowance of deduction to the tune of Rs.19,30,28,003/-, he filed an application under Section 119(2)(b) of the Act on 17.08.2023 seeking condonation of delay in filing the return of income. The same was rejected by the impugned order dated 27.10.2023.



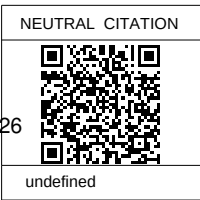
9. It is not in dispute that for the A.Y. 2021-22 when the petitioner had made a similar application seeking condonation of delay in filing return of income and the same having been rejected, it culminated into the writ petition being Special Civil Application No.19799 of 2023. By the judgment and order dated 02.12.2025 this Court allowed the writ petition by examining the same on merits and in wake of the fact that there was a delay of 13 days in filing the return of income whereas in the present case there has been delay of 25 days. This Court, after hearing the respective sides, has passed the following order :-

“13. The respondent Officer has also assigned another reason that as the petitioner would be entitled for claiming the deduction under Section 80 IBA of the Act, the application seeking condonation of delay is required to be rejected. We do not subscribe to such a view in wake of the fact that the respondents while passing the order was also equally responsible for considering the reasons assigned by the petitioner in its application explaining the cause for belatedly filing the return after a period of 13 days.

14. We may, at this stage, refer to the decision of Vrushti Aulkumar Shah (supra), wherein the Coordinate Bench of this Court has set aside the order refusing to condone delay of 15 days, by recording as under:

“5.4 In Sitaldas K. Motwani vs. Director, General of Income Tax and others [(2009) SCC online 2195], the Bombay High Court observed that words ‘genuine hardship’ used in section 119(2)(b) should have been construed liberally. It was observed that refusing to condone the delay could result into a meritorious matter being thrown out the very threshold defeating the cause of justice.

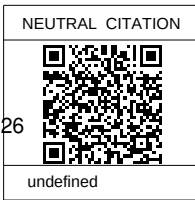
5.5 Section 119(2)(b) of the Act is a statutory authorisation whereby the Board may authorise an income tax authority to hear an application or claim for any exemption, deduction, refund or for any other relief under the Act after expiry of period specified for the purpose in the relevant provisions of the Act for making such application. After hearing any such application post the expiry of period specified, the authority may deal with the same on merits in accordance with the law. It is avowed purpose of the provision in section 119(2)(b) to avoid genuine hardship in the classes of cases as is expressly mentioned.



5.6 The words in the section, “if it considers it desirable or expedient to do so for avoiding genuine hardship” give wide power on the Board and obligates the authority concerned dealing with the request for acceptance of the applicant etc.. to consider the relevant facts and reasons which may have been advanced for condoning the delay. The object is to help the assessee who for good and valid reasons are prevented from moving an application for any purpose within the time stipulated under the Act. In other words, their applications may have witnessed delay for several meritorious reasons. It is true that merit of the case of the assessee could be simultaneously considered by the authority exercising powers under section 119(2)(b) of the Act, however, the dominant purpose to be achieved is to condone the delay and therefore, it is the grounds offered explaining the delay which should overweigh with the authorities.”

15. Thus, looking to the prevailing situation at the relevant time wherein the entire nation was facing COVID-19 pandemic, in our opinion, the explanation tendered by the present petitioner in his application seeking condonation of delay of 13 days was required to be accepted. Hence, the impugned order dated 27.10.2023 is hereby quashed and set aside and the application of the petitioner for condonation of delay in filing the return of income for A.Y. 2021-22 under the provisions of Section 119(2) (b) of the Act shall be restored to its original file. The respondent shall consider the application in light of the observations made by this Court and pass appropriate order within 12 weeks from the date of receipt of writ of this Court.”

10. The revenue has not disputed the aforementioned order, passed in favour of the petitioner, except to the extent that for F.Y. 2021-22, the directions issued by this Court for F.Y.2020-21, will not come to the rescue of the petitioner, since an assessment order is passed and the petitioner has filed the Appeal before the Commissioner of Income-tax (Appeals). We do not subscribe to the objection raised by the Revenue since it is an admitted position that the Commissioner of Income-tax (Appeals) does not have the power in condoning the delay and the remedy invoked by the petitioner by filing an application under Section 119(2)(b) of the Act reconciles with the statutory scheme of the Act. The petitioner has availed the remedy of filing an application for seeking



condonation of delay of 25 days in filing the return, since he does not have any other remedy which ultimately has been rejected by the respondent authority. Thus, merely because an assessment order is passed and the Appeal filed by the petitioner for making an addition of total income of Rs.19,19,37,003/- on account of under recognition of Revenue along with the disallowance of deduction claimed under Section 80IBA of the Act of Rs.19,30,28,003/- is pending before the Commissioner of Income-tax (Appeals), this Court cannot allow the impugned order to stand, since the disallowance of deductions will result into undue hardship to the petitioner, more particularly, when this Court has set aside the similar order passed for A.Y.2021-22.

11. Hence, the impugned order dated 27.10.2023 is quashed and set aside in terms of the judgment and order 02.12.2025 passed in Special Civil Application No.19799 of 2023 for A.Y. 2021-22.

12. We clarify that on setting aside of the impugned order, the Commissioner of Income-tax (Appeals) shall examine the disallowance of the deduction under Section 80IBA of the Act of Rs.19,30,28,003/- on merits and pass appropriate order in accordance with law.

(A. S. SUPEHIA, J)

(VAIBHAVI D. NANAVATI,J)

K.K. SAIYED/39