

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 11322 of 2025****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA****and****HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

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Approved for Reporting	Yes	No

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LOKENDRA RAMANBHAI PATEL**Versus****COMMISSIONER OF INCOME TAX(IT AND TP) AMEDABAD & ANR.**

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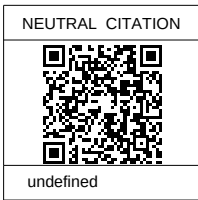
Appearance:**VIJAY H PATEL(7361) for the Petitioner(s) No. 1****MR.VARUN K.PATEL, SR. STANDING COUNSEL for the Respondent(s) No.****1,2****NOTICE SERVED for the Respondent(s) No. 1,2**

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CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA**and****HONOURABLE MR. JUSTICE PRANAV TRIVEDI****Date : 06/10/2025****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE PRANAV TRIVEDI)**

1 Heard learned advocate Mr.Vijay Patel for the petitioner and learned Senior Standing Counsel Mr. Varun Patel for the respondent.

2 Rule returnable forthwith. Learned Senior

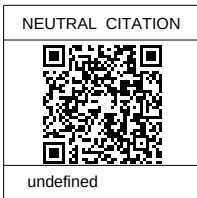


Standing Counsel Mr.Varun Patel, waives service of notice of rule for and on behalf of the respondent. Having regard to the controversy involved in this petition, with the consent of the learned advocates for the respective parties, the matter is taken up for final hearing.

3 By this petition under Articles 226/227 of the Constitution of India, the petitioner prays for quashing and setting aside the order dated 16.06.2025 passed under Sec.119(2)(b) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act' for short) for the Assessment Year 2021-22.

4 The brief facts leading to filing of the present writ petition are as under:

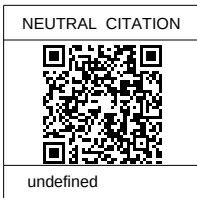
4.1 The petitioner is an individual and a Non-Resident Indian (N.R.I) residing permanently in



Nairobi since the year 1965. During the Assessment Year 2021-22, the petitioner had sold the residential plot No.79 at Gulmohar Residential Enclave on 21.05.2020. The plot was jointly owned by the petitioner and his wife. The consideration for sale of the plot was Rs.1,12,87,500/-. It was during this year that the petitioner earned income by way of long term capital gain and also by way of interest.

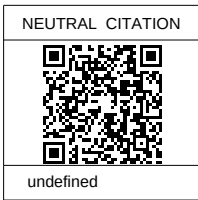
4.2 It is the case of the petitioner that the purchaser of the property deducted tax at source of Rs.12,91,290/- from the amount of consideration and deposited the same with the Income Tax Department on 31.03.2020 and also filed the TDS return.

4.3 It is the case of the petitioner that the tax deducted at source is reflected in Form 26AS in the Assessment Year 2020-21 instead of Assessment Year 2021-22.



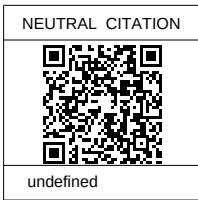
4.4 It is further the case of the petitioner that the transactions took place on 21.05.2020 and the petitioner left India on 23.06.2020. That was the COVID period and due to travel restrictions, the petitioner could not visit India for the purpose of filing of Return of Income. It was under these circumstances that the petitioner was unable to file original Return of Income for the Assessment Year 2021-22 within due date as prescribed under Sec.139(5) of the Act.

4.5 It was in this context that the petitioner preferred an application under Sec.119(b) of the Act praying for condoning the delay caused in filing of Return of Income for the Assessment Year 2021-22. The application was filed on 28.11.2024. During the course of hearing, the respondent issued notice to file written submission as well as an opportunity of personal hearing was granted to the petitioner. The



petitioner filed its reply on 24.12.2024. However, by way of order dated 16.06.2025, the application of the petitioner came to be rejected which is now impugned in the present writ petition.

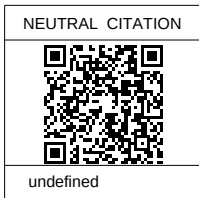
5 Mr.Vijay Patel, learned advocate for the petitioner has submitted that there was genuine hardship on the part of the petitioner, and therefore, the impugned order dated 16.06.2025 is perverse. The case of the petitioner clearly falls within the ambit of four corners of Sec.119 of the Act. The petitioner could not file his Return of Income due to genuine hardship caused by COVID-19 pandemic. Even this Court, in catena of decisions has allowed the application preferred by the assessee under Sec.119(2)(b) of the Act which were related to filing of Return of Income during the COVID-19 pandemic. In wake of such submissions, Mr.Patel, learned advocate for the petitioner, has requested to allow the



present writ petition.

6 Per Contra, Mr.Varun Patel learned Senior Standing Counsel for the respondent, would controvert the fact that the issue has arisen during the COVID-19 pandemic. However, it was contended that the impugned order is passed in accordance with the jurisdiction vested under Sec.119(2)(b) of the Act. It was submitted by Mr.Patel, learned Senior Standing Counsel that the petitioner is not able to prove genuine hardship and that inconvenience cannot be equated with genuine hardship.

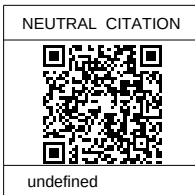
6.1 It was further submitted that during the pandemic, the government had already provided several statutory relaxations and extension of deadlines during that period. However, the application under Sec.119(2)(b) is only filed by the petitioner in the year 2024. Therefore, the impugned



order passed by the authority is just and proper.

7 Having heard the learned advocates appearing for the respective parties and having perused the materials on record, it is not in dispute that the petitioner is a Non Resident Indian staying in Nairobi and was genuinely prevented from filing the return in COVID-19 pandemic. The respondent ought to have condoned the delay in filing the Return of Income for the Assessment Year 2020-21 as that was the period of genuine COVID hardships. It is also not in dispute that the petitioner has furnished computation of income along with reply. It is also not in dispute that the purchaser of the property has deposited the TDS which is also reflected in Form 26AS. Therefore, the application preferred by the applicant could not have been rejected.

7.1 In similar circumstances, this Court, in the case

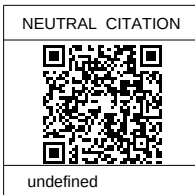


of ***Yogesh Rasiklal Chandrani vs. Commissioner of Income-tax IT & TP.***, reported in ***[2025] 173 taxmann.com 660 (Gujarat)***, has made the following observations:

“14. Considering the submissions made by the learned advocates for both the sides and in view of the fact that the petitioner is a non-resident staying at USA was genuinely prevented from filing the return in view of Covid-19 pandemic situation, the respondent ought to have condoned the delay in filing the return for Assessment Year 2020-21. It is also not in dispute that the petitioner has furnished computation of income along with computation of long-term capital gain along with reply dated 17.01.2023 filed in response to the notice dated 10.01.2021 issued by the respondent which is placed on record.

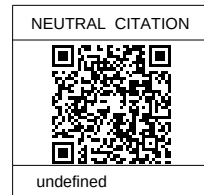
15. On perusal of the Form 26 AS for AY 2020-21, it is also found that the purchaser of the property namely M/s. Ashutosh Builders deposited the amount of TDS which was deducted at the time of purchase in the year 2019 only on 11.06.2022. Therefore, the petitioner was not able to file the return for Assessment Year 2020-21 claiming the refund in view of late deposit of TDS by the purchaser of the property.

16. In view of the aforesaid facts and circumstances of the case, the impugned order dated 03.03.2023 passed under section 119(2)(b)



of the Act is not tenable and is accordingly quashed and set aside and delay in filing the return of income for A.Y.2020-21 is required to be condoned to permit the petitioner to file return of income for Assessment Year 20202021 belatedly claiming the refund of Rs.5,07,790/- as per the computation of income placed on record at Annexure-F of the paper book. The respondent is therefore directed to pas a fresh de novo order condoning the delay in filing the return of income for A.Y. 2020-21 by the petitioner within twelve (12) weeks from the date of receipt of copy of this order.”

8 In view of the same, the impugned order dated 16.06.2025 passed under Sec.119(2)(b) of the Act is not tenable and is accordingly quashed and set aside and the delay caused in filing Return of Income for the Assessment Year 2020-21 is required to be condoned and the petitioner is permitted to file the Return of Income for the Assessment Year 2020-21. The respondent is also directed to pass a fresh *de novo* order condoning the delay in filing the Return of Income for the Assessment Year 2020-21 by the petitioner within twelve (12) weeks from the date of



receipt of copy of this order. Rule is made absolute to the aforesaid extent. No order as to costs.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI,J)

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