IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.282 OF 2014
IN
INCOME TAX APPEAL [L] NO.430 OF 2014

Ravindra Gawande .... Applicant
In the matter between
Castrol India Ltd. .... Appellant
Vs.
Deputy Commissioner of Income-tax,
Rg.-8(1), Mumbai & Anr. .... Respondents

Mr. Nitesh Joshi i/b Mr. Atul Jasani for the Applicant.
Mr. Arvind Pinto for the Respondents.

CORAM: M.S. SANKLECHA &
N.M. JAMDAR, JJ.

DATE : 17 JULY 2015

P.C:

1. This notice of motion seeks condonation of 381 days delay in filing an appeal against the order of the Tribunal dated 14-9-2012, passed in respect of Assessment Year 2002-03.

2. The applicant has pointed out that for the Assessment Years 1997-98 to 2001-02 the applicant had

disclaimed depreciation. However, same was negatived by the Tribunal resulting in depreciation being allowed. The appeals against the orders of the Tribunal for the aforesaid Assessment Years are pending, either in the High Court or in the Apex Court.

3. For the subject Assessment Year, the applicant thus claimed depreciation. However, as they had not claimed depreciation in the earlier year, the written down value on which depreciation was claimed was higher. However, the Tribunal did not accept the applicant's claim and proceeded to compute depreciation on the written down value of the assets arrived at after taking into account its orders passed for the earlier Assessment Years, allowing depreciation. The applicant *bona fide* believed that there was no requirement to file an appeal from the impugned order as the decision rendered by the Courts for the Assessment Years 1997-98 to 2001-02 would conclude the issue of written down value in respect of which depreciation has to be claimed in the subject Assessment Year. Thus, it would only be consequential.

4. It was later on, when orders were passed by the Tribunal for the Assessment Years 2003-04 and 2004-05 on the same issue adverse to them, that on discussing the issue of filing appeal, with Senior Counsel, they were advised that as a matter of abundant caution it would be better to file an appeal for the subject Assessment Year, including Assessment Year 2002-03. This advice was received on 23-1-2014 and the applicant has filed the present appeal on 10-2-2014. Besides, appeals for the Assessment Years 2003-04 and 2004-05, on the same issue, are filed and are pending.

5. It is in the aforesaid circumstances that we are of the view that the applicant was under a *bona fide* belief that no appeal ought to be filed from the impugned order dated 14-9-2012 for the Assessment Year 2002-03. Thus, the delay in filing the appeal is condoned. Notice of motion is made absolute in terms of prayer clause (a).

(N.M. JAMDAR, J.) (M.S. SANKLECHA, J.)