IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 646 OF 2011
IN
INCOME TAX APPEAL NO. 6012 OF 2010

The Commissioner of Income Tax-7 ..Applicant

Vs.

Ruby Mills Ltd. ..Respondent

....

Mr. Ashok Kotangle, Advocate a/w Mr. Arun Nagarjun for Applicant.
Mr. R Murlidhar, Advocate a/w Mr. Rajesh Yadav, i/b Rajesh Shah and Co.

....

CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 6 FEBRUARY 2015

P.C.:

1. This Notice of Motion has been taken out by Revenue praying for condonation of delay of 559 days in taking out the present Notice of Motion which seeks to restore the appeal dismissed on 22nd June 2009.

2. The affidavit in support states that by an order dated 22nd June 2009, this Court had granted four week's time to the Revenue to remove its objections. However it is stated in the affidavit that the objections could not be removed because there was change in Assessing Officer and there was internal movement of correspondence within the

the Department leading to the dismissal of the appeal on 20th July 2009. The objections which the Revenue had to remove were the following:

(a) mark exhibits in the margin;

(b) replace page no.32;

(c) appeal barred by limitation;

(d) second set to be filed as per first.

The objections were of a clerical nature and if the Revenue was serious about it, the same would be removed. Moreover, the affidavit in support of the Motion does not indicate any reason for the delay post dated 20th July 2009.

3. Besides it must be pointed out that one of the objection was the appeal is itself barred by the limitation. We find that no Notice of Motion has been taken out by the Revenue seeking condonation of delay in filing the appeal. The attitude of the Revenue appears to be casual. It may also be pointed out that for the preceding Assessment Year i.e. A.Y. 2000-01, this Court by an order dated 3 June 2008 dismiss the Revenue's appeal for a delay of 285 days in filing the same.

4. The learned Counsel for the Respondent places reliance upon decision of Supreme Court passed in ***Postmaster General Vs. Living Media India Ltd.*** reported in ***2012 (3) SCC 563*** wherein it has been observed as under:

> "27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us."

The aforesaid observations are clearly applicable to the facts of the present case.

5. In view of the above, we find that the Revenue has been negligent in prosecuting the present appeal. Accordingly, the Notice of Motion is dismissed.

[G.S. KULKARNI, J] **[M.S. SANKLECHA, J.]**