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

NOTICE OF MOTION NO. 911 OF 2009
IN
INCOME TAX APPEAL NO. 103 OF 2009

The Commissioner of Income Tax-III, Thane ..Applicant

Vs.

Rani W. Biljani ..Respondent

....

Mr. Suresh Kumar, Advocate i/b N.R. Prajapati for Applicant.
Mr. V.S. Hadade, Advocate for Respondent.

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CORAM : M.S. SANKLECHA &
N.M. JAMDAR, JJ.
DATED : 12th JUNE 2015

P.C.:

This Notice of Motion seeks to recall the order dated 12 February 2009 passed by this Court. The order dated 12 February 2009 dismissed the revenue's appeal on the ground that the tax effect in this appeal was only Rs.2.47 Lakhs and the same was preferred in the face of Central Board of Direct Taxes (the 'CBDT') circular in force at that time. The CBDT circular directed the revenue that where the tax effect less than Rs.4 Lakhs, appeal should not be filed by the revenue. Further the order dated 12

February 2009 directed the revenue to recover the sum of Rs.9,430/- from the officer who filed this appeal in the face of the circular.

2. The present Notice of Motion was taken out in 2009 seeks to recall the order dated 12 February 2009 dismissing the appeal and directing the revenue to recover the amount from the salary of the officer who had preferred the appeal within a period of one month from 12 February 2009. In these circumstances, it was incumbent upon the revenue to have mentioned the matter before the Bench in 2009 itself when they took out the Notice of Motion and seek a stay of the order dated 12 February 2009 directing recovery of Rs.9,430/- from the officer of the revenue. In any case no flaw in the decision making process is shown warranting a recall of the order dated 12 February 2009. Thus we find no reason to recall the order as the same was passed after hearing the revenue and also considering CBDT circular in existence at the relevant time.

3. Accordingly, the Notice of Motion is dismissed.

4. However it is clarified that in case the revenue has not recovered the amount from the salary of the concerned officer as directed by order dated 12 February 2009 they should do the same and report compliance within one month from today.

[N.M. JAMDAR, J] **[M.S. SANKLECHA, J.]**