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

NOTICE OF MOTION NO. 1790 OF 2009
IN
INCOME TAX APPEAL NO. 408 OF 2009

The Commissioner of Income Tax-15, Mumbai ..Applicant
Vs.
Pravinkumar B. Jain ..Respondent

....
Mr. Nirmal Mohanty, Advocate for Applicant.
Mr. Ashok Patil, Advocate i/b Aasifa Khan for Respondent.
....

CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 21 AUGUST 2015

P.C.:

This notice of motion has been taken out to recall the order dated 27 April 2009 by which the revenue's appeal was dismissed for default. The affidavit in support of the notice of motion indicates that the advocate appearing for the revenue was in Court, but as she suddenly felt unwell, therefore she had to leave the Court premises resulting in dismissal of the appeal.

2. Mr. Patil, the learned Counsel for the respondent-assessee submits that the appeal is dismissed on 27 April 2009. The learned

Counsel for the respondent/assessee submits that though the present notice of motion was taken out in 2009, it is come up for hearing only in 2015 and the same does cause prejudice to the respondents. This in view of the fact that at the time when the impugned order was passed, the issue arising in the present appeal was covered by the decision of the Delhi High Court in ***CIT Vs. Eltek Sgs (P) Ltd.***[1] in its favour. However, thereafter the same was reversed by the Apex Court in ***Liberty India Vs. CIT***[2]. It is pertinent to note that the decision of the Apex Court in Liberty India was rendered on 31 August 2009. The respondent-assessee was also served with the Notice of Motion on 22 May 2009. It is also relevant to note that at that time there was no decision on this issue of the jurisdictional Court. In the above circumstances, it is open to the respondent-assessee to move an application for waiver of interest under Section 220(2A) of the Act if he so deems fit. It would be considered by the Commissioner of Income Tax on its own merits without in any manner being influenced by any observations herein.

1. 215 CTR 279
2. 317 ITR 218

4. We are satisfied that the reasons in support of the Notice of Motion. Consequently, the delay is condoned. The notice of motion is made absolutely in terms of prayer clause (A).

5. At the request of the respondent-assessee, the appeal is placed for admission on 31 August 2015.

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