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

NOTICE OF MOTION NO. 1350 OF 2012
IN
INCOME TAX APPEAL NO. 194 OF 2010

The Commissioner of Income Tax
Central-III, Mumbai … Applicant

v/s

Haryana Ship Breakers Ltd. … Respondent

Mr.P.C. Chhotaray for the applicant.

Mr.Atul Sajani for the respondent.

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

DATED : 31ST JULY, 2015

P.C.:

This notice of motion taken out by the revenue is for a recall of the order dated 23 July 2009 passed by this Court.

2 The order dated 23 July 2009 reads as under :-

*"**P.C.:***

1. All the above appeals which are placed for admission today, were in fact placed for admission on an earlier occasion when conditional order was passed to the effectthat all office objections should be removed within the time stipulated therein, failing which the appeals shall stand *dismissed without reference to the Court.*

2. Admittedly, the office objections have not been removed in all the above appeals within the stipulated time though the appeals are pending in this Court for sufficiently long time. It is pertinent to not that wherever extension of time for removal of office objections were sought within the period specified, this Court has granted extension of time. However, in all the above matters, neither the objections are removed within the stipulated time nor extension of time is sought for removing the office objections. As a result, the conditional order has become operational and all the above appeals stood dismissed for want of removal of office objections after the expiry of the stipulated time. In this view of the matter, no further order is necessary."

3 It would therefore be noticed that the order dated 23 July 2009 was not an order which dismissed the revenue's appeals but only stated that no directions are necessary and the earlier order by which the appeal stood dismissed would continue. Therefore, the application seeking to recall the order dated 23 July 2009 by the revenue is misconceived.

4 Be that as it may. even otherwise, as stated in the affidavit in support, the conduct of the revenue in this matter does not warrant the delay being condoned. The applicant has, on dismissal of the appeal for non-removal of office objections, had taken out a review petition on 29 October 2009 being Review Petition (L) No.80 of 2009. It was dismissed on 3 May 2012 as none was present on behalf of the review petitioner i.e. the revenue. Thereafter the present notice of motion was taken out by the revenue and it was registered on 12 June 2012.

5 It is very clear from the facts as stated above that the applicants were aware of its appeal having being dismissed on 23 July 2009 itself when they were represented. After that date, the revenue took out a review petition on 29 October 2009 which also they did not prosecute. The affidavit in support of notice of motion gives no reason as to why the revenue did not take out the present notice of motion earlier to 12 June 2012. No explanation is offered as to why even after knowledge of the order dated 23 July 2009 the applicants took no steps to take out the present notice of motion which was registered on 12 June 2012. As no satisfactory explanation has been offered nor any responsibility fixed for this gross delay of 980 days, we do not see any reason to condone the delay.

6 Accordingly, the notice of motion is dismissed. No order as to costs.

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