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

NOTICE OF MOTION NO. 876 OF 2014
IN
INCOME TAX APPEAL NO. 191 OF 2012

WITH

NOTICE OF MOTION NO. 877 OF 2014
IN
INCOME TAX APPEAL NO. 64 OF 2006

Triumph International Finance India Ltd. ..Applicant

Vs.

Assistant Commissioner of Income Tax,
Central Circle-40, Mumbai ..Respondent

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Mr. J.D. Mistry, Sr. Advocate a/w Mr. Nitesh Joshi i/b A.K. Jasani for Applicant.
Mr. N.C. Mohanty, Advocate for Respondent.

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

P.C.:

1. These two notice of motions have been taken out for fixing the date for final hearing of two appeals viz. Income Tax Appeal No. 64/2006 (quantum appeal) and Income Tax Appeal No. 191/2012 (penalty appeal) both are relating to block period 1 April 1990 to 23 March 2001. The prayer for out of turn hearing has been made in view of the applicant's business coming to a stand still in view of attachment of its

funds with the Bankers, depositories and debtors including Stock Exchange.

2. In the quantum proceedings, a tax demand of Rs.680.82 Crores including interest was made on the applicant and penalty of Rs.672.44 Crores has also been imposed. It is the petitioner's case that consequent to the demands of tax and penalty, the applicant paid amount of Rs.14.64 Crores but with regard to the balance the applicant has not been able to pay resulting in consequent garnishment of its funds with bankers, depositories and debtors including Stock Exchange. Consequently, the applicant is unable to carryon it's business. Besides according to the applicant the matter is within a very narrow compass namely whether the entire demand which has arisen on account of mismatch in the client's ID at the time of execution of trade on behalf of the client. It is the applicant's case that the shares which were traded in on behalf of the client were attributed as the applicant's own trade by default. Additional evidence viz. clients confirming that these transaction belong to them was not admitted by the CIT(A) although on the same issue in regular assessment proceeding, the Tribunal has passed an order in Assessment Year 1998-99 and 1999-00 in favour of the applicant.

2. Mr. Mohanty, learned Counsel for Revenue states that applicant is carrying on business and in that respect relies upon the

applicant's balance sheet for the Assessment Year 2012-13 which indicates interest from fixed deposits to the extent of Rs.2.12 Crores.

3. As the issue appears within a narrow scope and the applicant is seriously prejudiced by virtue of the garnishee notice issued to the applicant's bankers, depositors and debtors resulting in its inability to carry on its business as stock broker.

4. Accordingly, both Notice of Motions are allowed in terms of prayer clause 'a'. The applicants are given liberty to mention the matter for final hearing before the Bench taking up Income Tax Appeal in second week of April 2015. Both Motions are disposed of.

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