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

NOTICE OF MOTION NO. 2280 OF 2009
IN
INCOME TAX APPEAL (L) NO. 1083 OF 2008

The Commissioner of Income-Tax,
Mumbai .. Applicant
v/s.

M/s. Rama Petrochemicals Ltd. ..Respondent

Mr. A.R. Malhotra a/w N.A. Kazi for the applicant
Mr. J.D. Mistry, Sr. Counsel a/w Atul Jasani for the respondent

CORAM : M.S. SANKLECHA &
G.S. KULKARNI, J.J.

DATED : 4th DECEMBER, 2015.

P.C.

1. This notice of motion has been taken out by the Revenue seeking condonation of delay of 935 days in filing the appeal. The affidavit-in-support of the notice of motion sets out following chronology of events to explain the reasons for the delay :-

"3. …... (i) Impugned order of ITAT was received in the office of CIT Mumbai on 10/06/2005.

(ii) The order of ITAT was received in the office of AO

(ACIT/ITO) Mumbai on 10/06/2005.

(iii) The scrutiny report was called for on 13/06/2005 and the same was sent by AO on 17/08/2005.

(iv) Jurisdictional CIT received scrutiny report on 18/08/2005.

(v) CIT-Mumbai approved filing of appeal on 25/08/2005.

(vi) Chief CIT approved filing of appeal on 29/08/2005.

(vii) File sent to Govt. Counsel on 23/05/2006.

(viii) Draft of appeal received on or around 14/09/2006.

(ix) The appeal was filed on 09/04/2008."

2. Thereafter, in paragraph 4 of the affidavit, it is stated as follows :-

"4. I say that in the aforesaid circumstances and from the chronological dates and events as above it would be seen that the office of the Appellant was diligently following the matter for filing of the appeal on the due date itself. However, inspite of best efforts and for reasons beyond the control of the Appellant's office including the administrative difficulties as explained above and supplying of some material information to panel counsel subsequently which he had found missing, together with the voluminous work of typing, checking and compilation of documents, the appeal could be filed only on 09/04/2008 thereby being a delay of 935 days in filing

the subject appeal."

3. We find that affidavit-in-support to the notice of motion makes a bald statement of there being an administrative difficulties, which led to the delay in filing the present appeal. There is no explanation forthcoming for condoning the delay of 935 days in filing the appeal. In any event, the last two dates in the list of events i.e. draft of appeal received from the Counsel by the Revenue on 14/09/2006 and the appeal was filed only on 09/04/2008 is not even attempted to be explained.

4. The Apex Court in the case of ***Office of the Chief Post Master General & Ors. Vs. Living Media India Ltd. & Anr. (2012) 348 ITR 7(SC)*** has held, as under :-

> *"12. 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. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

In our view, it is the right time to inform all the Government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The Government departments are under a special obligation to ensure that they perform their duties with

> *diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for Government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay."*

6. In view of the above, we see no reason to condone the delay. Accordingly, the Notice of Motion is dismissed.

(G.S. KULKARNI, J.) **(M.S. SANKLECHA, J.)**