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

NOTICE OF MOTION NO. 3210 OF 2010
IN
INCOME TAX APPEAL (ST) NO. 725 OF 2006

The Commissioner of Income Tax-V ..Applicant

Vs.

Thermax Ltd. ..Respondent

....

Mr. Suresh Kumar, Advocate I/b Shyam Walve for Applicant.
Mr. Sanjiv M. Shah, Advocate for Respondent.

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

P.C.:

This notice of motion has been taken out to restore the appeal which has been dismissed on 17 April 2007 under Rule 986 of the High Court (Original Side) Rules and for that purpose the motion also seeks of condonation of delay of 1203 days in taking out this motion.

2. The affidavit in support of the notice of motion states that the reason for the delay was the change in the panel of advocates

representing the revenue with effect from June 2008. Consequently, the deponent of the affidavit was not informed that the appeal was dismissed for non-removal of office objections. Further in support thereto, it is stated that there was lack of communication with the then counsel appearing for the revenue.

3. The affidavit in support does not inspire confidence. It states the appeal was dismissed on 17 April 2007 while the advocate representing the revenue in this case was removed from the panel in June 2008. Thus there is no explanation for the period of more than 1 Year and 2 Months from the date of the dismissal of the appeal and removal of the advocate. It does not state the date on which the deponent of the affidavit came to know of the order of this Court dated 17 April 2007 dismissing it's appeal. The aforesaid date would be the primary date around which would revolve the application for condonation of delay and consideration of the reasons for the delay. Besides no particulars have been listed out in the affidavit to point out, what efforts were made, if any, to be in touch with their counsel appearing in respect of the appeal and the result of their attempts at contacting the advocate.

4. In view of the above, we find that the explanation offered for the delay is without any basis particularly because the date of coming to know of the dismissal of the appeal is not stated in the affidavit. The manner in which the affidavit in support has been filed display a casual approach.

5. In the above circumstances, we find that the reasons set out for the delay in the affidavit in support are not satisfactory. Accordingly, the notice of motion as filed by the revenue is dismissed.

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