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

NOTICE OF MOTION NO. 1029 OF 2016
IN
INCOME TAX APPEAL (L) NO.2122 OF 2013

Pr. Commissioner of Income Tax-10
Mumbai .. Applicant

In the matter between
Pr. Commissioner of Income Tax-10
Mumbai .. Appellant

v/s.
IOT Infrastructure & Energy Services Ltd. .. Respondent

Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the applicant
Ms. Vasanti Patel for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.

DATED : 1st APRIL, 2016.

P.C.

1. This notice of motion has been taken out to condone 720 days delay in taking out the notice of motion and to set aside the order dated 27th February, 2014 passed by the Prothonotary and Senior Master. The impugned order dated 27th February, 2014 rejected the appellant's appeal by self-operative order for non-removal of office objections by 27th March, 2014, under Rule 986 of the Bombay High Court (Original Side) Rules.

2. During the course of the submission, Mr. Suresh Kumar, learned Counsel for the Revenue points out that the tax effect in present appeal is less than 20 lakhs. However, when asked whether he still wanted to press the motion, Mr. Suresh Kumar replied that he has been instructed not to withdraw the present Notice of Motion. In this view of the mater, we have to consider the notice of motion taken out by the Revenue on its own merits.

3. The reasons in support of the notice of motion merely states that due to re-structuring of the Income Tax Department w.e.f. 15th November, 2014, the papers with regard to the present appeal came under the charge of the present Assessing Officer. Prior to 15th November, 2014, it was attended to by another Officer of the Income Tax Department. The affidavit states that he was not aware of the appeal being rejected for non-compliance of the conditional order dated 27th February, 2014 passed by the Prothonotary and Senior Master. The affidavit states that he learnt of this only on receipt of the letter dated 2nd March, 2016 from the Advocate. This without indicating the reason why the Advocate inform the Assessing Officer on 2nd March, 2016 of an appeal rejected as far back as on 27th

February, 2014.

4. We find that there is no explanation forthcoming with regard to the period commencing from 27th February, 2014 when the order of the Prothonotary and Senior Master rejecting the appeal by conditional order was passed, upto 15th November, 2014 when the appeal was assigned to the present Assessing Officer. Further, the affidavit also merely states that he was not aware that the appeal stood rejected for non-compliance of the order dated 27th February, 2014 passed by the Prothonotary and Senior Master. From the order dated 27th February, 2014, we notice that the applicant was represented by its advocate before the Prothonotary and Senior Master when the conditional order was passed. Needless to state that the advocate concerned would have informed the Officers of the Revenue about the order passed on 27th February, 2014. It appears that the Assessing Officer may not have taken steps to have the objections addressed. Thus, no mention in respect of the same.

5. In the above view, we find that no satisfactory reasons have been set out in the affidavit in support of the notice of motion so as to condone 720 days delay in taking out the present notice of motion.

Consequently, no occasion to set aside the order of the Prothonotary and Senior Master dated 27th February, 2014 arises.

6. Accordingly, the Notice of Motion is dismissed. No order as to costs.

(A.K. MENON, J.) **(M.S. SANKLECHA, J.)**