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

NOTICE OF MOTION NO. 1026 OF 2016
IN
INCOME TAX APPEAL (L) NO. 1817 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 755 days delay in taking out the notice of motion and to set aside the order dated 6th February, 2014 passed by the Prothonotary and Senior Master. The impugned order dated 6th February, 2014 rejected the appellant's appeal by self-operative order for non-removal of office objections by 20th February, 2014 under Rule 986 of the Bombay High Court (Original Side) Rules.

2. 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 6th 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 6th February, 2014.

4. We find that there is no explanation forthcoming with regard to the period commencing from 6th 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 6th February, 2014 passed by the

Prothonotary and Senior Master. The affidavit in support does not fix responsibility for the delay and / or sets out the manner in which the delay took place. This establishes the casual manner in which the application for restoration is being made by the Revenue.

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 755 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 6th February, 2014 arises.

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

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