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

NOTICE OF MOTION NO.848 OF 2016
IN
REVIEW PETITION [L] NO.44 OF 2015
IN
INCOME TAX APPEAL NO.427 OF 2012
AND
NOTICE OF MOTION NO.970 OF 2016
IN
REVIEW PETITION [L] NO.45 OF 2015
IN
INCOME TAX APPEAL NO.428 OF 2012
AND
NOTICE OF MOTION NO.971 OF 2016
IN
REVIEW PETITION [L] NO.46 OF 2015
IN
INCOME TAX APPEAL NO.590 OF 2012

Principal Commissioner of Income Tax-25 .... Applicant
In the matter between
Principal Commissioner of Income Tax-25 .... Petitioner
Vs.
Hatkesh Coop Housing Society Ltd. .... Respondent

AND
REVIEW PETITION [L] NO.44 OF 2015
IN
INCOME TAX APPEAL NO.427 OF 2012
AND
REVIEW PETITION [L] NO.45 OF 2015
IN
INCOME TAX APPEAL NO.428 OF 2012
AND

REVIEW PETITION [L] NO.46 OF 2015
IN
INCOME TAX APPEAL NO.590 OF 2012

The Principal Commissioner of Income Tax-25 .... Petitioner
Vs.
The Hatkesh Coop Housing Society Ltd. .... Respondent

Mr. Arvind Pinto for the Applicant/Petitioner.
Mr. Rahul K. Hakani for the Respondent.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : OCTOBER 24, 2016

P.C:

1. We have heard both counsel on the notices of motion for condonation of delay in filing the review petitions.

2. In the light of the affidavits in support and the contents whereof constitute sufficient cause, we condone the delay in filing the review petitions. The cause shown is reasonable and bona fide. Hence, the notices of motion are allowed. No order as to costs.

3. With the consent of Mr. Pinto and Mr. Hakani, we have taken up the review petitions for admission forthwith.

4. In all the three review petitions, the only ground on which the review is sought is set out in para 5 of the review petitions.

5. That para 5 reads as under:-

> "*The Petitioner submits, on the very issue namely the applicability of the principle of mutuality to the transfer fee received from members, the Tribunal for A.Y. 1996-97, 2000-01, 2001-02, 2002-03, 2006-07, 2007-08 had held to the contrary. It is prayed that these subsequent decisions of the Tribunal on certain crucial findings of fact were not placed before the Hon'ble High Court. Hereto annexed and marked as Exhibit C are the decisions of the Tribunal for AY 1996-97, 2000-01, 2001-02, 2002-03, 2006-07, 2007-08.*"

A perusal of this paragraph reveals that the Revenue now relies upon a contrary view of the Tribunal and which contrary view was not placed before this Court when it passed the order under review. Further, it is stated that based on the contrary view, some proceedings were brought before this Court and which resulted in a remand of the issue back to the Income Tax Appellate Tribunal.

6. We hardly find any justification for reviewing our order on this ground. Firstly, the ground does not meet the parameters set out by Section 114 r/w Order XLVII, Rule 1 of the Code of Civil Procedure, 1908. The review jurisdiction is not to be equated with appeal or power of revision. In review we cannot go behind our order and to such an extent as is now desired. The whole exercise and of review today is to impress upon us that had the contrary orders and views of the Tribunal been brought to our notice, we may not have held against the Revenue. Apart from the fact that this is not a ground for review, entertaining it would require us to go behind our order and Mr. Pinto's assumption that if these contrary views had been brought to our notice we may not have passed the order against the Revenue, itself is enough to reject these review petitions. That means we can recall and review our order as if we are possessing all powers, original, appellate, further appellate and still further thereafter. It is common ground that we had passed

the order in our appellate jurisdiction and powers conferred by Section 260-A of the Income Tax Act, 1961. It is that order which we had passed in such jurisdiction and the review whereof now is sought by the above process. We do not find that we can review our order only on the basis of the averments made in para 5, which fall short of the required parameters. The review petitions are totally misconceived and hence are dismissed.

(B.P. COLABAWALLA, J.) (S.C. DHARMADHIKARI, J.)