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

NOTICE OF MOTION NO. 2906 OF 2016
IN
INCOME TAX APPEAL (L) NO. 1495 OF 2016

Sagar Nitin Parikh .. Applicant
In the matter between
Sagar Nitin Parikh .. Appellant
v/s.
Asst. Commissioner of Income Tax .. Respondent

Mr. Rahul Hakani for the applicant / orig. appellant
Mr. A.R. Malhotra a/w Mr. N.A. Kazi for the respondent

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

DATED : 23rd DECEMBER, 2016.

P.C.

1. This Notice of Motion seeks condition of 372 days delay in filing the accompany appeal from the order dated 3rd June, 2015 passed by the Income Tax Appellate Tribunal for the Assessment Year 2008-09.

2. The affidavit in support of the motion states that the delay occurred on account of the fact that the applicant had filed a Miscellaneous Application for rectification before the Tribunal on 29th April, 2016. The same was dismissed on 22nd July, 2016 and the order of the Tribunal rejecting the application was received on 5th August,

2016. It is immediately thereafter i.e. on 27th October, 2016, that the accompanying appeal was filed along with this application for condonation delay.

3. We find that the order of the Tribunal dated 3rd June, 2015 was received by the applicant on 23rd June, 2015 and the last date to file an appeal before this Court under Section 260A of the Act was 20th October, 2015. The applicant filed its application for rectification much after that date i.e. on 29th April, 2016. It is clear that the applicant took no steps during the period of 120 days available to him to file an appeal to this Court. The affidavit gives no explanation as to why the appeal was not filed till the date of filing of the Rectification Application. In fact, even after the order was received on 5th October, 2016, the appeal was filed only on 27th October, 2016 and no explanation for that is found in the affidavit in support.

4. From the above, it is very clear that the applicant was not diligent in pursuing the issue. The reliance by Mr. Hakani, learned Counsel for the applicant, upon the decision of this Court in ***M/s. Shirpur Gold Refinery Ltd. Vs. DCIT*** (Notice of Motion No.2396 of 2016 in Income Tax Appeal (L) No. 1230 of 2016) on the ground that

in identical circumstances delay has been condoned is misplaced. We find that the facts in that case are completely distinguishable to the facts of the present case. In *Shirpur Gold Refinery Ltd.* (supra), the applicant had filed an application for rectification of order of the Tribunal immediately on receipt of the order of the Tribunal i.e. much before the expiry of time to file an appeal. As pointed out hereinabove, in this case, the application for rectification was filed almost six months after the period to file an appeal to this Court had expired.

5. In the above view, we are not satisfied with the reasons set out in the affidavit-in-reply seeking condonation of delay.

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

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