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

REVIEW PETITION NO. 7 OF 2016
IN
NOTICE OF MOTION NO. 2635 OF 2011
IN
INCOME TAX APPEAL NO. 864 OF 2015

M/s. M.G. Saraf (HUF) .. Petitioner
v/s.
Jt. Commissioner of Income Tax
Special Range 10, Mumbai .. Respondent

WITH
REVIEW PETITION NO. 8 OF 2016
IN
NOTICE OF MOTION NO. 2636 OF 2011
IN
INCOME TAX APPEAL NO. 1093 OF 2015

M/s. M.G. Saraf .. Petitioner

v/s.
Jt. Commissioner of Income Tax
Special Range 9, Mumbai .. Respondent

Mr. Niraj Seth a/w Ms. Sweta Jaydev i/b M/s. Federal Rashmikant for the petitioner
Mr. A.R. Malhotra i/b N.A. Kazi for the respondent

CORAM : M.S. SANKLECHA &
N.M. JAMDAR, J.J.

DATED : 24th JUNE, 2016.

P.C.

1. Review Petition No.7 of 2016 in Notice of Motion 2635 of 2011 in Income Tax Appeal No.864 of 2015 is taken out by an HUF seeking

recall of the order dated 7th August, 2015 dismissing an application for condonation of 2745 days of delay in filing an appeal from the order dated 11th October, 2004 of the Income Tax Appellate Tribunal (the Tribunal). Review Petition No.8 of 2016 in Notice of Motion No.2636 of 2011 in Income Tax Appeal No.1093 of 2015 has been taken out by an individual seeking to recall the order dated 7th August, 2015 dismissing an application for condonation of 2286 days delay in filing an appeal from the order dated 30th December, 2004 of the Tribunal.

2. The order dated 7th August, 2015 of this Court is a common order dismissing the notices of motion taken out by the above two applicants for condonation of delay. The order dated 7th August, 2015 was dictated in Court immediately after hearing the parties. The Review Petitions have been taken out on 30th October, 2015.

3. Both these Review Petitions are made on the following grounds.

(a) This Court had on earlier occasion desired that it should be apprised of the tax consequences if the payments and receipts were treated as capital or revenue in the hands of the three parties i.e. HUF, individual and Saraf Chemicals Ltd.

(b) That the Court had not considered and / or pronounced upon the petitioner's submissions that the Motions for condonation of delay be heard along with the appeals filed.

(c) That the Court had not considered and / or pronounced upon the request made for time to enable it to file a detailed affidavit.

4. The common order dated 7th August, 2015 was dictated in open Court immediately after hearing the parties in their presence. The appropriate thing would have been to point out the fact that its submissions have not been adverted to in the order at the conclusion of the dictation.. On being asked, the learned Counsel for the petitioner fairly states that no such objection was taken at the time when the order was dictated or immediately thereafter.

5. So far as the first ground of the Review Petition is concerned, no order / direction to the above effect is produced before us by the applicant. There is no material on record in the present proceedings to support the above contention.

6. In respect of the second ground of Review, we find that there is no such reference / averment made in the affidavit-in-support of the Notices of Motion. Therefore, nothing on record to support the

submissions has been shown to us.

7. In respect of the third ground of Review, we find that the applications for condonation of delay was made in 2011 with affidavit-in-support dated 5th September, 2011. The Revenue filed its reply affidavits dated 9th November, 2011 opposing the applications for condonation of delay. The Notices of Motion were being heard in August, 2015, the applicants if serious about its application had more than sufficient time to file a further and detailed affidavits. The delay is of inordinate nature and cogent explanation is required.

8. From the record, we find that both Notices of Motion for condonation of delay had appeared on 19th December, 2014 at which time the applicant sought time. Both the Notices again appeared on 10th July, 2015 at which time it was adjourned at the instance of the Revenue. At no time did the applicants make a request that the Notices of Motion be heard along with the appeals nor did they seek time to file a further affidavit.

9. In the above view, we find no merit in the Review Petitions. Hence, the Review Petitions are dismissed.

(N.M. JAMDAR, J.) **(M.S. SANKLECHA, J.)**