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

NOTICE OF MOTION NO.487 OF 2017
IN
INCOME TAX REFERENCE NO.1075 OF 1998

Commissioner of Income Tax,
Bombay City – III Bombay .... Applicant
In the matter between
Commissioner of Income Tax,
Bombay City – III Bombay .... Applicant
Vs.
M/s. The New India Assurance Co. Ltd. .... Respondent

Mr. Suresh Kumar with Ms Samiksha Kanani for the Applicant.
Mr. F.V. Irani with Mr. Rajesh Poojary i/by Mulla & Mulla & C.B. & Caroe for the Respondent.

CORAM: S.C. DHARMADHIKARI &
SMT. VIBHA KANKANWADI, JJ.

DATE : AUGUST 29, 2017

P.C:

1. This notice of motion is moved in Income Tax Reference No.1075 of 1998. The notice of motion claims the following reliefs:-

> *"(a) This Hon'ble High Court be pleased to condone the delay of 189 days in filing the present Notice of Motion.*
>
> *(b) This Hon'ble High Court be pleased to set aside the order dated, 27.06.2016 and restore the Income Tax Reference 1075 of 1998."*

2. We have heard both sides on the notice of motion.

3. In the affidavit in support, it was pointed out that the Court passed an order on 27-6-2016 for non-appearance of the Revenue's Advocate. A copy of this order is at page 6 of the paper-book.

4. Mr. Suresh Kumar would submit that the order dated 27-6-2016 has been applied even to this income tax reference. The order of 27-6-2016 in the subject-income tax reference follows another order of that very Bench in several references dated 17-6-2016. That is relying upon a circular of the Central Board of Direct Taxes/clarification of December, 2015.

5. If the tax effect involved is less than Rs.20 lakhs, then, the policy decision taken is not to press the matters and

filed by the Revenue or pending at the instance of the Revenue.

6. Mr. Suresh Kumar would submit that under a misconception or an obvious error none appeared on behalf of the Revenue when the subject reference was placed before the Court. Therefore, though the tax effect being more than Rs.20 lakhs, out of sheer negligence on the part of all concerned, this Court disposed of the reference unanswered. He would submit that there is an excellent case on merit and therefore the cause should not suffer on account of negligence or lack of care.

7. Mr. Irani, appearing on behalf of the respondent, on the other hand, would submit that this being an old matter it was the bounden duty of the Revenue and its Advocate to have remained present and attend the case. They do not attend the cases and when they are called out on specific dates assigned in advance, then, the Courts should not be blamed for such dismissal or disposal of the reference.

8. Having perused the affidavit in support and the

order passed, copy of which is at page 6 of the paper-book, it is apparent that it was passed in the absence of the Advocate for the applicant/Revenue. The Court proceeded on the footing that the Revenue is not interested in pursuing the reference for none appeared on its behalf.

9. The reference was disposed of as such. However, the Revenue official has stated on oath that the matters were listed and being very old, they could not discern to which of the matters have a tax effect of less than Rs.20 lakhs and which involve more than this sum. It is purely because of lack of care that each of the references were taken to have been disposed of only because of the tax effect. That is why presumably none attended the Court on the concerned date. It is in these circumstances and in facts peculiar to the matter, we allow the motion by imposing costs of Rs.5,000/- (Rupees Five Thousand). The costs is condition precedent and shall be paid within a period of two weeks from today.

10. The reference is restored to file.

11. Notice of motion accordingly stands disposed of.

(SMT. VIBHA KANKANWADI, J.) (S.C. DHARMADHIKARI, J.)