IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 674 OF 2017

M/s. Karanja Terminal and Logistics Pvt. Ltd. … Petitioner

Vs.

Dy. Commissioner of Income Tax … Respondents
C-6(3), & Ors.

Mr. J.D. Mistri, Senior Counsel a/w. Ms. Priyanka Jain i/by Mr. Ruturaj H. Gurjar for the Petitioner.

Mr. N.C. Mohanty for the Respondents.

CORAM : S.V. GANGAPURWALA AND
G.S. KULKARNI, JJ.

DATE : 23rd JUNE, 2017.

PER COURT :

The present Petitioner had challenged the legality of the Assessment order dated 31st March, 2014 passed under Section 143(3) of the Income Tax Act by the Assessing Officer for the Assessment Year 2011-2012. The said revision was purportedly filed under Section 264 of the said Act.

2 The Revision was delayed by about 200 days. The Commissioner passed the impugned order observing that the Revision is delayed. In fact before proceeding to adjudicate the said Revision, even notice was issued by the Commissioner asking the Petitioner to explain about the delay. Reply was filed by the

Petitioner. Perusal of the impugned order, it is manifest that the Commissioner has not delve upon the explanation given for condonation of delay. Proviso to Sub-Section 3 of Section 264 of the Act empowers the Commissioner to entertain the Revision filed beyond the prescribed period of limitation upon sufficient cause being shown. The said exercise, it appears has not been embarked upon by the Commissioner.

3 The Revision can only be entertained on merits only if the delay is condoned. Without condoning the delay even the Commissioner could not have observed anything on merits.

4 No separate application for condonation of delay was filed, however, the request to condone the delay was made in the Revision application itself.

5 It appears that no reasonings have been given by the Commissioner for not condoning the delay. It would be appropriate to set aside the said order and direct the Commissioner to reconsider the aspect of delay.

6 In the result, we pass the following order;

a) The impugned order is quashed and set aside.

b) The Petitioner shall file a separate application for condonation of delay giving reasons for not being able to file the Revision within the stipulated period of limitation.

c) The Commissioner shall decide the said application for condonation of delay and if it allows the application for condonation of delay, then shall decide the Revision on its own merits in accordance with law expeditiously.

d) It is made clear that we have not considered the arguments of the respective parties on merits.

e) No costs.

f) The Petitioner undertakes to file the application for condonation of delay within two weeks from today.

(G.S. KULKARNI, J.) (S.V. GANGAPURWALA, J.)