IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDITION

INCOME TAX APPEAL NO.1073 OF 2017
WITH
NOTICE OF MOTION NO.1231 OF 2017
IN
INCOME TAX APPEAL NO.1073 OF 2017

Shaan Apartment C.H.S. Ltd.	...	**Applicant/Appellant**
V/s.		
The Deputy Commissioner of Income Tax, Range 1(3)(2)	...	**Respondent**

.....

Mr.Joel D'souza i/by Mr.R.M.Vanoo, Advocate for the Applicant/Original Appellant.

Mr.Tejveer Singh, Advocate for the Respondent.

....

CORAM : S.V.GANGAPURWALA & A.M.BADAR JJ.

DATED : 24th July 2017.

P.C.

1 This Appeal pertains to the Assessment Years 2008-09. The present Appeal is filed against the Order dated 26th April 2017.

2 The learned counsel for the Appellant strenuously contended that the grounds which were raised by the present

Appellant in the Application for condonation and the affidavit filed have not at all been considered by the Tribunal. The Tribunal has dismissed the Appeal on the premise that the delay is of 300 days and the same has not been properly explained. According to the learned counsel, the office of the Tribunal itself has raised an objection that the delay is of 249 days. According to the learned counsel the expression 'sufficient cause" has to be liberally construed. The learned counsel submits that in the affidavit the reasons were given by the present Appellant. The Appellant is a Society. After receiving the Order under Section 263 of the Act, the affiant visited the office of the Income-Tax Officer. Appellant not guided about remedy of the Appeal. The Society is prosecuting for the rights of and on behalf of the members. The delay caused is not intentional one.

3 Mr.Singh, the learned counsel for the Revenue submits that the Tribunal has considered the grounds raised by the present Appellant. Ignorance of law would not be an excuse for condonation of delay. According to the learned counsel, the approach of the Appellant is casual and such a casual approach cannot come within the meaning of expression 'sufficient cause'. The Tribunal has rightly considered the same.

4 We have considered the submissions canvassed by the learned counsel for the respective parties.

5 The right of Appeal is a statuary right. Of course, the litigant has to be diligent. The Appellant herein is a Society naturally acting for and on behalf of the members. The affidavit has been filed by the Appellant thereby accepting that it had received the notice under Section 263 of the Income-Tax Act on 18/03/2014 and had been to the Income-Tax Officer and it was represented to it that the assessment would be taken up by the later date. The affiant of the said affidavit further states that he was not aware that the Appeal could be filed. The Society employed the Charted Accountant on 28th January 2015 and because of which the delay has been caused.

6 It does not appear that the Appellant would stand to gain by delay. It is trite that when the cause for substantial justice and technical consideration are pitted against each other, cause for substantial justice has to be sub-served. As it is found that the Appellant was not to gain by delay and for the reasons stated in the affidavit, we are inclined to exercise our discretion in favour of the Appellant and condone the delay. However, the Appellant also deserves to be mulct with cost for delay that has been caused. In the result, we pass the following order.

(i) The impugned order is quashed and set aside on condition that the Appellant deposit cost of Rs.20000/- with the Tribunal on or before 21st August 2017.

(ii) On deposit of said cost within the period as stipulated above, the Tribunal shall proceed and decide the Appeal on merits after hearing all the parties concerned.

(iii) The Appellant shall appear before the Tribunal on 21st August 2017.

(iv) The deposit of cost is condition precedent.

(v) The Appeal accordingly disposed of.

7 In view of disposal of the present Appeal, Notice of Motion No.1231 of 2017 does not survive and stands disposed of accordingly.

(A.M.BADAR J.) **(S.V.GANGAPURWALA J.)**