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

NOTICE OF MOTION NO. 2762 OF 2016
IN
INCOME TAX APPEAL (L) NO.1970 OF 2014

Principal Commissioner of Income Tax-24
Mumbai .. Appellant

v/s.

M/s. Neeta Enterprises .. Respondent

Ms. Padma Divakar for the applicant / appellant
Ms. Aasifa Khan for the respondent

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

DATED : 13th JANUARY, 2017.

P.C.

1. This notice of motion has been taken out to condone the delay of 459 days in taking out this application to set aside the order dated 26th March, 2015 passed by the Prothonotary and Senior Master rejecting the appeal for non-removal of office objections under Rue 986 of the Bombay High Court (O.S.) Rules.

2. The affidavit in support of the notice of motion states that the present Assessing Officer took charge of Ward-24(3)(1) 16th May, 2016 where the respondent is being assessed. Thus, implying that he was

not the Officer concerned, when the appeal was rejected.

3. We find that the affidavit in support of the notice of motion is bereft of any particulars. The Income Tax Department is not an individual but an Institution. Therefore, as a Department, the delay has to be explained and the Assessing Officer cannot wash his hands of the responsibility of the Department acting expeditiously to mend matters from the date of knowledge that the appeal was rejected. In fact, the affidavit states that "I perused the noting and found that the appeal was dismissed by this Hon'ble Court on 26th March, 2015". The affidavit is silent about when and by whom the noting was made and also on what date did he read the note. Needless to state that the noting is itself evidence of the fact that the Revenue Department did know of the rejection of the appeal and yet no steps were taken to have the order of the Prothonotary and Senior Master set aside nor any explanation offered for not taking remedial action. Nor any responsibility fixed.

4. The only reason set out in the affidavit in support is on account of administrative difficulties and the fact that the present Assessing Officer took charge only on 16th May, 2016 is not a sufficient cause to

condone the delay of 459 days on the part of the Income Tax Department to move this application.

5. The Apex Court in ***Postmaster, General & Ors. Vs. Living Media (I) Ltd. & Ors. 2012(3) SCC 563*** has observed that claim of impersonal machinery and inherited methodology is not a sufficient explanation for the condonation of delay made by the State. This is particularly so in view of the fact that the law of limitation binds all including the State.

6. In the above view, we see no reason to allow the present notice of motion

7. Accordingly, the Notice of Motion is dismissed.

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