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

NOTICE OF MOTION NO. 2761 OF 2016
IN
REVIEW PETITION (L) NO. 25 OF 2015
IN
INCOME TAX APPEAL NO. 49 OF 2014

WITH
NOTICE OF MOTION NO. 2763 OF 2016
IN
REVIEW PETITION (L) NO. 26 OF 2016
IN
INCOME TAX APPEAL NO. 2292 OF 2013

WITH
NOTICE OF MOTION NO. 2766 OF 2016
IN
REVIEW PETITION (L) NO. 22 OF 2016
IN
INCOME TAX APPEAL NO. 1765 OF 2013

WITH
NOTICE OF MOTION NO. 2767 OF 2016
IN
REVIEW PETITION (L) NO. 23 OF 2016
IN
INCOME TAX APPEAL NO. 1788 OF 2013

WITH
NOTICE OF MOTION NO. 2768 OF 2016
IN
REVIEW PETITION (L) NO. 27 OF 2016
IN
INCOME TAX APPEAL NO. 1776 OF 2013

WITH
NOTICE OF MOTION NO. 2789 OF 2016
IN
REVIEW PETITION NO. 24 OF 2016
IN
INCOME TAX APPEAL NO. 1761 OF 2013

The Principal Commissioner of Income Tax – 3 Thane } **Applicant**
versus
M/s. Madhav Constructions } **Respondent**

Mr. Ashok Kotangale with Mr. A. K. Saxena and Ms. Pratima Singh for the applicant/appellant.

Mr. Rohan Deshpande i/b. Mr. Mihir C. Naniwadekar for the respondent.

Mr. Vijay D. Malve – Inspector, Circle-2, Kalyan present.

CORAM :- S. C. DHARMADHIKARI & A. K. MENON, JJ.

DATED :- APRIL 21, 2017

P.C. :-

1. Heard Mr. Kotangale appearing for the applicant and Mr.Deshpande appearing for the respondent. We are of the opinion that there are two affidavits setting out cause for the delay. Though the first affidavit was wholly inadequate, in the second affidavit, an attempt has been made to set out as to how the legal opinion was obtained, firstly for filing a Special Leave Petition against the order under review. Later on, the opinion expressed was that the possibility of a review petition be explored. That is how the papers were forwarded to the counsel and then back to the Department and again to the counsel. In all this, the period of 460 days has been consumed.

2. Mr. Deshpande relies upon a judgment of the Hon'ble Supreme Court of India in the case of *Office of the Chief Post Master General and Ors. vs. Living Media India Ltd. and Anr.*[1]. We find that in the said decision, on facts, it was found that it is within the Department itself that the papers went back and forth. The attempt to contact a legal advisor was made only in March, 2010 though the order was delivered on 11th September, 2009. From the time the additional legal advisor was contacted, the file was not even sent to him immediately. That is how even after his advise, the learned Additional Solicitor General's advise, the Department took its sweet time to file the Special Leave Petition in the Hon'ble Supreme Court of India. It is for such enormous delay that the explanation offered that the files had to pass through several officials and within the hierarchy does not constitute sufficient cause. The explanation was not termed as reasonable or truthful.

3. In the present case, an attempt was indeed made to seek the opinion, but for a brief period, for which explanation has not been provided, there was no movement. However, in the peculiar facts and circumstances of the case, we condone the delay in filing all these review petitions, but on the condition that the revenue pays

1 **(2012) 3 SCC 563**

costs quantified at Rs.15,000/- in each application to the respondent assessee. The costs condition precedent. If no proof of the costs being tendered is produced on or before 19th June, 2017, the review petitions then to stand dismissed without any further reference to the court. If the costs are tendered and proof is produced, the Registry shall number the review petitions and thereafter obtain appropriate directions for placing them.

(A.K.MENON, J.) **(S.C.DHARMADHIKARI, J.)**