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

NOTICE OF MOTION NO. 2984 OF 2016
IN
INCOME TAX APPEAL NO. 223 OF 2014

The Principal Commissioner of Income Tax,
(Central) Kolhapur .. Applicant

In the matter between
The Principal Commissioner of Income Tax,
(Central) Kolhapur .. Appellant

v/s.
B.T. Patil & Sons Belgaum .. Respondent

Mr. N.N. Singh for the applicant / orig. appellant
Mr. Satish Mody a/w Ms. Aasifa Khan for the respondent

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

DATED : 13th JANUARY, 2017.

P.C.

1. Mr. Mody, learned Counsel appearing for the respondent assessee invites our attention to the facts that the Notice of Motion being No.2622 of 2016 taken out in Income Tax Appeal No.221 of 2014 was dismissed by this Court on 2nd December, 2016. In the above view, it is submitted that the present notice of motion be dismissed as done in the other case.

2. This notice of motion has been taken out by the Revenue seeks recall of the order dated 1st August, 2016 passed by the Income Tax Appellate Tribunal and also condonation of 69 days delay in taking out the present notice of motion. On 1st August, 2016 when the order dismissing the present appeal for non-prosecution was passed a similar order was passed in respect of the same respondent assessee in Income Tax Appeal No.221 of 2014. By order dated 2nd December, 2016 we dismissed the Revenue's notice of motion being Notice of Motion No. 2622 of 2016 in Income Tax Appeal No. 221 of 2014 seeking identical relief. In our order dated 2nd December, 2016, we have recorded the fact that the affidavit in support states that Revenue was not represented due to personal difficulty of the Counsel. However, no attempt was made to explain the name of Counsel or what difficulty the Counsel was in resulting in him not being able to attend the Court. Nor does the affidavit give any indication as to when, how and from what source the Department learnt of its Counsel being in personal difficulty at the time when the appeal was called for hearing.

3. In the present facts, the applicant Revenue has filed an additional affidavit dated 10th January, 2016 of Mr. M.L. Karmarkar, Principal Commissioner of Income Tax-2, Kolhapur. In the affidavit, it is stated

that on 2nd December 2016 a communication was addressed to Mr. Vipul Bajpayee, seeking to know the reason for his non-appearance. The affidavit states that till filing of the affidavit they had not received any reply to the aforesaid communication from Mr. Bajpayee. Therefore, in the present case, the applicant has made an attempt to find out the reason why Counsel who was briefed earlier did not appear in the matter. However, they have not got any response from the Counsel.

4. Bearing in mind that a litigant should not suffer on account of negligence on the part of the advocate, we condone the delay in taking out the present notice of motion. We recall our order dated 1st August, 2016 dismissing the appeal for non-prosecution.

5. Notice of motion is disposed of in the above terms.

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