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

NOTICE OF MOTION NO. 2907 OF 2016
IN
INCOME TAX APPEAL (L) NO. 1445 OF 2016

Anil Kumar Nehru .. Applicant

In the matter between
Anil Kumar Nehru .. Appellant

v/s.
Asstt. Commissioner of Income Tax,
Circle 16(2), Mumbai . Respondent

Mr. Madhur Agarwal a/w Mr. Balasaheb Yewale i/b Rajesh Shah & Co. for the applicant / appellant
None 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 for condonation of 1662 days delay in filing the accompanying appeal from the order 21st October, 2011 of the Income Tax Appellate Tribunal (Tribunal). The above order of the Tribunal relates to Assessment Year 2005-06.

2. The only reason set out in the affidavit in support of the notice of motion is that as four appeals on identical issues for earlier years were pending before this Court, he was under a bona fide belief that

relief, if any, granted in the appeals pending before this Court would inure to his benefit for the subject assessment year. This belief resulted in appeal being filed for the subject assessment year. The affidavit further states that no prejudice will be caused to the Revenue if the delay is condoned as the issue is pending consideration before this Court in four Income Tax Appeal Nos. 1159 of 2008, 1161 of 2008, 1162 of 2008 and 2481 of 2011.

3. The affidavit as filed does not carry credibility. This for the reason that if the applicant was genuinely under the impression that its four appeals (three Income Appeals being Nos. 1159 of 2008, 1161 of 2008 and 1162 of 2008 from the common order of the Tribunal dated 28th March, 2008, relating to Assessment Years 1999-2000, 2000-01 and 2001-02 and Income Tax Appeal No.2481 of 2011 arising from the order of the Tribunal dated 19th November, 2010 – relating to Assessment Year 2002-03) when disposed of by this Court, would work for his benefit in all subsequent years then there would have been no reason for him to have filed Income Tax Appeal No.2481 of 2011 from the order of the Tribunal dated 19th November, 2010 as in that case also the applicant would have been under the same belief that the orders in earlier appeals will apply even for order for Assessment Year 2002-03.

Therefore, this reason is not a *bona fide* reason for condonation of the undue delay.

4. In passing, we may mention that the applicant was represented by professionals from the Assessing Officer to the Tribunal. Therefore, advice was available to the applicant. It needs to be pointed out that the motion seeks a condonation of 1162 days delay in filing the appeal, while the appeal memo states that there is 1114 days delay in filing the appeal.

5. In the above view, we find that the reasons set out in the affidavit in support of the notice of motion evidently are not *bona fide*. The reason as set out in the affidavit in support for not filing the appeal are not plausible. Thus, we see no reason to condone the delay.

6. Accordingly, the notice of motion is dismissed.

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