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

NOTICE OF MOTION NO. 428 OF 2018
IN
INCOME TAX APPEAL (L) NO. 1291 OF 2016

The Principal Commissioner of Income Tax-13
Mumbai .. Applicant

In the matter between
The Principal Commissioner of Income Tax-13
Mumbai .. Appellant

v/s.
Sparkles Dhandho Advisors Pvt. Ltd.
(Formerly known as Battery Ventures
India Management Co. Pvt. Ltd.) ..Respondent

Ms. Padma Divakar for the applicant / orig. appellant
None for the respondent

CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, J.J.

DATED : 14th JUNE, 2018.

P.C.

1. This application seeks condonation of 389 days delay in seeking to set aside the self-operating order dated 5th January, 2017 passed by the Prothonotry and Senior Master rejecting the applicant's appeal under Rule 986 of the Bombay High Court (O.S.) Rules for failure to remove the office objections on or before 2nd February, 2017.

2. The affidavit in support filed by Mr. K.V. Sreenivas, ITO, dated

28th March, 2018 states that the objections could not be removed within time and the matter stood dismissed. It further states that the Revenue became aware of the dismissal of the appeal only when the process of filing the notice of motion was commenced. No particulars of the date and the manner in which the Assessing Officer became aware of the dismissal of the rejection of the appeal is mentioned in the affidavit in support of the motion. The affidavit further records that "advocate on record thus, somehow managed to contact the concerned person of the Income Tax Department and the status of the presetn appeal came to be disclosed to the Income Tax Department". We are unable to understand the above statement as it is from an Assessing Officer and not from the person who claims not to have been able to contact the person in the Income Tax Department.

3. Be that as it may, the affidavit is bereft of any particulars as it doe not mention the date and the manner in which the Assessing Officer became aware of the order dated 5th January, 2017 8th rejecting the present appeal. The affidavit does not mention as to the reason why the order dated 5th January, 2017 directing them to remove the objections before 2nd February, 2017 could not be complied nor there is an explanation supported by particulars for delay caused in removing

the office objections.

4. The Apex Court in the case of ***Office of the Chief Post Master General V. Livinmg Media India Ltd. and Anr. (2012) 348 ITR 7 (SC), (2012) 3 SCC 563 has, inter alia, observed as follows (page 19 of 348 ITR) :-***

> *"It is not in dispute that theperson(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.*
>
> *In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with*

> *diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."*

5. Moreover, we note that this Court in ***Commissioner of Income Tax Vs. Reliance Industries Ltd. (2017) 84 Taxmann.com 313*** has observed as under : -

> *"8. We have found that if the number of appeals filed by the Revenue are approximately thousand per year or more, then, we expect the Revenue to appoint and depute responsible officials and to follow up the legal cases and matters in this Court. The officers cannot pass on the buck to some junior level employees or clerical staff. This is routinely happening inasmuch as the Departmental heads have not been attending the cases by taking a periodical review of the proceedings or appeals lodged in this Court. They hand over the papers to Advocates and thereafter are not bothered about the outcome of these appeals. It is for the Revenue or the Department to take the necessary action but they do not feel obliged to do so. They expect this Court to condone serious lapses in their functioning by accepting above cause as sufficient. The cause as set out and the explanation as forwarded today, on affidavit and belatedly, reflects total negligence and callousness of the Revenue officials. Their attitude shows that they are not at all vigilant and interested in pursuing the cases filed by the Department involving a tax effect of crores of rupees. They expect the Court to be lenient and liberal and pardon them every time. It is this approach of the Revenue officials which is not only strongly deprecated in the earlier order but this Court has refused to uphold it after it was noticed that this is the position in almost every matter."*

6. The above observation apply to this application also. Further, there is no bonafide explanation to condone the undue delay.

7. In view of the above, we see no reason to condone the undue delay.

8. Accordingly, the Notice of Motion is dismissed.

(SANDEEP K. SHINDE J.) **(M.S. SANKLECHA, J.)**