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

NOTICE OF MOTION NO. 425 OF 2018
IN
INCOME TAX APPEAL (L) NO. 1024 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.
SNS Commercial Premises Pvt. Ltd. ..Respondent

Ms. Padma Divakar for the applicant / orig. appellant
Mr. Atul Jasani for the respondent

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

DATED : 14th JUNE, 2018.

P.C.

1. This application seeks condonation of 422 days delay in seeking to set aside the self-operating order dated 8th December, 2016 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 5th January, 2017.

2. We find that when the order dated 8th December, 2016 was

passed by the Prothonotary and Senior Master, the Revenue was represented. The affidavit in support states that the objections could not be removed within time and the matter stood dismissed. It further states that it 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 does not mention the date and the manner in which the Assessing Officer became aware of the order dated 8th December, 2016 rejecting the present appeal. The affidavit does not mention as to the reason why the order dated 8th December, 2016 directing them to remove the objections before 6th January, 2017 could not be complied nor there is

an explanation supported by particulars for delay caused in removing the office objections.

4. 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."*

5. Inspite of the aforesaid observations rendered by this Court on 22nd August, 2017, the present application taken out on 28th March,

2018 completely ignores the aforesaid observations and makes no attempt to explain the delay. In view of the above, we see no reason to condone the delay.

6. Accordingly, the Notice of Motion is dismissed.

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