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

NOTICE OF MOTION NO. 481 OF 2018
IN
INCOME TAX APPEAL (L) NO. 2664 OF 2017
WITH
NOTICE OF MOTION NO. 483 OF 2018
IN
INCOME TAX APPEAL (L) NO. 2666 OF 2017
WITH
NOTICE OF MOTION NO. 485 OF 2018
IN
INCOME TAX APPEAL (L) NO. 2661 OF 2017
WITH
NOTICE OF MOTION NO. 492 OF 2018
IN
INCOME TAX APPEAL (L) NO. 2662 OF 2017
WITH
NOTICE OF MOTION NO. 493 OF 2018
IN
INCOME TAX APPEAL (L) NO. 2667 OF 2017

Aakash Lavlesh Leisure Pvt. Ltd. ... **Applicant**
V/s.
Income Tax Officer – 9 (1)(1) ... **Respondent**

Mr. K. Gopal a/w Mr. Mandar Vaidya for the Applicants.

CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, JJ.
DATE : 05th JULY, 2018

P.C.:

. These five Notices of Motion seek condonation of 224 days delay in filing accompanying appeals from the common order dated 26.09.2016 passed by the Income Tax Appellate Tribunal (Tribunal).

2 The Affidavits of Mr. Bhasin dated 23rd April 2013 in support of the Notices of motion state that last date of filing the Appeals was 17.03.2017 and the appeals were filed on 26.10.2017. The Affidavits state that the tax affairs of the Applicant Company were looked after by the Ex-Chairman and majority shareholder of the Applicant Company. However, the Ex-chairman was suffering from health problem and unfortunately passed away on 08.05.2017. The deponent of the Affidavits Mr. Vinay Bhasin states that he has started looking after the tax matters of the Applicant Company on account of ill-health of the Ex-Chairman being his father who passed away. The affidavits further state that only on receipt of order dated 31.12.2017 of the Assessing Officer that Applicant realised the true import of the order of the Tribunal. It was that point of time that the Applicant company was advised that they should challenge the impugned order of the Tribunal dated 26.09.2016. It is the aforesaid advice that led to filing of the accompanying Appeals.

3 Mr. Gopal, learned Counsel appearing for the Applicants in support of the motion does not dispute the delay but submits that substantive justice should be done to the Applicant as the order under challenge of the Tribunal would have cascading effect even in the subsequent assessment years. In support of Mr. Gopal places reliance upon the decision of this Court in the matter of EBR Enterprises V/s. UOI, (2018) 89 taxmann.com 194 (Bombay).

4 The affidavits in support of Notices of Motion do not inspire confidence. It

states that the earlier Chairman was having health problem and unfortunately passed away on 08.05.2017. Further the affidavits state that the deponent starting looking after the tax affairs of the company but does not mention the date from which he started looking after its tax affairs. However, the affidavits state that true import of the impugned order of the Tribunal was realised only after the Assessing Officer passed an order dated 31.12.2017 giving effect of the order of the Tribunal dated 26.09.2016. Moreover, the Applicant is limited Company and there would be more persons than one looking after the affairs of the company. In fact in the Notice of Motion No. 481 of 2018 relating to Assessment Year 2006-2007, we noticed that in the Appeal filed before the Commissioner of Income Tax (Appeals) by the Applicant, was verified by two individuals i.e. Mr. Jajodia and Mr. Anand being a Chairman and Managing Director of the Company respectively. Thus, nothing has been indicated in the affidavit when the change in the Management has been effected and whether there are other working Directors and Executives of the Applicant company.

5 The reliance of the decision of this Court EBR Enterprises (supra) in our view does not assist the Applicant. This is so, as in that case the Commissioner while exercising his power under Section 264 of the Income Tax Act had rejected the Revision Application on the ground that the Applicant had not explained each day's delay and also that at the time of dealing with condonation application, the merits of the revision application was also considered. In the above facts, in view

of the decision of the Apex Court in the Collector Land Acquisition V/s Mst. Katiji, 167 ITR 471 it was held each day's delay need not be explained. Our Court condoned the delay. The facts are completely distinguishable in the present case and the condonation application is not being dismissed for failure to explain each day's delay.

6 If we have to accept the reason for the delay viz. understood the import of the order only after effect was given to the order, it would result in the period of limitation provided under the Act being rendered otiose/vain/useless. It is expected of a litigant to study the order on receipt of it and if aggrieved filed an appeal therefore expeditiously. It is not open to a party to try its luck in a subsequent proceedings and only if that is adverse to it, file an appeal from the earlier order on the ground that he did not understand the order of the Tribunal. The affidavits in support also do not inspire confidence as vital information is not forthcoming in the affidavit.

7 In view of the above, we are not satisfied with the reasons for the delay of 224 days in filing the accompanying Appeals. Thus, all the notices of motion are dismissed.

8 In view of dismissal of the Notices of motion, the Appeals do not survives and same are also dismissed as infructuous.

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