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

NOTICE OF MOTION NO. 1964 OF 2017
IN
INCOME TAX APPEAL (L) NO. 1384 OF 2017
WITH
NOTICE OF MOTION NO. 1973 OF 2017
IN
INCOME TAX APPEAL (L) NO. 1385 OF 2017
WITH
NOTICE OF MOTION NO. 1974 OF 2017
IN
INCOME TAX APPEAL (L) NO. 1383 OF 2017

CCIT(OSD)/Pr. Commissioner of Income Tax
Central-2, Mumbai .. Applicant
In the matter between
CCIT(OSD)/Pr. Commissioner of Income Tax
Central-2, Mumbai .. Applicant
v/s.
Shri Bhupendra Champaklal Dalal .. Respondent

Mr. Ashok Kotangle a/w Mr. A.K. Saxena for the appliant / orig. appellant
Mr. Bhupendra C. Dalal, respondent-Advocate in person

CORAM : M.S. SANKLECHA &
RIYAZ I. CHAGLA J.J.
DATED : 16th FEBRUARY, 2018.

P.C.

1. These three motions have been taken out to condone a delay of 12 days in filing the accompanying appeals from the order dated 9th November, 2017 passed by the Income Tax Appellate Tribunal (the Tribunal).

2. We have perused the affidavits in support of the three motions and considering the fact that there is only a delay of 12 days in filing the appeal, we were inclined to condone the same.

3. However, Mr. Dalal, Advocate appearing in person opposes the motions in support of the condonation of delay and files an affidavit to oppose. Further he has placed reliance upon the decisions of the Supreme Court in ***Union of India Vs. Tata Yodogawa Ltd. 38 ELT 739***, ***Balwant Singh Vs. Jagdish Singh & Ors.*** (Civil Appeal No.166 of 2006) and a decision in his own case in ***CBI, Mumbai Vs. Bhupen C. Dalal & Ors.*** (Criminal Application No.43 of 2014) dated 23rd October, 2015 to oppose the delay.

4. There can be no universal rule while allowing applications made for condonation of delay and each case would have to be decided on the facts as arising therein i.e. the explanation which have been offered to explain the delay.

5. We find that so far as the decision in *Tata Yodogawa Ltd.* (supra) is concerned, there was no attempt whatsoever to explain the delay of 51 days on the part of the Revenue and in that context, rejected

application for condonation of delay. In this case, there is an explanation for delay. So far as the decision of Balwant Singh (supra) is concerned, there was a delay of 778 days. The Court after recording the principles of condonation of delay particularly that there must a sufficient explanation for delay on the part of the party seeking condonation of delay and recording that the test for condonation is not the length of the delay but the reason for delay. In those facts, it held that the explanation given by the party seeking condonation of delay was not found satisfactory as it was found to be vague. The decision in the case of *Bhupen C. Dalal* (supra) was in the criminal matter and in that case also the Court was not satisfied with the reasons set out in the affidavit in support seeking condonation of delay.

6. In the present facts, we are satisfied with the reasons set out in the three affidavits dated 6th October, 2017 in support of the Notices of Motion to explain the 12 days delay in filing each of the three appeals.

7. Accordingly, all the three motions are allowed in terms of prayer clause (A).

(RIYAZ I. CHAGLA, J.) **(M.S. SANKLECHA, J.)**