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

NOTICE OF MOTION NO. 1971 OF 2017
IN
INCOME TAX APPEAL (L) NO. 1523 OF 2014

The Pr. Commissioner of Income – Central - 18 … Appellant

Versus

Shiv Puri …Respondent

Ms. Padma Divakar, for the Applicant / Appellant.
Mr. Nitesh Joshi, with Mr. Bharat Damodar, i/b Kanga & Co. for the Respondent.

CORAM: M.S.SANKLECHA & RIYAZ I. CHAGLA, JJ.

DATED: 9TH FEBRUARY 2018

PC:-

1. This Notice of Motion seeks a condonation of 979 days delay in moving this application to set aside the self operative order dated 18th December 2014 passed by the Prothonotary and Senior Master rejected the appeal under Section 260 A of the Income Tax Act, 1961 (the Act) under Rule 986 of Bombay High Court (Original Side) Rules. The self operative impugned order directed removal of office objections on or before 1st January 2015, failing which the Appeal would be rejected.

2. The Affidavit in support of the Notice of Motion states that on 18th December 2014, the registered clerk of the Advocate could not attend hearing before the Prothonotary and Senior Master, as he was on leave on medical grounds. This without giving particulars of the nature and duration of illness. The Affidavit further states that "it is only when the clerk of the Advocate resumed back on his work and after weeks when recollected the office objections to be removed in the present appeal checked the status of the present appeal and thus came to know about the appeal being dismissed on 1st January 2015". This again without particulars of the date when the clerk of the Advocate realised the mistake and pointed out to his Master and the Income Tax Department. The Affidavit further goes on to state that there was restructuring in the Income Tax department and the person who was assigned the appeal could not be traced easily. This again without any particulars. The basic date of when and how the deponent of the Affidavit learnt of the rejection and steps taken thereafter. The attitude to say the least is most casual and the entire exercise is being done only to satisfy the statistical requirements.

3. In fact as observed by the Apex Court in ***Office of the Chief Post Master General v. Living Media India Ltd.***[1],

> *"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 bona fide 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."*

4. The above observation applies on all fours to the present facts

5. In the above facts, we see no reason to condone the delay. Notice of Motion is dismissed. No order as to costs.

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

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1 (2012) 348 ITR 7 (SC).