Sharayu Khot.

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

NOTICE OF MOTION NO. 1990 OF 2017

IN

INCOME TAX APPEAL (L) NO. 1242 OF 2014

The Pr. Commissioner of Income Tax -16 **...Applicant/ Appellant**

Versus

Ravi Baldevraj Chadha **...Respondent**

Ms. Padma Divakar, for the Applicant/Appellant.

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

DATE : 19 January 2018

ORDER :

1. This Notice of Motion seeks condonation of delay of 1068 days in taking out this Motion for the purpose of setting

aside the order of the Prothonotary & Senior Master dated 25 September 2014 which dismissed the Applicant's Appeal by a self operating order on 9 October 2014.

2. The Affidavit dated 12 October 2017 in Support of the Notice of Motion is filed by Mr. Satish Reddy, Assistant Commissioner of Income Tax, seeking to explain the delay. We note the very casual manner adopted by the Revenue in setting out reason to condone the delay of 1068 days on its part. The Affidavit in support on oath states that the impugned order of the Tribunal which is being challenged is dated 4 July 2014 when in fact, the order passed by the Tribunal is dated 19 February 2014. Further the Affidavit indicates that the time to have objections removed and have the Appeal numbered was granted till 17 April 2015 by the Prothonotary & Senior Master, when in fact the order of the Prothonotary & Senior Master granted time till 9 October 2014 to remove the office objections.

3. Besides the Affidavit in Support gives no particulars

in support of its explanation that the delay took place because the Advocate's clerk had to leave due to some medical ailment. All that the Affidavit states is that the Advocate's Clerk could only attend the office on 17 April 2015. Thus, the Affidavit states that there was a delay leading to taking out this Application on 13 October 2017.

4. From the above, it is clear that there is no indication of the date when the Advocate's Clerk became unwell nor the nature of ailment nor there is any explanation on the part of the department of what it did after having come to know of the dismissal of the Appeal on 17 April 2015, except stating that the Advocate's Clerk could not contact the concerned person in view of restructuring of the Income Tax Department. This again is without any particulars to explain the delay in taking out this Notice of Motion on 12 October 2017 nor even indicating the date the Officer got to know of the dismissal of the Appeal on 25 September 2014 and how he got to know of it.

5. We are liberal in granting condonation of delay application, as it is best that the dispute is adjudicated on merits. Nevertheless one cannot loose sight of the opposite side who was led to believe that the impugned order of the Tribunal has been accepted. Moreover, a condonation of delay application even by the Revenue cannot be allowed in the absence of reasons to support the delay (Please see office of the ***Chief Post Master General & Ors. Vs. Living Media (India) Ltd. & Anr. 348 ITR 7***.)

6. In view of above, particularly the attitude of the Revenue in not even indicating any attempt on its part to explain its conduct viz-a-viz the delay. We find no reason to condone the delay.

7. Accordingly, the Notice of Motion is dismissed.

[RIYAZ I. CHAGLA J.] **[M.S. SANKLECHA, J.]**