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

NOTICE OF MOTION NO. 43 OF 2018
IN
INCOME TAX APPEAL (L) NO. 1599 OF 2014

The Commissioner of Income
Tax-LTU ....Applicant
(Orig. Appellant)

IN THE MATTER BETWEEN :-

The Commissioner of Income
Tax-LTU ......Appellant)
V/s.
Tata Consultancy Services Ltd. ......Respondent

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Mr. A.R. Malhotra a/w. Ms. Padma Divakar, Advocate for the applicant-original appellant.

Mr. Srihari Iyer, Advocate for the respondent.

CORAM :- **M.S. SANKLECHA, &**

SANDEEP K. SHINDE, JJ.

DATE :- **5TH APRIL, 2018.**

P.C. :-

1. This Notice of Motion seeks condonation of 950

days delay in seeking to set aside the self-operating order dated 8th January, 2016 passed by the Prothonotary & Senior Master rejecting the appeal for failure to remove the office objections on/or before 5th February, 2015. Thus, the Appeal stood rejected under Rule 986 of the Bombay High Court (Original Side) Rules.

2. We find that when the order dated 8th January, 2015 was passed by the Prothonotary and Senior Master, the applicant was represented. The Affidavit-in-support states that the appeal which stood rejected relates to Assessment Year 2003-04. The rejection of the Appeal came to the knowledge of the applicant when the petitioner's appeal for the Assessment Year 2004-05 was being heard by this Court on 25th September, 2017. This resulted in the present application being taken out. The Affidavit also states that, the earlier Advocate appearing for the department had not made the department aware of the objections raised by the Registry. There is no explanation on record

forthcoming from the Advocate concerned that the Assessing Officer was not informed about the impugned order requiring the petitioners to remove the objections before the specified date failing which the Appeal would stand rejected. Infact, the Advocate concerned is still on the panel and there is no statement made on her behalf supporting the above statement.

3. Moreover, we find that in almost similar circumstances, this Court in **Commissioner of Income Tax V/s. Reliance Industries Limited reported in [2017] 84 taxmann. Com 313 (Bombay)** had in similar circumstances dismissed the application making the following observations :-

> "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.

9. This is no explanation for the delay of 1371 days and if for all these years the Revenue officials have not noticed the lodging, filing or pendency of an appeal, a conditional order of the Registry, then, it must set its own house in order by sacking and removing the delinquent and negligent officials or penalising them otherwise so as to subserve larger public interest. If they are found to be hand-in-glove with the assessee and adopt such tactics deliberately, then, we do not think that the Court is responsible for the same. The Registrar (O.S.) has been drawing up a list and notifying the appeals regularly and intimating

> the parties and their Advocates through the High Court website that they must attend to these cases or else all consequences including dismissal without adjudication on merit, will follow. If this is a known fact to all practising Advocates, including the Revenue's Advocates, then, we do not think that any special treatment can be claimed."

The above observations would apply in equal measure to the present facts.

4. In the above view, we see no reason to condone the delay. The Notice of Motion is accordingly dismissed.

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