

Sharayu Khot.

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

NOTICE OF MOTION NO. 2065 OF 2017

IN

INCOME TAX APPEAL NO. 513 OF 2004

Tulsidas V. Patel Pvt.Ltd.

**...Applicant/
Appellant**

Versus

Dy. Commissioner of Income Tax

...Respondent

Mr. Ravi Ratlessar, i/by D.M. Harish & Co., for the Appellant.

Mr. N.C. Mohanty, for the Respondent.

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

DATE : 19 January 2018

ORDER :

1. This Notice of Motion has been taken out for condonation of 4885 days delay in seeking to set aside the order

dated 7 June 2004 passed by the Prothonotary & Senior Master, High Court, Bombay. The above impugned order dated 7 June 2004 directed the Appellants to remove the office objections on or before 18 May 2004, failing which, by a self operating order, the Appeal itself would stand dismissed under Rule 986 of the Bombay High Court (O.S.) Rules. This Appeal was dismissed prior to it being numbered for the purposes of its consideration for admission by this Court.

2. The Affidavit dated 23 November 2017 in Support of the Notice of Motion has been filed by an Advocate after over 13 years of dismissal of the Appeal. The reason for the inordinate delay is that only recently on 13 November 2017 while checking the status of some other Appeals, it realised that this Appeal was dismissed. The Affidavit states that it appears that the office objections were not removed due to oversight of his Clerk. No further particulars are placed on record. The Affidavit states that grave hardship, injury and loss would be caused to the Appellant for no fault on its part. Therefore, it is prayed that the

delay be condoned.

3. One must not loose sight of the fact that the Appeal itself was dismissed over 13 years prior to admission. It is impossible at this stage, to state the reasons for not prosecuting the Appeal even upto the stage of admission. It is likely the Appellant may have at that stage take a conscious decision not to prosecute this Appeal. It is not possible for us to second guess the same.

4. No doubt one should be liberal in dealing with the application for condonation of delay. However, one must at the same time keep in mind that condoning of the delay should not result in accrued rights of the other party being defeated by setting the clock back. The Applicant has been negligent in prosecuting their Appeal. We are not satisfied with the reasons indicated in the Affidavit in Support seeking condonation of delay. Thus, we see no reason to condone such gross delay of over thirteen years.

5. Accordingly, the Notice of Motion is dismissed.

[RIYAZ I. CHAGLA J.]

[M.S. SANKLECHA, J.]