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NMA-109-2018 (SR.4)

Thursday, 1.3.2018

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 109 OF 2018

IN

INCOME TAX APPEAL (LODG) NO. 1226 OF 2015

Pr. Commissioner of Income

Tax, Central-3

V/s.

Amritlal Jain

....Applicant

....Respondent

* * * * *

Ms. Padma Divakar, Advocate for the applicant, original
Appellant.

Mr. Sameer Dalal, Advocate for the respondent.

CORAM :-

M.S. SANKLECHA, &

SANDEEP K. SHINDE, JJ.

DATE :-

1ST MARCH, 2018.

P.C. :-

1. This application seeks condonation of 632 days delay in taking out this application to set aside the self-operating order dated 14th January, 2016 passed by the Prothonotary and Senior Master rejecting the petitioner's

appeal for failure to remove office objections in terms of Rule 986 of the Bombay High Court (Original Side), Rules on/or before 12th February, 2016.

2. We have perused the Affidavit-in-support of the Notice of Motion. It does not indicate the date when the applicant came to know about the rejection of the Appeal for non-removal of office objections. The Affidavit-in-support is bereft of any particulars. It is most casual and even the date when the deponent came to know of the rejection of the Appeal is not mentioned. There is no explanation even attempted to be offered for the delay.

3. Infact in similar circumstances, our Court in **Commissioner of Income Tax V/s. Reliance Industries Limited reported in [2017] 84 taxmann. Com 313 (Bombay)** had made 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.”

4. In spite of the above, the present Notice of Motion filed on 4th December, 2017 and the Affidavit-in-support are bereft of any particulars to explain the delay or even take into account, the above observation of this Court in the affidavit.

5. Accordingly, the Notice of Motion is dismissed.

(SANDEEP K. SHINDE, J)

(M.S. SANKLECHA, J)