IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 102 OF 2018
IN
INCOME TAX APPEAL (LODG) NO. 56 OF 2017

ALONGWITH
NOTICE OF MOTION NO. 104 OF 2018
IN
INCOME TAX APPEAL (LODG) NO. 58 OF 2017

Pr. Commissioner of Income-Tax-27 ....Applicant
(Orig. Appellant)

IN THE MATTER BETWEEN :

Pr. Commissioner of Income-Tax-27 ....Appellant
V/s.
Uday Namdeo Salunkhe ....Respondent

* * * * *

Ms. Padma Divakar, Advocate for the applicant-original appellant.

Mr. Arjun Gupta, Advocate for the respondent.

CORAM :- M.S. SANKLECHA, &

SANDEEP K. SHINDE, JJ.

DATE :- 16TH MARCH, 2018.

P.C. :-

1. These Notices of Motion have been taken out seeking condonation of delay of 228 days in seeking to set aside the self-operating order dated 23rd February, 2017 passed by the Prothonotary & Senior Master, rejecting the appellant's appeal for non-removal of office objections under Rule 986 of the Bombay High Court (Original Side) Rules.

2. We find that at the time of passing of the order dated 6th December, 2017 by the Prothonotary & Senior Master, the appellants were represented before the Prothonotary & Senior Master. The affidavits-in-support of the Notices of Motion are bereft of any particulars, in as much as, the basic date of when the Assessing Officer came to know of the dismissal of the Appeal for non-removal of office objections is even not mentioned therein. The Affidavits-in-support are most casual and there is no

explanation even attempted to be offered for the delay.

3. Infact in identical 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. It appears the entire process of filing the

Notices of Motion has been done by the Revenue only to complete a formality. Accordingly, both the Notices of Motion are dismissed. No order as to costs.

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