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

NOTICE OF MOTION NO. 984 OF 2018
IN
INCOME TAX APPEAL (L) NO.2010 OF 2015

The Principal Commissioner
of Income Tax-17, Mumbai. ...Applicant/Appellant
V/s.
M/s Poddar and Ashish Developers … Respondent

Mr.P.C.Chhotaray for the Applicant/Appellant.
Mr.Aasifa Khan with Mr. Satish Mody for the Respondent.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : FEBRUARY 21, 2019.

P.C.:-

1. This notice of motion is filed by the revenue. Two prayers are made. One is to set aside the order of the Prothonotary dismissing the appeal of the revenue for non-removal of office objections after condoning delay of 814 days and the second prayer is to condone the delay of 181 days in filing appeal itself.

2. Learned counsel for the revenue stated that on identical

issues concerning the same assessee, revenue's appeal for the earlier assessment years are admitted and pending. He drew our attention to the order of the Supreme Court in case of **Anil Kumar Nehru Vs. Assistant Commissioner of Income Tax reported in Civil Appeal No.11750 of 2018 dated 3rd December 2018,** in which while setting aside the order of this Court, it was felt that issues regarding the earlier years were pending before the High Court, the appeal should not have been dismissed on technical ground.

3. Learned counsel Ms.Aasifa Khan for the assessee vehemently submitted that proper reasons are not cited for delay.

4. Undisputed facts are that similar issues as raised in this appeal concerning the same assessee are admitted and pending before the High Court. Though there is substantial delay, bulk of the delay is attributable to bring in motion for recall or dismissal of appeal. Delay in filing the appeal of 181 days is sought to be explained on the ground that the impugned order of the Tribunal was first served on a wrong Commissioner, upon return of the

same it was thereafter transferred to the correct Commissioner, upon which the appeal came to be filed.

5. In view of such facts, delay in filing the motion is condoned. Order of the prothonotary dated 10th March, 2016 is recalled after condoning delay. Delay caused in filing the Income Tax Appeal is also condoned. However, the revenue-appellant shall pay costs of Rs.10,000/- to the respondent. Notice of motion disposed of.

(M.S.SANKLECHA,J.) **(AKIL KURESHI,J.)**

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