IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.699 OF 2019
IN
REVIEW PETITION (L) NO.15 OF 2019
IN
INCOME TAX APPEAL NO.808 OF 2016

Pr. Commissioner of Income Tax (Central) - 4 … Applicant

In the matter between:
Pr. Commissioner of Income Tax (Central) - 4 … Appellant
Vs.
Shreeji Enterprises … Respondent

Mr. Suresh Kumar for Applicant.
Mr. Jitendra Singh for Respondent.

CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.

DATE : JANUARY 28, 2020

P.C. :

Heard Mr. Suresh Kumar, learned standing counsel Revenue for the applicant and Mr. Singh, learned counsel for the respondent - assessee.

2. This notice of motion is sought for condoning the delay of 175 days in filing the related review petition.

3. The related review petition has been filed for review of final order dated 10.12.2018 passed by this Court in Income Tax Appeal No.808 of 2016 dismissing the appeal of the Revenue.

4. Revenue had preferred the appeal under Section 260-A of the Income Tax Act, 1961 against the common order dated 14.08.2015 passed by the Income Tax Appellate Tribunal in the case of the assessee

Shreeji Enterprises relating to the assessment year 2009-10. The question which was considered by this Court in appeal was as under:

> "Whether on the facts and in the circumstances of the case and in law the Hon'ble ITAT was justified in holding that the Assessee had exploited its property commercially by way of complex commercial activities and hence, the rental income received by the Assessee to be taxable as income from business and not under the heard 'Income from House Property'?"

5. By the final order dated 10.02.2018, this Court relied upon a decision of the Supreme Court in *Chennai Properties & Investment Limited Vs. CIT*, (2015) 373 ITR 673 and thereafter held that no substantial question of law arose in the appeal. The appeal was accordingly dismissed.

6. We find that review has been sought for by the Revenue primarily on the ground that the said decision in Chennai Properties and Investment Limited (*supra*) is distinguishable as would be evident from the subsequent decision of the Supreme Court in the case of *Raj Dadarkar & Associates Vs. ACIT*, (2017) 81 taxmann.com 193.

7. On due consideration, we are of the view that on such a ground prayer for review cannot be acceded to. No case for review is made out. Consequently, we decline to condone the delay in preferring the review petition.

8. Notice of motion sought for is declined.

(MILIND N. JADHAV, J.) **(UJJAL BHUYAN, J.)**