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

WRIT PETITION NO.3389 OF 2019

Principal Commissioner of Income Tax-7… Petitioner
V/s.
Income Tax Appellate Tribunal,
"J" Bench, Mumbai and anr. … Respondents

Mr.N.C.Mohanty, Advocate for the Petitioner.
Mr.Mohamedali M. Chunawala, Advocate for Respondent No.1.
Mr.Madhur Agarwal with Mr.A.K.Jasani, Advocate for Respondent No.2.

CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.
DATE : JANUARY 24, 2020

P.C.:-

1. Heard Mr.N.C.Mohanty, learned standing counsel, Revenue for the petitioner; and Mr.Madhur Agarwal, learned counsel for respondent No.2.

2. In this petition filed under Article 226 of the Constitution of India, Principal Commissioner of Income Tax-7, Mumbai as the petitioner has assailed legality and validity of the order dated 15th March, 2019 passed by the

Income Tax appellate Tribunal, "J" Bench, Mumbai (briefly "the Tribunal" hereinafter) in Miscellaneous Application No.143/Mum/2019 arising out of SA No.453/Mum/2018 for the assessment year 2011-12, whereby the application filed by the revenue for vacation/ recall of the stay order was dismissed by the Tribunal.

3. Be it stated that respondent No.2 i.e. the assessee has preferred Income Tax Appeal No.850/Mumbai/ 2016 and in that appeal it had filed a stay application being SA No.453/Mumbai/2018. Tribunal passed an order on 4th December, 2018 granting stay of the orders of the revenue authorities. For vacating the stay order revenue had preferred the miscellaneous application. By the impugned order dated 15th March, 2019, the miscellaneous application was rejected.

4. Basic grievance of the revenue is that Tribunal has no jurisdiction to extend the stay order beyond a period of 365 days. In the present case, Tribunal has been

extending the stay order from time to time which has exceeded the aforesaid period.

5. On the other hand, Mr.Agarwal, learned counsel for respondent No.2 submits that the stay order passed on 4th December, 2018 has elapsed by efflux of time whereafter Tribunal has passed a fresh order which revenue has not brought on record.

6. After hearing learned counsel for the parties and on due consideration, we are of the view that it would be in the interest of justice if the appeal itself is taken up for final disposal by the Tribunal expeditiously.

7. Accordingly, we direct the Tribunal to hear and decide Income Tax Appeal No.850/Mum/2016 for the assessment year 2011-12 within a period of four months from the date of receipt of an authenticated copy of this order. Stay granted by the Tribunal shall continue till the disposal of the appeal within the aforesaid period.

8. Writ petition is disposed of.

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

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