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

INTERIM APPLICATION NO.1906 OF 2020

IN

INCOME TAX APPEAL NO.716 OF 2016

The Pr. Commissioner of Income Tax (Central) Pune	**...Applicant / Petitioner**
Versus	
M.N. Navale (Bigger HUF)	**...Respondent**

Mr. Sham Walve with Mr. Pritish Chatterjee for Applicant.

Mr. Niraj Seth with Mr. Nitin Dhumal for Respondent.

JITENDRA SHANKAR NIJASURE Digitally signed by JITENDRA SHANKAR NIJASURE Date: 2021.09.15 16:06:10 +0530

CORAM : K.R. SHRIRAM & R.I. CHAGLA, JJ.

DATE : 13 SEPTEMBER, 2021.

ORDER :

1. On 10th August, 2021, following order came to be passed

> ***"1. When the Court pointed out to Mr. Walve that except from saying due to inadvertence the office objection remained to be removed, there is no explanation whatsoever. On 28th August 2014 applicant was directed to remove office***

objections within four weeks. Applicant did not comply with the order. The matter thereafter was listed on 16th March 2016 almost one and half years later, still the office objections had not been removed. Infact nobody even appeared in the Court on 16 th March 2016. On that date, the appeal came to be dismissed for non removal of office objections. Looks like the Court was charitable not to note the appeal was being dismissed for default. Thereafter, this application has been affirmed on 4th February 2020 but lodged on 4th March 2020 and the only explanation we find is "due to inadvertence"

2. Applicant is directed to file a further affidavit explaining why the office objections were not removed within four weeks from 28th August 2014 and in any case by 16th March 2016 and why nobody appeared on 16th March 2016 and still the application has been affirmed only on 4th February 2020 but lodged on 4th March 2020 and how after four years applicant realised that the appeal had been dismissed. This further affidavit shall be filed and copy served within two weeks from today. Respondent may file a reply to this application as well as to the additional affidavit to be filed and serve a copy thereof within a week of receiving a copy of the additional affidavit.

3. Application to be listed for hearing on 7th September 2021.

2. Admittedly, there is a delay of 1419 days in filing this application for restoration.

3. On 28th August, 2014, Applicant was directed to remove all office objections within four weeks. In view of non removal of office objections, Appeal came to be dismissed by an order dated 16th March, 2016.

4. In the further Affidavit, we find that Applicant has devoted four pages only to give details of certain connected proceedings which were pending before the Tribunal. Applicant has devoted three paragraphs to comply with the directions passed by this Court in its order dated 10th August, 2021. In paragraph 5, the Applicant has made a general statement that incumbent AO came to know that the Appeal filed by the department on the issue of existence of M.N. Navale Bigger HUF, the Hon'ble High Court had dismissed the Appeal for want of removal of office objections. Mr. Walve states that the said order of ITAT was passed on 15th November, 2019. What we find unacceptable is that the incumbent A.O. has not filed any Affidavit. In paragraph 6, Applicant states that in the year 2014, when the Court passed the order directing to remove office objections one Mr. Vipul Bajpayee was representing the department. On 16th March, 2016, when the Court passed the order of dismissal Mr. Vipul Bajpayee was a standing counsel for the

department. No Affidavit of Mr. Vipul Bajpayee is filed. We are informed that Mr. Vipul Bajpayee is junior standing counsel today for the department. Moreover, the Applicant's explanation for non removal of objection contains only conjectures. He says that in between "change in the standing counsel of the department may be the reason for non appearance ...."; there is a possibility of communication gap can be between standing counsel ..... and then AO......", the new officer may not have been fully aware of dismissal of this case....".

5. In paragraph 7, the Applicant states that "while constructing the factual background of this issue in case of M.N. Navale Bigger HUF (AY 2001 – 2002 to 2007 – 2008), it was noticed that the Appeal recorded the issue of existence of M.N. Navale HUF.....," He does not say on which date and who noticed it.

6. As stated in the Affidavit in Reply, the department was constantly participating in the proceedings before Income Tax Appellate Tribunal on the existence of M.N. Navale Bigger HUF. Therefore, it is inconceivable that during the period 2012 – 19, the Authority never once enquired about the status of the Appeal before

this Court.

7. In view of these reasons, we are not inclined to grant the relief as prayed for by the Applicant to restore the Appeal that was dismissed pursuant to order dated 16th March, 2016.

8. Application dismissed.

[R.I. CHAGLA J.] **[K.R. SHRIRAM, J.]**