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

## INCOME TAX APPEAL NO.2926 OF 2018

Pr. Commissioner of Income Tax, Central-2. .. Appellant

v/s.

Shoppers Stop Ltd. .. Respondent

…

Mr. P.C. Chhotaray, for the Appellant.

Ms. Aarti Sathe a/w Mr. Nirav Barot, Ms. Aasavari Kadam i/b. Maneksha & Sethna for the Respondent.

…

**CORAM : K. R. SHRIRAM &**
**KAMAL KHATA, JJ.**

**DATED : 27TH SEPTEMBER 2023**

**P.C. :**

1. On 15th November 2021 in Income Tax Appeal No.1954 of 2017 PCIT v/s. Patel Pratibha Joint Venture, the Court had passed an order in which paragraph 1, 2 and 3 read as under:

> "1. *Mr. Pinto is not sure whether the appeal has been served. Board was released on Friday, i.e.,12th November 2021 and as an Advocate on record we would expect Mr. Pinto to check his file and inform the court whether the appeal has been served. In any case, it is four and half years since the appeal was filed and it is rather unfortunate that the revenue being the biggest litigant in this court, does not even bother to ensure that after*

*filing of appeals copies are served on respondent and file affidavit of service. Everyday many matters get adjourned because the Advocates are unable to assist the court on this service aspect.*

*2. In the circumstances, the Commissioner of Income Tax (Judicial) of Mumbai and Pune, is directed to ensure that every appeal filed by them, which are pending admission, is served on respondent within two weeks from today and affidavit of service is filed within one week thereafter. If such service is not effected and affidavit of service is not filed, the appeals will stand dismissed without further reference to the court.*

*3. Time given for service may appear to be a little short but the fact is appellant had more than 4 years to serve. Copy of this order be placed before the Commissioner of Income Tax (Judicial) Mumbai and Pune as well as Principal Chief Commissioner Income Tax, Mumbai and Pune."*

2. On 6th September 2023 the following order came to be passed:

*"1. There was a standing order to serve all the Appeals within a particular time. Mr. Chhotaray is not sure whether Respondent has been served. If Respondent has already been served, then Affidavit of Service to be filed within one week. If not file, by virtue of the earlier self-operating orders/instructions, this Appeal will not survive.*

*2. If the Appeal has been served and the Affidavit of Service, as mentioned earlier is filed, then this Appeal be listed for admission on 27th September 2023."*

3. An affidavit of one Rajiv Kumar, Income Tax Inspector, affirmed on 12th September 2023 is filed in which it is stated that copy of

Appeal was served on 30th June 2023 by email. To the Affidavit is also annexed an email dated 4th September 2023 addressed to one manan.m@cbva.in, which we are informed by Ms. Sathe is the email address of the Chartered Accountant. There is nothing to indicate that the appeal was served within the time prescribed in our order dated 15th November 2021 in Income Tax Appeal No.1954 of 2017 quoted above.

4. In view of the self-operative order applying to all Appeals, this Appeal also should be deemed to have been dismissed. It will not be out of place to mention that this Appeal is of 2018 and on 6th September 2023 counsel was not aware whether the Appeal has been served and from the email annexed to affidavit of Rajiv Kumar, it appears, though Ms. Sathe denies having received, to have been served by email on 30th June 2023.

5. It is not clear whether email has been sent on 30th June 2023 to the registered email address of the assessee. We would hasten to state that this does not mean such service would be sufficient. There is no explanation also why the department did not send the Appeal by courier or by speed post or registered post or by hand delivery to the assessee.

6. In the circumstances the Appeal has been dismissed by the self-operative order of this Court. It is open to Appellant to take out an application for restoration making out a case as to why for five years the Appeal was not served and more so inspite of a judicial order.

**(KAMAL KHATA, J.)** **(K.R. SHRIRAM, J.)**