

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

NOTICE OF MOTION (L) NO. 1672 OF 2017
IN
INCOME TAX APPEAL (L) NO. 448 OF 2014

The Pr. Commissioner of Income-Tax-10 ... Applicant

In the matter between:

The Commissioner of Income-Tax-8 ... Appellant

Vs.

M/s. Parle Bisleri Ltd. ... Respondent

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Mr. A. R. Malhotra a/w Mr. N. A. Kazi for the Applicant.

Mr. J. D. Mistri, Senior Advocate a/w Mr. Hiten Chande i/b PDS
Legal for the Respondent.

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**CORAM : S. C. DHARMADHIKARI &
SMT. VIBHA KANKANWADI, JJ.**

DATE : AUGUST 28, 2017.

P.C. :

1. This is a Notice of Motion seeking condonation of delay of 1128 days in challenging an order dated 1st November, 2014 of the Prothonotary and Senior Master. The further relief sought is to set aside this order and direct restoration of the above Appeal to this Court's file.

2. The Revenue brought an Appeal to this Court being Income Tax Appeal (L) No.448 of 2014 to challenge an order of the Income Tax Appellate Tribunal, "J" Bench, Mumbai, dated 20th September, 2013, for the assessment year 1998-1999.

3. This Appeal was lodged in this Court on 14th February, 2014.

4. On the date of its lodging, the same was listed before the Registry official. The Registry official checked the memorandum of Appeal and the annexures, and on 1st April, 2014, recorded in writing the defects and deficiencies which need to be removed before the Appeal could be registered.

5. On 1st April, 2014, the objections were endorsed on the memorandum itself. It is common ground that the Registry granted enough time to the official and the Advocate, who lodged this Appeal, to remove these office objections.

6. Thus, the Appeal, on its lodging on 14th February, 2014, was listed for notifying the defects on 1st April, 2014. They were notified on that date and an opportunity was given to remove these deficiencies and defects, else, the Appeal was to stand dismissed. It thus stood dismissed on 19th June, 2014. However, on an application made by the Revenue's Advocate/appellant in this Appeal, the Registry recalled its earlier order and restored the matter to the file. Thereupon, the Registry gave time till 24th November, 2014 to remove the office objections. Both these orders are duly referred in paragraph 2 of the affidavit-in-support of the present Motion seeking condonation of delay. They are exhibits "A" and "B". Since the later order of 1st November, 2014

was also not complied with within time specified, namely, 24th November, 2014, with effect from that date the Appeal stood dismissed.

7. The cause and stated to be sufficient is set out in paragraph 3 of the affidavit-in-support. It only states that the Revenue/Department was not aware of the objections and only when the connected Appeals being Appeal No.1765 of 2014 and Appeal No. 978 of 2014 were listed before this Court for admission that the Revenue/Department officer discovered that the Appeal for the assessment year 1998-1999 stood dismissed as above.

8. We find that the explanation or reason given in paragraph 3 of this affidavit to be patently false. If paragraph 3 and paragraph 4 of this affidavit-in-support cannot be reconciled, then, it is obvious that though aware of the conditional orders after lodging of the subject Appeal, the Revenue's Advocate and the Revenue officials did not take the requisite steps. They cannot now come out with such a version for seeking restoration of a dismissed Appeal. The cause shown is, therefore, not sufficient and lacks in *bona fides*. It is a case of gross negligence and utter callousness on the part of the Revenue/Department. In two similar Motions, we had deprecated the tendency of the Revenue to either blame it's Advocate or the procedural rules for the dismissal of their Appeals. The Appeals are dismissed for non-removal of office objections. This Court and it's Registry derives no pleasure in dismissing the

Appeals without adjudication on merits. There is a certain sanctity attached to the procedural rules. Unless and until they are complied with, no matter can be said to be ready for admission or final hearing. If the Revenue and its officials are aware of lodging and filing of an Appeal, then, they must attend alongwith their Advocate, the Registry's office and take the requisite steps. Their abject failure rightly results in dismissal of their Appeals. Even in the present case, more than one opportunity was granted to remove the office objections. This Court, on its judicial side cannot routinely set aside the orders of the Registry. The procedural rules cannot be set at naught or rendered redundant merely because the Government or Revenue is the litigant. The office objections being not removed within the time specified, all consequences under the rules follow. Pertinently, neither the procedural rules, nor the power of the Prothonotary and Senior Master to dismiss the Appeal as above or refuse its registration are challenged. Hence the Notice of Motion is dismissed.

(SMT. VIBHA KANKANWADI, J.)

(S. C. DHARMADHIKARI, J.)