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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**NOTICE OF MOTION NO. 704 OF 2009
ALONG WITH
INCOME TAX APPEAL (L) NO. 3209 OF 2008**

The Commissioner of Income Tax ... Appellant

Versus

M/s. Advani Oerlikon Ltd. ... Respondent

Mr.P.S. Sahadevan for the Appellant.

None for Respondents.

**CORAM: F.I. REBELLO &
R.S.MOHITE, JJ.
DATED: 24TH MARCH, 2009**

P.C.:

. There is delay of 2193 days in preferring the appeal. The tax affect is also about 15 lacs of rupees. There is an affidavit filed by Mr. Shirish Kumar, Assistant Commissioner of Income Tax in support of condonation of delay. The order of ITAT is dated 23.4.2002. According to the affiant the last date for filing the appeal was 6.9.2002. The appeal has been filed on 3.10.2008. In para 4 are set out the purported acts for not filing the appeal within limitation. As pointed out and after the Chief Commissioner granted approval on 6.9.2002 the matter was referred to Law Ministry which returned the folder in December, 2004. The matter was then referred on 15.12.2005 to Prashant Senior Standing Counsel for drafting the appeal. The appeal was not

drafted and the file was collected on 31.8.2007. It is then pointed out that the fresh docket was prepared in the name of Mr. P.S. Sahadevan, Junior Counsel on 15.9.2008. The draft was received in the same month and thereafter the appeal was filed.

. We have been considering a large number of motions filed by the department for condonation of delay. In spite of several and persistent objections raised by the counsel for the assessees, considering that the revenue interests are involved, we have been condoning delay as a matter of course upto 400 days sometimes with costs. This approach of the court seems to have been taken as licence by the department for preferring the appeals much after the period of limitation has expired. The Department presumes that before a sympathetic court, the law of Limitation does not apply to them.

. Though this court was informed that there has been re-arrngements and appeals are now being filed on time, we find that the only thing that has happened is that the delays are shortened. Motions for condonation of delay for the periods ranging between 20 to 110 days and some times also more are filed. We have in the past not imposed costs in such matters. In our opinion, the effect of condoning the delay is that the assessee who is

otherwise entitled to an order in his favour has to once again engage counsel and to appear before this court apart from having the threat of assessment being re-opened after several years. Considering this aspect of the matter costs will have to be imposed so that the assessee would be recompensated to that extent.

. In our opinion, many of the questions raised in this appeal are covered. Yet inspite of that after the period of 2193 days, this appeal is preferred. The cause shown do not amount to sufficinet cause. This matter is nothing but abuse of judicial process by the officers shirking their responsibilities and passing the same to this court and burdening the court with matters which ought not to have been filed. Considering that we impose cost of Rs.5,000/- on the appellant to be paid within fifteen days. This cost will be recovered from the Officer who has filed the affidavit and who has preferred this appeal. The cost will be deposited in the account of Legal Services Authority of this court. The compliance to be filed before this court within 15 days from today.

. With the above observations motion dismissed.

. As the motion is dismissed, appeal also stands

dismissed.

(R.S.MOHITE, J.)

(F.I.REBELLO, J.)