IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

TAX APPEAL NO.19 OF 2003

Padmashree Dr. Vithalrao Vikhe Patil
Sahakari Sakhar Karkhana Limited
at Pravarangar, Tq-Rahata,
Dist-Ahmednagar,
Through its Managing Director,
Mr. Vasantrao Sakharam Gunjal

...APPELLANT

VERSUS

1) The Deputy Commissioner of
Income-tax, SH-3, Nashik,

2) Deputy Commissioner of
Income-tax, Special Range-II,
Aurangabad.

...RESPONDENTS

...

Mr. V.D. Hon, Senior Counsel for Appellant.
Mr. Alok Sharma, Standing Counsel for Respondents.

...

CORAM: S.V. GANGAPURWALA AND A.I.S. CHEEMA, JJ.

DATE : 25TH MARCH, 2015

ORAL ORDER :

1. Mr. Sharma, the learned counsel for Respondents submits that the non-refundable deposits and interest on the non-refundable deposits is an income. The Tribunal had rightly considered the said aspect and allowed the Appeal filed by the Department. According to the learned counsel, the Tribunal rightly relied on the Judgment of this Court in a case of **Commissioner of Income Tax vs. Chhatrapati Sahakari Sakhar Karkhana Ltd. & Rahuri Sahakari Sakhar Karkhana Ltd., reported in (2000) 245 I.T.R. 498.** According to the learned counsel, when the non-refundable deposit has been held to be an income and as such interest on it also would be taxable. Non-refundable deposit and interest on it cannot be deleted and the same have to be added to the income.

2. Mr. Hon, learned senior counsel for

Appellant relies on the Judgment of the Apex Court in a case of **Siddheshwar Sahakari Sakhar Karkhana Limited vs. C.I.T. Kolhapur, reported in 2004(12) S.C.C. 1.** According to the learned senior counsel, the non-refundable and refundable deposit cannot be treated as the income of the assessee society.

3. We have considered the submissions canvassed by the learned counsel for the respective parties. The Tribunal relied on the Judgment of this Court in a case of **Commissioner of Income Tax vs. Chhatrapati Sahakari Sakhar Karkhana Ltd.,** referred supra. However, in a subsequent Judgment in a case of **Siddheshwar Sahakari Sakhar Karkhana Limited vs. C.I.T. Kolhapur,** referred supra, the Apex Court has observed in Para 51 thus:-

> "51. For the aforesaid reasons we conclude that the non-refundable and refundable deposits cannot be treated as the income of the assessee- Societies. The Civil Appeals

filed by the assessees/Co-operative Sugar Factories are allowed without costs.

. It has been held by the Apex Court that such deposits are akin to the transaction of loan and liable to be excluded from taxable income.

4. In light of the above, the impugned Judgment and Order passed by the Tribunal is quashed and set aside and the order of the Commissioner is upheld. Appeal accordingly allowed. No costs.

[A.I.S.CHEEMA,J.] **[S.V.GANGAPURWALA,J.]**

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