IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

INCOME TAX APPEAL NO. 98 OF 2014

Niki Agro Products Pvt. Ltd.,
Jalgaon .. Appellant

Versus

JCIT, Range - 2, Jalgaon .. Respondent

Shri Subodh P. Shah, Advocates for the Appellant.
Shri Alok Sharma, Standing Counsel for the Respondent.

CORAM : S. V. GANGAPURWALA AND
A. M. DHAVALE, JJ.

CLOSED FOR ORDERS ON : 13.02.2018

ORDER PRONOUNCED ON : 23.03.2018

ORDER (***Per S. V. Gangapurwala, J.***) **:-**

. The present appeal arises out of an order U/Sec. 271D of the Income Tax. Penalty is imposed for accepting an amount of loan in cash.

2. Mr. Shah, the learned advocate for the appellant submits that, two important pieces of evidence are completely ignored. The appellant is a private limited company. The directors of the company are also assessees in their individual capacity. One of the director Shri Kantilal Jain borrowed an amount of Rs.

50,00,000/- in cash as a hand loan from one Shri S. G. Mittal. The transaction was entered into by Shri Kantilal Jain director of the appellant company in his personal and individual capacity. The appellant/company had no relation whatsoever with the transaction. While acknowledging the receipt of the cash of loan taken by Shri Kantilal Jain from Shri S. G. Mittal, Shri Kantilal Jain used the letter head of the appellant company. During the search of the premises of Shri S. G. Mittal U/Sec. 132 of the Income Tax Act (for short "I. T. Act"), the acknowledgement for receipt of cash issued by Shri Kantilal Jain was discovered by the searching party. The statement of Shri S. G. Mittal was recorded U/Sec. 132(4) of the I. T. Act and he declared this as his undisclosed income. Even the statement of Shri Deepak Jain another director of company was recorded U/Sec. 133A of the I. T. Act. He spontaneously replied that, the loan transaction is not of the company, but it is personal transaction of Shri Kantilal Jain. The learned counsel submits that, Kantilal Jain alone had no authority to borrow any amount for and on behalf of company. There was no resolution of the company to borrow any amount. Under letter dated 27.11.2007 Shri S. G. Mittal, acknowledged the repayment of the principal amount of loan. The text of the letter also shows that the loan was repaid by Shri Kantilal Jain and that transaction was his personal transaction. All these aspects have been ignored by the Tribunal, the Commissioner Appeals and the Assessing Officer. The learned advocate submits that, perverse finding is given that the amount is received by the company.

3. Mr. Sharma, the learned advocate for the respondent supports the order.

4. All the authorities have concurrently held that, loan in cash was obtained by the appellant company from Shri S. G. Mittal. The acknowledgement of having received the loan is on the letter head of the company. Shri Mittal has also categorically stated in his statement recorded U/Sec. 132(4) of the I. T. Act as well as statement on oath before the Assessing Officer that, he has given the loan to the assessee company. The subsequent statement by the director has been found to be after thought by the Tribunal, Commissioner Appeals and the Assessing Officer. It has been observed that, the assessee at no point of time had shown it's desire to cross examine Shri S. G. Mittal to controvert the deposition of Shri S. G. Mittal. All the authorities as such, have arrived at the conclusion that, the loan was received by the assessee company in cash, in contravention of Sec. 269SS of the I. T. Act. The said finding is possible finding of fact. We do not find any substantial question of law involved in the present appeal. The appeal is dismissed. No costs.

[A. M. DHAVALE, J.] **[S. V. GANGAPURWALA, J.]**

bsb/March 18