IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

INCOME TAX APPEAL NO. 67 OF 2015

The Commissioner of Income Tax- .. Appellant

Versus

Vivek Vardhini Nagari Sahakari
Pat Sanstha, Maryadit .. Respondents

Shri. Alok Sharma, Advocate for the Appellant.

CORAM : S.V. GANGAPURWALA AND
A. M. DHAVALE, JJ.
DATED : 27th February, 2018

PER COURT:

. The appellant assails order of the tribunal dismissing the appeal of the revenue and confirming the order passed by the Commissioner (Appeals).

2. Mr. Sharma, the learned advocate for the appellant submits that the respondent assessee has violated section 269 SS of the Income Tax

Act. Accepted deposits over Rs. 20,000/- in cash. The respondent assessee is situated at Pachora. The Banking facility is available. Once it is clear that section 269 SS is violated provision of section 271 D of the Income Tax Act gets attracted. Ignorance of law is no excuse. The learned advocate relies on the judgment of the jurisdictional High Court in case of **Shivaji Ramchandra Pawar (HUF) Vs. The Joint Commissioner of Income Tax Range-3- Nashik, reported in 2018 Tax Corp (DT) 71104 (Hc-Bombay)** and another judgment of the Alahabad High Court in case of **The Commissioner of Income Tax-I Vs. Ms. Sunil Sugar Co. reported in 2017 Tax Corp (DT) 69725.**

3. With the assistance of the learned advocate for the appellant and the respondent we have gone through the judgment.

4. In case of Shivaji Ramchandra Pawar (supra), this court had observed that mere fact that a party accepts loans in cash which are otherwise explainable would not absolve a party from penalty under section 271 D of the Act in absence of a reasonable cause.

5. In the present matter it has been observed by the Commissioner (Appeals) and the Tribunal concurrently that the auditor of the

respondent advised that Section 269- SS of the Act are not applicable to the assessee on the ground that assessee's business is akin to the bank. The Commissioner (Appeals) and Tribunal observed that it is based on the advise of the Auditor. The assessee believed the advice and it can not be said that the assessee's bona fide belief was genuine and honest.

6. Section 271-D is a penalty proceedings. The Tribunal and the Commissioner (Appeals) concurrently appreciated the explanation given and found the explanation to be within the purview of reasonable cause.

7. The appeal can only be entertained on substantial question of law. No substantial question of law arises.

8. The appeal as such is dismissed.

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

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