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

INCOME TAX APPEAL NO. 145 OF 2016
WITH
INCOME TAX APPEAL NO. 154 OF 2016
WITH
INCOME TAX APPEAL NO. 171 OF 2016

Shivaji Ramchandra Pawar (HUF) .. Appellant
v/s.
The Joint Commissioner of Income Tax,
Range 3, Nashik ..Respondent

Mr. Prayag Jha a/w Mr. Prateek Jha for the appellant
Mr. Sham Walve for the respondent

CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, J.J.

DATED : 18th JULY, 2018.

P.C.

1. These three appeals under Section 260A of the Income Tax Act, 1961 (the Act) challenge the common order dated 18th March 2015 of the Income Tax Appellate Tribunal (the Tribunal). The common impugned order relates to Assessment Years 2003-04, 2004-05 and 2005-06. Thus, the three appeals.

2. Mr. Jha, learned Counsel appearing in support of the three appeals urges the following re-framed questions of law for our consideration :-

(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in upholding penalty imposed under Section 271D without appreciating that the transactions were genuine, bona fide and carried out without having any intention to evade tax and the infraction of provisions of Section 269SS was not with knowledge or in defiance of this section with contumacious or dishonest intent?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in coming to the conclusion that there was an absence of reasonable cause within the meaning of section 273B?

3. During the course of search and seizure action, it was found that the appellant has received loans in cash in breach of Section 269SS of the Act which invites penalty under Section 271D of the Act. Thus, at the time of passing of the assessment order, the penalty proceedings were initiated for the previous years relevant to the three assessment years. Thereafter, the Assessing Officer issued a show-cause notice to the appellant to show-cause as to why penalty should not be imposed under Section 271D of the Act. The appellant has filed his explanation to the show-cause notice. However, the Assessing Officer was not satisfied with the explanation and, therefore, imposed penalty under Section 271D of the Act in respect of the breach of Section 269SS of the

Act for the subject three assessment years.

4. Being aggrieved, the appellant carried the issue in appeal to the Commissioner of Income Tax (Appeals) [CIT(A)] from the three penalty orders all dated 11th July 2008 for Assessment Years 2003-04, 2004-05 and 2005-06 under Section 271D of the Act. By the three separate orders all dated 14th January 2011, the CIT(A) dismissed the appeals.

5. On further appeal, the Tribunal by the impugned order dated 18th March 2015 partly allowed the appeal of the appellant from the orders dated 14th January, 2011. This by deleting the penalties imposed in respect of the amounts of loan of Rs.20,000/- or less received in cash. It further restored the issue to the Assessing Officer to verify whether lenders Ananat P. More, Anjanabai Chaudhari and Baijabai P. Deore were agriculturists and whether or not banking facilities existed in their villages for the purposes of considering reasonable cause for accepting loans in cash. Besides, penalty imposed in respect of Rs.1.75 lakhs obtained from Mr. R.B. Suryawanshi in cash was also restored to the Assessing Officer to re-examine the issue as the contention of the assessee was that the loan amount was only Rs.1 lakh and, therefore, the penalty could not be in excess thereof. Thus, wherever the

reasonable cause was shown, the impugned order of the Tribunal has deleted the penalty or where reasonable cause was likely the issue was restored to the Assessing Officer for fresh consideration. In cases where no reasonable cause was shown by the assessee, the impugned order upheld the order of the Tribunal to the extent of cash loans were received in excess of Rs.20,000/-.

6. Mr. Jha, learned Counsel appearing in support of the appeal submits that the impugned order of the Tribunal is not sustainable because on the same set of facts, it has deleted penalty in respect of the some parties while upheld penalty in respect of the other parties. Besides, reliance is placed upon the decision of the Supreme Court in ***Asst. Director of Inspection Vs. Kum. A.B. Shanthi, 122 Taxman 574***, the decision of this Court in ***Commissioner of Income Tax Vs. Triumph International Finance (I) Ltd., 22 taxmann.com 138*** and the Madras High Court in ***Commissioner of Income Tax Vs. Kundrathur Finance & Chit Co. 283 ITR 329.*** All this in support of his submission that there is discretion in the Authority to not impose penalty and that reasonable cause is different from sufficient cause. Therefore, wider meaning should be given to the expression 'reasonable cause' then that given to the words 'sufficient cause'. It is further submitted that the

impugned order of the Tribunal has not appropriately dealt with the grounds in the appeal memo which were raised in their memo of appeals. Therefore, the impugned order is not sustainable.

7. We find that the impugned order of the Tribunal is a detailed speaking order. Wherever the party has made submissions and made out a reasonable cause, the Tribunal has exercised its discretion in setting aside the imposition of penalty or restoring it to the Assessing Officer for fresh consideration in the light of the facts pointed out by the appellant during the course of the hearing. Wherever no reasonable cause was pointed out, the impugned order of the Tribunal did not disturb the findings arrived at by the Assessing Officer and the CIT(A). Thus, this is not a case of non exercise of discretion under Section 273B of the Act as alleged by the appellant. From the reading of the impugned order of the Tribunal, we find that in respect of the loans on which penalty has been confirmed, the appellant assessee has not made out and / or submitted any reasonable cause for the Tribunal to exercise its discretion to set aside the penalty in such cases. The case laws of the Apex Court and co-ordinate bench of this Court relied upon by Mr. Jha on behalf of the appellant, is binding upon us and there can be no quarrel with the proposition set out therein. However, the same cannot

be considered in vacuum. It necessarily has to be in the context of the facts arising in the case. In this case, we find that the appellant assessee has not made out any case for reasonable cause in respect of cases where the impugned order has not disturbed the finding of the lower authorities.

8. So far as the grievance that the grounds mentioned in the memo of appeal have not been appropriately considered, we find that the appellants were represented by an advocate before the Tribunal. Thus, it was for him to make appropriate submissions in support of his case. If no submissions in support of the grounds are made, when a party is represented by an Advocate, it is not for the Tribunal to go beyond the submissions made and investigate into facts *suo moto*. The impugned order of the Tribunal has dealt with the submissions made before it and taken possible view in the facts of the present case.

9. Thus, the view taken by the impugned order of the Tribunal on facts is a reasonable view and cannot be said to be perverse so as to warrant interference of this Court.

10. In the above facts, both the identical questions proposed in all the

appeals do not give rise to any substantial questions of law. Thus, not entertained.

11. Accordingly, all three appeals are dismissed. No order as to costs.

(SANDEEP K. SHINDE J.) **(M.S. SANKLECHA, J.)**