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

NOTICE OF MOTION NO. 1672 OF 2017
IN
INCOME TAX APPEAL NO. 171 OF 2016

Shivaji Ramchandra Pawar (HUF) … Appellant
Versus
The Joint Commissioner of Income Tax Range – 3- Nashik …Respondent

Mr. Mandar Vaidya, i/b Ameet Palkar, for the Appellant.
Mr. Sham Walve, for the Respondent.

CORAM: M.S.SANKLECHA & RIYAZ I. CHAGLA, JJ.
DATED: 9TH FEBRUARY 2018

PC:-

1. This Notice of Motion has been taken out in the pending Appeal to stay the order dated 18th March 2015 passed by the Income Tax Appellate Tribunal (Tribunal).

2. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 18 March 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 18th March 2015 is in respect of Assessment Year 2005-06. The Appeal is awaiting admission. The Appeal itself would come up for consideration in its normal turn.

3. The Applicant states that the urgency in moving this application for stay pending the consideration of the Appeal has arisen in view of the fact that consequent to the impugned order of the Tribunal, the Revenue has commenced recovery proceedings. Mr. Walve, the learned counsel for the Revenue confirms that the Revenue has decided to proceed with the recovery of its dues. Mr. Vaidya, the learned counsel appearing for the Appellant / Applicant in support of the application states that he is not ready for the consideration of the Appeal for admission today and pressing the Notice of Motion for stay taken out by the Applicant. This itself would disqualify the Respondent from any interim relief. Nevertheless as we had heard the Petitioner for some time on the stay application, we decided to consider this application fully on merits.

4. The origin of the present dispute is the applicant is receiving loans in cash in breach of Section 269 SS of the Act which invites penalty under Section 271 D of the Act. During the course of the assessment proceedings the Assessing Officer found that large amounts of loans were received in cash by the Applicant in breach of Section 269 SS of the Act. Consequently, penalty proceedings were initiated in the Assessment Order. The Applicant filed an

Appeal to the Commissioner of Income Tax (Appeals) (CIT(A) from the Assessment Order which had made an addition under Section 68 of the Act. However in appeal CIT(A) by an order deleted the addition made under Section 68 of the Act. Thereafter, the Assessing Officer after following the principles of natural justice by order dated 11 July 2008 imposed a penalty of Rs.1,58,95,000/- under Section 271D of the Act. This after holding that no reasonable cause for violation of Section 269SS of the Act was shown. The order dated 11 July 2008 of the Assessing Officer imposing penalty was carried in Appeal to the CIT(A) who dismissed the same.

5. Being aggrieved, the Applicant carried the issue of imposition of penalty in further Appeal to the Tribunal. By the impugned order dated 18th March 2015, the Tribunal partly allowed the Appeal by restoring the issue of amounts received in cash from agriculturists to the Assessing Officer to verify whether the agriculturists were not having banking facilities so as to delete the penalty under Section 271 D of the Act, on account of reasonable cause in such cases.

6. The Applicant seeks a stay of the impugned order of the Tribunal on the following two grounds:-

(a) the impugned order is *exfacie* bad in law as in quantum proceedings, the addition made under Section 68 of the Act was deleted. Consequently, no penalty under Section 271D could be imposed. In support of this reliance was placed on the decision of the Apex Court in ***CIT Vs. Jai Laxmi Rice Mills[1];***

(b) The impugned order of the Tribunal did not deal with the Petitioners case of there being reasonable cause for receiving the loans in cash in excess of Rs.50,000/-. In view of the fact that the Karta of the HUF is only 4th Standard pass and therefore, not conversant with the law.

7. So far as the first submission is concerned the law provides that the breach of Section 269 SS of the Act invites penalty under Section 271 D of the Act. The aforesaid breach has no relation to addition and / or deletion of income. The 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 the absence of reasonable cause. The fact that the Applicant's Appeal in quantum proceedings before CIT(A) deleted addition under Section 68 of the Act would have no bearing in respect of penalty imposed under Section 271D of the Act, for breach of Section

1 (2015) 379 ITR 521 (SC).

269SS of the Act. Even if, the Assessee has explained the identity, the source and genuineness of receipt in cash for the purpose of Section 68 of the Act, would not by itself permit / allow a party to obtain loans in cash in breach of Section 269 SS of the Act. The decision of the Apex Court in ***Jai Laxmi (Supra)*** is completely distinguishable as in that case the assessment order which had initiated penalty proceedings under Section 271 D of the Act was set aside by the CIT(A) and the Assessing Officer was directed to frame assessment order *denovo.* In the order passed subsequent to the remand, the Assessing Officer did not initiate any penalty proceedings under the 271D of the Act. Consequently, there could be no occasion to impose penalty. Therefore, in the facts of that case as the Assessment order which initiated penalty proceedings under Section 271 D of the Act had itself been set aside the satisfaction recorded in the earlier order for initiating penalty proceedings would not survive. In the present facts the assessment order which initiated penalty proceedings has not been set aside and therefore, the aforesaid decision would have no application in the facts of the present case.

8. So far as the next submission is concerned, that reasonable cause made out by the Applicant, was that the Karta of the HUF

being educated only upto 4th standard and was ignorant of the provisions of Section 269 SS of the Act. The Tribunal has dealt with the issue of reasonable cause and wherever it found that the reasonable cause has been made out, it restored the issue to the Assessing Officer for the purposes of verification of the facts stated by the Applicant in support thereof. The Tribunal did not find the cause that education up 4th standard is a reasonable cause to delete the penalty. Mr. Vaidya, the learned counsel for the Applicant pointed out that there is no presumption that everybody knows the law. This is different from the maxim ignorance of law is no excuse. In fact this distinction is noted in the case of ***Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh & Ors.***[2] cited by the appellant. The 'maxim ignorance of law is no excuse' is followed not because all men know the law, but because it is an excuse every man would plead and then it would be impossible for the opposite party to rebut it.

9. In any case, the education of the Karta of the HUF is upto 4th standard, cannot by itself lead to presumption that he is ignorant of law. This is more particularly when the Karta is dealing with the large amounts of cash. Lack of formal education cannot

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2 Vol.118 ITR *p.326*.

by itself be the conclusive of ignorance of the law, particularly in respect of men of business. This of course, is without prejudice to the legal maxim that ignorance of law is no excuse.

10. *Dehorse*, the above, under Section 260 A (7) of the Act the provisions of Code of Civil Procedure are made applicable to the appeals filed under the Act. Therefore, this would necessarily require application of O.41 R.1 and R.5 of the Code of Civil Procedure. The determination of the tax payable by the Assessee is in the nature of money decree and the same should be paid over to the successful party. In case, the applicant finally succeed in the appeal it would get the amounts paid in excess along with interest. However, there is no reason in the present facts to deny the successful party from the fruits of the decision of the Tribunal.

11. In the facts of this case, we see no reason to stay the impugned order of the Tribunal. Hence the Notice of Motion is dismissed.

(RIYAZ I. CHAGLA J.) **(M.S.SANKLECHA, J.)**