

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

913 WRIT PETITION NO.7416 OF 2019

MITUL J SHAH
VERSUS
PRINCIPLE COMMISSIONER OF INCOME TAX 1 NASHIK

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Advocate for Petitioner : Mr. Dhorde Vikram R.
Advocate for Respondents : Bharaswadkar Patil Kalpalata & Mr. Atul R. Kale

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**CORAM : S.V. GANGAPURWALA &
MANGESH S. PATIL, JJ.**
DATE : 20.06.2019

P.C. :-

We have heard the learned advocate for the petitioner and the learned advocate for the respondent.

2. Under the impugned order the petitioner is directed to deposit 10% amount in seven equal installments starting from 31.03.2019 till 30.09.2019. The said order is assailed in the present petition.

3. The learned advocate for the petitioner submits that the circular issued by the department and relied cannot circumscribe the discretionary powers of the Appellate Authority. According to the learned advocate, the Appellate Authority has to independently consider the facts of the case and arrive at an independent conclusion while directing deposit of amount. The petitioner has made out a *prima facie* case which has not been considered.

4. The learned advocate for the respondent submits that the petitioner does not have a *prima facie* case. The authority has considered that applicant availed the loan facility from the concerned parties but did not reflect the transaction in the books of accounts. No error has been committed.

5. The learned advocate for the petitioner on instructions in alternate submits that the petitioner would deposit the 10% amount, however the default committed in payment of second and third installment be condoned and the petitioner would deposit the entire 10% amount by 30.07.2019. On the said aspect, we have also heard the learned advocate for the respondent.

6. As the petitioner has shown *bona fides* in depositing 10% amount as directed under the impugned order, we are inclined to exercise our jurisdiction and condone the delay of payment of two installments more particularly when the petitioner has shown *bona fides* to deposit the amount by 30.07.2019 itself.

7. In light of the above, the impugned order is modified instead of depositing the amount by installments as directed under the impugned order, the petitioner shall deposit the 10% amount as directed by 30.07.2019. The deposit of Rs.4,24,285/- made by the petitioner shall be adjusted in the said

amount.

8. After the deposit of the amount is made within the time as stipulated the Appellate Authority shall hear the appeal expeditiously. Writ petition is disposed of. No costs.

[MANGESH S. PATIL, J.]

[S.V. GANGAPURWALA, J.]