IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 424 of 2011
WITH
TAX APPEAL No. 425 of 2011

For Approval and Signature:

HONOURABLE MR.JUSTICE V. M. SAHAI Sd/-

HONOURABLE MR.JUSTICE N.V. ANJARIA Sd/-

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1.	Whether Reporters of Local Papers may be allowed to see the judgment ?	**NO**
2.	To be referred to the Reporter or not ?	**NO**
3.	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4.	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	**NO**
5.	Whether it is to be circulated to the civil judge ?	**NO**

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COMMISSIONER OF INCOME TAX-II - Appellant
Versus
KINARIWALA SPINNERS LTD - Opponent

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Appearance :
MRS MAUNA M BHATT for Appellant.
None for Opponent.

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CORAM : HONOURABLE MR.JUSTICE V. M. SAHAI
and
HONOURABLE MR.JUSTICE N.V. ANJARIA

Date : 13/06/2012

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE V. M. SAHAI)

We have heard Mrs. Mauna M. Bhatt, learned Standing Counsel appearing for the revenue.

2. These two Tax Appeal have been filed proposing the following substantial questions of law :-

> <u>Tax Appeal No.424 of 2011</u>
>
> "Whether the Appellate Tribunal is right in law and on facts in cancelling the penalty of Rs.10,16,000/- levied under Section 271D of the Act ?"
>
> <u>Tax Appeal No.425 of 2011</u>
>
> "Whether the Appellate Tribunal is right in law and on facts in cancelling the penalty of Rs.7,72,000/- levied under Section 271E of the Act ?"

3. The Income-tax Appellate Tribunal has recorded a finding that the assessee Company's operations were closed since 2005 and Kalupur Commercial Co-operative Bank has taken possession of the Company's property from 20.4.2005 and the Banking activities of the Company were suspended. In these circumstances, the assessee Company was forced to accept loan in cash from the Directors of the Company for making payments of salaries and wages to the workers. Thus, the loans were also refunded in cash. The Tribunal has recorded a finding that there was a reasonable cause within

the meaning of Section 273B for accepting or repaying the loan in cash as the Company's operations were closed since 2005 and the assessee Company was prevented from accepting or repaying the loan through a/c payee cheque or Bank draft. The Tribunal has upheld the order of CIT (Appeals) and has affirmed the order cancelling the penalty of Rs.10,16,000/- and Rs.7,72,000/- levied by the Assessing Officer under Sections 271D and 271E of the Act.

4. We agree with the view taken by the Tribunal that the assessee Company was prevented by a sufficient cause in accepting or repaying the loan through account payee cheque of Bank draft. We do not find that any question of law, much less, substantial question of law arises in these two appeals. Both the tax appeals fail and are accordingly dismissed.

Sd/-
[**V. M. SAHAI, J.**]

Sd/-
[**N. V. ANJARIA, J.**]

Savariya