INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 3920 to 3926/Del/2015
(Assessment Year: 2006-07 to 2012-13)

Mrs .Jayanti Dalmia, 2nd Floor, Indraprakash Building, 21, Barakhamba Road, New Delhi PAN: AADPD9437D	Vs.	DCIT, Central Circle-26, Room No. 323, E-2, ARA Centre, Jhandewalan Extension, New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Vinod Kumar Bindal, CA Ms. Sweety Kothari, CA Ms. Rinky Sharma, ATP
Revenue by:	Shri S. S. Rana, CIT DR
Date of Hearing	27/09/2018
Date of pronouncement	31/10/2018

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. These are the seven appeals filed by the assessee , Mrs. Jayanti Dalamia , against the order of the ld Commissioner of Income tax (Appeals) -29, New Delhi [the Ld CIT (A)] dated 05.05.2015 for the Assessment Year 2006-07 to 2012-13 wherein penalty levied by the Deputy Commissioner of Income tax , Central Circle-26, New Delhi [The d AO] under section 271(1)(b) of The Income Tax Act [The Act] of ₹ 10,000/– for all these years for not submitting 'consent letter' for verification of alleged foreign swiss bank accounts are confirmed.

2. Though the learned AO has passed the penalty order under section 271 (1) (b) of the income tax act, 1961 for all these years separately, however, the learned CIT appeal has passed the common order for all these years. The facts and circumstances of the case for all these years are similar and therefore these appeals are heard together and decided by this common order.

3. Firstly , we state the facts for assessment year 2006 – 07 and also the ground raised by the assessee which are as under:-

"1. That learned Commissioner of Income Tax (Appeals) has erred in confirming the penalty levied by the Assessing Officer u/s 271(l)(b) of the Income Tax Act, 1961 in an amount of Rs. 10,000/- for Assessment Year 2006-07, on the basis that the appellant has not furnished 'consent form' in respect of alleged undisclosed overseas bank account, even though the appellant denies having any such bank account and consequently cannot furnish such 'consent form' containing some bank a/c number not being owned by the appellant assessee and his order is bad in law and against the facts and circumstances of the case.

2. That since the appellant denies having any bank account with FISBC Bank, Geneva, Switzerland, it cannot be compelled to generate artificial bank account opening form and issue consent letters in favour of any authority.

3. That the appellant having duly complied with notice u/s 142(1) of the Income Tax Act, 1961 there was no reason for levy of penalty u/s 271(l)(b) of the Income Tax Act, 1961 on incorrect assumption of facts.

4. That the above Grounds of Appeal are without prejudice to one another."

4. Assessee is an individual. Search and seizure u/s 132 of the income tax act was carried out in the group case on 20/1/2012. Subsequently notice under section 153A of the income tax act was issued to the assessee. The assessee submitted her return of income.

5. During the course of assessment proceedings, notice under section 142 (1) of The Income Tax Act was issued on 18/7/2013, calling for information in respect of her alleged bank account in HSBC Geneva/ Zurich , Switzerland having code BUP_SIFIC_PER_ID_500157548 Profile code 5091445448, Profile code 5091321617, Profile code 5091312057 Profile code 5091310070 and Profile CHOTUMAN 21. The assessee was also requested to furnish the evidences in the form of account opening form in respect of foreign bank account, complete bank statement in original in the foreign bank mentioned since beginning and residential status as per the income tax act as on the date of opening of the foreign bank account and subsequently for all these years. The learned assessing officer further stated that in case the assessee does not have any bank account statement, She may furnish duly filled up, signed an notarized 'consent letter' so that the office of the learned assessing officer can help her obtain the account statement from the bank. The assessee was directed to furnish the above information and the 'consent letter on or before 22/7/2013. Along with the letter, the assessing officer also attached a proforma copy of the consent letter to be submitted by the assessee. AO mentioned that this letter is notice u/s 142(1) of the act. The learned assessing officer further informed the assessee that in case of non-compliance, penalty provisions would be initiated.

6. The assessee did not comply on the appointed date and instead on 23/7/2013 assessee submitted that she does not have such bank account and there is no question of submitting any consent letter. Further, she did not file the consent letter on that date or at any time thereafter.

7. Therefore the learned assessing officer noted the non-compliance and hence, initiated the penalty proceedings under section 271 (1) (b) of the act and issued show cause notice on 26/9/2013 fixing the date of hearing on 30/9/2013. On the appointed date the assessee submitted a letter stating that assessee has already complied with the letter notice dated 18 July 2013 and stated that the reply to the said letter is submitted on 22 July 2013(actual date of submission is 23/07/2013). The assessee, therefore, stated that there is no reason for issue of notice for penalty. The learned assessing officer noted that the letter submitted by the assessee on 23/7/2013 stated that she does not have any connection with any of the alleged accounts and transactions detailed in the above notice and deny that any of these accounts, transactions belong to her. She further stated that since these transactions, accounts or codes do not belong to her, there is no question of her receiving any information from HSBC bank, Switzerland or her submitting any of the details asked in notice issued by the learned AO. She also stated that there is no question of signing her any consent letter in this regard, as she does not have that bank account. The learned assessing officer noted that the explanation submitted by the assessee is not satisfactory, as she has not filed the consent letter duly filled in and signed viz a viz copy of her bank statement. According to the learned assessing officer, this shows non-compliance on the part of the assessee for which the assessee has not given any plausible reason, in support of her contention that penalty proceedings should be dropped. He further stated that in view of the above facts, there is a failure on part of the assessee to comply with the terms of the notice issued

to her on 18/7/2013 and therefore he levied a penalty of ₹ 10,000 under section 271 (1) (b) of the income tax act vide order dated 12/1/2015. Similar penalty orders were also passed for six other years up to AY 2012-13.

8. Aggrieved by the order of the learned assessing officer, assessee preferred an appeal before the learned Commissioner of Income Tax Appeals- 29, New Delhi. The learned commissioner Appeals passed the consolidated order for assessment year 2006 – 07 to 2012 – 13 on 5/05/2015 wherein, he confirmed the penalty levied by the learned assessing officer for all these years. After considering the explanation furnished by the assessee, learned commissioner appeals held that in April/May 2011, India received information from a foreign government under the Double Taxation Avoidance Agreement that certain Indian passport holders have opened and had maintained bank accounts with Hong Kong and Shanghai banking Corp (HSBC) in Switzerland. The information received was covered under the confidentiality clause of the Double Taxation Avoidance Agreement and its contents could not be disclosed by the income tax department without express consent of the country, which had shared the information. Based on these information investigations were initiated by the income tax department in July 2011. Some persons appeared before the tax authorities and have admitted that they have had bank account with HSBC and paid the due tax on the maximum amount deposited/outstanding in those accounts. In several cases, search were conducted and the person searched also admitted to have opened account overseas and not disclosed for tax purposes in India. However, during the investigation, several persons have denied outrightly having

opened any such bank accounts overseas while some persons have admitted opening the account, but denied having any transactions. In cases, where the details of the transaction in the accounts were not available, or where persons have denied any account or any transaction in the account reference has been made to Hong Kong and Shanghai banking Corp by way of a consent letter signed by the account holder duly notarized to enable Hong Kong and Shanghai banking Corp to furnish the requisite details such as account opening form, other documents, names of beneficiaries, details of transactions et cetera of the account holder. In some such cases, account holders have already received information from HSBC and are cooperating with the department in its investigations. The learned CIT further noted that the income tax act, 1961 has also been amended to provide for reopening of tax assessments for a period of 16 years to cover such cases, which has escaped assessment. Therefore, only in such cases where such persons have refused to deliver signed consent letters the penalty has been initiated and imposed under section 271 (1) (b) of the act. Therefore, these were not the cases of simple tax evasion, but of suspected tax evasion by transferring or keeping funds overseas in an illicit manner. The persons who are suspected of having opened and maintained undisclosed bank accounts overseas were required to sign these consent letters to verify the truth of the allegations against them. Therefore, it is the duty of every citizen to cooperate with and join investigation to ascertain the truth regarding cases with such serious allegations. The purpose of the panel provisions is to ensure compliance to tax enquiry and investigation. He therefore held that in the case of the assessee,

there was an information that assessee is engaged in suspected tax evasion by transferring or keeping funds overseas in an illicit manner. The assessee is suspected of having opened and maintained undisclosed bank account overseas and was required to sign the consent form to verify the allegation. Therefore, according to the learned commissioner Appeals, it is the duty of the assessee as a citizen of India to cooperate with and join the investigation. Mere signing of the consent form does not cause any harm to the appellant and if his denial of having opened any bank account is correct, assessee has nothing to worry. However, he held that but refusal to sign the consent form tantamount to refusal to join the investigation itself. He further held that the purpose of the penal provisions of section 271 (1) (b) of the act is to ensure compliance to tax investigation and, therefore, as the appellant has failed to sign the consent form and having no reasonable cause to do so has violated the said provision. He further held that it is immaterial whether the assessee has opened any bank account and indulged in undisclosed transaction, that is a fact to be verified and investigated, but refusal of the appellant to sign the consent document is a deliberate refusal to join the investigation, for which liability to penal consequences arises at this very stage itself. Consequently, he confirmed the penalty levied by the learned assessing officer for all these years. Therefore, assessee is aggrieved with the order of the learned commissioner appeals has preferred appeals before us for all these seven assessment years.

9. The hearings in the case of the appeals were fixed firstly, on 18/9/2018 on which date the adjournment was sought and granted. The case was fixed for hearing on 25/9/2018. On that

date, also assessee filed a paper book and additional grounds and further sought adjournment of hearing. The case of the assessee was adjourned and finally heard on 27/ 9/ 2018.

10. All the additional grounds are in fact arguments of the assessee, legal in nature and therefore those are admitted and are dealt with in the arguments raised by the ld AR.

11. The learned authorised representative vehemently submitted that there is no failure on the part of the assessee in complying any of the notices issued by the learned assessing officer, therefore the penalty levied u/s 271(1)(b) of the act for all the seven years is not sustainable. He submitted his arguments as under.

    i. He submitted a date chart and submitted that the notice was issued on 18/7/2013 to sign the consent form by 22/7/2013. He submitted that 21st and 22 July 2013 were holidays. He further stated that assessee submitted a reply on 23/7/2013. He submitted that as the reply is submitted by the assessee, there is complete compliance.

    ii. According to him first notice under section 143 (2) was issued only on 21/10/2013. Thereafter the penalty was imposed on 12/1/2015. After the issue of notice under section 143 (2) and up to the date of imposition of the penalty, no notices were issued at all in between these, two dates by the learned assessing officer. Therefore, according to him the assessment proceedings only commenced from that date i.e. 21/10/2013 and prior to that date, whatever information was sought for cannot result into the penalty as the penalty can only be levied for non-compliance during the course of assessment proceedings.

iii. According to the provisions of section 273B of The Income Tax Act, no penalty can be levied, if assessee shows a reasonable cause for failure to comply with the notice. After obtaining the explanation from the assessee, if the assessing officer finds that the explanation is not satisfactory, then only the penalty can be levied. He submitted that the assessee has submitted during the course of search that she does not have any such account with a foreign bank. It was also submitted that various details provided in for portfolios by the assessing officer in 3 portfolios the name of assessee does not appear and in the 4th portfolio only in CHOTUMAN 21. The name of the assessee appears and that too as a joint holder. In the circumstances, as assessee has nothing to do with the bank account stated by the assessing officer. The assessee refused to sign the consent form. This amounts to a reasonable cause so no penalty should have been levied under section 271 (1) (b) for not signing the consent form by the assessee.

iv. Show cause notice has been issued for initiation of the penalty and not for the levy of the penalty. He referred to notice dated 26/9/2013 and read the subject title which in subject line shows that show cause notice for initiation of penalty proceedings. He further stated that non-compliance has been stated in para number 4 of the above notice where it is mentioned that on verification of the office records, it was noticed that there has been no compliance with the terms of the notice issued under section 142 (1) of The Income Tax Act dated 18/7/2013 up to 22/7/2013 as

assessee has not submitted the foreign bank account statement nor filed a duly signed consent letter. He further submitted that there is no evidence available whether any satisfaction was recorded by AO before issue of notice under section 271 (1) (b) of the Act or not. He submitted that according to the provisions of section 274 under which the notice is required to be issued, only table is mentioned by hand, and no satisfaction was recorded. He further referred to para number 5 of the notice stating that it was without satisfaction by the assessing officer about the default of the assessee. He further stated that satisfaction must be discernible from the notice which is absent in this particular case. He therefore submitted that in absence of any satisfaction recorded by the learned assessing officer about the failure of the assessee, the penalty proceedings are invalid.

v. That in the notice, assessee was not given copy of the information available with assessing officer. He referred to page number 199 of his paper book, which is an assessment order under section 153A read with section 143 (3) of the income tax act, 1961 dated 27/3/2015 and submitted that information was provided in the assessment order itself. He further referred to page number 213 wherein para number 10 of the assessment order, assessee has submitted by letter dated 20 January 2015 that the alleged bank statement of HSBC account stated to be belonging to the assessee is not authentic or signed by the any of the officers of the bank or any competent authority which assessee has already denied. He therefore submitted that

where copy of the document was provided to the assessee during the assessment proceedings, which commences only on 21/10/2012 by issue of the notice, and, therefore, at the time of alleged default, there were no proceedings pending and therefore the penalty levied by the learned assessing officer is invalid.

vi. That the penalty is levied as per the codified law which is income tax act and the learned commissioner appeals has talked about the morality which is least concerned in the tax laws. Therefore, the confirmation of the penalty by the commissioner appeals invoking the principles of morality is invalid.

vii. That the principle of natural justice is violated in this particular case, as only single notice was issued by the learned AO and no information was enclosed with the notice.

viii. That the assessment order in the present case has been passed on 27/3/2015. The penalty proceedings under section 271 (1) (b) does not have any reference to the assessment proceedings. Therefore, the original show cause notice was issued on 26/9/2013 , according to the provisions of section 275 (1) (C) of the income tax act, the penalty should have been levied within 6 months from the end of the year in which show cause notice was issued. He therefore submitted that the show cause notice is issued on 26/9/2013 and the year ended on 31/3/2014 and therefore the penalty should have been levied on or before 30/9/2014. In this present case, the penalty has been

levied on 12/1/2015 and therefore the penalty proceedings are time barred.

ix. He further submitted that during the assessment proceedings, the learned assessing officer himself was not sure whether the addition is required to be made in the hands of the assessee or not. He further referred to the assessment order passed in the case of the assessee when the addition has been made in the hence of the assessee on protective basis.

x. He further submitted that the three persons are involved in this case along with the assessee. The husband of the assessee as well as the elder brother of the husband of the assessee are also involved. None of the 3 persons were called for and examine during the course of the assessment proceedings. He further submitted that the page number 14, alleged statement where the name of the Sanjay Dalmia in CHOTUMAN21 and that document itself shows that there is a missing manner of the signature. Therefore, it was not sure whether the account belongs to the assessee or not even as per the understanding of the learned assessing officer himself. Therefore, when the assessing officer himself is not sure whether the account belongs to the assessee or not, there is no purpose and no reason that assessee must sign a consent form. He referred to the provisions of section 142 (1) of the income tax act and stated that the provisions of that section does not ask an assessee to create a document or evidence against him. Therefore, by asking for the consent letter from the assessee is asking the assessee to produce evidence against her,

which is not permitted by the law. He further stated that the assessing officer has asked the assessee to render assistance in the assessment proceedings, but such assistance cannot lead to the asking for information.

xi. He further stated that the issue in the case of Sanjay Dalmia was different and does not apply to the facts of the case, as in the present case, the assessee has shown reasonable cause and further the provisions of the natural justice were violated. He further submitted that in the case of Sanjay Dalmia the honourable High Court was on the issue of" Prejudice" . However, in the case of the assessee It is the question of the morality based on which the penalty has been confirmed by the learned CIT appeal. He therefore submitted that the case of Mr Sanjay Dalmia may not be applied to the case of the assessee.

xii. He further submitted that the case of Mr Manish periwal is also distinguishable on facts. In that case assessee has accepted the bank account in search belonging to him and then retracted. He submitted that in the present case, the assessee is accepted neither during search nor during the assessment proceedings that the bank account belongs to the assessee.

xiii. He further referred to the decision of Mrs sumanlata Bansal V ACIT and stated that in the present case, no notice under section 274 of the income tax act has been issued by the assessing officer and therefore the whole of the penalty proceedings are invalid.

xiv. He further referred to the decision of coordinate bench in case of Akhil Bharatiya Prathmik Shiskhan Sangh Bhavan

Trust V ADIT [115 TTJ 419 (Delhi)] stating that as the assessment has been made under section 143 (3) and not under section 144 of the income tax act, means that the subsequent compliance in the assessment proceedings was considered as a good compliance and the default committed earlier were ignored by the assessing officer and therefore the penalty under section 271 (1) (b) could not be levied by the assessing officer. He submitted that assessment in the present case has also been made under section 143 (3) and not under section 144 of the act. Therefore, the subsequent compliance has been made by the assessee are accepted by the learned AO and, therefore, there is no default.

12. Based on the above argument, He submitted that the penalty levied by the learned assessing officer and confirmed by the learned commissioner of income tax appeal for all the 7 years deserves to be deleted.

13. The learned departmental representative vehemently submitted and supported the orders of the lower authorities. He stated that

    i. Issue is squarely covered in favour of the revenue by the decision of the coordinate bench in case of Mr. Manish Periwal V DCIT (ITA number 5157-5162/Del/2014). He further stated that the issue is also squarely covered in case of relative of the assessee in the same search, same bank account and same issue in case of Mr. Sanjay Dalmia vs the CIT [ITA number 3795 – 3801/Del/2014] which has been upheld by the honourable Delhi High Court and the special leave petition before the honourable Supreme Court has also been dismissed. He extensively referred to the decision of Mr. Sanjay Dalmia and stated

that the penalty has been confirmed by the honourable Delhi High Court on the same set of accounts, same facts, same search and authored by the Accountant member, therefore that decision binds the ITAT and therefore should be followed. He further submitted that the futile distinction of the order made by the ld AR is irrelevant. He further submitted that it is not the merely the question of morality in the case of the assessee but to join the investigation. In this case, also there is no prejudice caused to assessee if she signs the consent letter. He also submitted that it is not the evidence against her but if she does not hold any such alleged bank account, it is in her favour so that inquiry can be closed against her in favour of the assessee absolving her.

ii. He further stated that the claim of the assessee that the assessment proceedings did not commence unless the notice under section 142 (1) of the income tax act has been issued. He submitted that the assessment commences under section 153A of the income tax act as soon as the notice has been issued by the learned assessing officer under that section, as it is a search assessment. He further stated that the such notice has been issued by the learned assessing officer on 17/10/2012 and after that notice under section 271 (1) (b) were issued on 26/9/2013. He also stated that assessee committed non compliance of the requirement was also a notice u/s 142 (1) of the act which is mentioned in the letter itself. Therefore, the claim of the

assessee that no notice has been issued during the course of assessment proceedings is devoid of any merit.

iii. He further submitted that provisions of section 275 (1) © does not apply to the facts of the case as stated by the learned authorised representative. He submitted that the penalty has been levied in time by the assessing officer. He further stated that no such argument has been raised by the assessee before the learned assessing officer or before the learned commissioner of appeals. Even otherwise, he submitted that the penalty order passed by the learned assessing officer is not barred by the limitation. He submitted that the assessment order is passed on 27/3/2015 and the penalty order has been passed on 12/1/2015 , i.e. before the assessment is completed so it is within the time allowed by the act under section 275 (1) © of the act.

iv. He further referred to the page number 232 of the paper book which contains the statement recorded of the assessee on 5/12/2014, where the documents seized during the course of search were shown to the assessee. Therefore, it cannot be stated that the documents were shown to the assessee in the assessment proceedings only. He submitted that the assessee was aware about the issue for which the search took place and for the purpose of the issue of notice under section 271 (1) (b) of the act. Therefore, now the assessee cannot say that she was not aware of the information, as it was not provided to the assessee. It was within the knowledge of the assessee even at the time of the search. He further submitted that

in other two persons Shri Sanjay Dalamia and Shri Anurag Dalamia , the issue has reached at the ITAT and supreme court stage and therefore, assessee cannot feign ignorance .

v. He further stated that it is also the claim of the learned authorised representative that 4 days time was provided to the assessee. He stated that if the 4 days time was found short by the assessee, the best course would have been to seek adjournment. No adjournment was sought by the assessee during that time. If the assessee wanted more time to submit the detail, then a proper application for adjournment should have been addressed to the assessing officer and he was sure that the learned assessing officer might have considered the same in the most judicious manner He stated that assessee is neither applied for the adjournment and nor even approached the assessing officer for extension of the time. He also referred to the letter submitted on 23/7/2013 which even does not give any hint that assessee wants more time. Therefore, now this plea in the penalty proceedings is just to avoid levy of the penalty. He further stated that in absence of any plea by the assessee there is no violation of rules of natural justice.

vi. With respect to the claim of the learned authorised representative that on issue of the notice there was no satisfaction recorded by the assessing officer about the failure of the assessee, He referred to para number 5 of the notice , that proper satisfaction has been recorded by the learned assessing officer and therefore it cannot be

stated that assessing officer has not recorded satisfaction prior to the issue of the notice.

vii. With respect to the provision of information to the assessee, he submitted that para number 2 of the letter dated 18/7/2013 gives the complete information and source the account number, bank account, et cetera. So, no further information was available with the assessing officer and the complete information available with AO was provided to the assessee. He further stated that the whole story is like this that even assessing officer did not have the complete information and therefore he requested the assessee for the purpose of signing of the consent letter which assessee has refused to sign. This it shows that there is no bona fide intention of the assessee. Otherwise, there is no prejudice caused to the assessee in signing the consent form. The consent form would have given a clear-cut picture whether the assessee is having a bank account or not. If the assessee is not having a bank account, which is pleaded by the assessee from time and again, there is no reason that the assessee has not signed the consent form. He therefore submitted that the explanation furnished by the assessee is also not bona fide because assessee does not want to cooperate with the assessing officer to reach at the truth.

viii. He submitted that whole process was for the benefit of the assessee. Name of the assessee has cropped up in information received from a foreign country and therefore it was necessary to clear the name of the assessee whether such information is correct or not. In this whole

process of the Income tax Department, assessee was not supporting / cooperating the AO. He submitted that assessee has not even said a single word about the difficulty faced by the assessee is signing the consent form. T is simply a blunt denial to cooperate. Therefore, there is no reasonable cause for non compliance.

ix. He further submitted that the next ground of the learned authorised representative is that no penalty can be levied where there is no addition in the course of assessment proceedings. He submitted that this plea of the learned authorised representative is incorrect and there is a protective addition in the hands of the assessee and there is an income. It is not a case of Nil addition.

x. He also submitted that it is incomprehensible that why the assessee is thinking that signing of form is creating evidence against her. It is submitted that when the assessee is so sure that the account does not belong to her, it is not evidence against her but in her favour and will absolved her from all the future proceedings.

xi. He further submitted that order is passed u/s 143 (3) of the act. The assessee has not made subsequent compliance by submitting consent form even till to date, therefore it is not mandatory to pas an order u/s 144 of the act for initiating penalty u/s 271 (1) (b) of the act.

14. In view of the above facts, the learned departmental representative vehemently supported the order of the lower authorities and submitted that the penalty has been rightly levied by the learned assessing officer and confirmed by the learned Commissioner Appeals.

15. In rejoinder, the learned authorised representative vehemently submitted that notice u/s 153A issued does not mean that the assessment proceedings were started. He stated that notice under section 153A of the income tax act is a mere letter asking assessee to furnish the return of income. After the return of income is furnished the assessment proceedings starts, not prior to that.

16. He further referred to the provisions of article 20 of the Constitution that no person shall be liable to produce information against him.

17. We have carefully considered the rival contention and also perused the orders of the lower authorities. The only issue involved in this appeal is that assessee was issued notice under section 142(1) of the income tax act, 1961 on 18/ 7 /2013 and the date fixed for the compliance was 22/07/ 2013. The above notice is placed at page number 1 and 2 of the paper book. According to that notice, the learned assessing officer informed the assessee that assessee has been issued notice under section 153A of the ac on 17/10/2012 and further questionnaire was also issued on 26/11/2012 and notice under section 142 (1) was also issued on 6/5 /2013. With respect to the above subject the learned AO found that as per the information available with the revenue, assessee is having an account in Hong Kong and Shanghai banking Corp , Geneva, Switzerland. The learned assessing officer also informed the relevant code of those accounts. The learned assessing officer in para number 3 of the notice stated that HSBC bank has decided to send the copies of the documents such as account opening form, copy of passbook, transaction details, instructions from account holders and alert

received by them to the respective account holders in respect of all the Indian account holders maintaining accounts with them, either as the account holder or as beneficiary. Therefore, assessee being one of the alleged account holders in HSBC bank might have received all the relevant details as stated above. Therefore, the learned assessing officer requested the assessee to furnish certain details. In Para Number 4 of the letter, the assessing officer further stated that in case the assessee does not have the bank account statement, then to furnish duly filled up signed, notarized consent letter so that the assessing officer can help the assessee to obtain the account statement from that particular bank. Along with the letter, the learned assessing officer further submitted the copy of the consent letter for the signature of the assessee. The learned assessing officer further directed the assessee to attend the office on 22/7/2013 at 11.30 a.m. along with the above-mentioned information. The learned AO further stated that no further adjournment will be granted and the above mentioned information is required under section 142 (1) of the income tax act and in case of non-compliance penal provisions in terms of penalty/prosecution under the income tax act may be invoked. The assessee submitted reply to that letter on 23/7/2013 vide letter dated 22/7/2013. The main contention of the assessee is that she does not have any connection with any of the alleged bank accounts and transactions detailed in the notice and deny that any of these accounts of transactions or accounts belong to her. She further stated that since the transaction accounts or accounts do not belong to her, there is no question of her receiving any information from HSBC banks, Switzerland because her

submitting any of the details called for in the above referred letter and also signing any consent letter in this regard. Therefore it is apparent from the above reply filed by the assessee late by one day that she does not have any such account and she does not want to sign any consent letter in this regard. Therefore the learned assessing officer noted that on the appointed date on 22/7/2013 no reply was furnished by the assessee and vide letter dated 22/7/2013 submitted on 23/7/2013 , assessee did not submit any information and also not submitted the consent letter. Therefore on the appointed date, there is a non-compliance by the assessee. Further, in substance the assessee. even on 23 July 2013 has not complied with the notice. Therefore on 20/9/2013, The learned assessing officer issued a show cause notice for initiation of penalty proceedings under section 271 (1) (b) of the income tax act with respect to assessment year 2006 – 07 to 2012 – 13. The learned assessing officer in that notice has specifically mentioned that notice under section 142 (1) of the income tax act, 1961 was issued on 18/7/ 2013 and date was fixed for the compliance was 22/7/2013. In para number 3, The learned assessing officer has also noted that assessee was required to furnish foreign bank account statement and in case the assessee does not have the bank account statement, to furnish duly filled up signed notarized consent letter by 22/7/2013. On verification of the records of the assessing officer, it was noted by him that the assessee has not complied with the notice under section 142 (1) of the income tax act by not submitting copies of the bank account and also the consent letter. Therefore in para number 5 of that notice the assessing officer noted the satisfaction that assessee has failed to

comply with the terms of notice under section 142 (1) of the income tax act and therefore the assessee was issued a show cause why a penalty of ₹ 10,000 should not be imposed upon her under section 271 (1) (b) of the income tax act for failure to comply with the terms of the notice issued under section 142 (1) of the act. The notice fixed the date of hearing on 30/9/2013 on which date the assessee filed a letter wherein it has been stated that assessee has already complied with the notice dated 18 July 2013 for which the reply has already been submitted on 23 July 2013. The assessee also stated that there being a complete compliance of the said notice there is no reason for issue of any notice under section 271 (1) (b) of the income tax Act. The learned assessing officer not satisfied with the reply filed by the assessee dated 23/7/2013 as well as the explanation submitted by the assessee in hearing on 30/9/2013, levied a penalty under that section of ₹ 10,000 for each of the years. The above order was challenged before the learned commissioner of income tax appeals, who confirmed the penalty for all the 6 years. Now we deal with each of the contentions raised by the ld AR.

18. The 1st contention of the learned authorised representative is that assessee has complied with the notice dated 18/7/2013 by submitting a letter dated 22/7/2013 on 23/7/2013 in the office of the learned assessing officer. The said letter has been placed at page number 3 of the paper book. On careful perusal of the above said letter, it is apparent that the assessee has denied that she does not have any bank account as stated by the learned assessing officer and therefore she refused to sign any consent letter in this regard. The notice under section 142 (1) of the income tax act stated that if she does not have bank statement

account, then the learned assessing officer will help to obtain the statement from those banks. Assessee did not give that consent letter. In case if the assessee does not have any bank account, then on submitting the consent letter the truth would have come out that assessee does not have any bank account, but by non submitting of the consent letter was clear non compliance of the letter dated 18/7/2013 by the assessee. Further, on 30/9/2013, assessee in response to notice under section 271 (1) (b) of the income tax act submitted that there being complete compliance of the said notice. On perusal of the record, AO noted that it is apparent that the assessee has not complied with the notice by not submitting the consent form for obtaining the bank account statement with respective numbers stated by the assessing officer to the assessee. Hence according to us there is no compliance by the assessee.

19. The 2nd contention of the learned authorised representative was that 1st notice under section 143 (2) was issued only on 21/10/2013 and penalty was imposed on 12/1/2015. It was stated that as the assessment proceedings begins only on the issue of notice under section 143 (2) of the income tax act, i.e. on 21/10/2013, the penalty notice issued by the learned assessing officer on 26/9/2013 is not valid. We have carefully perused the relevant records placed before us. As per page number 1 of the paper book, assessee has placed the letter dated 18/7/2013, where it is mentioned that the notice under section 153A has been issued on 17/10/20, further questionnaire is issued to the assessee on 26/11/2012 and notice under section 142(1) was issued on 6/5/2013. Therefore, the argument of the learned authorised representative that assessment proceedings

begun only on 21/10/2013 is devoid of any merit. According to the provisions of section 271 (1) (b) if the assessee has failed to comply with the notice issued under section 142 (1) of the income tax act than the assessee may be directed by the learned assessing officer that he shall pay by way of a penalty a sum of ₹ 10,000 for each of such failure. The letter dated 18/7/2013, as per para number 5 clearly mentioned that the above information is required by the learned assessing officer under section 142(1) of the income tax act, 1961. Therefore it is apparent that the above notice dated 18/7/2013 was issued under section 142 (1) of the income tax act and failure to comply with the said notice invites penalty under section 271 (1) (b) of the income tax act. Hence, we reject this argument of the ld AR.

20. The next argument of the learned authorised representative is that that the provisions of section 273B provides that no penalty under section 271 (1) (b) can be levied if the assessee shows that the default was for the reasonable cause. The assessee has not shown any reasonable cause for not complying with the notice dated 18/7/2013 before AO. The assessee has flatly refused stating that assessee does not have any such accounts or there is no question of signing any consent letter in this regard. That letter was also submitted on 23/7/2013 and not on the appointed date on 22/7/2013. The assessee also did not apply for any adjournment on those dates. Further if the assessee does not have any bank account, then the assessee should have submitted the consent letter. No prejudice would have caused to the assessee. Further by not submitting the consent assessee has put herself in greater difficulty as penal proceedings were initiated as well as assessment has also made on her on

protective basis. Further , by not submitting the consent letter the assessee has not proved her bona fide, but had created an impression that she wants to stall any enquiry by the revenue with respect to those accounts where the name of the assessee is mentioned. As per the information available, which is placed at page number 14 to 19 of the paper book, it is apparent that the name of the assessee is specifically mentioned in part – A of the statement which clearly shows that assessee has some connection with that bank account. Further, the name of the 2 relatives of the assessee were also mentioned in the same bank account that clearly shows that assessee has some connection with that bank account. This information was already available with the assessee at the time of search also however, assessee to stall the enquiry by the learned assessing officer did not sign the consent letter. Therefore, the explanation that the assessee has shown reasonable cause defies logic and hence it is apparent that assessee has not shown any reasonable cause for committing a default by not submitting the consent form.

21. The next objection raised by the learned authorised representative is that that the assessee has not been issued show cause notice for the levy of the penalty but the learned assessing officer has issued the show cause notice for initiation of the penalty proceedings. He was referring to the notice dated 26/9/2013. We have carefully gone through the notice and in para number 5 of the above notice it clearly says that the assessing officer has issued show cause notice to the assessee stating that why penalty of ₹ 10,000 should not be imposed upon the assessee under section 271 (1) (b) of the income tax act for failure to comply with the terms of the notice under section 142

(1) of the income tax act, 1961. In view of this, the argument of the learned authorised representative that it is a show cause notice for initiation of the penalty proceedings and not for the levy of the penalty is devoid of any merit and hence rejected.

22. On reading of the show cause notice, in para no 5 clear cut satisfaction of failure of assessee was also mentioned.

23. The next objection raised by the learned authorised representative is that the assessee has not been given a copy of the information available with the assessing officer of various bank statements / accounts. We are not impressed with this argument for reason that the assessee was shown the information available with the assessing officer during the course of search. Further, as per letter dated 18/7/2013, learned assessing officer in para number 3 has given the complete details that what information is available with the assessing officer and made a request to the assessee to sign the consent letter if The above information is not available with her. Therefore, we do not find any merit in the above argument of the assessee that assessee was not having any information about the foreign bank account Furthermore, in the case of two of the relatives of the assessee on identical facts were shown in the proceedings and various proceedings were going on in those cases. Therefore, the above argument of the assessee does not hold any water.

24. The next argument of the learned authorised representative was that the penalty levied as per the codified law which is income tax act, whereas the learned commissioner of income tax appeal has talked about the morality. According to him the penalty cannot be levied even if the assessee has not acted according to the morals. We have carefully perused the order of the learned

assessing officer, he has not levied penalty on that ground. The learned commissioner appeals has also not confirmed the penalty only on this ground. The subject matter of the penalty is a failure on part of the assessee to comply with the notice issued by the learned assessing officer under section 142 (1) of the income tax act. Therefore, this argument of the assessee is also not acceptable.

25. The next argument of the learned authorised representative is that that assessment order has been passed on 27/3/2015 and the penalty initiation as well as the levy of the penalty does not have any connectivity with the assessment proceedings. We have already held that assessment proceedings were open before the learned assessing officer at the time when he issued notice under section 142(1) of the income tax act. Therefore the penalty proceedings were initiated during the assessment proceedings and they also culminated during the assessment proceedings, as assessee failed to cooperate with the income tax officer by signing in submitting the consent letter.

26. The next argument of the learned authorised representative is that the learned AO himself was not sure whether the addition is required to be made in the hands of the assessee or not. He was referring to the fact that the addition has been made in the hands of the assessee on protective basis. On careful consideration of this argument we have come to the conclusion that penalty is not levied for the income required to be assessed in the hands of the assessee but it is levied for stalling the enquiry to be made by the assessing officer for determining the correct income of the assessee. Had assessee signed the consent form the truth would have come out and if the assessee does not

have any bank account there would not have been any issue with respect to the addition in the hands of the assessee even on protective basis. Therefore, we reject this argument of the authorised representative.

27. The next argument of the learned authorised representative is that the 3 persons of the family are involved in this case, along with the assessee, none of them has been inquired during the assessment proceedings. This does not have any bearing according to us on the penalty proceedings. The penalty proceedings has been initiated for the reason that assessee did not comply with the notice under section 142 (1) of the income tax act, therefore, calling the other persons would not have served any purpose. Further as per information with the assessing officer, names of all the persons are mentioned in the respective information and separate proceedings are pending against each of them. As per the information submitted by the assessee assessment proceedings were continuing as it is apparent as per the information submitted at sr no 32 and 33 of paper book of the assessee where the appellate orders with respect to the other 2 persons are mentioned. Even otherwise we do not find any reason that why AO should examine in penalty proceedings u/s 271 (1) (b) of the act.

28. On the issue regarding applicability of the decision of the another person, Mr Sanjay Dalmia as well as Mr.Manish Periwal, we find that coordinate bench orders in case of Mr Sanjay Dalmia are also based on the same documents on which the penalty proceedings are in case of the assessee. There is also no violation of the principle of natural justice in the case of the assessee, as assessee was aware about the information during

the course of search as well as as per notice issued under section 142 (1) of the income tax act. The issue was that the assessee was requested for merely signing consent form. It is held in the case of Mr Sanjay Dalmia, there would not have been any prejudice caused to the assessee, if she does not have any bank account with the HSBC bank. In case of Mr Manish Periwal the penalty was also levied for the simple reason of not signing the consent letter. The issue was not whether the assessee has confessed during the course of search or retracted thereafter. Hence, both these cases relied by ld DR are on similar facts.

29. The learned authorised representative also referred to the decision of coordinate bench in case of Mrs. Suman Lata Bansal (ITA number 525-530/MUM/2008). We have carefully considered the facts of that case and the issue before the coordinate bench. In that decision, there was no issue of penalty under section 271 (1) (b) of the income tax act. The only issue was with respect to whether the non issue of the notice under section 143 (2) will render the assessment proceedings under section 153 A of the income tax act as null and void. The coordinate bench has held that assessment proceedings under section 153A, cannot be held as null and void for non-issuance of notice under section 143 (2) of the act. Therefore, the above decision does not have any bearing on the present appeal.

30. The learned authorised representative further relied upon the decision of the coordinate bench in case of Akhil Bhartiya Shishak Sangh Bhavan Trust vs ADIT 115 TTJ 419. It is the contention of the learned authorised representative that the learned AO has passed order under section 143 (3) and not under section 144 of the act. Therefore, it means that the

subsequent compliance in the assessment proceedings was considered as good compliance and the default committed earlier were ignored by the learned AO. Hence penalty under section 271 (1) (b) of the income tax act is not leviable. The coordinate bench in para number 2.5 has held that the subsequent compliance in the assessment proceedings was considered a good compliance and the default committed earlier were ignored by the AO. However, in the present case, the facts are quite stark which shows that even in the assessment proceedings assessee has not submitted the consent letter to the assessing officer. Therefore, even in the assessment proceedings to there was no compliance by the assessee of the information asked for by the learned assessing officer. Therefore, even in this case, there is no compliance at all, leave aside the subsequent compliance. In view of this, the facts of the present case are quite different from the facts stated before the coordinate bench in the case cited before us. Hence the reliance placed by the learned authorised representative on this case is rejected.

31. Assessee has also stated that asking assessee to sign a consent form is violative of article 20 (3) of the constitution of India. We are not in agreement with the assessee on this point. Firstly the assessee is not at all an accused. Further merely making a statement that it violates the article 20 (3) without substantiating the reason for the same , plea of assessee cannot be accepted. Even other wise we fail to understand that why assessee thinks that it is a evidence against her when she does not have any bank account. In fact, the evidences are not against her but in her favour. Further the case of the assessee does not hold any credence in view of the decision of the hon. SC in case of Ritesh

Sinha V State of Uttar Pradesh AIR 2013 SC 1132 2 SCC 357 where the honourable SC has held that if an accused person is directed to give vice samples during the course of investigation of an offence, there is no violation of article 20 (3) of the Constitution.

32. Assessee hs further contended that provision of section 142 (1) does not ask assessee to give evidence against her. We have already dealt with this issue stating that it is not an evidence against the assessee and therefore , this argument is rejected.

33. The last ground raised by the learned authorised representative was that the penalty order is a time barred. We are carefully considered the provisions of section 275 (1) see which provides that in any other case the penalty order is shall be passed after the expiry of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, or completed, or 6 months from the end of the month in which action for imposition of penalty is initiated, whichever. Expires letter. In the present case the penalty has been levied wide order dated 12/1/2015. The assessment order in case of the assessee has been passed on 27/3/2015. We have already held that the penalty proceedings have been initiated during the assessment proceedings after the issue of several notices to the assessee. Therefore, the outer limit for passing of the penalty order was 30/9/2015 whereas the order has been passed on 12/1/2015. In view of this, the penalty order same been passed by the learned assessing officer as provided under section 275 (1) © of the act hence, they are not barred by limitation of time.

34. Lastly, the revenue has relied upon the decision of Mr. Sanjay Dalmia ITA No. 3795 to 3801/Del/2014 (Assessment Year: 2006-

07 to 2012-13 Sanjay Dalamia wherein in the course of same search, same alleged bank accounts the penalty under section 271 (1) (b) of the act was levied for the same offence of not submitting the consent letter was confirmed by the coordinate bench as under:-

> "Reasons and decisions
>
> 12. We have carefully considered the rival contentions and also perused the relevant paper book furnished by the assessee. We have also perused the relevant decisions cited before us. In the present case the simple issue is that Ld. assessing officer has received certain information with respect to certain bank accounts with HSBC accounts, Geneva where the name of the assessee is mentioned. Subsequently, search was also conducted under section 132 of the income tax act. With respect to the bank account with HSBC, Geneva the assessee was issued a notice under section 142 (1) on 18/07/2013 where the assessee was required to furnish certain information with respect to that bank account and in case the assessee does not have the bank a count statement then a particular consent letter was required to be signed, so that the office of the income tax officer can help the assessee in obtaining bank account from that particular bank. In response to that notice the assessee did not furnish either the bank account or furnished the consent letter but pleaded that the assessee does not have any such bank account. Therefore, the penalty under section 271 (1) (b) of the income tax act was initiated and show cause notice dated 26/09/2013 was issued to the assessee in response to which assessee submitted that he has already submitted reply to the notice dated 18/07/2013 submitting the reply on 23/07/2013 and copy of which was also submitted on 23/09/2013. Therefore the claim of the assessee is that there is a complete compliance of the said notice and therefore penalty cannot be levied. The Ld. assessing officer rejected the contention of the assessee and held that as no consent letter was submitted by the assessee and merely stating that assessee does not have bank account there is no compliance by the assessee, therefore, the penalty under section 271 (1) (b) of the act of Rs. 10,000

was levied for all these years. CIT appeal confirmed the above penalty for all the years. We fully agree with the finding given by the Ld. CIT (A) in confirming the above penalty and our reasons are as under:-

a. The name of the assessee appeared in a particular bank account maintained with the HSBC account and therefore the Ld. assessing officer has requested the assessee to furnish either the bank account of that particular bank or to give consent letter in a particular form so that the assessee can be helped by the revenue for obtaining the copies of the above bank account. In case if the contention of the assessee is correct, then naturally the bank account would not by the HSBC bank stating that such accounts are not held by the assessee. If the assessee has such account, in the status of the account holder or a case of beneficiaries or settlers, then naturally the HSBC bank to the revenue will supply the bank account. If the assessee signs the consent letter then the version of the assessee is proved if no such bank account is received from that particular bank or such bank refuses stating that the assessee does not own that bank account. Therefore there is no reason for the assessee to not to sign the consent form. In view of the above facts, the only inference that can be drawn is that, that assessee does not want revenue to reach at the conclusion whether the assessee is having the bank account or not. According to us the assessee is making an a tempt to forestall the enquiry of the revenue.

b. The revenue is not making any fishing or rowing Inquiry. It has received the information in the form of document that has been collected by the government of India as part of tax information exchange treaty. The name of the assessee is appearing in that particular document. Therefore, the revenue is asking assessee to help in ascertaining the correct facts. The revenue has further established that the particular bank account has some connection with the assessee because name of the assessee is mentioned and further the name of the family members of the assessee are also appearing as attorney and account holder 1 and account holder 2. This fact gives credence to the enquiry of the revenue and the document received in information exchange from foreign country. Therefore, the revenue has got the specific information, but to ascertain the correct facts because of the

confidentiality agreement between the bank and the assessee, the consent letter is required to be signed by the assessee. This is not done by the assessee despite specific notice issued by the assessing officer.

c. Merely signing the consent letter would not have prejudiced the interest of the assessee because if the account would not have been having any connection with the assessee. The foreign bank would not give the details of such account. Therefore, the intentions of the assessee in not signing the consent letter prove what assessee wants to hide the information.

d. Notice issued by the Ld. assessing officer under section 142 (1) of the act was very specific and precisely on the point giving the clear cut requirement of the law, and in absence of compliance of such notice, the penalty under section 271 (1) (b) is correctly levied, e. The deletion of the addition in the hands of the assessee does not help the argument of the assessee because the addition was made in the hands of the assessee on protective basis and on substantive basis in the hands of the other family members of the assessee. The addition in the hands of the other family members on substantive basis have been upheld by the appellate authorities and therefore the addition in the hands of the assessee has been deleted, which was made on the protective basis. Therefore, the result of appeal of the assessee before the appellate authority does not help the case of the assessee so far as these penalties are concerned. f. The argument of the assessee is that there is no provision of issue of notice under section 142 (1) of the act for assessing the income unearthed during the course of search and therefore the penalty originating from non-compliance of that notice does not survive because of the reason that assessment has been made under section 153A of the income tax act. The above argument of the assessee is required to be rejected at the threshold itself because of the reason that the provisions of section 153A provides that the return furnished by the assessee in response to the notice under section 153A are to be treated as if their returns furnished under section 139 of the income tax act. The provisions of section 142 (1) also provides that for the purpose of making an assessment under the Act, the assessing officer may serve a notice requiring assessee on

the date specified therein to furnish certain details. Therefore, we are of the opinion that the Ld. assessing officer is empowered under the provisions of this act, even in case of assessment under section 153A to issue notice under section 142(1) of the income tax act. Hence the above plea of the assessee is rejected.

13. Now we come to the various decisions cited by the assessee before us pleading that penalty levied under section 271 (1) (b) is not sustainable. a. First decision cited before us is in case of ITA No. 4429 to 4434/del/2015 for assessment year 2003 - 04 to 2008 - 09 in case of LK G builders private limited versus DCIT where in the penalty was deleted for non-compliance of statutory notices where the assessee has shown a reasonable cause. The facts of the case shows that assessee is engaged in real estate and lending trading etc and search and seizure action was conducted at the premises of the assessee on 31/01/2008. All the assessments completed under section 144 read with Section 153A of the income tax act and during the course of assessment proceedings, the assessing officer initiated penalty proceedings under section 271 (1) (b) for non-compliance of certain statutory notices. The reason shown by the assessee for such non-compliance was that there were more than 303 group assessments conducted during short span of 5 months. Hence, it was practically difficult to comply with all the notices in all the cases at the appointed date and therefore there was delay in compliance of the notices. Furthermore, it was also stated that the controlling person of the group was in judicial custody for more than 2 years, who was helm of the affairs for taking all the decisions and was aware of the tax matters and documents. Therefore, there was delay in collecting such information and consequently making certain compliances. In view of this particular facts the penalties were deleted. In the present case, the facts are very clear that the assessee was asked to comply with certain notices which assessee defiantly did not comply by furnishing such information or if the assessee does not have such information by not signing the consent letter. In view of this the reliance placed on the above decision is incorrect.

b. The 2nd decision relied upon by the assessee is with respect to ITA No. 6425 and 6426/del/2015 for assessment year 2006 - 07 in case of Sh. Shyamsunder Jindal . We have carefully perused the facts of the above case and we are of the considered opinion that in that particular case, it was not considered by the coordinate bench that whether the non-filing of the consent letter is a compliance or not. The bench also did not consider that the consent letter in the absence of the information was not submitted, and therefore there was a non-compliance of the notice under section 142 (1) of the income tax act. Furthermore in para No. 6 of that particular order it is stated by the coordinate bench that:-

— In our opinion, when nothing was brought on record to substantiate that the alleged bank and account actually belong to the assessee, there was no possibility of furnishing the consent form, particularly when the assessee time and again denied that the alleged bank account belong to him.‖ [underline supplied by us] In the present case there is a specific name of the assessee showing that assessee has some relationship with the particular bank account held with the HSBC account. In the present case the family members of the assessee are found to having such bank accounts and the appellate authority in their hands has confirmed additions. Therefore the decision cited before us have distinct facts which are not comparable with the facts before us. It is further to be noted that when the relatives of the assessee are having the bank accounts and addition are confirmed in their hands by the 1st appellate authority and where the name of the assessee appears in the information received under the information exchange agreement between the two countries, We do not agree that there is no material brought on record by the revenue for initiating an enquiry. Therefore, the reliance placed by the assessee on the decision of the coordinate bench does not apply to the peculiar facts of the case.

c. The 3rd decision relied upon by the assessee is with respect to the decision of coordinate bench in case of Piagam Impex private limited versus ACIT in ITA No. 4787/del/2013 dated 06/02/2014. The above decision does not apply to the facts of the case as there was no issue of information received by the government of India under

the information exchange. In view of this the reliance by the Ld. authorised representative on this decision is incorrect.

d. The 4th decision relied upon by the assessee is with respect to the decision of the coordinate bench in case of Pushpa Garg Vs. ACIT in ITA No. 4852/del/2013 dated 06/02/2014. The above decision does not apply to the facts of the case as there was no issue of information received by the government of India under the information exchange. In view of this the reliance by the Ld. authorized representative on this decision is incorrect.

e. In the end the assessee has placed upon the decision of the Hon'ble Supreme Court in case of M/s Hindustan steel Ltd versus state of Orissa 83 ITR 26 (SC). We have carefully considered the rival contentions with respect to the applicability of this decision. The Hon'ble Supreme Court has held that an order-imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceedings and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. In such circumstances penalty should not be levied. It is further held that where there is a technical or venial breach of the provisions of the act or where the breach) is bona fides that the vendor is not liable to act in the manner prescribed by the statute, the adjudicating authority will be justified in refusing to impose penalty. In that particular case the issue was pertaining to the sales tax matters where whether the amounts charged by the company as a fixed percentage for storage insurance etc it can be said to be that assessee was carrying on business of supplying material and it would not be a _dealer'. Further, merely registering the assessee is a _dealer' under the genuine belief that company was not a dealer, no penalty should be levied. In the present case, the facts are quite different. In the present case the information was received by the government of India under the information exchange agreement with other countries. Issue involved is not of registering or mere technical or venial compliance default by the assessee but it is with respect to holding a foreign bank account with the bank of the foreign country, which has not been allegedly disclosed

by the assessee to the Indian tax authorities. Therefore it is neither a technical nor venial default to not to sign a consent letter to arrive at the true facts of that particular bank account when the two of the relatives of the assessee are also subject to similar proceedings and addition in their hands are confirmed by the 1st appellate authority. Therefore the decision of Hon'ble Supreme Court are rendered on different facts and do not apply in the present case as the offence of the assessee for non-compliance with the notice of the assessing officer is neither technical nor venial in nature.

14. Further on the identical facts and circumstances in the ITA No. 5157-5162/Del/2014, the penalties have been confirmed by the coordinate bench considering the peculiar facts of the case as under :-

"11. The Ld. CIT(A) has properly taken note of all these relevant facts, legality of notices, nature of non-compliance and its adverse impact on investigations related to alleged undisclosed HSBC bank account. We find no infirmity in the order of Ld. CIT(A) confirming the imposition of penalty of Rs. 30,000/- each in above assessment years as defaults are more than 3 times. It has been rightly held that there is no law that for each default separate notice u/s 27(1)(b) should be issued on defaulting assessee. The orders of ld. CIT(A) being justified on proper appreciation of facts and law and based on relevant Supreme Court judgments are upheld. The appeals of assessee are dismissed."

15. In view of above facts we do not find any infirmity in the order of the ld. AO in levying penalty u/s 271(1) (b) of the act of Rs 10,000/- for all these seven years and Ld CIT (A) in confirming the same.

16. In the result all the appeal filed by the assessee are dismissed."

35. Assessee aggrieved with the order of the coordinate bench, challenged the order of the coordinate bench before honourable Delhi high court. Hon High court vide order dated 21/3/2018 has dismissed the appeal of the assessee holding as under :-

"The assessee in these appeals questions the order of the ITAT which had upheld the concurrent findings with respect to non-compliance of the notice under Section 142(1) of the Income Tax Act, 1961 (hereafter referred to as "the Act") by the appellant/assessee and the consequent imposition of penalty under Section 271(1)(b) of the Act. It is urged that the findings of the lower authorities are contrary to law.

The assessee was served with a notice calling upon him to co-operate and, inter alia, fill a consent-cum-waiver form. The form is set out in the documents annexed to this petition and requires the assessee's consent to enable the tax authorities to obtain information from Swiss Banks in respect of bank accounts held there. The Revenue had relied upon documents which it claims were received from French official source indicative of the fact that the assessee was an attorney holder of a Swiss Bank account holder in HSBC Bank. The assessee, of course, disputes that he was ever an attorney and by two letters stated that he was not obliged to fill such consent form as he was in no way involved in those transactions or that he had no connection with the Bank accounts.

The AO – as well as the appellate authorities including the ITAT were of the opinion that having regard to the nature and contents of the form, the assessee could not have refused to answer the notice under Section

142(1) of the Act and therefore invoked the penal clause under Section 271(1)(b) of the Act.

Learned counsel submits that the action of the Revenue authorities is utterly unwarranted. It is submitted that unless there is some credible material or information requiring the Revenue's further investigations with respect to the assessee's complicity, there was no question of compelling him to answer to the letters and also submit the consent form under Section 142(1) of the Act. It is submitted that in the course of the search, no incriminating material was, in fact, seized from the assessee and therefore the penal consequence heaped upon him, is without authority of law

This Court has considered the submissions of the parties. The material on the record indicates that the French official source shared information with the Indian Government with respect to accounts held in HSBC Bank. Prima facie, such material disclosed that the assessee was an attorney of some account holder. In the Court's opinion, if the assessee really had no connection with such accounts, no prejudice could really have ensued to him if he would have complied with the notice under Section 142(1) of the Act and filed the consent form.

In these circumstances, the penalty cannot be held to be erroneous or unwarranted. No question of law arises. The appeals are dismissed."

36. Assessee aggrieved with the order of the Hon High court challenged the same before Honorable Supreme Court by filing special leave petition. Honorable supreme court vide Special Leave to Appeal (C) No(s). 15828-15829/2018 on 10/72018 has dismissed it. In view of this now, the issue is squarely covered against the assessee.

37. In view of this and respectfully following the decision of Honourable Delhi high court in case of Mr. Sanjay Dalamia where in the penalty u/s 271(1)(b) of the act is upheld for all these seven years arising out of the same search and relating to the same bank account and for the same reason of not filing the consent letter, we also confirm the penalty levied by the ld AO for all these seven years u/s 271(1)(b) of the act in case of the appellant. We also uphold the order of the ld CIT (A) for all these seven years confirming the penalty levied u/s 271(1)(b) of the act of Rs 10,000/- for each year.

38. Accordingly all the seven appeal filed by the assessee are dismissed.

Order pronounced in the open court on 31/10/2018.

-Sd/-	-Sd/-
(KULDIP SINGH)	(PRASHANT MAHARISHI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated:31/10/2018
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR