

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: "G" NEW DELHI**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

**ITA no. 6425/Del/2015
&
ITA no. 6426/Del/2015
Assessment Year:- 2006-07**

Sh. Shyam Sunder Jindal
12 A, Green Avenue
Sector D, Pocket 3
Vasant Kunj
New Delhi 110 070

vs.

ACIT, Central Circle 30
New Delhi

PAN: AAGPJ 0184 N

(Appellant)

(Respondent)

Appellant by : Shri Rupesh Jain, Adv.
Respondent by : Sh. A.K.Sharma, Sr. D.R.

ORDER

PER N.K. SAINI, ACCOUNTANT MEMBER

These two appeals filed by the assessee are directed against separate orders each dated 22.9.2015 by the Ld.CIT(A)-30, New Delhi pertaining to the Assessment Year (A.Y.) 2006-07. Common issues are involved in both these appeals, which were heard together, so, these are disposed of by way of this consolidated order for the sake of convenience.

2. At the first instance we will take up the appeal in ITA 6426/Del/15 wherein the assessee had raised the following grounds of appeal.

“That the CIT(A) erred on facts and in law in confirming the penalty of Rs. 10,000/- levied by the assessing officer under section 271(1)(b) for alleged non compliance of notice dated 12.07.2013 issued under section 142(1) of the Income Tax Act, 1961 (‘the Act’) by the assessing officer without appreciating

that the appellant had duly responded to and complied with the notice issued under section 142(1) of the Act.

1.2 That the Commissioner of Income Tax (Appeals) erred on facts and in law in holding that the appellant failed to file copy of a bank statement not belonging to the assessee and to furnish a signed consent form in respect of that account which the assessee was not bound to furnish as no provision of law required that.

1.3 Without prejudice, that the CIT(A) failed to appreciate that penalty under section 271 (1)(b) r.w.s.273B of the Act was even otherwise not leviable since there existed 'reasonable cause' for not furnishing the 'consent-form' sought by the assessing office.

The appellant craves leave to add to, alter, amend or vary from the above grounds of appeal before or at the time of hearing.”

2. The facts of the case in brief are that the income tax department was having an information that the assessee was having an account with HSBC Bank, Geneva, Switzerland under profile name Partman Investments Holdings & Code BUP 9072021170 which was not disclosed by the assessee at the time of filing of the return. The Assessing Officer (A.O.) sought information during the course of assessment proceedings. The A.O. mentioned in the penalty order u/s 274 r.w.s. 271(1)(b) of the Act that the assessee was asked to furnish the bank statement with account opening form, consent letter with regard to the bank account, vide letter dt. 12.7.2013 and thereafter vide show cause notice dt. 31.7.2013 the assessee was asked to explain the reason for non compliance of the above said notice. The A.O. also mentioned that the assessee vide reply dated 19.7.2013 stated that he was not maintaining any bank account. The A.O. again asked the assessee vide notice dt. 30.9.2013 to show cause as to why penalty u/s 271(1)(b) of the Act may not be levied for non-compliance of the notices dt. 12.7.2013 and 31.7.2013. In response to the said notices the assessee stated that he had already submitted that the foreign bank account as stated in the notices did not belong to him, therefore, the assessee could submit neither the documents required in connection with the account,

nor any consent letter. The A.O. however did not find merit in the submissions of the assessee and levied penalty u/s 271(1)(b) of the Act.

2.1. Being aggrieved the assessee carried the matter to the Ld.CIT(A) and furnished the written submissions vide letter dt. 18.9.2015 which has been incorporated by the Ld.CIT(A) at para 4.1 of the impugned order which is reproduced verbatim for the sake of ready reference hereunder.

“Arguments on Grounds of Appeal No. 1 and 2

1- 2.1 The appellant filed his return of income under section 139 of the Income tax Act, 1961 declaring income of Rs 7,05,732/-. Subsequently, a search and seizure operation under section 132 of the Income tax Act, 1961 was carried out in the case of the appellant. The learned assessing officer issued notice dated 12.07.2013 under section 142(1) of the Income tax Act, 1961 requiring the appellant to furnish information/documents in respect of an alleged bank account maintained with HSBC, Geneva, Switzerland and in case if appellant is not able to obtain the same from bank, learned assessing officer asked to fill up the consent form for obtaining bank statement.

(Pages 1 to 5 of the Paper book)

1 - 2.2 In response, the appellant vide reply dated 19/07/2013 in response to notice issued under section 142(1) of the Income tax Act, 1961 submitted that he did not maintain any foreign bank account with HSBC, Geneva and the same was clarified earlier during the search proceedings and further through various letters/replies filed before the assessing officer.

(Page 6 of the Paper book)

1.2.3 The learned assessing officer issued show cause notice dated 31/07/2013 under section 271(l)(b) read with section 274 of the Income tax Act, 1961 fixing the case for 08/08/2013 to show cause why an order imposing a penalty under section 271 (l)(b) of the Income tax Act, 1961 which was duly complied by the appellant.

(Pages 7 to 9 of the Paper book)

1.2.4 However, the learned assessing officer imposed penalty under section 271(1)(b) of the Income tax Act, 1961 vide order dated 18/10/2013 as the appellant company denied that he is not maintaining any foreign account with HSBC, Geneva as alleged by the learned assessing officer by considering such reply filed by the appellant in response to notice as equivalent to non-compliance of notice issued under section 142(1) of the Income tax Act, 1961 for the purpose of imposing penalty under section 271(1)(b) of the Income tax Act, 1961 without appreciating that the appellant had duly complied with the notice issued under section 142(1) of the Income tax Act, 1961. The learned assessing officer alleged in the impugned order that:

"However since giving a reply is not a compliance of notice as the department is having specific information that you are having the above bank account in which your name, your residential address are mentioned. So this attempt of yours in non production of account statement is considered to be a non compliance of notice u/s 142(1) of the Act. "

(Pages 1 to 3 of the Paper book)

1.2.5 On perusal of the impugned order, it is quite evident that the learned assessing officer imposed penalty under section 271(1)(b) of the Income tax Act, 1961 only on the basis that the appellant has denied of having a foreign bank account in HSBC, in reply filed in response to notice issued under section 142(1) of the Income tax Act, 1961.

1.2.6 It is pertinent to note that the learned assessing officer issued notice under section 142(1) of the Income tax Act, 1961 dated 12/07/2013. It is also pertinent to note that in response to notice issued under section 142(1) of the Income tax Act, 1961 dated 12/07/2013, the appellant vide reply dated 19/07/2013 submitted that he did not maintain any foreign bank account with HSBC, Geneva and the same was clarified earlier during the search proceedings and further through various letters/ replies filed before the assessing officer.

(Pages 4 to 6 of the Paper book)

1.2.7 It is pertinent to note that the said fact that the appellant has filed reply in response to notice issued under section 142(1) is also accepted by the learned assessing officer in the impugned order. However, the learned assessing officer imposed penalty under section 271(1) (b) only on the basis that the appellant in his replies filed in response to notice issued under section 142(1) of the Income tax Act, 1961 denied that he is not maintaining foreign bank account with HSBC, Geneva.

(Pages 1 to 3 of the Paper book)

1.2.8 It is pertinent to note that the learned assessing officer erred in law in imposing penalty under section 271 (1) (b) of the Income tax Act, 1961, on the basis that in response to notice issued under section 142(1) of the Income tax Act, 1961, the appellant filed reply denying of having foreign bank account in HSBC as asked by the learned assessing officer in notice issued under section 142(1) of the Income tax Act, 1961.

1.2.9. It is pertinent to note that as per the provisions of section 271(1) (b) of the Income tax Act. 1961 penalty may be imposed on the assessee for non - compliance of notice issued under section 142 (1) or 143(2) of the Income tax Act. 1961. For the sake of convenience relevant portion of section 271 (1) (b) of the Income tax Act. 1961 is reproduced as under:

*"271.(1) - If the [Assessing] Officer or the [***] [Commissioner (Appeals)] [or the [Principal Commissioner or] Commissioner] in the course of any proceedings under this Act. is satisfied that any person- (b) has [* * *] failed to comply with a notice [under sub-section (2) of section 115 WD or under sub-section (2) of section 115WE or] under sub-section (1) of section 142 or sub-section (2) of section 143 [or fails to comply with a direction issued under sub-section (2A) of section 142},".*

1.2.10 On analysis of the provisions of section 271(1) (b) of the Income tax Act, 1961, penalty under such section may be imposed when the assessee has not complied with the notice issued under section 142(1) or 143(2) or fails to comply with the directions issued under section 142(2A) of the Income tax Act. 1961. It is pertinent to note that the said penalty under section 271 (1) (b) should not be imposed merely on the basis that the appellant has denied of

having any foreign bank account with HSBC, Geneva, Switzerland in reply filed in response to notice issued under section 142(1) of the Income tax Act, 1961 by considering the reply filed by the appellant in response to notice as equivalent to non - compliance of notice issued under section 142(1) of the Income tax Act, 1961.

1.2.11 It is pertinent to note that the learned assessing officer failed to appreciate the fact that non-compliance of the notice issued under section 142(1), if any was not deliberate and due to reasonable cause beyond the control of the appellant as the documents i.e. bank statement of foreign account asked by the learned assessing officer do not belongs to the appellant. Therefore. it was not possible for him to file the same before the learned assessing officer. It is also pertinent to note that since, there is reasonable cause for failure to comply with the notices issued under section 142(1) of the Income Tax Act, 1961, penalty under section 271 (1) (b) read with section 273B is not imposable. For the sake of convenience, relevant portion of section 273B of the Income tax Act, 1961 is reproduced as under:

"Penalty not to be imposed in certain cases.

"Notwithstanding anything contained in the provisions of [clause (b) of sub-section (1) of] [section 271, section 271A. [section 271AA.) section 271B[,section 271BA, [section 271BB.] section 271C. [section 271CA.)section 271D, section 271E. [section 271 F. [section 271 FA.) section 271 FB. [section 271G.] {section 271 H. clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AAJ or [section 272B or [sub-section (1) [or sub-section (1A)] of section 272BB or [sub-section (1) of section 272BBB or clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273.no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure. "

On analysis of the provisions of section 273B of the Income tax Act, 1961, it is quite evident that if the assessee proves that there is reasonable cause for failure to comply, penalty under section 271 (1)(b) is not imposable. Since, there existed a reasonable cause for non - compliance by the appellant in filing of documents i.e. bank statement of foreign account asked by the learned assessing officer vide notice dated 12/07/2013 issued under section 142(1) of the Income tax Act, 1961. So, the learned assessing officer erred in law in imposing penalty under section 271 (1)(b) of the Income tax Act, 1961 ignoring the provisions of section 273 B of the Income tax Act, 1961. Hence penalty of Rs 10,000/- imposed under section 271 (1) (b) of the Income tax Act, 1961 is bad in law and liable to be cancelled. "

In addition to the above, the appellant relied upon the following case laws:-

- *Balram Kumar Mahendra v Income-tax Officer [2012] 21 taxmann.com 222 (ITAT-Delhi)*
- *Woodward Governors India Private Limited v Commissioner of Income-tax [2001] 118 Taxman 433 (HC - DELHI)*

(II)) Arguments on Grounds of Appeal No. 3

3.1 The learned assessing officer has completed the assessment under section 153A of the Income tax Act, 1961 on 27/02/2015 in the case of the appellant. However, the learned assessing officer passed penalty order under section 271 (1)(b) read with section 274 of the Income tax Act, 1961 on 18/10/2013 in the case of the appellant. Therefore, the learned assessing officer passed penalty order under section 271 (1)(b) before passing of assessment order under section 153A on 27/02/2015.

(Pages 10 to 24 of the Paper book)

3.2 It is pertinent to note that since the learned assessing officer imposed penalty under section 271 (1) (b) of the Income tax Act, 1961 before passing order under section 153A/143(3) of the Income tax Act, 1961, the learned assessing officer failed to record his satisfaction about failure on the part of the appellant to comply with the notice issued under section 142(1) of the Income Tax Act, 1961 in the body of assessment order itself Hence, the learned assessing officer has imposed penalty under section 271 (1)(b) of the Income tax Act, 1961 without recording mandatory satisfaction as contemplated under section 271 of the Income tax Act, 1961 before levying penalty.

(Pages 1 to 3 and pages 10 to 24 of the Paper book)

3.3 It is pertinent to note that the satisfaction of the authorities must be a legal satisfaction, which should be formed by an authority before a notice of imposing penalty proceedings is issued. The fact that a legal satisfaction 'reached should be clearly demonstrated by the authorities and such a demonstration is possible only when the satisfaction is shown to have been recorded in writing in any proceedings under the Income Tax Act, 1961.

3.4 It is pertinent to note that the order imposing penalty under section 271 of the Income tax Act, 1961 cannot be passed before passing assessment order as the learned assessing officer has to record satisfaction for imposing of penalty in such assessment order only and then issue notice under section 274 of the Income tax Act, 1961. As penalty proceedings under section 271 are required to be initiated during the course of an assessment, a satisfaction of such initiation must be mentioned in the body of the assessment order itself.

3.5 It is well settled law that power to impose penalty under section 271 depends upon the satisfaction of the Assessing Officer in the course of the assessment proceedings under provisions of the Income tax Act, 1961 and it cannot be exercised if he is not satisfied and has not recorded his satisfaction about the existence of the conditions specified in clauses (b), (c) and (d) of sub-section (1) of section 271 before the proceedings are concluded. It is also settled in law that satisfaction as envisaged in section 271 should be discernible from the assessment order itself.

In addition to above, the appellant relied upon the following case laws:-

- Commissioner of Income-tax v Rampur Engineering Co. Limited (2009) 309 ITR 143 (HC - Delhi)
- Commissioner of Income-tax v Ram Commercial Enterprises Limited (2002) 246 ITR 548 (HC - Delhi)
- Akhil Bhartiya Prathmik Shikshak Sangh Bhawan Trust v Assistant Director of Income tax (2008) 115 TTJ 419 (ITAT - Delhi)

- Assistant Commissioner of Income tax v K K Mansinghka (ITA No. 9207/ Bom. / 1990) (ITAT - Mumbai)
- Parmeshwari Textiles v income-tax officer(2005) 146 Taxman 38 (Mag.) (ITAT- Jodhpur)

(III)) Arguments on Grounds of Appeal No. 4

4.1 It is pertinent to note that the learned assessing officer has completed the assessment proceedings under section 153A of the Income tax Act, 1961 vide order dated 27/02/2015 and not under section 144 of the Income tax Act, 1961.

(Pages 10 to 24 of the Paper book)

4.2 It is also pertinent to note that the all the required details was filed by the appellant before the learned assessing officer during the course of assessment proceedings, which has also been acknowledged by the learned assessing officer in the assessment order itself. For the sake of convenience relevant portion of assessment order is reproduced as under:

"Sh. Radhey Shyam Aggarwal, Authorized Representative, Sh. Sachin Rastogi A/R, Sh Sanjay Mittal A/R and Sh. Akshat Jain CA, Authorized Representative of the assessee attended the assessment proceedings in compliance to the notices issued from time to time. "

(Pages 10 to 24 of the Paper book)

4.3 It is settled law that the assessment proceedings in the case of the appellant were completed and the order was passed under section 153A/ 143(3) and not under section 144, means that the subsequent compliance was considered good compliance and earlier defaults were ignored by the learned assessing officer.

(Pages 10 to 24 of the Paper book)

It is well settled law that if finally the order was passed under section. 153A /143(3) and not under section 144 of the Act, this means that subsequent compliance in the assessment proceedings was considered as good compliance and the defaults committed earlier were ignored by the AO. Therefore, no penalty could be levied for earlier defaults under section 271 (1)(b) of the Income Tax Act 1961, if any.

In addition to above, the appellant relied upon the following case laws:-

- Akhil Bhartiya Prathmik Shikshak Sangh Bhawan Trust vs Assistant Director of Income Tax (2008) 115 TTJ Delhi 419
- Kamla Madan v Deputy Commissioner of Income tax [2014J ITA Nos.4691 to 4697/Del/2013 (ITAT - Delhi)
- l'vlls Bluebell Infrastructure Private Limited v Assistant Commissioner of Income tax (2014) ITA Nos.4378 to 4382/Del/2013 (ITAT - Delhi)
- Ms. Natasha Garg v Assistant Commissioner of Income tax (2014) ITA Nos. 4834 to 4837/De1/2013 (ITAT - Delhi)
 - Assistant Commissioner of Income tax v K K Mansinghka (ITA No. 9207 Bom/1990) (ITAT- Mumbai)
 - Parmeshwari Textiles v Income-tax officer [2005 J 146 Taxman 38 (Mag.) (ITAT - Jodhpur)

2.2. The Ld.CIT(A) however did not find merit in the submissions of the assessee and sustained the penalty levied by the A.O. by observing in para 4.3 of the impugned order as under.

“4 2 Findings: The Findings are as under:-

I have carefully considered the Penalty order, statement of facts, written submission and oral arguments of Ld. AR. The objection/argument of the appellant are discussed as under.-

(i) The appellant has stated that this HSBC account does not belong to him and therefore, the appellant can neither submit the documents required in connection with the bank account nor any consent form. For the sake of arguments for a moment, if the appellant is not having bank account in the HSBC, then the consent form sought by the A.O. should have been filed by the appellant, so that the A.O. can obtain the details of this alleged bank account from the HSBC.

For further clarification, the section 142(1)(iii) is reproduced as under.-

"Inquiry before assessment. 142(1) For the purpose of making an assessment under this Act, the Assessing Officer. may serve on any person who has made a return under section 115WD or section 139 or in whose case the time allowed under sub-section(l) of section 139 for furnishing the return has expired a notice requiring him, on a date to be there in specified, ...

(i) " .

(ii) .

(iii) to furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including a statement of all assets and liabilities of the assessee, whether included in the accounts or not) as the Assessing Officer may require: (emphasis supplied)

From the above, it is clear that the A.O. was well within it's power to obtain the consent form duly filled in by the appellant under his signature.

(ii) By not giving the consent form, as required by the bank as prerequisite for furnishing the details of the bank account, the investigation to be done by the A.O. by obtaining details from the bank, could not be carried out. If the appellant is of view that this HSBC account does not belong to him, than, there was no harm in providing the consent form, which should have facilitated the A.O. to collect the information from the HSBC Bank. The information so collected by the A.O. from the HSBC bank, should have cleared the doubt of the appellant as well as of the department. Thus, by not furnishing the consent form, it creates the doubt in the minds of the A.O. also.

iii) The appellant's argument that there was a reasonable cause for not furnishing the consent form, as alleged Bank account in the HSBC does not

belong to him and therefore, as per provision of 273B, penalty is not imposable. This argument of the appellant, is not acceptable as there was no reason for not giving consent form, in order to obtain the details of the HSBC account alleged to be in the name of the appellant. Rather, by not giving the consent form, which is a prerequisite for obtaining the details of the HSBC account, the HSBC will not provide the details of the bank account.

(iv) The appellant has also taken the argument that the final assessment has been passed U/S 153A and not U/S 144 of the Act. The A.O. has raised the specific queries vide notice U/S 142(1) dated 12.7.2013, and same was not complied fully, since the appellant failed to give the consent form and therefore, there is a clear cut default committed by the appellant. The case laws relied upon by the appellant have also been carefully considered and are not applicable, as same are distinguishable to the facts of the appellant.

The penalty u/s 271(1)(b) is attracted for each such default and there is no prerequisite that the assessment has to be passed ex-party U/S 144 of the Act, for imposing the penalty. Any compliance made subsequently to the default committed earlier, will not absolve the appellant from the earlier default. However, in the case of the appellant even subsequent to the default under consideration, no compliance was made and the A.O. has taken adverse view in the assessment order passed U/S 153A on 27.02.2015, and addition of Rs. 69,07,414/-has been made by considering undisclosed deposits in the alleged HSBC account, in the hands of the appellant.

From the above, it is clear that the appellant failed to furnish the specific information/details for the alleged bank account in the name of the appellant, i.e. consent form, without any reasonable cause. Therefore, there is a non-compliance of the notice U/S 142(1) dated 12.7.2013.

In view of the above, I do not find any infirmity in the Penalty imposed U/S 271 (1)(b) and same is hereby confirmed.”

3. Now the assessee is in appeal before us.

4. The Ld.Counsel for the assessee reiterated the submissions made before the lower authorities and further submitted that the assessee had duly complied with the notices issued by the A.O. by stating in his reply dated 19.7.2013 that the bank account did not belong to him. Our attention was drawn to page no.7 of the assessee's paper book which is a copy of the aforesaid reply. It was further submitted that the assessee also replied in response to notice dt. 31.7.2013 through his authorised signatory and stated that it has already submitted that the foreign bank account as

stated in the said notice did not belong to him. It was accordingly submitted that the assessee replied to the notices issued by the A.O. Therefore, the penalty levied by the A.O. u/s 271(1)(b) of the Act was not justified. It was further submitted that the Ld.CIT(A) sustained the penalty for the reason that the assessee did not furnish consent form but he ignored this fact that the assessee could not have given the consent form when the bank account did not belong to him. It was further submitted that nothing was brought on record by the A.O. to substantiate that the bank account actually belonged to the assessee, therefore, the penalty sustained by the Ld.CIT(A) was not justified.

4.1. In his rival submissions the Ld.D.R. strongly supported the orders of the authorities below and reiterated the observations made in their respective orders.

5. We have considered the submissions of both the parties and carefully gone through the material available on record. In the present case it is noticed that the A.O. issued a letter dt. 12.7.2013 to the assessee stating therein that as per the information available with the department, the assessee was having an account in HSBC Bank, Geneva, Switzerland with the profile name Partman Investments Holdings & Code BUP 9072021170 and asked the assessee to furnish the following details.

- a) Account opening form in respect of foreign bank account mentioned at para 2.
- b) Complete bank statements, in original, in the foreign bank mentioned at (a) above, since beginning till date.
- C) Residential status as per the Act as on the date of opening of foreign bank account mentioned at (a) above and thereafter for all AYs till date.

The A.O. also stated in the said letter as under.

“In case you do not have the bank account statement, please furnish duly filled up, signed and notarized consent letter so that we may help you obtain the account statement from the bank. Copy of the consent letter enclosed.”

5.1. In response to the afore said letter/notice, the assessee vide letter dt. 19th July, 2013 (a copy of which is placed at page 7 of the assessee's paper book) submitted as under:-

"This has reference to the notice issued to the assessee wherein it is stated that as per the information available with the department you are having an account in HSBC bank, Geneva, Switzerland having client profile name Portman Investments Holdings Ltd. (profile Code 9072021170 and the assessee has been asked to provide information/details/documents in relation to the aforesaid.

In this regard, it is stated that the assessee is not maintaining any foreign bank account and this position was already clarified during the search proceedings at the time of recording of statement by the assessee and later on also to the investigation team vide letter dt. 9.1.2012 and thereafter to your honour vide letter dt. 30.11.2012."

5.2. Thereafter the A.O. again asked the assessee vide letter dt. 31.07.2013 to furnish the details and also asked to show cause as to why penalty of Rs.10,000/- should not be imposed u/s 271(1)(b) of the Act. The assessee again vide letter dt. 7th August, 2013 (a copy of which is placed at page 10 of assessee's paper book) submitted as under:-

"This is w.r.t. your notice dt. 31.7.2013 u/s 271(1)(b) of the Act requiring therein to show cause why the penalty should not be levied under the above section as the assessee has not furnished reply on or before 19.7.2013.

In this regard my submission is as under:

The notice dt. 12th July, 2013 was served on the assessee on 16.7.2013 wherein asked to submit the reply on or before 19.7.2013. Since there was short of time between the date of service of notice and furnishing reply of the notice, hence, the reply of the afore said notice was not furnished on 19.7.2013.

Reply of the said notice was submitted in your office on 5.8.2013 copy of same enclosed for your reference.

In view of the factual position, your good self may be pleased to drop the penalty proceedings initiated u/s 271(1)(b) of the Act and oblige.”

5.3. The A.O. again asked the assessee vide letter dt. 30.9.2013 to furnish similar information by 9.10.2013. In response assessee again vide letter dt. 7.10.2013 (a copy of which is placed at page 12 of assessee’s paper book) submitted as under.

“This is wrt your notice dt. 30.9.2013 u/s 271(1)(b) of the Act requiring therein to show cause why the penalty should not be levied under the above section as the assessee has not furnished reply in pursuance to the above stated notices.

In this regard the submissions are as under:

The notice dt. 12th July, 2013 was served on the assessee on 16.7.2013 wherein asked to submit the reply on or before 19.7.2013. The reply was submitted by us on 5.8.2013 on the same date by which it was required to be submitted.

As the assessee has already submitted in the above referred reply that the foreign bank account as stated in your notice does not belong to the assessee, therefore the assessee can neither submit the documents required in connection with the account nor any consent letter can be given by the assessee for such account as the same is not belonging to him.

In view of the above position, your good self may please appreciate that the assessee has duly complied with your notices and there is no case for initiation of penalty proceedings initiated u/s 271(1)(b) of the Act and accordingly the assessee requests your good self to please drop the same.”

6. From the above narrated facts it is crystal clear that there was compliance by the assessee to each and every letter or notice issued by the A.O. Thus it cannot be said that the assessee did not comply with the notices/letters. Therefore, the penalty levied by the AO u/s 271(1)(b) of the Act was not justified. In the instant case the Ld.CIT(A) confirmed the penalty for the reason that the assessee did not give the consent form for obtaining the bank statement. In our opinion, when nothing was brought

on record to substantiate that the alleged bank account actually belonged 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 belonged to him. Therefore, we are of the confirmed view that the sustenance of penalty u/s 271(1)(b) of the Act by the Ld.CIT(A) was not justified, particularly when the assessee complied with the notice/letters issued by the A.O. and it was not possible for him to give the consent form for obtaining the bank statement, as the same did not belong to him. We, therefore, considering the totality of the facts, delete the penalty u/s 271(1)(b) of the Act levied by the AO and sustained by the Ld.CIT(A).

7. The facts in ITA 6425/Del/2015 are similar to the facts involved in ITA no.6426/Del/2015 (supra) the only difference is in the dates of the letters/notices dated 12.8.2014 and 30.6.2014 which were alleged to have not been complied with by the assessee. Therefore our findings given in former part of this order shall apply mutates mutandis.

8. In the result both the appeals of the assessee are allowed.

Order pronounced on 28th February, 2017.

Sd/-

(BEENA A PILLAI)
JUDICIAL MEMBER

Sd/-

(N.K. SAINI)
ACCOUNTANT MEMBER

Dated: the 28th February, 2017

**manga*

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
- 5.DR;
- 6.Guard File

By Order

Asst. Registrar