

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI O.P. KANT, ACCOUNTANT MEMBER**

I.T.As. No.4114 to 4120/DEL/2015
Assessment Years: 2006-07 to 2012-13

Charu Modi Bhartia, A-1, Maharani Bagh, New Delhi.	v.	Deputy Commissioner of Income Tax, Central Circle-26, New Delhi.
TAN/PAN: ACSPB 6374J (Appellant)		(Respondent)

Appellant by:	Shri Ajay Vohra, Sr. Adv. & Ms. Deepashree Rao, C.A.		
Respondent by:	Shri Manoj Kumar Mahar, Sr.D.R.		
Date of hearing:	09	01	2019 & 14.03.2019
Date of pronouncement:	26	03	2019

ORDER

Per BENCH:

In all these appeals, the assessee has challenged the levy of penalty of Rs.10,000/- u/s.271(1)(b) arising out of common impugned order dated 13.05.2015, passed by Id. CIT(Appeals), New Delhi.

2. Since, issues involved in all the appeals are similar arising out of identical set of facts, therefore, same were heard together and are being disposed of by way of this consolidated order. In the grounds of appeal, the assessee has raised the following grounds which is common for all the appeals: -

“1. That the Commissioner of Income Tax (Appeals) erred on facts and in law in not holding that the impugned order dated 09.01.2015, levying penalty under section 271(1)(b) of the Income-tax Act, 1961 (“the Act”) is without jurisdiction, illegal and bad in law.

2. That the Commissioner of Income Tax (Appeals) erred on facts and in law in upholding the levy of penalty of Rs. 10,000 under section 271(1)(b), without appreciating that the appellant had duly responded to and complied with the notice issued under section 142(1) of the Act.

3. That the Commissioner of Income Tax (Appeals) erred on facts and in law in holding that the appellant failed to co-operate in the investigation proceedings by refusing to sign the ‘consent-form’, without appreciating that the appellant was not at all competent to sign such form.

4. That the Commissioner of Income Tax (Appeals) erred on facts and in law in not appreciating that no addition had been made in the assessment order passed under section 153(C)/143(3) of the Act, wherein the assessing officer categorically acknowledged that no information was available with the department in respect of the alleged foreign bank account.

5. Without prejudice, that the Commissioner of Income Tax (Appeals) 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 officer.”

Besides this, the assessee has also raised following as additional ground of appeals in all the appeals: -

“1. That on the facts and circumstances of the case and in law, the penalty order dated 09.01.2015 passed under section 271(1)(b) of the Income Tax Act, 1961 (‘the Act’) in respect of

invalid proceedings under section 143(3) r.w.s. 153C of the Act, is without jurisdiction, illegal and bad in law.

2. *That on the facts and circumstances of the case and in law, the penalty levied under section 271(1)(b) of the Act on account of alleged non-compliance in connection with material/document beyond the scope of proceedings under section 143(3) r.w.s. 153C of the Act, is illegal and bad in law.”*

3. The facts in brief are that the assessee is an individual, who had filed her regular return of income for all the impugned assessment years. A search and seizure action u/s.132 was carried out in the case of her father, Shri Krishna Kumar Modi, on 09.11.2011. In pursuance thereto, proceedings u/s.153A r.w.s.153C of the Act was initiated in her case by the Assessing Officer vide notice u/s 153A dated 19.11.2012, requiring the assessee to furnish return of income in respect of assessment years falling within six assessment years, immediately preceding the assessment year in which search was conducted, i.e., Assessment Years 2006-07 to 2011-12. In response to said notice, assessee has filed return of income for all the assessment years under consideration on 04.01.2013. During the course of the assessment proceedings, Assessing Officer issued notice u/s 142(1) dated 05.08.2013, requiring the assessee to furnish information/documents in respect of alleged bank account maintained with HSBC, Geneva, Switzerland bearing code **BUP_SIFIC_PER_ID_5090189871**. Besides this, assessee was also required to furnish the following details/evidences: -

- “(i) Account opening form in respect of Foreign Bank Account.
(ii) Complete Bank statement, in original- in the Foreign Bank mentioned at point (i) above since beginning.
(iii) Residential Status as per the I.T. Act as on the date of opening of Foreign Bank Account mentioned at point (i) and thereafter for all the assessment years.”*

3.1 The Assessing Officer had also provided a blank ‘consent form’ addressed to some counsel in Switzerland of HSBC Pvt. Bank (Suisse) of SA, Geneva, Switzerland and directed the assessee to fill in the requisite information and sign the consent form, in case the assessee is not in possession of requisite details. Similar consent form was received from ADIT (Inv.) & DDIT (Inv.), Unit-II (2), New Delhi, vide letter dated 15.04.2013 and 18.07.2013, respectively. In response to the said letter/notice dated 15.04.2013, the assessee vide letter dated 07.05.2013, submitted that, she did not maintain any foreign bank account with HSBC, Geneva, and therefore, information/documents required could not be furnished; and it was further stated that as per legal advice received by her, she was not at all competent to sign the consent/declaration form in respect of the same as bank account does not belong to her. **Further, assessee vide letter dated 24.07.2013, filed a duly signed a ‘consent form’ with respect of one foreign bank account, admitting that she had maintained with HSBC, London, bearing account no. 31628879.** Thereafter, again similar notice was issued by the Assessing Officer dated 18.07.2013; and in response assessee again vide letter dated 11.09.2013 filed on

13.09.2013, clarified that she did not maintain any bank account with HSBC, Geneva, therefore, the information /document required to be furnished is not possible.

3.2 Ld. Assessing Officer during the course of assessment proceedings summoned assessee u/s 131 and recorded the statement of the assessee on 10.12.2014. The relevant question and answer have been incorporated in all the assessment orders for various assessment years from pages 6 to 12. In reply to various questions, especially in response to question no. 26 and 29, wherein she was asked to inform the details of account in HSBC, Geneva and for signing of consent waiver form, she reiterated that she does not maintain any foreign bank account with HSBC, Geneva except for HSBC, London for which she has already signed the consent waiver form and she was not competent to sign any consent waiver form for the bank account which does not belong to her. This averment was reiterated by her before the Assessing Officer, time again not only in response to various questions asked but also vide several letters as stated above. The ld. Assessing Officer in the assessment order, despite all the compliances made by the assessee in response to every notice has initiated the penalty proceedings u/s. 271(1)(b) only for the reason of not signing the consent waiver form. AO has further noted in the assessment order that independent reference has been made to competent authorities in other countries to get the account statement and other details and once the information is received the taxability of the amount shall be decided as

per the provisions of the Act. Thus, in all the years, no addition has been made whatsoever and the return of income of the assessee has been accepted in the order passed u/s 143(3)/153C.

4. In the course of impugned penalty proceedings u/s. 271(1)(b), again similar show cause notice was issued by the AO for failure to comply with notice u/s 142(1) dated 05.08.2013; and in response assessee reiterated the same contention and empathetically submitted that there has been no compliance whatsoever on the part of the assessee as all the notices were duly responded including notice dated 05.08.2013. However, the Ld. Assessing Officer has levied the penalty u/s 271(1)(b) for failure on the part of the assessee to comply notice dated 05.08.2013 simply on the ground that assessee has not filed the consent letter form.

5. Before the ld. CIT (A), assessee had given very detail submissions which have been incorporated from pages 3 to 6 of the assessment order. In nutshell, assessee reiterated that she has duly complied with all the notices and not only that, she has filed the reply and also given the reasons as to why consent letter could not be signed by her.

6. Ld. CIT(A) has confirmed the penalty based on certain general observations that such kind of cases are not simple cases, but all are suspected tax evasion cases where people have kept illicit funds in the overseas bank. The suspected persons were required to sign consent letter to verify the truth

of the allegation against them and it is the duty of every citizen of India to co-operate and join the investigation to ascertain the truth. Refusal to sign the consent form tantamount to refusal to join investigation and therefore, the assessee has violated the said provision and it is immaterial whether she has opened any bank account or not. According to him, such refusal entails penal consequences. However, nowhere there is any finding by him that, there is any material indicating assessee has any such bank account in HSBC Geneva or that assessee has failed to comply with notice dated 05.08.2013.

7. Before us, ld. senior counsel, Shri Ajay Vohra, first of all, submitted that, here in this case, no material whatsoever was found during the course of search to remotely indicate that assessee was maintaining any kind of bank account in HSBC, Geneva, Switzerland. Not only that, no addition has been made by the Assessing Officer in the impugned assessment order. The information which has been referred to by the Assessing Officer, first of all, was not found during the course of search and in any case could not have been held to be belonging to the assessee. Even, the Assessing Officer in the assessment order had himself admitted that there is no concrete information whatsoever available with the Department in respect of aforesaid alleged foreign bank account and it is for this reason, information was sought from the competent authorities and he has categorically observed that, as and when any undisclosed money is found in the said

bank account, same would be taxed under the provisions of the Act. Under these circumstances, there cannot be any non-compliance of notice u/s.142(1), especially when, the proceedings u/s.153C are circumscribed to the material found during the course of search of the 'searched person' and that too belonging to the assessee. He further submitted that, the inquiries for the purpose of assessment u/s 153C can be made only relating to materials found during search, which here in this case, it is an admitted fact that no such material was found and hence, there cannot be any charge for non-compliance of such notice and therefore, same is illegal and bad in law. He further submitted that, at each and every stage, assessee has duly responded to all the notices and has categorically submitted before the authorities below that: -

- Firstly, she does not have any kind of bank account with HSBC, Geneva,
- Secondly, the document relating to alleged foreign bank account confronted to her by the Investigation Wing and by the Assessing Officer does not even contain the name of the Bank Account.
- Thirdly, she has only one foreign bank account with HSBC, London for which she had signed the consent form and;
- Lastly, she was not competent to sign the consent form with respect to HSBC account, Geneva as per legal advice given to her.

7.1 Mr. Vohra argued that, if assessee has duly complied with notice and had clearly given her clarification regarding not signing of consent form, then how the Department can allege that there has been non-compliance by the assessee. Not signing of consent form cannot be the ground for levy of penalty, especially when assessee, not only before the Investigation Wing but also before the Assessing Officer had stated that she is not competent to sign the consent form as she does not have any such bank account with the Switzerland. In respect of various contentions, he relied upon the catena of judgments;

- Firstly, on the point that no penalty u/.271(1)(b) in respect of foreign bank account can be made simply on the ground that consent waiver has not been signed and;
- Secondly, no penalty u/s.271(1)(b) can be levied when assessment year has been passed u/s.143(3) the list of such judgments are as under:

<i>Re: No Penalty' under section 271(1)(b) of the Income Tax Act, 1961 in In respect of foreign Bank account</i>	
1.	<i>Copy of decision of Delhi Bench of Tribunal in the case of Shyam Sunder Jindal vs. ACIT: ITA No. 6425/Delhi/2015</i>
2.	<i>Copy of decision of Delhi Bench of Tribunal in the case of Sh. Subhash Sathe vs. ACIT: ITA Nos. 2765 to 2771/Del/2016</i>
<i>Re: No Penalty under section 271(1)(b) of the Act when assessment order has been passed 143(3) of the Act</i>	
3.	<i>Copy of decision of Madras High Court in the case of CIT vs. Vedlapatla Veera Venkatataramiah: 11 ITR 308</i>
4.	<i>Copy of decision of Delhi Bench of the Tribunal in the case of Akhil Bhartiya Prathmik Shmshak Sangh Bhawan Trust: 115 TTJ 419.</i>
5.	<i>Copy of decision of Delhi Bench of the Tribunal in the case of Paigam Impex Private Limited vs. ACIT: ITA Nos. 4787 to 4791 of 2013</i>


6.	<i>Copy of decision of Delhi Bench of the Tribunal in the case of Chetan Arc Electrodoes Pvt. Ltd vs. ACIT: ITA Nos. 4842 to 4846 of 2013</i>
7.	<i>Copy of decision of Delhi Bench of the Tribunal in the case of Bela Madan vs. DCIT: I.T.A. Nos. 4738 to 4740 of 2013</i>
8.	<i>Copy of decision of Delhi Bench of the Tribunal in the case of Ms. Manjusha Madan vs. DCIT: ITA Nos. 4698 to 4703 of 2013</i>
9.	<i>Copy of decision of Delhi Bench of the Tribunal in the case of M/s D.R. Exports International vs. DCIT: ITA No. 824 of 2010</i>
10.	<i>Copy of decision of Mumbai Bench of the Tribunal in the case of Shri Ramesh Kumar Jain vs. ACIT: ITA. No. 458 to 464 of 2013</i>
11.	<i>Copy of decision of Mumbai Bench of the Tribunal in the case of M/s Cabochon Arts Pvt. Ltd vs. DCIT: ITA No. 5952 of 2013</i>
12.	<i>Copy of decision of Ahmedabad Bench of the Tribunal in the case of Swarnaben M. Khanna vs. DCIT: 37 SOT 25</i>
13.	<i>Copy of decision of Ahmedabad Bench of the Tribunal in the case of Nemichand Arvindkumar (HUF) vs. ITO: ITA No. 2541 of 2011</i>
14.	<i>Copy of decision of Chennai Bench of the Tribunal in the case of Sardarmal Kothari vs. ACIT: ITA No.2104 of 2012</i>
15.	<i>Copy of decision of Allahabad Bench of the Tribunal in the case of Pawan Kumar Didwania and Ors. Vs. ACIT : ITA No.187 of 2014</i>
16.	<i>Copy of decision of Jodhpur Bench of the Tribunal in the case of Parmeshwari Textiles vs. ITO: 146 Taxman 38</i>

8. On the other hand, learned Department Representative strongly relied upon the order of the Id. CIT (A) and submitted that non-signing of consent form amounts to non-compliance, because assessee was specifically asked to sign the consent form so that proper inquiry investigation can be done. Even if assessee was not maintaining any bank account in HSBC Geneva, then also to ascertain the truth and to cooperate with investigation, assessee should have signed the consent form. Failure to do so, tantamount to non-compliance of the notice and hence penalty u/s 271(1)(b) is leviable.

9. We have heard the rival submissions and also perused the relevant findings given in the impugned orders as well as material referred to before us. Here, the sole reason for levying the penalty u/s. 271(1)(b) is that assessee has not complied with notice dated 05.08.2013 issued u/s.142(1) in as much as she has not signed consent waiver form for HSBC Geneva Bank Account. From the perusal of the said notice and the information called upon by the Assessing Officer, it is seen that the Assessing Officer had required the assessee to furnish information in respect of bank account in HSBC, Geneva, Switzerland having a particular code/account number. In response, the assessee had categorically submitted not only before the ADIT (Inv.) but also before the Assessing Officer that she does not maintain any foreign bank account with HSBC, Geneva, with any such account number as stated by the Assessing Officer and it does not belong to her at all. The copies of all such letters filed before the ADIT and before the Assessing Officer have been placed in the paper book from pages 4 to 11. Not only that, Assessing Officer had issued summons u/s.131 to the assessee, in response, assessee had duly appeared before the Assessing Officer and her statement was recorded on oath. During the course of statement, the Assessing Officer had repeatedly asked her, whether she has any bank account with HSBC, Geneva, to which she has categorically denied having such bank account and stated that she has neither visited Switzerland nor she has authorised any person to open any

bank account in Switzerland and also reiterated that she has no authority to sign consent form as per the legal advice given to her.

10. Here in this case, from the perusal of the assessment order, it is seen that some information was received to the department, that certain persons including the assessee in India, held bank account in HSBC Pvt. Bank (Suisse) of SA, Geneva, Switzerland. The relevant document received to the AO has been scanned by the AO at page 4 of the assessment order. The scan version is pasted here in below:

Nom : <u>BHARTIA CHARU</u> Prenoms : CHARU Date de naissance : 10/28/1962 Lieu de naissance : DELHI Profession :		Nationalite : Sexe : F Sit. Maritale :		Evenements sur la personne PART -B Date creation : 9/20/2006 Derniere modification : 9/20/2006 Date de cloture : Motif de cloture :		Identifiants internes PART -C BUP_SIFIC_PER_ID : 5090189871 PER_ID : 151155 PER_NO : 189871	
Telephones Personnel Portable Fax Professionnel				Piece d'identite PART -E Numero Nature Lieu d'etablissement Pays Date			
ADRESSES POSTALES DE LA PERSONNE PHYSIQUE PART -F MRS CHARU BHARTIA A1-MAHAHRANI BAGH NEW DELHI 110065 INDIA [LEGAL ADDRESS]						Dy. Commissioner of Income Tax Central Circle-28, E-2, Room No. 323 ARA Centre, Jandewalan East, New Delhi-110055	

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10.1 From the perusal of the above document, it is seen that, there is no mention about HSBC Pvt. Bank (Suisse) of SA, Geneva, Switzerland; nor there is any information or annexure about any amount deposited in the said bank account. There is no whisper even in the assessment order

that there was any amount which has been mentioned in the alleged bank account whose information was received to the Department. In the said form, the name of the assessee including date of birth, place of birth, nationality, gender, etc., date of creation is mentioned as 30.09.2006 and the postal address of the assessee has been mentioned. Once this information was confronted to the assessee during her statement recorded u/s. 132(4), she has stated that apart from certain bank account in India she is maintaining one bank account abroad which was with HSBC London. The exact question and answer are reproduced here under:

“Qn. 2. Please furnish the details of all bank accounts maintained by in India or abroad?”

Ans. The list of Indian bank account maintained by me has already been provided by my father. I have also maintained a bank account abroad the detail of which is as under:”

10.2 Thereafter, Assessing Officer observed that with a view to verify the above foreign bank account, a reference has been sent to competent authority in Switzerland and other countries and till date verificatory report has not been received, and as when report will come, then appropriate action shall be taken later on; and since the assessment is getting time barred he has to pass the assessment. Accordingly, no addition either on substantive or protective basis has been made by the Assessing Officer in any of the assessment orders passed for the impugned assessment years. This clearly indicates that the information which was received there was no mention about any disclosed or

undisclosed amount deposited in the said bank account.

10.3 Another very important fact which is emerging from the question and answer recorded by the Assessing Officer u/s.131 is that, the assessee has stated that the bank account confronted to her relates to some LGT bank account and not HSBC Geneva, Switzerland. This is evident from the following relevant questions and answer given by the assessee which is reproduced hereunder:

Q.1	<i>Please identify yourself?</i>
Ans.	<i>I am Smt. Charu Modi, D/o Sh. K.K. Modi, r/o A-1, Maharani Bagh, New Delhi. I am submitting the copy of my passport No.z2096943 as my identity proof.</i>
Q2.	<i>During the course of search and seizure operation and post search proceedings, your statements were recorded by the Authorized Officers of the Department on 09.11.2011. Please confirm that the statements recorded were signed by you after taking oath?</i>
Ans.	<i>Yes I confirm that my statement was recorded which was signed by me after taking oath.</i>
Q3.	<i>During the course of search dated 09.11.2011 at your residential premises, you were shown a copy of your bank statement with HSBC Geneva by the search team in which details of the client profiles linked to you were given. On this you have denied having any account. Please confirm the same and give your comments.</i>
Ans.	<i>I was not shown any paper relating to HSBC Geneva, one question was put to me after showing the document that an account was opened in LGT bank Geneva. In response to the same I denied having opened any account in LGT bank Geneva.</i>
Ans.	<i>This was the same document that was shown as being my account from LGT bank Geneva. I have no knowledge of this unsigned document which does not even have the bank name on it.</i>
Q5.	<i>As per the details shown to you the date of creation of this account mentioned is 20th September, 2006. Were you in Switzerland in F.Y 2006-07?</i>
Ans.	<i>I was not in Switzerland in that F. Y 2006-07.1 have</i>

	submitted the details of my foreign travel vide letter dated 17.11.2014.
Q6.	After coming to know that your name is appearing in a bank account. Have you visited Switzerland?
Ans.	I have submitted the details of my foreign travel vide letter 17.11.2014. I travel extensively for business but I have not visited in 2011-12 and 2012-13 after recording of my statement on 09.11.2011.
Q7.	Have you visited Switzerland in last 8 years? If yes give the details and the purpose of such visit (s)?
Ans.	I will verify and submit the details by 15.12.2014.
Q8.	Have you ever signed any document pertaining to opening of any account outside India especially HSBC bank Geneva?
Ans.	I have opened an account in HSBC London and not in HSBC Geneva.
Q9.	Have you ever authorized any person/bank official/institution to sign any document on your behalf for the purpose of opening any account outside India?
Ans.	No, except for HSBC London for which documents were, as stated in my statement in question no. 5 dated 09.11.2011 sent by post to the representative of the bank Mr. Steward Browmley.
Q10.	Have you ever authorized any bank/institution/any other agency to open/operate any bank account outside India?
Ans.	No, I have only bank account in HSBC London. I haven't authorized any bank/institution/any other agency to open/operate any other bank account outside India.
Q11.	Did you ever authorize any person/institution/company to sign any document pertaining to formation of any company/trust/association of persons/societies outside India?
Ans.	No, I haven't authorized any person /institution/ company to sign any document pertaining to formation of any company/trust/association of persons /societies outside India.
Q12	After coming to know that your name is appearing in a

	<i>bank account with HSBC Geneva what have you done to find out the veracity of the document/information?</i>
Ans.	<i>I have only been shown one document today saying that it is from HSBC Geneva. This document does not have any signature or bank name.</i>
Q13.	<i>This is the same statement which was shown to you on 09.11.2011. Its already 3 years. What have you done to find out the veracity of the document/information?</i>
Ans.	<i>This unsigned document was only shown to me on 09.11.2011 but no copy was given to me. It was shown to me as some document relating to LGT bank Geneva. Since, this document does not pertain to me, I haven 7 taken any action.</i>
Q14	<i>Have you ever asked for a copy of this document?</i>
Ans.	<i>We didn't ask for the copy of this document.</i>
Q15	<i>Have you made any communication with LGT bank Geneva regarding this document as you have been stating that this document was shown to you on 09.11.2011 as information pertaining to bank account in LGT bank Geneva?</i>
Ans.	<i>Vide Q. No. 18 of my statement recorded on 09.11.2011, this unsigned document was shown to me as an account opened in LGT bank Geneva. In reply thereto I said that I haven't opened any account in LGT bank Geneva. I haven't made any communication thereafter with LGT bank Geneva, since, I have no account in LGT bank Geneva.</i>
Q16	<i>I am giving you the copy of the document/information which was shown to you on 09.11.2011. Please acknowledge the same and give your comments.</i>
Ans.	<i>I have today received a copy of the unsigned document which was earlier shown to me on 09.11.2011. As stated above, this document does not contain name of any bank account. I am not aware how my name and address appear on this piece of paper.</i>
Q17	<i>Have you made any communication with HSBC bank Geneva pertaining to this account after the date of search?</i>

Ans.	<i>No, I haven't made any communication with HSBC bank Geneva in relation to this document after the date of search. As stated earlier this document was shown to me as relating to LGT bank Geneva and not HSBC bank Geneva.</i>
Q18.	<i>Have you made any communication with LGT bank Geneva pertaining this account after the date of search?</i>
Ans.	<i>No I haven't made any communication with LGT bank Geneva.</i>
Q19.	<i>Have you made any communication with any agency/bank/institution, other than HSBC Geneva pertaining to this bank account?</i>
Ans.	<i>No, I haven't</i>
Q20.	<i>Have you filed any case civil/criminal against HSBC bank or any other person/institutions relating to this bank account?</i>
Ans.	<i>No, I haven't filed any case.</i>
Q21.	<i>Have you ever visited HSBC bank Geneva?</i>
Ans.	<i>I have no idea</i>
Q22.	<i>Do you think your name and address or any document pertaining to you may have been misused/used without your authorization for the purpose of opening any account in HSBC bank Geneva?</i>
Ans.	<i>I have no idea</i>
Q23.	<i>You are a woman of repute with high social standing. Your name, date of birth and address has been used in a bank account. Despite all this you have not taken any action against the bank You even have stated above that you have not communicated with the bank after coming to know of the existence of an account in your name. This appears highly improbable. Your comments please.</i>
Ans.	<i>I was only shown one unsigned paper containing my name, date of birth and address. There is no mention of the name of any bank on the said piece of paper. Therefore there was no question of any communication or taking of any action.</i>
Q.24	<i>Your father Mr. K.K. Modi was shown a similar kind of paper/document in which his name, address and other particulars were appearing. The documents were unsigned as the document which was shown to you. Mr. K. K. Modi in</i>

	<i>the return for A.Y 2012-13 has offered the maximum amount appearing in the document for taxation. Since, the information in the document shown to you is of similar nature don't you think as a responsible citizen of the country you should have made efforts to find out the veracity of the documents.</i>
Ans.	<i>I am not aware what document was shown to my father Sh. K. K. Modi. As stated earlier one unsigned piece of paper was only shown to me and no copy was given. I denied having any account in LGT bank Geneva. Therefore, there is no question of my undertaking any effort to find out veracity of the unsigned paper which was never given to me.</i>
Q.25	<i>Your name and other particulars are appearing in a bank account which is located outside India. Don't you think as a responsible citizen of India you should have applied for the copy of the document?</i>
Ans.	<i>Since the paper was unsigned and didn't contain name of any bank and I denied having any account in LGT bank Geneva, I didn't ask for copy of the said paper.</i>
Q.26	<i>On 15.04.2013 summons were issued to you along with a consent waiver form from HSBC bank Geneva wherein you were requested to help the government to get full details/particulars relating to the information which was shown to you on 09.11.2011. By this it was made categorically clear to you that the information pertained to a bank account for which the consent waiver forms were sent to you. Apparently vide letter 07.05.2013 you have submitted that you are not at all competent to verify/sign the declaration forms. Since, the particulars' in the document was matching with your particulars in India, don't you think as a responsible citizen you should have signed the consent waiver form and helped the Government of India to get a true and fair details of the account in which your name was appearing?</i>
Ans.	<i>As stated in my letter dated 07.05.2013, I do not maintain any foreign bank account other than HSBC London. Therefore, I am not competent to sign the declaration form in respect of any bank account in HSBC Geneva.</i>
Q-27	<i>Government of India was privy to certain information from credible sources in which your particulars were appearing. The particulars suggested the existence of a bank account outside India. On your statement on 09.11.2011 you appeared clueless about how your particulars are appearing in that document which according to you is unsigned. Keeping all this thing in view government gave you an opportunity to help it get full details of the bank</i>

	<i>account in which your particulars was appearing. Had you signed the consent form the government would have got all the information relating to the account having your name? Your non cooperation in this regard appears to be intentional and misleading. What do you have to say?</i>
Ans.	<i>I have no idea about any such information available with the Government of India. I humbly repeat that I have no foreign bank account other than HSBC London. Therefore, I am not competent to sign any declaration form relating to HSBC Geneva. I am committed to giving full cooperation to the Government of India and I have replied to various notices/summons received from time to time.</i>
Q28.	<i>When the document was shown to you on 09.11.2011, how can you say you have no idea. Are you lying on oath?</i>
Ans.	<i>As stated earlier one unsigned paper was shown to me on 09.11.2011 and in my statement I had stated that I do not have any bank account in LGT bank Geneva. I am not lying on oath.</i>
Q29.	<i>After 15.04.2013 another opportunity was given to you vide letter dated 05.08.2013 in which you were informed about the details of a bank account in your name in HSBC bank Geneva and a consent waiver form was again given to you in the spirit of cooperation and helping the Government to get the information from the bank in which your particulars are appearing. You again failed to cooperate by not signing the consent letter. Your comments please.</i>
Ans.	<i>I repeat that since I do not have any bank account with HSBC Geneva, I am not competent to sign any consent waiver form.</i>
Q30	<i>When the government is willing to help you, to verify under what circumstances your name is appearing in a foreign bank account, don't you think as a responsible citizen you should sign the consent waiver form and let the government get full particulars. If there will be no account then information stating the same will be received from HSBC bank Geneva and no prejudice will be caused to you. In this regard it is incomprehensible what makes you not to sign the consent waiver form.</i>
Ans.	<i>I am advised that since I have no bank account with HSBC Geneva, I am not competent to sign any such consent waiver form.</i>
Q31	<i>I am giving you final opportunity and I am giving you a</i>

	<i>consent waiver form. Please sign it and help the government.</i>
Ans.	<i>Please give me some time to seek legal advice and I will inform by next week.</i>

[Emphasis in bold is ours]

10.4 From the perusal of the above statement it is quite palpable that:-

- *Firstly*, the assessee was shown the copy of the same document by the search team to which she has stated that she was not shown any paper relating to HSBC, Geneva and only she was shown a document that to be account in LGT Bank Geneva for which she is denying for opening of any bank account LGT in Geneva.
- *Secondly*, the same document was shown during the course of assessment proceedings for which she categorically stated that it was the same document which was shown at the time of search allegedly relating to LGT Bank Geneva for which she has no knowledge and the unsigned document which even does not have any bank name.
- *Thirdly*, she has tried to demonstrate before the Assessing Officer that she has never visited to Switzerland in the year in which alleged bank account was purported to be opened and she has not confronted with any document for opening of any account in HSBC, Geneva except account in HSBC London nor she has authorized any one for opening it. When she was

confronted that her name is bearing in bank account with HSBC Geneva, she stated that this account does not belong to her and does not have any signature or bank name and no copy was given to her and she was shown the same document stated to be of LGT Bank which does not pertain to her.

- *Lastly*, she stated several times that why she is not competent to sign consent waiver form and she has been legally advised that she cannot sign the consent form because it does not contain any bank detail.

10.5 To reiterate once again, assessee kept on maintaining her stand that neither has she opened any bank account in LGT Bank Account in Geneva; nor she had any information or knowledge about HSBC Bank Geneva; nor has she made any communication with HSBC Bank Geneva after the date of search. She had also denied visiting HSBC Bank Geneva. Specifically in response to question no.30 she has stated that she has been legally advised that if she does not have any account with HSBC Geneva then she cannot sign any consent form. Ld. Assessing Officer without rebutting her statement recorded on oath nor it is borne out that there was any material before him to prove the contrary, has held that assessee has not complied with notice u/s.142(1) by not signing the consent waiver form. Once assessee has duly complied with all the notices sent by the Assessing Officer and investigation Wing and personally appeared and co-operated with assessment proceedings and explained each

and every thing, then without any cogent material or specific information in the document about any undisclosed amount or the name of the bank, etc., how assessee can be held that she has thwarted the investigation. At least there has to be some kind of the document or material confronted to the assessee that indicate assessee's statement cannot be believed. As stated above the document does not even indicate whether this is a bank account in LGT bank or HSBC bank in Geneva. This itself shows that the information was incomplete and Department was not even sure that the alleged account belongs to which bank. From the perusal of the consent waiver form, it is seen same has been addressed to some counsel in Switzerland of HSBC Pvt. Bank (Suisse) of SA, Geneva, Switzerland. If the document itself does not indicate which bank it pertains to, then where is the question of assessee signing any consent letter form for any bank account with HSBC Geneva? The information of one foreign account maintained by the assessee, i.e., HSBC London has been duly provided for which she has already signed consent letter form. Thus, what is transpired from the assessment order, it cannot be emphatically said that assessee has failed to comply either with the terms of notice or has failed to file any documents required in the said notice.

11. Here in this case, the penalty has been levied for non-compliance of Notice issued under section 142(1) dated 05.08.2013. The relevant content of the notice for the sake of ready reference is reproduced hereunder:

To,
Ms. Charu Modi Bhartia,
A-1, Maharani Bagh,
New Delhi.

Sir/Madam,

Sub: Assessment Proceedings – requisition of information u/s.142(1) of the IT Act, for the A.Ys. 2006-07 to 2012-13 - reg.

Ref: Notice u/s.153C read with 153A of the I.T. Act, 1961 dated 19.11.2012.

Kindly refer to the subject mentioned above.

2. As per the information available with the department you are having an account in HSBC Geneva/Zurich, Switzerland having Code BUP_SIFIC_PER_ID 5090189871.

3. In this connection, it has been learnt that the HSBC Bank, Geneva, Switzerland has decided to send the copies of documents such as account opening form, copy of pass book, transaction details, instruction from accounts holders and alert received by them to the respective account holders in respect of all the Indian Account Holders maintaining account with them, either as the account holder or as beneficiary. Accordingly, as a foreign bank account holder in the HSBC Bank at Geneva/Zurich, Switzerland, you must have received all the relevant as mentioned supra.

Therefore requested to furnish the following details/evidence:

(i) Account opening form in respect of Foreign Bank Account mentioned at para 2 above.

(ii) Complete Bank statement, in original, in the Foreign Bank mentioned at point (i)

(iii) Residential status as per the I.T. Act as on the date of opening of Foreign Bank accounts mentioned at point i) and thereafter for all the Assessment Years till date.

4. In case you do not have the bank account statement, please furnish dully filled up. Signed and notarized 'consent letter" so that we may

help you obtain the account statement from bank. Copy of the Consent Letter (2 Pages) is enclosed.

5. You are requested to attend the office of the undersigned at 11:30 AM on 13.08.2013 along with the above mentioned information. No further adjournment will be granted. Statutory notices u/s.142(1) of the I.T. Act, 1961 is also enclosed. The above information is required u/s. 142(1) of the Income Tax Act, 1961. Please note that in case of non compliance, penal provision in terms of penalty/prosecution under the Income Tax Act, 1961 would be initiated.

Yours faithfully,

Enclosed : Blank Consent Letter (2 pages)

(G.P. Singh)

*Asst. Commissioner of Income Tax,
Central Circle-2, New Delhi.*

12. The assessee as discussed above, in response has stated that she had duly responded to such a notice. The documents which was required to be furnished was first of all was not in possession of the assessee at all; and assessee has categorically stated that such bank account was never maintained by her nor she has any kind of connection, therefore, she has been legally advised that she has no authority to sign the consent letter.

13. In our humble opinion and as we infer from plain reading of Section 142(1), is that, the section contemplates inquiry before the assessment and provides that for the purpose of making an assessment, the Assessing Officer may serve notice to the assessee, either to:

- *firstly*, to file return of income where person has not made a return within the time allowed; or

- *secondly*, to produce or cause to produce such documents or accounts as Assessing Officer made require or;
- *lastly*, to furnish in writing and verify in the prescribed manner the information in such form and such point as the Assessing Officer may require.

The assessee thus can produce any such document or account, which is necessary for the purpose of making an assessment; or if assessee is having such account or document, then if required by the Assessing Officer, he has to file or produce the same. However, if assessee is neither having such document nor she was in possession of any such document or is denying the document, then where is the question of default on the part of the assessee in terms of Section 142(1). Here, in this case, assessment proceedings have been initiated in pursuance of notice u/s.153C, which stipulates that, if any kind of money, bullion, jewellery, or any books of account or documents is seized from the person searched, belongs to or relates to a person other than the person searched. There has to be some document seized from the possession of person searched which is belonging to the assessee. Here, nowhere from the assessment order it is discernable that any incriminating document pertaining to alleged bank account or anything indirectly linking the said bank account of the assessee has been found. Only if anything belonging to the assessee has been found or seized from the person searched, then the entire inquiry of

assessment ostensibly has to be confined to the seized documents relating to the assessee. Here in this case, Department had received certain information about alleged bank account, which as stated above, was not even clear, whether the information regarding foreign bank account relates to HSBC Geneva or LGT bank account Geneva. Even in the course of search nothing has been found that assessee has any kind of foreign bank account with HSBC Geneva. So once there is no document found during the course of search nor there is any specific information that assessee has bank account with HSBC Geneva, then it is very difficult to rope in the assessee for hold guilty of any kind of non-compliance. As sated above, the document as is discernable from the assessment order does not mention any name of the bank and it is also not clear whether the information received was with respect to HSBC Geneva bank account or LGT bank account. In such a situation signing of consent letter form for HSBC Geneva bank account tantamount to rowing and fishing inquiry. In any case when no addition whatsoever, protective or substantive has been made by the Assessing Officer and the return of income of the assessee has been accepted on the assessed income, then where is the issue of assessee not complying with the notices for inquiry before assessment? Thus, in our opinion in such a situation it would be very difficult to justify the levy of penalty for non compliance, especially when inquiry by the Assessing Officer is circumscribed to the material found during the course of

search and when there is no specific document or information that assessee was maintaining any kind of account with HSBC Geneva. There is no provision under Section 142(1) that assessee is required to sign a document thrust upon her when she has denied the content of the document and has also explained time and again as to why she cannot sign the document. The penalty u/s.271(1)(b) is leviable only when there is a failure on the part of the assessee to comply with the notice issued u/s.142(1) or any other notices mentioned therein. Here, we do not find that there is any kind of non-compliance on the facts and circumstances discussed above.

14. However, it came to our notice that, this Co-ordinate Bench in the case of **Sanjay Dalmia in ITAs No.3795 to 3801/Del/2014**, vide order dated 05.10.2017, has confirmed the penalty u/s.271(1)(b) on account of not signing of consent waiver form, sent alongwith notice u/s 142(1). From the perusal of the said order, it is seen that there is categorical finding of fact that, *firstly*, the name of the assessee had appeared in particular bank account maintained with the HSBC and in wake of such specific information Assessing Officer has requested the assessee either to furnish the bank account or to give consent letter which can lead the Revenue to obtain the copy of the said bank account. But here in this case, it is not even clear whether the document confronted to the assessee was for LGT bank account or HSBC Geneva bank account. Further in case of Sanjay Dalmia, Revenue has established that particular bank account had some

connection with the assessee and further the name of the family members was also appearing as attorney and account holder. Here no such material has been placed on record by the Assessing Officer indicating that the information shared was with respect to account held in HSBC Geneva account, because there is no mention of any bank name in the said document. Apart from that, assessee has truly disclosed before the Assessing Officer and Investigation Wing about one foreign bank account which was with HSBC London and in compliance to the notice; she has signed the consent waiver form. Thus, the facts of the present case are materially different from the case of Sanjay Dalmia (supra).

15. Despite our observations made above in the foregoing paragraphs, still in light of the aforesaid judgment, which came to our notice subsequently and at the stage of the draft order, it was once again felt that, if there is any such information on assessment record or Assessing Officer had any document which mentions the bank name in the document or was there any annexure indicating that assessee had any bank account with HSBC, Geneva, Switzerland, then it must be placed before us. Accordingly, the matter was again listed for limited clarification on 1.03.2019. After giving two opportunities to the Department, Assessing Officer has filed a letter dated 6.03.2019, which was annexed with one document. This document is the same as has been scanned and taken into consideration in the assessment order by the Assessing Officer. From this also, it can be inferred that no

bank details are available with the Assessing Officer, bearing bank name of HSBC, Geneva.

16. Be that as may be, here in this case we are quite persuaded by the plea of Mr. Vohra that the penalty in the case of the assessee should not be levied as assessee had a reasonable and bonafide belief in terms of section 273B, that there had been no violation of notice u/s 142(1) for non-compliance, as assessee kept on reiterating before the authorities below that the document does not contain her signature nor mentions any name of the bank, and for this reason, she was legally advised that she is not competent to sign the consent letter. We are in tandem with such a contention of Ld. Sr. Counsel that if any person is acting upon a legal advice, then he/she believes in such advice that there is no violation of law. Such an act definitely falls in the realm of *reasonable and bona fide belief*, as any prudent or reasonable person gets persuaded by the legal advice, in a judicial or quasi judicial proceedings or any action which may have any civil consequence. If assessee had not signed the consent waiver form, based on legal advice then she did had a bonafide belief. Since, this aspect has not been seen by the Assessing Officer, therefore, we are of the opinion that, Assessing Officer may verify, whether assessee during the course of any proceedings has taken this plea or else assessee may point out to Assessing Officer that such a belief was also based on legal advice.

17. Further, to allay any doubts arising from the contents of query asked by the Assessing Officer vide notice u/s 142(1), that the assessee was having the bank account in HSBC Geneva, we are of the opinion that Assessing Officer may verify from the assessment records as to; *firstly*, whether there was any specific information based on documents available to him where name of bank account mentioned was of HSBC Bank Geneva for which consent waiver form was insisted to be signed by the assessee; and *secondly*, whether any such specific document was confronted to the assessee at any stage, before requiring the assessee to sign the consent waiver form. Assessing Officer will then decide accordingly.

18. In the result, the appeals of the assessee are treated allowed for statistical purposes.

Order pronounced in the open Court on 26th March, 2019.

sd/-
[O.P. KANT]
ACCOUNTANT MEMBER

sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 26th March, 2019

Pkk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar

		Date
1.	Draft dictated on	14.03. 2019
2.	Draft placed before author	15.03.2019
3.	Draft proposed & placed before the second member	
4.	Draft discussed/approved by Second Member.	
5.	Approved Draft comes to the Sr.PS/PS	
6.	Kept for pronouncement on	
7.	File comes back to PS/Sr. PS	.03.2019
8.	Uploaded on	.03.2019
9.	File sent to the Bench Clerk	.03.2019
10.	Date on which file goes to the AR	
11.	Date on which file goes to the Head Clerk.	
12.	Date of dispatch of Order.	