

IN THE INCOME-TAX APPELLATE TRIBUNAL "H" BENCH MUMBAI  
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND SHRI PAWAN SINGH JUDICIAL MEMBER  
ITA No. 4667/Mum/2018 (Assessment Year 2006-07)

Kanaiyalal B. Shah 31, Jai Bhavani Society, 3 RR Thakker Marg, Mumbai-400006. <b>PAN: AAHPK4505D</b>	Vs.	JCIT Range-19(2), Mumbai.
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Appellant

Respondent

Appellant by : Ms. Divya Jeswant (AR)

Respondent by : Shri Manoj Kumar Singh (DR)

Date of Hearing : 06.08.2019

Date of Pronouncement : 30.08.2019

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**  
**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by assessee is directed against the order of Id. Commissioner of Income tax (Appeals)-7. hereinafter referred as "learned Commissioner (Appeals), Mumbai dated 11<sup>th</sup> April 2018, which in turn arise in the matter of penalty levied under section 272A(2)(c) of the Act by assessing officer vide his order dated 30<sup>th</sup> December 2014. The assessee has raised following grounds of appeal:

"Based on the facts and circumstances of the case, Mr. Kanaiyalal B. Shah ("the Appellant") respectfully craves leave to prefer an appeal against the order passed by the Commissioner of Income Tax (Appeals) - 7, Mumbai ("CIT(A)") dated 11 April 2018 (received on 18.05.2018) under section 250 of the Income-tax Act, 1961 (the "Act") ("the Order"), on the following grounds:

1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming penalty under section 272A(2)(c) of the Act of

Rs. 36,400 levied by the JCIT ('AO') for non-compliance of notice under section 133(6) of the Act. The appellant prays that the penalty levied at Rs. 36,400 may please be deleted.

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) AO has erred in placing reliance on the document (referred to as the Base Note) which is not authenticated or certified by any credible statutory authority or the bank in question.

3. The learned CIT(A) has erred in seeking to establish the genuineness and correctness of the information on the basis that the personal details of the Appellant matches with the details as mentioned in the Base Note.

4. The learned CIT(A) has erred in not considering the submissions, statements and affidavits given by the Appellant which substantiates the fact that the Appellant does not own the bank account in HSBC Bank, Geneva.

5. The CIT(A) has erred in not appreciating the fact that the Appellant has not submitted the 'Consent Waiver Form' as it would tantamount to Appellant making a false statement/declaration about a bank account in HSBC Bank, Geneva of which he is not the owner.

6. The learned CIT(A) erred in concluding that no case for a reasonable cause has been made out by the Appellant under Section 273B of the Act, without appreciating the fact that the Appellant is not the owner of the bank account in HSBC Bank, Geneva.

7. The learned CIT(A) failed to appreciate that the reassessment proceedings under Section 147 initiated on the basis the alleged bank account of HSBC Bank, Geneva were dropped in the case of Appellant by the AO.

8. In the premises of the aforesaid, the impugned Order has been passed without due application of mind, without considering the evidence on record, by purporting to rely on evidence which is clearly inadmissible and contrary to law and therefore the said Order is unsustainable and liable to be quashed.

The appellant submits that each of the above grounds is independent and without prejudice to one another.”

2. Perusal of record reveals that the order impugned in the present appeal was passed by learned Commissioner (Appeals) on 11<sup>th</sup> April 2018,

however the present appeal was filed on 1<sup>st</sup> August 2018, thus there is apparent delay in filing the appeal before the Tribunal. The assessee has filed an application for condonation of delay. In the application for condonation of delay, the assessee stated that the impugned order was received by assessee only on 18<sup>th</sup> May 2018, the appeal was filed on 1<sup>st</sup> August 2018, thus, there is delay of 15 days and filing the present appeal. It is further stated that the matter/appeal was dismissed by learned Commissioner (Appeals) on technical grounds and was not heard on merit, though the assessee has strong and good case on merit. The revenue would not be prejudice, if the matter is heard on merit. The assessee has also filed his affidavit in support of application for condoning the delay application. In the affidavit, the assessee deposed that he is 82 years old and was not been well due to old age and was unable to coordinate with his tax consultant, due to which a delay of 15 days occurred. The learned AR of the assessee made his submission as per the contention pleaded in the application for condonation of delay and in affidavit. The learned AR of the assessee further submits that the assessee should not be denied opportunity of hearing due to technical reasons. And that the assessee would suffer, if the delay is not condoned.

3. On the other hand, the learned DR for the revenue submits that the assessee has not shown sufficient cause for condoning the delay.

However, the Id. DR left the decision on application for condoning the delay on the discretion of the Bench.

4. We have considered the submission of both the parties and perused the application for condonation of delay and the affidavit filed in support thereof. Considering the contents of application, affidavit and the submissions of the Id. AR for the assessee and keeping in view there is a delay of 15 days only and that the assessee deserve to be heard on the merit. We have further noted that the assessee/applicant is a senior citizen and has shown sufficient cause for condoning the delay as it mainly occurred due to his ill-health. Therefore, taking a lenient view, the delay in filing of the appeal is condoned. Now, we shall proceed to consider the appeal on merit.
5. Brief facts of the case as extracted from the order of lower authorities, leading to levy of penalty under section 272A(2)(c) are that assessment of assessee was reopened on the basis of information received by Government of India from French Government under Double Taxation Avoidance Agreement in exercise of its sovereign power that some Indian nationals and residents including assessee had Foreign bank account with HSBC Bank, Geneva, Switzerland, which were undisclosed to the Indian Tax Department. This information was received in the form of a document called Base Note. In the said Base Note various details of account holder such as name, date of birth, place of birth, sex, residential

address, profession, nationality along with date of opening of the bank account with HSBC, Geneva and balance in certain years were informed. In case of assessee, a Base Note was also allegedly received. Base Note allegedly contained all personal details of the assessee including his name, date of birth, place of birth, sex residential address, profession, nationality with date of opening of the bank account with HSBC Bank, Geneva and the amount of balance in that particular years in the said document. On the basis of aforesaid information, the assessing officer was of the view that all the details clearly show the account belongs to assessee. The assessing officer reopened the case of assessee under section 147, by issuing notice under section 148 on 12<sup>th</sup> March 2014. A survey under section 133A was also conducted at the business premises of the assessee's group on 30<sup>th</sup> September 2011 by Investigation Wing of Income Tax Department, Mumbai. During the course of survey proceeding and subsequently statement of son of assessee was recorded under section 131 on 23<sup>rd</sup> December 2011. However, Shri Sanjay K Shah, son of assessee denied of having any Bank account with HSBC, Geneva in the name of assessee or his family members. During the course of reassessment proceeding summon under section 131 was issued to assessee on 2<sup>nd</sup> July 2014 for furnishing complete details of statement of bank account in HSBC, Geneva, since inception till date and if he is not in possession of the statement of his bank account then he was required to

fill up a Consent Waiver Form (for facilitating the copy of account from HSBC Bank Geneva to assessee). In response to the notice issued by assessing officer to assessee under section 131 the assessee attended the proceeding on 7<sup>th</sup> July 2014, wherein the statement of assessee on oath was recorded. During the statement on oath the assessee denied ownership of any bank account with HSBC Geneva. The assessing officer also issued notice under section 133(6) of the Act dated 19<sup>th</sup> December 2013 for obtaining the assessee's Consent Waiver Form. The assessee in response to the said notice denied the ownership of the alleged bank account. On failure to sign Consent Waiver Form by the assessee, a show cause notice dated 21.11.2014 under section 272A(2)(c) for levying penalty was served also upon the assessee. The assessee filed his reply dated 8<sup>th</sup> December 2014 and again reiterated his earlier stand that he does not owe any bank account with HSBC Geneva. The assessing officer treated the stand in the reply of assessee as refusal to file Consent Waiver Form. The assessing officer concluded that the Base Note contained all personal detail of the assessee including his name, date of birth, place of birth, sex, residential address, profession, nationality along with the date of opening of the bank account in HSBC Geneva and that the bank account BUP\_SIFIC\_PER\_ID 5090178703 has linkage with the bank accounts pertaining to Balsum Trust, and that all the details clearly shows that the accounts belong to assessee. The assessing officer held that

assessee wilfully failed to produce the required document as a specified in the notice under section 133(6) list of the assessing officer levied the penalty of ₹ 36400/under section 272A(2)(c). On appeal before Id. Commissioner (Appeals) the action of assessing officer was confirmed. The learned Commissioner (Appeals) while confirming the action of assessing officer concluded that non-signing of consent waiver form would not have amounted in furnishing false information by the assessee. That known furnishing consent waiver form have further enabled the assessing officer to carry out further investigation in the sensitive matter of unaccounted for an accounts held by international and that it had stunted investigation. And that the assessee has not shown any reasonable cause. Being aggrieved, the assessee has filed this appeal before this Tribunal.

6. We have heard the rival submission of Id. Authorised Representative of party and perused the material available on record. The learned AR of the assessee submit that in response to the notice under section 133(6), the assessee clearly stated that he does not own any bank account with HSBC, Geneva and there was no occasion for assessee to sign such consent waiver form. The assessee duly replied the notice under section 133(6) as there was no cause to treat the reply of assessee is non-compliance. The Assessing Officer is entitled to levy the penalty in case the assessee failed to file reply the question raised by assessee or to fail

the in attending proceeding before him. The assessee duly replied the notice under section 133(6) dated 19.12.2013. In the reply dated 08.12.2014, the assessee denied the ownership in respect of the alleged bank account with HSBC, Geneva. Hence, the conclusion arrived by Assessing Officer that the assessee wilfully failed to produce the required document.

7. On the other hand, the Id. DR for the revenue supported the order of lower authority. The Id. DR further submits that the assessee failed to furnish the consent waiver form to the Assessing Officer, therefore, the assessee has committed default under section 272A(2)(c).
8. We have considered the submission of both the parties and gone through the orders of authorities below. A narrow dispute in controversy before us is, if the assessee failed/committed default of non-compliance of section 133(6). Section 133 deals with 'power to call for information' by Assessing Officer, Deputy Commissioner, Joint Commissioner or Commissioner. Sub-section (6) of section 133 prescribed that Assessing Officer, Deputy Commissioner, Joint Commissioner or Commissioner may require any person, including a banking company or any officer thereof to furnish information in relation to such point or matter or to furnish statement of account and the affairs verified in the manner prescribed by them, which will be useful for, or relevant to any enquiry or proceeding under the Act. These powers can also be exercised by

Principle Director General, Director General, Principle Chief Commissioner or Chief Commissioner or Principle Chief Commissioner. Further, 2<sup>nd</sup> proviso attached with the sub-section prescribed that for the purpose of agreement referred to in section 90 or section 90A, an Income-tax Authority notify under sub-section (2) of sub-section 131 may exercise all power conferred under this section, notwithstanding no proceeding are pending before it or any other Income-tax Authority. In the present case, though, the Assessing Officer was allegedly having information in the form of a Base Note wherein various details of account holder were provided. The assessee in reply to the notice under section 133(6) specifically denied ownership or any relation of any bank account.

9. We have noted that the assessee in his reply categorically stated neither he owned bank account nor he has owned any relationship with the alleged bank account in HSBC Bank, Geneva. The Assessing Officer without rebutting his reply that there was any material before him to prove the contrary, has held that assessee has not complied with notice under section 133(6) by not signing the consent waiver form. Once assessee has duly complied with all the notices sent by the Assessing Officer, he cannot take the view that assessee failed to produce the required document. We have also noted that on the basis of same information the case of assessee was reopened under section 147 by issuing notice under section 148 dated 12.03.2014. The assessee before

the Id. CIT(A) specifically contended that the re-opening proceeding was dropped by the Assessing Officer. In our view once the assessee denied the ownership of the bank account in response to the notice under section 133(6), the Assessing Officer cannot take the plea that assessee failed to comply with the condition of aforesaid notice. Hence, we are of the view that levy of penalty by Assessing Officer under section 272A(2)(c) was not justified. Therefore, we direct the Assessing Officer to delete the entire penalty. No contrary fact or material is placed before us. No contrary law is cited by revenue to take the other view. Hence, the grounds of appeal raised by assessee are allowed.

10. In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 30/08/2019.

**Sd/-**  
**SHAMIM YAHYA**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

Mumbai, Date: 30.08.2019

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**Copy of the Order forwarded to :**

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|-------------------------------|----------------------|
| 1. Assessee                   | 2. Respondent        |
| 3. The concerned CIT(A)       | 4. The concerned CIT |
| 5. DR "H" Bench, ITAT, Mumbai |                      |
| 6. Guard File                 |                      |

**BY ORDER,**

**Dy./Asst. Registrar**  
**TAT, Mumbai**