

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**Before Sh. Ramesh. P. Tolani, Vice President
And
Sh. Prashant Maharishi, Accountant Member**

**ITA No. 5157-5162/Del/2014
(A.Y. 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13)**

Manish Periwal 9, Ezre Street Kolkata PAN : AFWPP8883K	Vs	DCIT Central Circle-7 New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AFWPP8883K		

Date of Hearing : 05.06.2017	Date of Pronouncement : 08.06.2017
-------------------------------------	---

**Assessee by : None
Revenue by : Sh. Rajesh Kumar, Sr. DR**

ORDER

Per R.P.Tolani : V.P

1. This is a group of 6 appeals challenging imposition of penalty u/s 271(1)(b) for the above A.Ys. The issue being common and assessee being same are disposed off by common order for the sake of convenience.

By various argumentative common grounds, assessee challenges imposition of penalty u/s 271(1)(b) at Rs. 30,000/- for each assessment year claiming that Id. CIT(A) erred in law and on facts in confirming the same as:

i. The penalties have been illegally levied against the provisions of Act as sec. 142(1) does not authorize IT authorities to issue such notice and force the assessee to sign the same. The imposition is in violation of principles of natural justice.

ii. The defaults for violation of notices u/s 142(1) dated 2/5/13 and 12/6/13 have been attributed without issuing notices.

iii. The penalty notices u/s 271(1)(b) for one default but same has been levied for 3 defaults.

2. None appeared for the assessee despite notice of hearing. Therefore, the appeals are disposed of ex-parte qua assessee after hearing Ld. DR and on perusal of the record.

3. Brief facts are that assessments for these AYs were being framed u/s 153A rws 143(3) on assessee consequent to information about undisclosed HSBC Bank Account in Switzerland. During the course thereof notices u/s 142(1) along with questionnaire dated 13.5.2013 were served on the assessed for hearing on 30.5.2013 alongwith details and evidence. Assessee did not comply; thereafter further reminders for hearings were issued on 02.05.2013, 12.06.2013 and 11.07.2013. Since the assessee did not comply with all these statutory notices, show cause notices

u/s 271(1)(b) read with section 274 were issued in accordance with I T Act.

4. In response to penalty notices, assessee of notices vide reply dated 01.10.2013 challenged the legality and claimed that no evidence as alleged was called for by AO. The replies were found to be non satisfactory and penalty at Rs. 30,000/- for each assessment year was imposed by ld. AO for repetitive defaults.

5. Aggrieved assessee preferred first appeals where Ld. CIT(A) passed a detailed order confirming the penalties. Considering the various issues as under:

“6.1 I have considered the penalty order and the submissions made. The objections raised by the appellant are three-fold - (i) that penalty was imposed without notice / adequate notice, (ii) penalty could not be levied for the information / documents sought as proceedings u/s 142 do not require furnishing of such documents, and (iii) no specific default or amount of tax has been referred to in the penalty order.

6.2 So far as the first objection is concerned, it is noted that appellant had been searched u/s 132 and was well aware of the tax proceedings against him. The appellant was specifically asked in the notices dated 02.05.2013 and 12.06.2013 about the details of foreign bank accounts opened and maintained by the appellant and his relatives. A third notice was issued to him on 11.07.2013, in

which the information sought earlier was again sought and in addition the appellant was required to execute the enclosed consent document to get the aforesaid information. No reply was filed by the appellant to any of these notices except seeking adjournment on one or the other pretext. Seeking adjournment is not compliance to the law. Show-cause notices were duly issued on 05.08.2013 and by the revenue asking the appellant to explain the reasons for not furnishing the information called for and as to why penalty should not be imposed for such failure u/s 271(l)(b). One of the objections raised by the appellant is that the show-cause notice was only in regard to the notice dated 11.07.2013 and not in regard to the earlier notices dated 02.05.2013 and 12.06.2013. As the defaults of the appellant were continuing defaults, the appellant was given one more opportunity during this appeal also, and a show-cause notice was issued to him on to explain as to why penalty should not be levied for failure to submit the information sought vide the three notices issued by the revenue. Till date, the appellant has not furnished the information sought in the said three notices nor filed the consent documents. Thus, there is no basis to conclude that the penalty was imposed without notice or adequate notice.

6.3 So far as the second objection is concerned, in the background of the matter as reproduced in Para-

4 above, and in view of the fact that appellant had paid the tax with interest on the amount of deposit in a foreign bank account brought to his notice by the Department during the search and seizure, the information called for was necessary for the correct assessment of the income of the appellant chargeable to tax under the Act as the appellant is a tax resident of India, it cannot be concluded that the information / document sought was not required u/s 142(1). The appellant, having admitted the amount of deposit in the said bank account, continues to plead ignorance about the existence of the said account and details thereof. In such an event, he is bound to execute the consent documents which will enable the Department to get the requisite information from the bank. Having failed to execute this document also, the appellant is in continuous default of noncooperation with the ongoing investigations and non-compliance to these statutory notices.

6.4 So far as the third objection is concerned, penalty is leviable u/s 271(1)(b) for each failure to comply with a notice u/s 142(1). There is no requirement under the law for escapement of tax or any reference to any tax quantum. Thus, this objection raised by the appellant has no legal basis.”

“7.2 These cases are not of simple tax evasion, but of suspected tax evasion by transferring or keeping

funds overseas in an illicit manner. These persons suspected of having opened and maintained undisclosed bank account overseas, were required to sign and execute / notarize the consent letter to verify the truth of the allegation against them. It is the duty of every citizen of India to cooperate with and join the investigation to ascertain the truth regarding cases with such serious allegation. The purpose of the penal provision contained in section 271(1)(b) is to ensure compliance to tax enquiry / investigation. This penalty is attracted where there is failure to comply with notices u/s 142(1) or u/s 143(2). In criminal law, similar provisions are contained in Sections 160 and 161 in the Code of Criminal Procedure, 1973 and the punishment for the same is prescribed in Section 174 of the Indian Penal Code, 1860. Under the civil law, the relevant provisions are contained in Sections 31 & 32 and Order XVI (Schedule-!) of the Code of Civil Procedure, 1908. Under the Income Tax Act, 1961 the enforcement provisions are contained in Sections 131, 132, 133, 133A 142 and 143. The penal provisions contained in Chapter XXI relevant to enforcement of sections 142/ 143 are Sections 271 and 272A.”

6. Ld. CIT(A) in support of his decision relied on following judgments:

(a) Dhakeswari Cotton Mills Ltd. V. CIT [1955] 27 ITR 126 (SC)

(b) Estate of Late Rangalal Jajodia V. CIT [1971] 79 ITR 505 (SC)

(c) Isha Beevi V. TRO [1975] 101 ITR 449 (SC)

7. Ld. CIT(A) finally confirmed the penalty orders passed by ld. AO by following observations :

“ In view of the above factual and legal position in the matter, the penalties imposed u/s 271(1)(b) for refusal, without reasonable cause, to furnish the information sought and to execute the consent letter vide the three notices issued by the revenue, is upheld. These orders shall be read as three separate orders. I also find that for refusal to sign / execute a document, penalty is imposable u/s 271 as well as u/s 272A. Accordingly, the provision shall be read as section 271(1)(b) and alternatively as Section 272A.”

8. Ld. DR contends that the assessee was found to have maintained undisclosed foreign a/c in HSBC Bank, Switzerland, whose details were not disclosed to the Income Tax Department. During the course of these assessment proceedings the assessee deliberately adopted a non-cooperative attitude to ward off the necessary inquiries and investigation by

the Income Tax Department. Ld. CIT(A) has made detailed observations in this behalf and deliberated on the consequent impact of non-cooperative attitude of the assessee in necessary investigations about the undisclosed HSBC Bank Accounts. In penalty proceedings also the assessed adopted a rigid attitude and went on challenging the legality of the notices and refusing to furnish any satisfactory reply. The notices issued being statutory were supposed to be diligently complied with by assessee in terms of IT Act. Since the assessee avoided the compliance of statutory notices and attending the proceedings without any justified reasons, therefore, the penalties have been rightly imposed and confirmed.

9. We have heard Ld. DR and perused the material available on record. In our considered view the assessee was subjected to such assessments u/s 153A in respect to alleged maintenance of un-disclosed HSBC, Switzerland Bank Account.

10. The facts about the Bank Accounts and other circumstances are in the exclusive knowledge of the assessee and non co-operation leads to derailment of investigation. It is the duty of every assessee to duly respond to statutory notices failing which the law provides imposition of penalty u/s 271(1)(b) of Rs. 10,000/- each default. In this case, assessee's non-

compliance of statutory notice is for more than 3 times in each A. Y.

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

In the result, assessee's appeals are dismissed.

Order Pronounced in the Court on 08/06/2017.

Sd/-
(Prashant Maharishi)
Accountant member

Sd/-
(R. P. Tolani)
Vice President

Dated: **/06/2017**
Binita

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

		Date	<u>Initial</u>	
1.	Draft dictated on	07/06/2017		
2.	Draft placed before author	07/06/2017		
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 sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			