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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 339/2018 & CM APPL. 11059-11062/2018
+ ITA 340/2018 & CM APPL. 11063-11066/2018
+ ITA 341/2018 & CM APPL. 11069-11072/2018
+ ITA 342/2018 & CM APPL. 11073-11076/2018
+ ITA 343/2018 & CM APPL. 11079-11082/2018
+ ITA 344/2018 & CM APPL. 11083-11086/2018
+ ITA 345/2018 & CM APPL. 11089/2018 & 11091-11093/2018

SANJAY DALMIA

..... Appellant

versus

PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL-3,
NEW DELHI

..... Respondent

Present: Mr. Siddharth Garg, Adv. for appellant.
Mr. Sanjay Kumar, Jr. Standing Counsel for Revenue.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **21.03.2018**

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

The assessee was served with a notice calling upon him to co-operate and, *inter alia*, fill a consent-cum-waiver form. The

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

The AO – as well as the appellate authorities including the ITAT were of the opinion that having regard to the nature and contents of the form, the assessee could not have refused to answer the notice under Section 142(1) of the Act and therefore invoked the penal clause under Section 271(1)(b) of the Act.

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

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

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

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MARCH 21, 2018
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