

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “G”, NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.5303/Del/2016
Assessment Year : 2011-12**

Young Indian, 5A, Herald House, Bahadur Shah Zafar Marg, New Delhi.	Vs.	Addl. DIT (Inv.), Unit- 4, New Delhi.
PAN : AAACY4625Q		
(Appellant)		(Respondent)

Assessee by : Shri Yogesh Thar, CA
Shri Ankit Agarwal, CA
Department by : Shri S.S. Rana, CIT-DR
Date of hearing : 19-06-2018
Date of pronouncement : 30-08-2018

ORDER

PER R. K. PANDA, AM :

This appeal filed by the assessee is directed against the order dated 15.07.2016 of the CIT(A)- 36, New Delhi relating to assessment year 2011-12.

2. Facts of the case, in brief, are that a letter was issued to M/s Young Indian on 04.07.2014 u/s 133(6) of the Income Tax Act, seeking certain details of the company for the financial years 2010-11 to 2012-13. It was directed that the details be furnished within 10 days of receipt of the letter. However, the details were not furnished and instead vide their letter dated 14.07.2014 certain

concerns were expressed. In view of the concerns raised by them, summons u/s 131(1A) of the Income Tax Act was issued on 17.07.2014 directing them to furnish the details as mentioned therein within four days of receipt of the summons. Instead of furnishing the details called for, the assessee filed a letter dated 21.07.2014 raising concerns about disclosure of information u/s 138 of the IT Act. The DDIT, Unit IV(3) vide his letter dated 24.07.2014, addressed their apprehension by intimating that they are unfounded and once again requested them to furnish the details called for vide summons dated 17.07.2014 without any further delay.

3. In letter dated 05.08.2014, it was submitted by the assessee that the information regarding certain details requisitioned u/s 131(1A) of the IT Act were either before the assessing officer (AO) or irrelevant. Regarding other details it was submitted that they will arrange to submit it to the AO before whom the assessment proceedings were pending and thus refused to comply with the summons u/s 131(1A). It was brought to the attention of the assessee that the complete details as requested by summons/ notices/letters, referred to earlier, were not available in these accounts and documents as the Balance Sheet and Profit and Loss account have only net value under different heads. However, in order to carry the investigations forward the material available with the AO was taken into consideration by the DDIT. The DDIT Unit IV(3) vide

his letter dated 20.08.2014 elaborately discussed and addressed their objections regarding relevance of the information called for by him. He also identified seven issues and the assessee was requested to furnish the information within seven days of receipt of the letter.

4. Part information as called for vide letter of the DDIT Unit IV(3) dated 20.08.2014 was furnished vide letter dated 01.09.2014. However, no information was furnished in respect of queries raised vide para 5.5, 5.6 and 5.7 of the said letter. Instead of furnishing the information the assessee questioned the jurisdiction of the office of the DDIT in seeking the said information on the ground that the said transaction had no bearing on any provision of the Income Tax Act. This objection was comprehensively discussed and addressed by the DDIT (Inv), Unit IV(3) vide his letter dated 23.09.2014. The DDIT(Inv) also raised four specific issues on which information was sought. To enable the assessee to furnish the information, summons u/s 131 (1A) was also issued on 23.09.2014 directing the assessee to furnish information as called for vide letter dated 23.09.2014 on 01.10.2014. On the date fixed for compliance of the said summons by the DDIT(Inv) Unit IV(3) New Delhi i.e. on 01.10.2014, the assessee failed to furnish any details or documents. Instead, through a letter dated 30.09.2014 it was submitted by the assessee that the details sought from it were not relevant for the purpose of the income Tax Act. The DDIT (Inv) vide

his office letter dated 22.10.2014 comprehensively addressed their concerns and once again requested the assessee to furnish the details/ documents as asked for vide summons dated 23.09.2014 which were required by him for the purpose of investigation in the cases of the persons mentioned in the said summons. Vide the said letter dated 22.10.2014, it was made categorically clear by the DDIT(Inv) Unit-IV(3) New Delhi that the persistent refusal to provide the details/ documents may tantamount to abetting tax evasion and any further refusal to submit the requisite details/ documents shall be construed as an act of willful and conscious abetment and shall be visited by appropriate penal and other provisions of the Income Tax Act. The assessee was allowed further time till 03.11.2014 for submitting the requisite details/ documents.

5. The assessee submitted a letter dated 03.11.2014 to the office of the DDIT(Inv) Unit-IV(3) New Delhi seeking a copy of the approval obtained by him from the Director of Income Tax in accordance with the provisions of Section 133(6) of the Income Tax Act whereas it was called upon to give evidence in exercise of powers under section 131 (1A) of the Income Tax Act in the matter of investigation in the cases of Share Holders, Directors and Members of M/s Young Indian. The details sought in the case also remained only partially complied. In the interest of natural justice one more opportunity was provided to the assessee vide office letter dated 10.11.2014 whereby the

assessee was also required to show cause as to why penalty proceedings u/s 272A(1)(c) should not be initiated against it for not complying with all the terms of the summons dated 23.09.2014 issued u/s 131 (1A) of the Income tax Act. On this occasion too, instead of availing the opportunity to comply with the summons u/s 131(1A) of the Income Tax Act dated 23.09.2014 or showing cause for failure in submitting the details/ documents sought vide the said summons, the assessee vide letter dated 17.11.2014 resorted to the refrain that the motive behind seeking the information was purely witch - hunt and that it was not mentioned by the DDIT (Inv) in the show cause notice dated 10.11.2014 that which part of the purported notice u/s 131 (1A) of the Income Tax Act was not complied by it. The Addl. DIT (Inv.) noted from the records that the information called for vide summons dated 23.09.2014 was not furnished by the assessee.

6. In view of the above facts and circumstances and in accordance with the provisions of sub-section 4 of section 272A of the Income Tax Act, the assessee was provided an opportunity by the Addl. DIT (Inv.) to show cause as to why penalty u/s 272A(1)(c) of the Income Tax Act, computed @ Rs.10,000/- for each default should not be levied upon it for its aforesaid failure. The assessee filed its reply vide letter dated 21.12.2014 in which it contended that the reply

filed by it before the DDIT (Inv) vide its letter dated 02.12.2014 should be treated as its reply to the said notice.

7. However, the Additional Director of Income Tax (Inv.) was not satisfied with the explanation given by the assessee. He observed that the assessee has still not furnished any details as called for vide summons issued on 23.09.2014. The explanation of the assessee that the law does not provide for any penalty for failure of compliance with the summons issued u/s 131(1A) of the I.T. Act was rejected by him on the ground that the provisions of section 131(1A) provides that for the purpose of making any enquiry or investigation it shall be competent for Assistant Director or Deputy Director to exercise the powers conferred under sub-section (1) of section 131 of the I.T. Act. Therefore, any non-compliance shall attract the penalty provisions for not complying with section 131(1) of the I.T. Act.

8. So far as the contention of the assessee that the information sought is identical to the issues raised in the complaint filed by Dr. Swamy and is presently pending before the Hon'ble High Court of Delhi and any adjudication made by the Department in that regard will result in prejudging the issues pending in the Courts is concerned, the ADIT (Investigation) held that this contention is not tenable. According to him, the enquiries by the Income Tax Department are necessary to verify whether such transactions involve any

income tax avoidance/evasion. He observed that it is the bounden duty of the Revenue to ascertain the facts when there are public allegations of revenue loss irrespective of the source of allegation as much as it is of the responsible assessee to share the details with the Revenue willingly. He further noted that waiting for the outcome of the court cases may render income tax cases fruitless due to limitation of time. Rejecting the explanation given by the assessee, the ADIT (Investigation) levied penalty of Rs.10,000/- u/s 272A(1)(c) of the I.T. Act.

9. Before the Id. CIT(A), the assessee submitted that as stated in para 16 of the penalty order, the penalty is levied for the alleged failure to furnish information called for vide summons dated 23.09.2014. Para 8 of the penalty order refers to four specific items of information, which are allegedly not provided by the assessee and it is in respect of these four details that the penalty order has been passed. The said four details, serially numbered A, B, C and D are the ones that are mentioned in para 5 of the summons, issued u/s 131(1A) dated 23.09.2014. The assessee submitted that there can be no basis to suspect that any income has been concealed or likely to be concealed. Indeed, such suspicion cannot be the only basis for issue of summons u/s 131(1A). Since all the details were available with the Tax Department, the question of any suspicion cannot arise and therefore, despite the details being available with the

Department, calling for the information once again u/s 131(1A) is without any basis for such suspicion and therefore, to that extent calling for such information itself is without the authority of the law. Regarding various details, it was submitted that the question of once again furnishing the same does not arise. Further, the query raised at Sr. No. C, regarding relationship of shareholders with the company, is incapable of being answered. The details called for in respect of pricing of shares amongst the shareholders from the Company are details which are beyond the powers conferred u/s 131(1A) of the Act and therefore, that cannot be the basis for levy of penalty for alleged non-compliance of such requirements. The monies received from issue of new shares are already part of the Audited Balance Sheet available with the Tax Department and therefore, when such details are available, there is no justification whatsoever for issue of summons u/s 131(1A). Having regard to the fact that the relevant transaction has been disclosed in the notes to accounts filed with the return of income, no basis survives for any suspicion that any income is concealed or is likely to be concealed. It was submitted that in view of such explicit disclosure, there is no room for suspicion and therefore, in the absence of any suspicion, the jurisdiction u/s, 131(1A) is not in existence. The assessee reiterated the submissions that the information called for lacks 'relevance' and expressed its outburst that the information called for is not for the purpose of I.T

Act but in furtherance of certain proceedings initiated by political rivals of assessee's shareholders outside the income tax law. It was submitted that contention of the assessee that the enquiry is of fishing nature, de hors the provisions of the I.T Act gets fortified by the fact that ever since enquiries were initiated, several details have already been submitted. Several other details are available with the Assessing Officer and in public domain. However, no assessment of any significant nature was made on the assessee for any alleged concealment of income. If therefore, there was any relevance of the details called for to the assessee's taxable income, by now, some proceedings would have been initiated for taxing such income. In absence of any such proceedings, the contention of the assessee that the information is not relevant for the purpose of assessee's taxable income gets reinforced. Besides, there is every evidence of correlation between the date on which the Ld. ADIT called for the details from time to time from the assessee and the dates on which the hearings were fixed in trial courts/High Courts in the on-going litigation where the political rivals of the assessee's shareholders have filed criminal proceedings against them. This clear cut co-relation of dates demonstrates that the details are being fished out by the political rivals for creating evidence in those cases and thereby serving their political purpose.

10. Without prejudice to the foregoing submission, it was submitted that penalty u/s 272A(1)(c) applies only in case of non-compliance by any person "to whom summons is issued under sub-section (1) of section 131 ". It was submitted that there is no penalty prescribed for non-compliance with summons issued u/s. 131(1A) of the Act. It was argued that in absence of any penalty provided in the Law in respect of summons u/s. 131(1A), levy of penalty u/s. 272A is bad in law and therefore ought to be deleted. The assessee submitted that section 131(1A) was introduced by Taxation Laws (Amendment) Act 1975 and the Board's circular explaining such insertion states that powers u/s. 131(1) are not available to ADIT and that the law is amended so that the ADIT will be able to exercise these powers in case where there are reasons to suspect that any income has been concealed or likely to be concealed by any person even though no proceedings with respect to such persons is pending before him. Referring to the decision of the Hon'ble Bombay High Court in the case of Jamnadas Madhavji vs. ITO, 162 ITR 331 it was submitted that the Hon'ble High Court in the said decision has held that powers u/s. 131(1) cannot be exercised when there are no proceedings pending before the income tax officer. Insertion of section 131(1A) nullifies the effect of that decision, thereby empowering certain authorities to issue summons even in absence of pending proceedings. Clearly,

therefore, the provisions of section 131(1A) are mutually exclusively from the provisions of section 131(1) in as much as:

- a) authorities mentioned under the two sub-sections are different; and
- b) the powers mentioned in sub-section (1) can be invoked only when proceedings are pending before the relevant authorities whereas the powers under sub-section (1A) can be invoked even where there are no proceedings pending before the concerned authorities.

11. It was accordingly argued that the penalty levied u/s 272A(1)(c) of the I.T. Act is illegal and bad in law and hence should be deleted.

12. However, Id. CIT(A) also was not satisfied with the arguments advanced by the assessee and upheld the penalty of Rs.10,000/- levied u/s 272A(1)(c) for non-compliance of summons dated 23.09.2014 by observing as under :-

“8. I have gone through the penalty order, grounds of the appeal and the submissions made by the assessee. It is observed that the penalty order u/s.272A of the I.T Act is quite detailed and addresses all the issues and objections raised by the assessee during proceedings in investigation wing and the appellate proceedings where the same objections are reiterated. The assessee's contention that it felt that the summons issued u/s. 131(1A) was without any basis or jurisdiction and that the question of suspicion does not arise as all details were available with the tax department or the MCA database or anybody else, are not tenable. The assessee cannot sit in the chair of the investigator and decide as to what could be the relevant information for the Income Tax purpose and what could be not. Despite the show cause given which very clearly stated that in case of non compliance, penal recourse shall be taken, "the assessee persisted in not providing the details on its own ground that it does not think that the information called for was either relevant or reasonable or justified. Even if the information was available with other public agencies or other Income Tax authorities, what was simply required was that a copy of the same could have been given in compliance which was not done. I do not deem it fit to comment or adjudicate on the contention of the assessee that the summons were merely for witch hunt or had any political angle to it in relation to the case filed in the High Court by one Mr. Swamy. This appears to be mere conjecture and guessing and assumption by the assessee and baseless allegation on the intention of the Department and cannot

be entertained in absence of any evidence. That there was non-compliance to summons willfully is clear.

9. *Coming to the issue of applicability of section 272A for non compliance of section 131 (1A), I am inclined to concur with the Addl. Director of Income (Inv). Section 131(1A) provides that for the purposes of making any enquiry or investigation it shall be competent for Assistant Director or Deputy Director to exercise the powers conferred under sub-section(1). Thus section 131(1A) does not provide any fresh power of issuing summons and instead the powers provided u/s. 131(1) are used. Hence any non-compliance shall attract the penalty provisions for not complying with section 131(1). The section 131(1A) clearly states that "....for the purpose of making any enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under sub-section 1 on the income tax authorities referred to in that sub section ". This clearly implies that the powers of section 131(1A) are derived from the powers of 131 and hence the same penalty u/s 272A shall be levied as for the non compliance of summons u/s. 131(1). It is improbable that the legislation would have no intention to levy any penalty in case of non compliance u/s. 131(1A) which would in effect leave that section without any penal provision. In view of the above discussion, the penalty of Rs.10,000/- u/s. 272A(1) for non compliance of summons dated 23.09.2014 is confirmed."*

13. Aggrieved with such order of the Id. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds :-

"GROUND I:

1. *On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income-tax (Appeals) - 36, New Delhi ("CIT(A)") erred in upholding the action of the Additional Director of Income Tax (Inv), Unit-4, New Delhi ("ADIT") in levying penalty u/s. 272A(1)(c) of the Income Tax Act, 1961 ("the Act") of Rs.10,000/-, even though the said order was passed without any jurisdiction.*

2. *She failed to appreciate and ought to have held that:*

a. *There is no penalty prescribed for the alleged non-compliance with summons issued u/s. 131(1A) of the Act;*

b. *Penalty u/s. 272A(1)(c) applies only in case of non-compliance by any person "to whom summons is issued under sub-section (1) of section 131" and not sub-section (1A);*

c. *The provisions of section 131(1A) are mutually exclusive from the provisions of section 131(1) inasmuch as:*

a. *authorities mentioned under the two sub-sections are different; and*

b. *the powers mentioned in sub-section (1) can be invoked only when proceedings are pending before the relevant authorities whereas the powers under sub-section (1A) can be invoked even where there are no proceedings pending before the concerned authorities;*

- d. Accordingly, section 131(1A) provides fresh power of issuing summons which are not in section 131(1).
3. The Appellant prays that the penalty levied u/s. 272A of the Act in respect of summons issued u/s. 131(1A) is bad in law and ought to be deleted;

WITHOUT PREJUDICE TO THE ABOVE,

GROUND II:

1. On the facts and in the circumstances of the case and in law, the Learned CIT(A) failed to appreciate that even on merits, there was no non-compliance with the summons issued u/s. 131(1A) and accordingly, there was no case of levying penalty u/s. 272A(1)(c).
2. She failed to appreciate and ought to have held that:
- a. The details called for by the ADIT were already filed/available with the Tax Department and accordingly, there was no basis to suspect that any income has been concealed or is likely to be concealed, which is the only basis for issue of summons u/s. 131(1A);
- b. In absence of any valid ground for suspicion, the details called for are beyond the purview of Section 131(1A) and thus, the question of levy of penalty for any alleged non-furnishing of data does not arise.
- c. Besides, the details called for in the summons lack relevance for the purpose of the Act. The details called for were not for assessing the income of the Appellant in any manner, and hence such enquiries were beyond jurisdiction conferred u/s. 131(1A) of the Act. Consequently, penalty levied for alleged failure to comply with such summons also ought to be deleted.
3. Accordingly, the Appellant prays that the penalty levied u/s. 272A of the Act ought to be deleted.

GROUND III:

The Appellant craves leave to add to, amends and / or alter the above ground of appeal at the time of hearing.”

14. The Id. counsel for the assessee strongly challenged the order of the Id. CIT(A). Referring to page 22 of the Paper Book, he drew the attention of the Bench to the show-cause notice which is due to alleged non-compliance to summons u/s 131(1A) of the I.T. Act and not to non-compliance of any summon u/s 131 of the I.T. Act. Referring to the provisions of section 131(1) and the provisions of section 131(1A), he submitted that the penalty provisions under the above sections are different. As per the provisions of section 131(1), the

power regarding discovery, production of evidence, etc can be exercised only when any proceedings are pending before the Income Tax Authorities. However, as per the provisions of section 131(1A), this power can be exercised even if no proceedings are pending before the Income Tax Authorities. Referring to the provisions of section 272A(1)(c), he submitted that the section provides penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspection, etc. u/s 131(1) of the I.T. Act. However, no penalty has been prescribed for non-compliance to provisions of section 131(1A) of the I.T. Act. Relying on various decisions, he submitted that the provisions of section 131(1) and 131(1A) has been held to be different. Therefore, in absence of any provision for levy of penalty for non-compliance to the provisions of section 131(1A) penalty u/s 272A of the I.T. Act, 1961 cannot be levied.

15. In his alternation contention, he submitted that the assessee is a company u/s 25 of the Companies Act, 1956 and is a non-profit organization. The 12AA certificate issued to the assessee earlier was surrendered in assessment year 2016-17. He submitted that most of the information called for are available either in the records of the Department or available in the Website of the Ministry of Corporate Affairs. Therefore, there was no relevance of calling for the details again from the assessee. He submitted that calling for the

information u/s 131(1A) itself is bad in law to the extent it is required for some other purpose is abuse of the provisions of law. Since the assessee had already intimated before the ADIT (Investigation) that most of the information called for by him are already available in the records of the Department or in the Website of the Ministry of Corporate Affairs, therefore, there was a reasonable cause on the part of the assessee for non-submissions of the same. Therefore, no penalty u/s 272A is leviable.

16. Referring to the decision of the Hon'ble Bombay High Court in the case of Jamnadas Madhavji & Co. vs. J.B. Panchal, ITO reported in 162 ITR 331, ld. counsel for the assessee drew the attention of the Bench to para 10 of the order and submitted that the Hon'ble High Court in the said decision has held that the provisions of section 131(1A) and provisions of section 131(1) are different.

17. Referring to the decision of the Hon'ble Supreme Court in the case of State of Haryana vs. State of Punjab reported in (2004) 12 SCC 673, he drew the attention of the Bench to para 96 of the order and drew the attention of the Bench to the meaning of the words "under" and "in accordance with". Referring to the said paragraph, he submitted that the phrase "in accordance with" in the context implies similarity or harmony but not identity.

18. Referring to the decision of the Hon'ble Supreme Court in the case of Bijaya Kumar Agarwala Etc vs. State of Orissa reported in 1996 SCC (5) 1, he

drew the attention of the Bench to page 5 of the order and submitted that the Hon'ble Supreme Court in the said decision has held that if two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature.

19. Referring to the decision of the Hon'ble Supreme Court in the case of Kumar Jagdish Chandra Sinha vs. CIT reported in 220 ITR 67, he drew the attention of the Bench to para 11 of the said order and submitted that the Hon'ble Supreme Court has answered the question and held that no revised return can be filed under sub-section (5) of section 139 in a case where the return was filed u/s 139(4). It was held that it would not be reasonable to construe the said clause as indirectly conferring a right which is not conferred directly by sub-section (5) of section 139 of the I.T. Act. He submitted that when no provisions for levy of penalty for non-compliance of provisions of section 131(1A) is provided, therefore, the ld. CIT(A) could not have held that the penalty can be levied in view of provisions of section 131(1) of the I.T. Act.

20. Referring to the decision of the Delhi Bench of the Tribunal in the case of Contemporary Enterprises Ltd. vs. DCIT reported in (2004) 2 SOT 108, he

submitted that the Tribunal has canceled the penalty levied u/s 272A on the ground that although the assessee failed to submit TDS return within prescribed time, however, in view of the bona-fide conduct of the assessee in deducting and depositing tax into Government treasury and default, if any, being clearly technical and venial in nature, no penalty was leviable. He accordingly submitted that the levy of penalty u/s 272A by the ADIT (Investigation) which has been confirmed by the Id. CIT(A) should be deleted.

21. Ld. DR on the other hand heavily relied on the order of the Id. CIT(A). Referring to the provisions of section 131(1A), he submitted that for the purpose of making enquiry or investigation relating thereto it shall be competent for the officer to exercise the powers conferred under sub-section (1) on the Income Tax Authorities referred to in that sub-section. Therefore, the contention of the Id. counsel for the assessee that no penalty provisions has been prescribed for violation to provisions of section (1A) is not correct.

22. So far as the merit of the case is concerned, he submitted that the assessee deliberately did not furnish the requisite details as called for by the ADIT (Investigation). There was no reasonable cause on the part of the assessee for non-submission of those details. The assessee cannot escape from the clutches of law by simply stating that all details are either available in the records of the Income Tax Department or in the Website of the Ministry of Corporate Affairs.

He accordingly submitted that when complete information was not furnished in compliance to the summons issued u/s 131(1A), penalty was rightly confirmed by the Id. CIT(A). He accordingly submitted that the order of the Id. CIT(A) be upheld and the grounds raised by the assessee be dismissed.

23. We have considered the rival arguments made by both the sides, perused the orders of the authorities below and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the penalty of Rs.10,000/- was levied by the ADIT (Inv.) under the provisions of section 272A(1)(c) on the ground that the assessee deliberately and without any valid reasons failed to furnish the following details as called for vide summons u/s 131(1A) dated 23.09.2014 :-

A. The details of persons who at any time during the Financial year 2010-11 was a founder member, ordinary member, Patron member, Member of the Managing committee, Director or Manager or M/s Young Indian.

B. Complete details of subsequent transfer of shares of M/s Young Indian made by the 2 founder members who were holding 550 shares each (Certificates bearing numbers 1 and 2) allotted to them at the time of incorporation, which as per the statutory filings made by the company to the MCA was effected on 22.01.2011, Please explain with documentary evidences, the entire procedure involved in the transfer of such shares, the method of arriving at the fair price of such shares by M/s Young Indian in accordance with the terms of clause 4.11 of the Articles of Association of M/s Young Indian and the fair price so determined or determinable. Also provide the details of payments received by M/s Young Indian from the incoming members and details of disbursement of fair price, received from the incoming members, if any, and made to the outgoing share holders / founder members. Also provide the details of payment received from the founder members for the share allotted to them by M/s Young Indians.

C. Complete details of fresh allotment of 3900 equity shares made on 22.1.2011 as per the statutory filings made before MCA, the relationship of each new share holder with M/s Young Indian clearly specifying the nature of such relationship, the share issue price, the method of determining the issue price, copies of share applications the details of payments made along with the share applications and

payments, if any, made thereafter. Also provide the complete details of credit to the bank account of M/s Young Indians of such share capital received from the new share applicants and share holders.

D. Fair value of the new shares as on the date of issue. In this regard, also provide the complete details of the assets of M/s Young Indian as on 22.01.2011. These details may also be provided in respect of the subsidiary of M/s Young Indian.”

24. We find the ld. CIT(A) confirmed the penalty so levied, the reasons of which are already reproduced in the preceding paragraph. It is the submission of the ld. counsel for the assessee that the provisions of section 131(1) and provisions of section 131(1A) are different and since the provisions of section 272A(1)(c) prescribe levy of penalty for non-compliance to provisions of section 131(1) only and since there is no provision in the Income Tax Act for levy of penalty for non-compliance under the provisions of section 131(1A) of the I.T. Act, therefore, the ld. CIT(A) was not justified in confirming the penalty so levied by the ADIT (Investigation). It is also his submission that since all the details as called for by the ADIT (Investigation) are already available either in the records of the Income Tax Department or in the Website of the Ministry of Corporate Affairs, therefore, there was a reasonable cause on the part of the assessee for non-submissions of the same as those details would have gone to the hands of the political opponents for mis-utilize of the same.

25. We do not find any merit in the above arguments of the ld. counsel for the assessee. So far as argument of the ld. counsel for the assessee that provisions of section 131(1) and 131(1A) are different, there is no dispute to the same.

However, as per the provisions of section 131(1A) for the purpose of making any enquiry or investigation relating thereto it shall be competent for the officer to exercise the powers conferred under sub-section (1) on the Income Tax Authorities referred to in that sub-section. Therefore, the provisions of section 131(1A) has to be read along with the provisions of section 131(1) of the I.T. Act. Therefore, the consequences for failure to furnish the requisite details will be the same as prescribed u/s 272A(1)(c) of the I.T. Act, 1961.

26. So far as the various decisions relied upon by the Id. counsel for the assessee are concerned, the same in our opinion are distinguishable and not applicable to the facts of the present case. So far as the decision in the case of Jamnadas Madhavji & Co. (supra) is concerned, the issue was where assessment proceedings have been concluded or have become time-barred in respect of relevant assessment years and thus no proceedings are pending, whether summons u/s 131(1) can be issued against the assessee by concerned officers mentioned in section 131(1) of the I.T. Act. Here issue is different i.e. levy of penalty u/s 272A(1)(c) for non-compliance of the provisions of section 131A. Therefore, this decision is not applicable.

27. So far as the decision in the case of State of Haryana (supra), the assessee has mainly relied on the phrase used “in accordance with” and not “under” which is not applicable to the facts of the present case.

28. So far as the decision in the case of Bijaya Kumar Agarwala (*supra*) is concerned, it was a case u/s 3(1) of the Essential Commodities Act. We fail to understand as to how the provisions of that law can be applied to the present proceedings for non-compliance to provisions of section 131(1A) of the I.T. Act.

29. So far as the decision in the case of Kumar Jagdish Chandra Sinha (*supra*) is concerned, the issue was whether in a case of return filed u/s 139(4), a revised return contemplated by section 139(5) can be filed. Therefore, the facts of this case are also not applicable to the facts of the present case. Therefore, this decision is not applicable.

30. So far as the decision in the case of Contemporary Enterprises Ltd. (*supra*) is concerned, we find that the Tribunal has held that the conduct of the assessee was bona-fide. However in the present case there is deliberate and complete defiance to the summons issue u/s 131(1A) of the I.T. Act. Therefore, this decision is also not applicable.

31. So far as the arguments of the ld. counsel for the assessee that there was a reasonable cause on the part of the assessee in not submitting the details as called for by the ADIT (Investigation) is concerned, we find from the record that there was a deliberate defiance on the part of the assessee for non-submission of the same under the pretext that some of the details are available in the records of the Income Tax Department or some of the details are available in the Website of the Ministry of Corporate Affairs. In our opinion, no

prejudice would have been caused to the assessee by submitting the details as called for by the ADIT (Investigation), as per the summons u/s 131(1A) if those details are already available in the records of the I.T. Department or in the website of the Ministry of Corporate Affairs. The conduct of the assessee in the instant case, in our opinion, is not at all bona-fide. We, therefore, do not find any merit in the argument of the ld. counsel for the assessee on this issue. In view of the above discussion, the order of the ld. CIT(A) in confirming the penalty of Rs.10,000/- levied u/s 272A(1)(c) is upheld. The grounds raised by the assessee are accordingly dismissed.

32. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open Court on this 30th August, 2018.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 30-08-2018.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi