

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7460 OF 2013
(Arising out of S.L.P.(C) No. 3976 of 2010)

Kathiroor Service Cooperative Bank ..Appellant
Ltd.

Versus

Commissioner of Income Tax (CIB) & ..Respondent(s)
Ors.

WITH C.A.NO.7487-7517 OF 2013 @ S.L.P.(C)No.3994-4024 OF 2010

WITH C.A.NO.7518-7532 OF 2013 @ S.L.P.(C)No.5194-5208 OF 2010

WITH C.A.NO.7461 OF 2013 @ S.L.P.(C)No.11135 OF 2010

WITH C.A.NO.7468-7481 OF 2013 @ S.L.P.(C)No.11454-11467 OF 2010

WITH C.A.NO.7483 OF 2013 @ S.L.P.(C)No.13778 OF 2010

WITH C.A.NO.7482-7484 OF 2013 @ S.L.P.(C)No.11909-11911 OF 2010

WITH C.A.NO. 7534 OF 2013 @ S.L.P.(C)No.4442 OF 2011

AND

WITH C.A.NO.7486 OF 2013 @ S.L.P.(C)No.21114 OF 2011

O R D E R

1. Leave granted in all the Special Leave Petitions.

2. Since the facts involved in all these appeals are similar,
we take Civil Appeal No.7460 of 2013 @ S.L.P.(C)No.3976 of 2010 as
the lead case.

Civil Appeal No. 7460 of 2013@ S.L.P.(C)No.3976 of 2010:

3. This appeal by special leave is directed against the common
judgment and order passed by the High Court of Kerala at Ernakulam in

Writ Appeal No. 1854 of 2009 and other connected matters, dated 24.11.2009, whereby the Division Bench has dismissed the said Writ Appeals and Writ Petitions filed by the appellant-assessee(s) herein and upheld the judgments and orders of the learned Single Judge and notices issued under Section 133(6) of the Income Tax Act, 1961 (for short 'the Act'), respectively.

4. Since the appellant-assessee(s) herein are similarly placed societies registered under the Kerala Co-operative Societies Act engaged in banking business, for brevity and convenience of reference, we would confine the discussion to factual matrix in the lead case. The appellant-assessee before us is a Service Co-operative Rural Bank. The Income Tax Officer (CIB), Calicut issued a notice bearing F.No. ITO (CIB)/Clt/2008-09 to the assessee under Section 133(6) of the Act calling for general information regarding details of all persons (whether resident or non-resident) who have made (a) cash transactions (remittance, transfer, etc.) of Rs. 1,00,000/- and above in any account and/or (b) time deposits (FDs, RDs, TDs, etc.) of Rs. 1,00,000/- or above for the period of three years between 01.04.2005 and 31.03.2008, dated 02.02.2009. It was expressly stated therein that failure to furnish the aforesaid information would attract penal consequences. The assessee objected to the said notice on grounds, *inter alia*, that such notice seeking for information which is unrelated to any existing or pending proceeding against the assessee could not be issued under the provisions of the Act and requested for withdrawal of the said notice by its letter-in-reply, dated 26.02.2009. The Assessing Authority addressed to the objections

raised by the assessee and accordingly rejected them by letter dated 05.03.2009. The relevant paragraphs of the said letter are as under:

2. Your contention that this office does not enjoy the powers to call for information under section 133 (6) does not hold water in view of the Hon'ble High Court's judgment dated 24th December, 2002 in the case of M.V. Rajendran Vs. Income Tax Officer and Another reported in 260 ITR 442, wherein it is categorically stated that -

".....The Department is free to ask for information about any particular person or to call for general information in regard to any matter they consider necessary. Section 133(6) does not refer to any enquiry about any particular person or assessee, but pertains to the information of a general nature can be called for and names and addresses of the depositors who hold deposits above a particular sum is certainly permissible. In fact as the section presently stands section 133(6) is a power of general survey and is not related to any person and no claim any immunity from furnishing such informationIn the circumstances, I hold that the notices are within the powers of the officers who issued the same and the co-operative societies and co-operative banks are bound to furnish the particulars called for in the notices, failing which the Department will be free to conduct search or take penal action permissible under the Act."

Since the Hon'ble High Court of Kerala is the jurisdictional High Court and the decisions relied upon by you are superceded by the order of Hon'ble Kerala High Court, I failed to find any merit in your objection for not furnishing the information called for under section 133(6). In this connection, you may also refer the following decisions of the Hon'ble High Court of Kerala -

- | | |
|---|----------------------|
| 1 | 186 CTR 310 (Kerala) |
| 2 | 263 ITR 161 (Kerala) |

3. As can be seen from Para-1 above, the powers to initiate an inquiry, in a case where no proceedings is pending, can only be exercised by an authority above the rank of Director or the Commissioner. Accordingly, prior permission has been obtained from the Commissioner of Income Tax (CIB), Cochin before issuing the notice to you calling for the details of transactions/ deposits above Rs.1 lakh made by customers in your institution. It is hereby pointed

out that I am well within my authority calling for information from you and have not exceeded my powers. Further, the Hon'ble High Court in its above judgment has stated that -

'.....If co-operative banks and co-operative societies are allowed to maintain deposits beyond the scrutiny of the Income Tax Department, then the societies will become safe havens for hoarding back money in the country which is opposed to public policy. Besides this, the statutory authorities vested with the responsibility to levy tax on income will be prevented from achieving their objective and that will defeat the very purpose of the Income Tax Act....'

5. The assessee, aggrieved by the aforesaid, filed Writ Petition No. 9737 of 2009 before the High Court challenging the notice dated 02.02.2009. The learned Single Judge has discussed the case of the assessee including the submissions made by the parties *in extenso* and reached the conclusion that the impugned notice was validly issued under the provisions of the Act and therefore, dismissed the said petition by judgment and order dated 27.03.2009.

6. Thereafter, the assessee approached the Division Bench of the High Court by way of Writ Appeal No. 1854 of 2009 questioning the said notice on grounds, *inter alia*, that the issuance of such notice under Section 133(6) is bad in law as Section 133(6) only provides for power to seek information in case of pending proceedings under the Act and does not contemplate the powers to seek fishing information which is unrelated to any existing proceedings or which may enable the Assessing Authority to decide upon institution of proceedings under the Act. The Division Bench has observed that the questions raised therein are no longer *res integra* in view of the

decision of this Court in *Karnataka Bank Ltd. v. Secretary, Government of India and Ors.*, (2002) 9 SCC 106 and accordingly, dismissed the said appeal by the impugned judgment and order dated 24.11.2009.

7. Aggrieved by the aforesaid, the assessee is before us in this appeal.

8. We would refer to the submissions made by the learned counsel for the parties to the *lis* a little later.

9. In the instant case, the point which arises for our consideration and decision is with respect to the possible construction that could be placed on the interpretation of Section 133(6) of the Act.

10. At the outset, we would briefly refer to the relevant provisions of the Act and the legislative history thereto. Section 133 provides for the power of authorities under the Act to call for information for the purposes prescribed therein. Sub Section (6) of Section 133 of the Act, as it stood originally, had provided for calling for information in relation to such points or matters which would be useful for or relevant to any proceeding under the Act from any person including a banking company or any officer thereof. It was settled law that unless a proceeding is pending, the powers under Section 133(6) could not be exercised by the Assessing Authorities. In such circumstances, an amendment was made by the Finance Act, 1995 (Act 22 of 1995), with effect from 01.07.1995, inserting the words

"enquiry or" before "proceeding" in Section 133(6) and the second proviso to the said provision. Besides the aforesaid amendment in 1995, Section 133(6) was amended by Finance Act, 1977 and the Direct Tax Laws (Amendment) Act, 1987 whereby certain authorities were included and the first proviso was inserted, respectively. Further, Finance Act, 2011 inserted the third proviso with effect from 01.06.2011. The amended Section 133(6) reads as under:

"Section 133 - Power to call for information: The Assessing Officer, the Deputy Commissioner (Appeals), the *Joint Commissioner* or the Commissioner (Appeals) may, for the purposes of this Act,

(6) require any person, including a banking company or any officer thereof, to furnish information in relation to such points or matters, or to furnish statements of accounts and affairs verified in the manner specified by the Assessing Officer, the Deputy Commissioner (Appeals), the 1[Joint Commissioner] or the Commissioner (Appeals), giving information in relation to such points or matters as, in the opinion of the Assessing Officer, the Deputy Commissioner (Appeals), the *Joint Commissioner* or the Commissioner (Appeals), will be useful for, or relevant to, any enquiry or proceeding under this Act:

Provided that the powers referred to in clause (6), may also be exercised by the Director General, the Chief Commissioner, the Director and the Commissioner.

Provided further that the power in respect of an inquiry, in a case where no proceeding is pending, shall not be exercised by any income-tax authority below the rank of Director or Commissioner without the prior approval of the Director or, as the case may be, the Commissioner.

Provided also that for the purposes of an agreement referred to in section 90 or section 90A, an income-tax authority notified under sub-section (2) of section 131 may exercise all the powers conferred under this section, notwithstanding that no proceedings are pending before it or any other income-tax authority."

[Emphasis supplied]

11. The addition of the word "enquiry" expanded the ambit of exercise of powers by the authorities under Section 133(6) to seek

for information which would be useful for or relevant to any enquiry besides proceeding under the Act. The second proviso to Section 133(6), specified that the power in respect of an enquiry, in case where no proceeding is pending, shall not be exercised by any income tax authority below the rank of Director or Commissioner without the prior approval of the said authorities.

12. The effect of the amendments made by the Finance Act (Act 22 of 1995) was explained by the CBDT in the Circular No. 717, dated 14th Aug., 1995 (See *Taxmann's Direct Taxes Circulars*, Vol. 4, 2002 Ed., p. 2.1759, 2.1782) as follows :

"Power to call for information when no proceeding is pending.-

41.2 At present the provisions of sub-section (6) of section 133 empower income-tax authorities to call for information which is useful for, or relevant to, any proceeding under the Act which means that these provisions can be invoked only in cases where the proceedings are pending and not otherwise. *This acts as a limitation or a restraint on the capability of the Department to tackle evasion effectively. It is, therefore, thought necessary to have the power to gather information which after proper enquiry, will result in initiation of proceedings under the Act.*

41.3 With a view to having a clear legal sanction, the existing provisions to call for information have been amended. *Now the income-tax authorities have been empowered to requisition information which will be useful for or relevant to any enquiry or proceedings under the Income-tax Act in the case of any person.* The Assessing Officer would, however, continue to have the power to requisition information in specific cases in respect of which any proceeding is pending as at present. However, an income-tax authority below the rank of Director or Commissioner can exercise this power in respect of an inquiry in a case where no proceeding is pending, only with the prior approval of the Director or the Commissioner."

[Emphasis supplied]

13. Keeping in view the aforesaid, we would now refer to the contentions of the learned counsel for the parties. It is the case of the assessee that though this Court in *Karnataka Bank case (supra)* has considered the powers of respondent-authorities to issue notice under Section 133(6) but has not considered as to whether the said provision clothes the respondent-authorities with any power for conducting a roving or fishing enquiry into the affairs of the assessee or regarding the deposits made by its customers. Further, that this Court has considered only "case specific" or "area specific" information sought under Section 133(6). Learned Counsel for the assessee would therefore submit that the High Court has erred by not appreciating the decision of this Court in *Karnataka Bank case (supra)* and erroneously dismissed the case of similarly placed banks.

14. *Au contraire* learned Solicitor General for the Assessing Authority, would support the impugned judgment and order and contend that for the purposes of enquiry under the provisions of the Act, the Assessing Authority can issue such notice under the said Section.

15. Having noticed the aforesaid, in order to appreciate the contentions canvassed by the parties to the *lis*, we must examine the import of the term "enquiry" under Section 133(6) of the Act. In common parlance, "to enquire" would mean to seek information and "enquiry" would refer to the process of gathering such information. The *Longman Dictionary of Contemporary English* defines "enquiry" as

"1 [countable] a question you ask in order to get information; 2 [uncountable] the act or process of asking questions in order to get information; 3 [countable] an official process to find out about something."

The *Merriam-Webster Unabridged Dictionary* states that the words "Inquiry or Enquiry" connote:

"1: examination into facts or [principles](#)
 2: a request for information
 3: a [systematic](#) investigation often of a matter of public interest."

The [Cambridge Advanced Learner's Dictionary & Thesaurus](#) defines inquiry or enquiry as "question" or "the [process](#) of [asking](#) a [question](#)." The *Oxford Advanced Learner's Dictionary* defines enquire as:

"an official process to find out the cause of something or to find out information about something; a request for information about somebody/something; a question about somebody/something; the act of asking questions or collecting information about somebody/something"

16. The *Black's Law Dictionary, 9th Ed., 2009, p. 864* defines "enquiry" as "a request for information, either procedural or substantive". The expression inquiry under *Encyclopedia Law Lexicon, Vol. 4, Ashoka Law House, 2008/09, p. 2356* and *K.J. Aiyar's Judicial Dictionary, Vol. 1, Lexis Nexis Butterworths Wadhwa, 15th Edition, 2011, p. 838* follows the explanation hereunder:

"According to the *New Standards Dictionary*, the word inquiry includes investigation into facts, causes effects and relations generally; "to inquire", according to the same dictionary means to "exert oneself to discover something." *Chambers 20th Century Dictionary* lays down that the meaning of the term "to inquire" is "to ask, to seek" and the meaning of the term "inquiry" is to give as: "in search for knowledge; investigation; a question" (Also *Real Value Appliances Limited v. Canara Bank and others, (1998)*

5 SCC 554)"

17. Since the language of the Section 133(6) is wholly unambiguous and clear, reliance on interpretation of statutes would not be necessary. Before the introduction of amendment to Section 133(6) in 1995, the Act only provided for issuance of notice in case of pending proceedings. As a consequence of the said amendment, the scope of Section 133(6) was expanded to include issuance of notice for the purposes of enquiry. The object of the amendment of section 133(6) by the Finance Act, 1995 (Act 22 of 1995) as explained by the CBDT in its circular shows that the legislative intention was to give wide powers to the officers, of course with the permission of the CIT or the Director of Investigation to gather general particulars in the nature of survey and store those details in the computer so that the data so collected can be made use of for checking evasion of tax effectively. The assessing authorities are now empowered to issue such notice calling for general information for the purposes of any enquiry in both cases: (a) where a proceeding is pending and (b) where proceeding is not pending against the assessee. However in the latter case, the assessing authority must obtain the prior approval of the Director or Commissioner, as the case maybe before issuance of such notice. The word "enquiry" would thus connote a request for information or questions to gather information either before the initiation of proceedings or during the pendency of proceedings; such information being useful for or relevant to the proceeding under the Act.

18. This Court in *Karnataka Bank Ltd. v. Secretary, Government of India and Ors.*, (2002) 9 SCC 106 has examined the proposition whether a notice under Section 133(6) could be issued to seek information in cases where the proceedings are not pending and construed Section 133(6) of the Act. The petitioner therein was a financial institution which had impugned the notice issued under section 133(6) on grounds that the notice requiring furnishing of information in respect of its customers regarding payment of loans when no enquiry was pending was not envisaged by the said sub-section. This Court has observed as follows:

"3. It is clear from the mere reading of the said provision that it is not necessary that any inquiry should have commenced with the issuance of notice or otherwise before Section 133(6) could have been invoked. It is with the view to collect information that power is given under Section 133(6) to issue notice, inter alia, requiring a banking company to furnish information in respect of such points or matters as may be useful or relevant. The second proviso makes it clear that such information can be sought for even when no proceeding under the Act is pending, the only safeguard being that before this power can be invoked the approval of the Director or the Commissioner, as the case may be, has to be obtained."

19. In view of the aforesaid, we are of the view that the powers under section 133(6) are in the nature of survey and a general enquiry to identify persons who are likely to have taxable income and whether they are in compliance with the provisions of the Act. It would not fall under the restricted domains of being "area specific"

or "case specific." Section 133(6) does not refer to any enquiry about any particular person or assessee, but pertains to information in relation to "such points or matters" which the assessing authority issuing notices requires. This clearly illustrates that the information of general nature can be called for and names and addresses of depositors who hold deposits above a particular sum is certainly permissible.

20. In the instant case, by the impugned notice the assessing authority sought for information in respect of its customers which have cash transactions or deposits of Rs. 1,00,000/- or above for a period of three years, without reference to any proceeding or enquiry pending before any authority under the Act. Admittedly, in the present case notice was issued only after obtaining approval of the Commissioner of Income Tax, Cochin. In light of the aforesaid, we are of the considered opinion that the Assessing Authority has not erred in issuing the notice to the assessee-financial institution requiring it to furnish information regarding the account holder with cash transactions or deposits of more than Rs. 1,00,000/-.

21. Therefore, we hold that the Division Bench of the High Court was justified in its conclusion that for such enquiry under Section 133(6) the notice could be validly issued by the Assessing Authority.

22. In view of the above, the appeal requires to be dismissed and accordingly, stands dismissed.

In C.A.NO.7487-7517 OF 2013 @ S.L.P.(C)No.3994-4024 OF 2010
WITH
C.A.NO.7518-32 OF 2013 @S.L.P.(C)No.5194-5208 OF 2010
WITH
C.A.NO.7461 OF 2013 @S.L.P.(C)No.11135 OF 2010
WITH
C.A.NO.7468-81 OF 2013@S.L.P.(C)No.11454-11467 OF 2010
WITH
C.A.NO.7483 OF 2013 @ S.L.P.(C)No.13778 OF 2010
WITH
C.A.NO.7482-7484 OF 2013@ S.L.P.(C)No.11909-11911 OF 2010
WITH
C.A.NO.7534 OF 2013 @ S.L.P.(C)No.4442 OF 2011
AND
WITH
C.A.NO.7486 OF 2013 @ S.L.P.(C)No.21114 OF 2011

In view of the order passed in Civil Appeal No.7460 of 2013 @ S.L.P.(C) No.3976 of 2010 above, all these appeals also stands dismissed.

Ordered accordingly.

.....J.
[H.L. DATTU]

.....J.
[SUDHANSU JYOTI MUKHOPADHAYA]

NEW DELHI,
August 27, 2013.

Revised

ITEM NO.5

COURT NO.4

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).3976/2010
(From the judgement and order dated 24/11/2009 in WA
No.1854/2009 of the HIGH COURT OF KERALA AT ERNAKULAM)

KATHIROOR SER.CO-OP BANK LTD.

Petitioner(s)

VERSUS

C.I.T(CIB) & ORS.

Respondent(s)

WITH SLP(C) NO. 11135 of 2010

SLP(C) NO. 11454-11467 of 2010

(With prayer for interim relief and office report)

SLP(C) NO. 11909-11911 of 2010

SLP(C) NO. 13778 of 2010

(With office report)

SLP(C) NO. 21114 of 2011

SLP(C) NO. 3994-4024 of 2010

SLP(C) NO. 5194-5208 of 2010

(With appln.(s) for vacation of stay on behalf of respondent
and with prayer for interim relief and office report)

SLP(C) NO. 4442 of 2011

[ALL THE MATTERS FOR FINAL DISPOSAL)

Date: 27/08/2013 These Petitions were called on for hearing
today.

CORAM :

HON'BLE MR. JUSTICE H.L. DATTU

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Petitioner(s) Mr.Jaideep Gupta, Sr.Adv.
Mr. G. Prakash,Adv.
Ms.Beena Prakash, Adv.
Mr.Sathyan, Adv.

Mr. P.V. Dinesh, Adv.
Ms.T.P.Sindhu, Adv.
Mr.Bineesh, Adv.
Mr.Sunil Kr.Tripathi, Adv.

Mr.Ragvesh Singh, Adv.
For Mr. P.S.Sudheer, Adv.

For Respondent(s) Mr.Mohan Parasaran,
Solicitor General of India
Mr.R.P.Bhatt, Sr.Adv.
Mr.Arijit Prasad, Adv.
Mr.D.L.Chidananda, Adv.
Mr.S.A.Haseeb, Adv.
For Mrs Anil Katiyar,Adv.
For Mr. B.V. Balaram Das, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted in all the Special Leave Petitions.

The appeals are dismissed, in terms of the signed
order.

(G.V.Ramana)
Court Master

(signed order is placed on the file)

(Vinod Kulvi)
Asstt.Registrar

Corrected

ITEM NO.5

COURT NO.4

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).3976/2010
(From the judgement and order dated 24/11/2009 in WA
No.1854/2009 of the HIGH COURT OF KERALA AT ERNAKULAM)

KATHIROOR SER.CO-OP BANK LTD.

Petitioner(s)

VERSUS

C.I.T(CIB) & ORS.

Respondent(s)

WITH SLP(C) NO. 11135 of 2010

SLP(C) NO. 11454-11467 of 2010

(With prayer for interim relief and office report)

SLP(C) NO. 11909-11911 of 2010

SLP(C) NO. 13778 of 2010

(With office report)

SLP(C) NO. 21114 of 2011

SLP(C) NO. 3994-4024 of 2010

SLP(C) NO. 5194-5208 of 2010

(With appln.(s) for vacation of stay on behalf of respondent
and with prayer for interim relief and office report)

SLP(C) NO. 4442 of 2011

[ALL THE MATTERS FOR FINAL DISPOSAL)

Date: 27/08/2013 These Petitions were called on for hearing
today.

CORAM :

HON'BLE MR. JUSTICE H.L. DATTU

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Petitioner(s)

Mr.Jaideep Gupta, Sr.Adv.

Mr. G. Prakash,Adv.

Ms.Beena Prakash, Adv.

Mr.Sathyan, Adv.

Mr. P.V. Dinesh, Adv.

Ms.T.P.Sindhu, Adv.

Mr.Bineesh, Adv.

Mr.Sunil Kr.Tripathi, Adv.

Mr.Ragvesh Singh, Adv.

For Mr. P.S.Sudheer, Adv.

For Respondent(s) Mr.Mohan Parasaran,
Solicitor General of India
Mr.R.P.Bhatt, Sr.Adv.
Mr.Arijit Prasad, Adv.
Mr.D.L.Chidananda, Adv.
Mr.S.A.Haseeb, Adv.
For Mrs Anil Katiyar,Adv.
For Mr. B.V. Balaram Das, Adv.

UPON hearing counsel the Court made the following
O R D E R

Dismissed. However, reasons will follow.

(G.V.Ramana)
Court Master

(Vinod Kulvi)
Asstt.Registrar