

<b>IN THE INCOME TAX APPELLATE TRIBUNAL</b>
<b>COCHIN BENCH (SMC)</b>
<b>COCHIN</b>
<b>BEFORE SHRI GEORGE GEORGE K. JUDICIAL MEMBER</b>

I.T.A. No.230/Coch/2017
Assessment Years : 2011-12 to 2013-14)

M/s. The Poonithura Co-operative Bank Ltd., No. E-840, Poonithura P.O. Ernakulam, Kochi. [PAN: AAAAP 3548D]	<b>Vs.</b>	The Addl. Director of Income Tax (Intelligence), Kochi.
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	None
<b>Revenue by</b>	Shri A. Dhanaraj, Sr. DR

<b>Date of hearing</b>	08/11/2017
<b>Date of pronouncement</b>	08/11/2017

## ORDER

Per GEORGE GEORGE K. JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the CIT(A)-III, Kochi dated 28-02-2017. The relevant AY's are 2011-12 to 2013-14. This

2. The grounds raised read as follows:

1. *On the facts and in the circumstances of the case and in law the Commissioner of Income-tax (Appeals) as well as the Additional Director (Intelligence) erred in arriving into a conclusion that the Income tax Officer (Intelligence) is an authority to call for information under Section 133(6) of Income tax Act without appreciating the fact that power to call for information under section 133(6) is vested on the Assessing Officer, the Deputy Commissioner(Appeals), the Joint*

*Commissioner or the Commissioner(Appeals) and therefore the Income Tax Officer (Intelligence) is not an authority to invoke provision under the said section.*

- 2. The Commissioner of Income-tax(Appeals) as well as the Additional Director (Intelligence) ought to have seen that the information under Section 133(6) shall be called for only for the purpose of the Income Tax Act 1961 and no such purpose was mentioned in the notice issued by the Income Tax Officer (I&CI), Kochi.*
- 3. The Commissioner of Income-tax(Appeals) as well as the Additional Director (Intelligence) ought to have seen that the information called for under Section 133(6) should be useful for, or relevant to any enquiry as instructed in para 4.3 of Chapter 4 of Manual of Office Procedure which states that the Assessing Officer, the Addl./Joint Commissioner and the Commissioner(Appeals) may, u/s. 133 call for certain information relevant for any proceedings under the Act*
- 4. The Commissioner of Income-tax(Appeals) ought to have seen that the "inquiry" and "enquiry" have different and distinct meaning in the Income Tax Act, 1961 and refers to different contexts and that the information for the purpose of the Act which are useful for, or relevant to any "enquiry" only shall be called for under Section 133(6) and that there was no mention in the notice issued by Income Tax Officer (Intelligence) about any such "enquiry" under the Income Tax Act 1961.*
- 5. The Commissioner of Income-tax(Appeals) as well as the Additional Director (Intelligence) ought to have seen that the imposition of penalty is time barred under section 275(1)(c) of The Income Tax Act 1961 in as much as the proceedings for imposition of penalty was initiated on the date of notice issued by the Income Tax Officer (Intelligence), Kochi for the initiation of such proceedings.*
- 6. The Appellant prays that the penalty of Rs.29,300/- imposed by the Addl. Director of Income Tax(Intelligence), Kochi in respect of non-furnishing of information called for u/s. 133(6) by the Income Tax Officer(Intelligence), Kochi be deleted.*
- 7. The Appellant craves leave to add, amend, alter vary and/or withdraw any or all the above grounds of Appeal.*

3. None was present on behalf of the assessee. However, I proceed to dispose of the matter on merits after hearing the Ld. DR.

4. The brief facts in relation to the case read as follows:

The assessee is a Primary Agricultural Co-operative Society. The Income Tax Officer(Intelligence), Kochi issued notice u/s. 133(6) of the I.T. Act vide letter dated 10/09/2013 to the Secretary of the assessee-Society wherein following information was sought for.

Sl. No.	Information Required
1	Details of depositors of cash exceeding Rs. 5 Lakhs during the F.Y. 2010-11, 2011-12 & 2012-13. (Information regarding cash deposits in SB account where the aggregate of cash deposits is Rs. 5 Lakhs or above for the concerned years. While furnishing the information, all the cash transaction in the account are to be reflected date wise and not merely the aggregate amount.
2.	Details of the payment of interest exceeding Rs.10,000/- made to the depositors including interest on Fixed deposits.

5. The above information was not furnished to the Department. Therefore, the Addl. Director of Income Tax (I&CI), Kochi initiated penalty proceedings u/s. 272A(2)(c) of the Act. Though the Secretary of the assessee-Society appeared before the officer, in the course of penalty proceedings, assessee did not furnish the required information. Therefore, the Addl. Director of Income Tax(I&CI), Kochi imposed penalty of Rs.27,300/- u/s. 274 r.w.s. 272A(2)(c) of the I.T. Act for non furnishing of information u/s. 133(6) for the financial years 2010-11 to 2012-13.

6. Aggrieved by the order of the penalty u/s. 274 r.w.s.272(2)(c) of the Act, the assessee preferred an appeal before the first appellate authority. It was contended that the ITO(Intelligence) does not have the powers to issue the notice u/s. 133(6) of the I.T. Act. Further it was contended that the order imposing penalty is barred by limitation. The CIT(A) rejected both the contentions raised by the assessee and dismissed the appeal of the assessee. The CIT(A) placed reliance on the judgment of the Hon'ble Apex Court in the case of Kathiroom Service Co-operative Bank Ltd. and others vs. Commissioner of Income Tax and others (2013) 360 ITR 243 and held that the ITO(Intelligence) has the authority under the Income Tax Act to issue notice u/s. 133(6) of the Act. The CIT(A) also rejected the assessee's other contention that the penalty order is barred by limitation.

7. Aggrieved by the order of the CIT(A), the assessee has preferred the present appeal before the Tribunal. The Ld. DR submitted that the issue in question is squarely covered by the orders of the Tribunal in the cases of Kakoor Service Co-operative Bank Ltd. in I.T.A. No. 473/Coch/2015 & Others (21 appeals) dated 23/08/2017.

8. I have heard the Ld. DR and perused the material on record. I notice an identical issue was considered by the Tribunal in the cases of Kakoor Service Co-operative Bank Ltd. in I.T.A. No. 473/Coch/2015 & Others dated 23-08-

2017. In the case of Kakoor Service Co-operative Bank Ltd. & Others, identical grounds are raised to that of the grounds raised in these appeals. In Kakoor Service Co-operative Bank Ltd. & Others, the Tribunal has decided the issue in favour of the Revenue and has held that the order passed u/s. 272A(2)(c) of the Act is valid. The relevant finding of the Tribunal in the case of Kakoor Service Co-operative Bank Ltd. & Others reads as follows:

*"8 I have heard the rival contentions and perused the material on record. From the grounds raised and the argument note submitted by the assessee, I am of the view that three contentions are raised by the assessee in this appeal; namely;*

- (i) ITO (Intelligence) does not have jurisdiction to issue notice u/s 133(6) of the I T Act;
- (ii) the order passed u/s 272A(2)(c) is barred by limitation;
- (iii) there was reasonable cause, as mentioned in section 273B of the Act for non furnishing information sought u/s 133(6); therefore, penalty u/s 272A(2) ( c) of the I T Act is to be quashed.

*8.1 I shall take up for adjudication each of the above three contentions as under:*

*i) ITO (Intelligence) does not have jurisdiction to issue notice u/s 133(6) of the I T Act;*

*Section 133(6) of the I T Act 1961 is unambiguous and clear. The department under the said section has power to call 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' thereon. Later, an amendment was introduced as per the Finance Act, 1995 whereby, the words "enquiry or" were inserted before the word "proceeding" in Section 133(6), also adding the '2nd proviso' to the said provision, with effect from 1. 7.1995. The effect of the said amendment is that, the power to call for information under the un-amended Act, which was confined only in relation to a 'pending proceeding' came to be widened, and even in a case where no proceeding was pending, such information could be called for as part of the enquiry, subject to the*

*rider that, such power was not to be exercised by any income tax authority below the rank of Director or Commissioner without the prior approval of the Director or the Commissioner, as the case may be. The said amendment was brought about as a measure to tackle tax evasion effectively, as clarified by the Central Board of Direct Taxes (CBDT) vide Circular no. 717 dated 14.8.1995 , which reads 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 use ful 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 informa tion in specific cases in respect of which any proceeding is pending as at present. However, an Income-tax authority below the rank of the 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."*

*8.2 In the instant case, notice u/s 133(6) of the Act was issued by the ITO (Intelligence) after obtaining necessary approval from the Director of Income Tax (Intelligence). The Hon'ble Supreme Court in the case of Kathiroom Service Co-op Bank Ltd vs CIT (CIB) & others, reported in 360 ITR 243 have considered an identical case and decided that the ITO(CIB) has power to issue notice u/s 133(6) of the I T Act. The relevant findings of the Hon'ble Supreme Court, read as follows:*

*"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 the 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."

8.3 In the light of the judgment of the Hon'ble Apex Court (supra) and the aforesaid reasoning, I am of the view that the ITO (Intelligence) has jurisdiction to issue notice u/s 133(6) of the I T Act.

(ii) the order passed u/s 272A(2)(C) is barred by limitation;

8.4 Section 275(1)(c) of the Act prescribed the time limit for imposition of penalty u/s 272A(2)(c) of the I T Act. Section 275(1)(c) of the I T Act, reads as follows:

"275(1).....

(c) in any other case after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later."

8.5 Admittedly, penalty proceedings u/s 272A(2)(c) was initiated on 12.8.2014 by issuance of notice u/s 274 of the I T Act and the order imposing penalty u/s 272A(2)(c) was passed on 19.9.2014. Therefore, the penalty order is well within the time limit prescribed u/s 275(1)(c) of the Act. The Judgment of the Hon'ble Rajasthan High Court, relied on by the Id AR of the assessee, in the case of CIT vs Sri Jithendra Singh

*Rathore, is not applicable to the facts of the instance case. In the case considered by the Hon'ble Rajasthan High Court the penalty proceedings u/s 271D was initiated by issuing notice on 25.3.2003 and the penalty order was passed only on 30.9.2003 by which time, six months period mentioned u/s 275(1)(c) had already expired. The contention of the Id AR that notice issued u/s 133(6) should be reckoned for considering the time limit u/s 275(1)(c) of the Act is de-void of any merits; because Section 275(1)(c) prescribes the time limit only from the date of initiation of penalty proceedings; namely issuance of notice u/s 274 of the Act. For the aforesaid reasons, I hold that the order passed by the Jt Director of Income Tax (Intelligence) is a valid order.*

*(iii) there was reasonable cause, as mentioned in section 273B of the Act for non furnishing information sought u/s 133(6); therefore, penalty u/s 272A(2) (c) of the I T Act is to be quashed:*

*8.6 The assessee has not offered any valid reason for not furnishing the information called for u/s 133(6) of the Act. Many of the notices issued by the ITO (Intelligence) were never responded to by the assessee. In many instances the Assessing Officer has mentioned that when they had approached, the assessee Society, for seeking information u/s 133(6) of the Act, there was total lack of co-operation on the part of the assessee society as well as threat (reference order imposing penalty u/s 272A(2)(c) in appeals ITA No.202/C/2017 and ITA NO.217/C/2017). Since there is no reasonable cause furnished by the assessee as mentioned u/s 273B of the I T Act for non furnishing of information sought by the ITO(intelligence) u/s 133(6) of the Act, I am of the view that the order imposing penalty cannot be quashed. It is ordered accordingly.*

*9 In the result, the appeal in ITA No.473/Coch/2015 is dismissed.*

*10 Both the parties have agreed that the facts considered by the Tribunal in ITA No 473/C/2015 are identical to the facts of the other appeals. Therefore, for the reasons stated in para 8 to 8.6, the appeals in ITA Nos 243/Coch/2013, 544/Coch/2015, 190/Coch/2016, 126/Coch/2017, 158/Coch/2017, 153/Coch/2017, 146/C/2017, 194/C/2017, 159/C/2017, 197/C/2017, 196/C/2017, 195/C/2017, 152/C/2017, 204/C/2017, 206/C/2017, 200/C/2017, 198/C/2017, 202/C/2017, 201/C/2017 and 217/C/2017 are dismissed.*

*11 To sum-up, all the 21 appeals filed by the different assesseees are dismissed."*

8.1 In view of the above orders of the Tribunal which are identical to the facts of the present cases, I hold that the CIT(A) is justified in upholding the orders passed u/s. 272A(2)(c) of the Act. It is ordered accordingly.

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

Order pronounced in the open court on the 8<sup>th</sup> day of November, 2017.

sd/-  
**(GEORGE GEORGE K.)**  
Judicial Member

Place: Kochi

Dated: 08<sup>th</sup> November, 2017

GJ

Copy to:

1. M/s. The Poonithura Co-operative Bank Ltd., No. E-840, Poonithura P.O. Ernakulam, Kochi.
2. The Addl. Director of Income-tax (Intelligence), Kochi.
3. The Commissioner of Income-tax(Appeals)-III, Kochi
4. The Pr. Commissioner of Income-tax, Kochi.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

**(ASSISTANT REGISTRAR)**  
I.T.A.T., Cochin