

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.441/Coch/2019 : Asst.Year 2011-2012

M/s.Arthinkalvillage Service Co-operative Bank Limited No.3772, Arthinkal P.O. Alappuzha District PAN : AAAAT7864J.	Vs.	The Joint Director of Income-tax (I & CI) Kochi.
(Appellant)		(Respondent)

SA No.39/Coch/2019 : Asst.Year 2011-2012

M/s.Arthinkalvillage Service Co-operative Bank Limited No.3772, Arthinkal P.O. Alappuzha District PAN : AAAAT7864J.	Vs.	The Joint Director of Income-tax (I & CI) Kochi.
(Applicant)		(Respondent)

Assessee by : Smt.Swathy S. Advocate

Revenue by : Smt.A.S.Bindhu, Sr.DR

Date of Hearing : 27.06.2019	Date of Pronouncement : 08.07.2019
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ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against the order of the CIT(A) dated 26.02.2019. The relevant assessment year is 2011-2012. The order of the CIT(A) arises out of the order passed u/s 272A(2)(c) r.w.s. 274 of the Income-tax Act, 1961. The assessee has also filed stay application seeking to stay the recovery of outstanding tax arrears.

2. The brief facts of the case are as follow:

2.1 The assessee is a Co-operative Society registered under the Kerala Co-operative Societies Act, 1969. The assessee was served with notice u/s 133(6) of the Income-tax Act. The assessee was directed to furnish details of the persons who had deposited above Rs.5 lakhs during the financial years 2010-2011, 2011-2012 & 2012-2013. The assessee was also directed to give details of the persons, who had received interest income exceeding Rs.10,000 during the above mentioned financial years. The assessee did not furnish the details called for under the notice issued u/s 133(6). The Assessing Officer, therefore, initiated penalty proceedings u/s 272A(2)(c) r.w.s. 274 and imposed penalty of Rs.81,300 @ Rs.100 per day for the period from 30.09.2013 to 22.12.2015 (till the date of order imposing penalty).

2.2 Aggrieved by the order of the imposition of penalty, the assessee preferred appeal to the first appellate authority. The CIT(A) dismissed the appeal filed by the assessee.

2.3 Aggrieved by the order of the CIT(A), the assessee has filed the present appeal. The grounds raised read as follows:-

"A. On the facts and in the circumstances of the case and in law the Commissioner of Income-tax (Appeals) erred in arriving into a conclusion that the Income tax Officer (I&CI) is an authority to call for information under section 133(6) of Income tax Act without appreciating the fact that the power to call for information under section 133(6) is vested on the Assessing Officer, the Deputy Commissioner (Appeals), the Additional Commissioner or the Commissioner (Appeals) and therefore the Income Tax Officer (I&CI) is not an authority to invoke provision under the said section.

B. The Commissioner of Income-tax (Appeals) 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 (J&CI), Alappuzha.

C. The Commissioner of Income-tax (Appeals) 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. Commissioner and the Commissioner (Appeals) may, u/s 133 call for certain information relevant for any proceedings under the Act.

D. 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 (I&CI) about any such "enquiry" under the Income Tax Act 1961.

E. The Commissioner of Income-tax (Appeals) 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 (I&CI), Kochi for the initiation of such proceedings.

G. The provision u/s 272(A)(2) permits to impose penalty for a sum of Rs.100/- for every day during which the failure continues. In the case of this appeal the appellant has sought time to produce the details by written letter. But the respondent has not rejected the request of the appellant. Later the Joint Director of Income Tax(I&CI), Kochi (Intelligence), in his notice dated 01-06-2015 asked to show cause why penalty proceedings under section 272A should not be initiated. The respondent can only impose penalty from 01.06.2015 to 22.12.2015 the date of imposition of penalty. The respondent has wrongly taken 831 days instead of 202 days. Therefore the quantum calculation is illegal as well as illegal originating from a void notice. Learned Joint Director of Income Tax (Intelligence), Kochi issued order under Section 272A (2) (C) imposing penalty of Rs.81,300/- for the period 30-09-2013 to 22-12-2015. Demand notice under section 156 for the amount has also been issued along with the order.

H. The Commissioner (Appeals) has not considered and answered the questions of law raised in the grounds of appeal, by a speaking order.

I. The Appellant craves leave to add, amend, alter vary and / or withdraw any or all the above grounds of Appeal."

2.4 The learned Counsel for the assessee reiterated the submissions made before the Income-tax Authorities.

2.5 The learned Departmental Representative submitted that the Cochin Bench of the Tribunal in the case of The Kakoor Service Co-operative Bank Ltd. in ITA No.473/Coch/2015 & Others (21 appeals) order dated 23.08.2017 had adjudicated an identical issue in favour of the Revenue.

3. We have heard the rival submission and perused material the record. On identical facts the Cochin Bench of the Tribunal in the cases of Kakoor Service Co-operative Bank Ltd. (supra) had held that the penalty imposed u/s 272A(2)(c) of the Act is valid. The relevant finding of the Tribunal reads as follow:-

"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 2738 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 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 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 C/T (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 IT 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, Co chin. 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 2710 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 2738 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 2738 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 assessees are dismissed."

4. In view of the above order of the Tribunal which is identical to the facts of the present case, we hold that the CIT(A) is justified in upholding the order passed u/s 272A(2)(c) of the Income-tax Act. It is ordered accordingly.

5. Insofar as the ground relating to wrong calculation of the period of imposition of penalty, the assessee may file a rectification petition before the concerned Officer and rectify the mistake, if any, in the calculation of the penalty imposed.

6. In the result, the appeal and stay application filed by the assessee are dismissed.

Order pronounced on this 08th day of July, 2019.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 08th July, 2019.
Devdas*

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT, Kochi.
4. CIT(A)-I, Kochi.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin