(1999) 06 KAR CK 0012

In the Karnataka High Court

Case No : Writ Petition No. 37905 of 1998 28 June 1999

IN THE KARNATAKA HIGH COURT V.K. SINGHAL, J.

Date of Decision : 28-06-1999

Acts Referred:
Income Tax Act, 1961 — Section 133 (6)

Citation : (2000) 158 CTR 181

Hon'ble Judges : V.K. Singhal, J

Bench : Division Bench

Advocate : S. Parthasarathy, for the Assessee, E.R. Indrakumar, for the Revenue, for the Appellant;

Judgement

V.K. Singhal, J.

By letter dated 15-9-1998, the petitioner was required to furnish information u/s 133(6) of the Income Tax Act, 1961 in respect of deposits of Rs. 50,000 and above during the financial year 1997-98 i.e. from 1-4-1997 to 31-3-1998. The information was required to be furnished within one week in respect of the name of the depositors/deposits, complete postal address of the depositor, amount and date of deposit, rate of interest and term of deposit. It was mentioned that the Director of Income Tax (Investigation) desired the information. It is stated by the learned counsel for the petitioner that desiring of information cannot be equated with the approval of the director in a case where no proceedings are pending.

2. Section 133(6) of the Income Tax Act confer the power on the assessing officer, Deputy Commissioner (Appeals), Joint Commissioner and Commissioner (Appeals) to require any person including a banking company or any officer thereof to furnish information in relation to such points or matters or to furnish statement of accounts and affairs verified in the manner specified by the assessing officer, Deputy Commissioner (Appeals), Joint Commissioner or Commissioner (Appeals), giving information in relation to such points or matters as in the opinion of the said authorities will be useful or relevant to any enquiry or proceedings under this Act. The information which is desired could be asked by the assessing officer and the appellate authority and, therefore, has to be in

relation to any enquiry or proceedings under the Act. The word "proceeding" has been interpreted in a number of cases to refer to the pending or existing proceeding on the date of issue of notice. The Bombay High Court in D.B.S. Financial Services Pvt. Ltd. Vs. Smt. M. George, Second Income Tax Officer and others, has also interpreted the word "proceeding" as pending proceedings and not further proceeding. Before exercising the power u/s 133(6) of the Act there must be an existing or pending proceeding.

3. The word "enquiry" which has been used in the section, however, has to be in a different connotation and enquiry could be during the pendency of the proceedings or may be even prior to that for the purpose of initiating the proceedings under the Act.

4. If the enquiry is pending and during the pendency of the enquiry proceedings information is sought, then the power u/s 133(6) could be exercised. If proceeding is not pending power in respect of an enquiry could be exercised by virtue of the second proviso of section 133(6). That enquiry could be even in a case where no proceedings are pending. It has not come on record that the Commissioner or Director has given the approval in the present case. From the notice issued it is not evident that any proceeding under the Act were pending or for the purpose of the enquiry the approval of the Commissioner or Director were taken.

5. In these circumstances, the notice issued is quashed. The respondent would be free to issue notice after taking approval from the Director or the Commissioner as the case may be.

