(2002) 12 KL CK 0030

In the High Court Of Kerala

Case No : O.P. No''s. 30572, 30610, 34061, 34275, 34774, 34775, 34776, 34891, 34892, 35300, 35505, 35506, 35507, 35511, 35535, 35536, 35884, 37258, 37845, 38460, 38618, 38786, 38805, 38845 of 2002

M.V. Rajendran APPELLANT

Vs

Income Tax Officer and Another RESPONDENT

Date of Decision : 24-12-2002

Acts Referred:
Income Tax Act, 1961 — Section 133, 133(6), 2(31), 269SS, 80P

Citation : (2003) 180 CTR 369 : (2003) 260 ITR 442

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : P.N. Mohanan, for the Appellant; P.K.R. Menon and George K. George, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The petitioners in all these original petitions are either co-operative societies or co-operative banks registered under the Kerala Co-operative Societies Act engaged in advancing loans to its members. Even though the societies are constituted to serve to various categories of people such as farmers, employees in companies, small traders, etc., their activities are essentially the same, i.e., advancing loans to its members and accepting deposits from members and public. These co-operative banks and societies are challenging the validity of notices issued to each of them u/s 133(6) of the Income Tax Act by various authorities under the Act. A specimen of the notices issued to the petitioner in O. P. No. 35300 of 2002, is extracted hereunder :

"In connection with the Income Tax investigation in your case, you are requested to appear and furnish the following information in writing on November 22, 2002, at 11 a.m.

1. Whether you are assessed to Income Tax ? If assessed, your permanent account number and designation of the Assessing Officer, (please furnish a copy

of acknowledgment for filing the return of income for the latest assessment year for which return has been filed).

2. Details of your income from different sources during the last four years ended on March 31, 1999, March 31, 2000, March 31, 2001 and March 31, 2002. (please furnish copies of the trading and profit and loss account and balance-sheets for the above years if books of account have been maintained.)

3. Details of immovable properties owned by you with date of acquisition.

4. Name of the institutions in which you have made investments with nature and amount of investments.

5. Details of motor vehicles if any owned by you with date of acquisition.

6. Details of assets and liabilities as on March 31, 1999, March 31, 2000, March 31, 2001 and March 31, 2002.

7. List of persons who have made term-recurring deposits of rupees fifty thousand and above as on date along with their complete postal addresses and amounts of deposits.

Please note that split deposits and deposits in the name of the members of the same family should be taken together and reported.

8. Whether you are conducting any chitty business or other similar financial activities ? (please furnish the details).

Please ensure that the information called for is furnished on the date specified above. This information is required u/s 133(6) of the Income Tax Act, 1961, after obtaining necessary approval from the Commissioner of Income Tax (CIB), Cochin. Non-compliance to this notice may entail levy of penalty u/s 272A of the Income Tax Act, 1961."

2. Identical notices as above received by other petitioners in the other original petitions are under challenge. Even though particulars are called for on various transactions of the society and their associates, the main grievance of the petitioners is against Clause (7) of the impugned notice calling for names and addresses and other details of the depositors who have deposits above Rs. 50,000.

3. I heard learned counsel for the petitioners and also learned standing counsel appearing for the respondents. The objection raised by the petitioners in all these cases is essentially against the details of deposits called for under Clause (7) of notices. According to the petitioners, the co-operative sectors enjoys certain privileges under the Income Tax Act such as Income Tax exemption available to them u/s 80P of the Income Tax Act, immunity from deduction of tax on the interest received by them u/s 194A of the Income Tax Act, etc. Therefore, their contention is that Section 133(6) of the Income Tax Act does not authorise issuance of notice to the co-operative societies including co-operative banks. In

short, the impugned notice is without jurisdiction, is their contention. Further, according to them, even if notices are technically permissible the same will go against the spirit of the Act which grants a special status to the co-operative societies and so much so, the notices are an exercise of arbitrary power by the authorities. On the other hand, learned standing counsel for the Department contended that Section 133(6) applies to all persons and by virtue of the wide definition of "person" contained in Section 2(31) of the Income Tax Act the co-operative societies including co-operative banks are liable to be proceeded against u/s 133(6) of the Act.

4. Therefore, according to him, the notices are within the powers of the authorities who issued the same. He contended that the co-operative societies do not enjoy any privilege under the Income Tax Act except the benefits specifically granted to them such as lower rate of tax, exemption from tax to the extent provided u/s 80P, and immunity from deduction of tax at source on certain interest receipts by the societies. In other words, the contention of the respondents is that a society registered under the co-operative societies Act like any other person is subject to the discipline provided under the Income Tax Act including Section 133(6) of the Act.

5. The first question to be examined is whether notice u/s 133(6) of the Income Tax Act can be issued to a co-operative society including a co-operative bank. Section 133 is extracted hereunder :

"133. 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 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 inquiry 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."

6. Section 133 is in the nature of a survey power conferred on various Income Tax authorities. Under Sub-section (6) of Section 133, the Income Tax authorities referred to therein can 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 such officer. Section 2(31) of the Income Tax Act defines "person" as follows :

"(31) ''person'' includes-

(i) an individual ;

(ii) a Hindu undivided family ;

(iii) a company;

(iv) a firm ;

(v) an association of persons or a body of individuals, whether incorporated or not ;

(vi) a local authority ; and

(vii) every artificial juridical person, not falling within any of the preceding sub-clauses.

Explanation.--for the purposes of this clause, an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains ;"

7. The definition clause is inclusive and not exhaustive. After arraying the categories of persons covered by the normal meaning of a term "person" the residuary clause covers every "artificial juridical person" not falling within any of the preceding sub-clauses. This clearly shows that the Act does not propose to exclude anyone or any institution from the scope of the definition of the term "person". A society constituted under the Co-operative Societies Act is an artificial juridical person and so much so it answers the definition of "person" under the definition above referred. Therefore, Section 133(6) squarely applies to a co-operative society as well. Sri M.K. Damodaran, learned counsel appearing for one of the petitioners, has pointed out that the banking companies are specifically included in Section 133(6) and going by the care taken by the Legislature in specifically including banking companies, it has to be assumed that the co-operative societies are specifically excluded from the scope of the definition, "person". I do not think his contention can be accepted. In fact specific inclusion of banking company in Section 133(6) was unnecessary because banking companies otherwise come within the scope of "person" under the residuary category (vii) of the definition clause. Probably, since the enquiry u/s 133(6) will have to be directed against the banks, as banks are the main custodians of public money the Legislature did not want to leave any room for doubt. Therefore, want of specific mention of the co-operative society or co-operative bank in Section 133(6) does not make any difference. The co-operative societies or co-operative banks are not immune from proceedings u/s 133(6) so

far as they come within the definition of "person". Therefore, this argument stands rejected.

8. The next contention raised by the petitioners is that the co-operative societies enjoy exemption from payment of Income Tax u/s 80P and also enjoy immunity from deduction of Income Tax in respect of receipt of interest on their deposits with other institutions. I do not think these two provisions of the Income Tax Act have any relation to Section 133(6). Exemption available u/s 80P and immunity from TDS are mutually complementary and are on certain income of the society. This does not mean that the activities of the society are free from scrutiny by the Income Tax Department. Co-operative society is an assessee under the Income Tax Act and is liable to pay tax except on income covered by Section 80P though at a lower rate provided under the Schedule to the Finance Act. Therefore, every society will have to file its return and the same will be subject to scrutiny by the Department. The Assessing Officer is therefore free to call for books of account to convince himself about the correctness of the return filed. Therefore, books of account of the society and its transactions are subject to scrutiny by the Assessing Officers in the normal course. The petitioners also have no challenge against the impugned notices on such of the aspects called for by the Department pertaining to the activities of the society, its income, expenditure, etc. The objection is only against calling for particulars of depositors by the Department. This is only as part of the survey conducted by the Department to ensure that moneys deposited in the co-operative societies and co-operative banks are accounted by such depositors. The society by itself cannot have any grievance against the notice because the notice does not contemplate any action against the society. Since it is a settled position that the authority empowered to do a thing will have auxiliary and necessary power to achieve the objective, none can have a doubt that the Income Tax authorities whose duty it is to trace tax evaders and to bring them to book and compel them to pay tax can ask for details on deposits. Therefore, a survey or investigation conducted to trace black money is absolutely within the powers of the Income Tax authorities and co-operative societies or banks cannot claim any immunity for hoarding black money. Even though not specifically conceded by the petitioners, their case is that unless societies enjoy immunity from Section 133(6) proceedings and information on deposits and depositors is kept out of reach of the Income Tax Department, they will not get deposits, or the existing depositors will withdraw the deposits leading to liquidity problem for them. I do not think this is a ground to resist a notice u/s 133(6). If co-operative banks and cooperative societies are allowed to maintain deposits beyond the scrutiny of the Income Tax Department, then the societies will become safe havens for hoarding black-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. The Supreme Court of India will upholding Section 269SS of the Income Tax Act in the case of Assistant Director of Inspection Investigation Vs. Kum. A.B.

Shanthi, held as follows (headnote) :

"The object of introducing Section 269SS is to ensure that a taxpayer is not allowed to give false explanation for his unaccounted money, or if he makes some false entries, he shall not escape by giving false explanation for the same. During search and seizure, unaccounted money is unearthed and the taxpayer would usually give the explanation that he had borrowed or received deposits from his relatives or friends and it is easy for the so-called lender also to manipulate his records to suit the plea of the taxpayer. The main object of Section 269SS was to curb this menace of making false entries in the account books and later giving an explanation for the same."

9. The very object of Section 269SS which provides for acceptance and repayment of deposits in excess of limits provided therein only through account payee cheques or demand drafts is to ensure that such transactions do not take place in unaccounted money. In fact proceedings u/s 133(6) are essentially to ensure as to whether there is violation of Section 269SS of the Income Tax Act. If Section 269SS is observed by co-operative societies and cooperative banks which they are bound to observe, then there should be no difficulty for them to furnish the details called for u/s 133(6). Therefore, the notice issued u/s 133(6) is essentially to verify whether there is compliance with Section 269SS by both depositors and acceptors, namely, co-operative societies and co-operative banks, and since Section 269SS is upheld by the Supreme Court in the decision referred to above, I do not think the petitioners can challenge the notice issued calling for details of deposits. It is worthwhile to look into the other provisions of Section 133 which provides for collection of information by the Income Tax Department from firms with regard to the names and addresses of the partners and their shares and from Hindu undivided families with regard to the names and addresses of the manager and the members of the family and requiring any assessee to furnish a statement of the names and addresses of all persons to whom he has paid in any previous year rent, interest, commission, royalty or brokerage or any annuity, not more than one thousand rupees, or such higher amount as may be prescribed, together with particulars of all such payments made and requiring any dealer, broker or agent or any person concerned in the management of a stock or commodity exchange to furnish a statement of the names and addresses of all persons to whom he or the exchange has paid any sum in connection with the transfer, whether by way of sale, exchange or otherwise, of assets, or on whose behalf or from whom he or the exchange has received any such sum, together with particulars of all such payments and receipts. Therefore, the powers u/s 133 are in the nature of survey and a general inquiry to identify persons who are likely to have taxable income and see whether there is compliance by them in regard to payment of tax. Learned counsel for the petitioners contended that the co-operative banks and co-operative societies are only opposing calling for details of the deposits held by them generally. They do not have any objection in giving details of deposits held by any particular person required by the Department. They further contended

that the banking companies including nationalised banks are not called upon to furnish details generally with regard to deposits held by them. Learned standing counsel for the respondents denied this allegation and he has contended that the banking companies including nationalised banks are not immune from any enquiry u/s 133(6). I do not think any banking company including nationalised banks can claim any immunity from proceedings u/s 133(6) of the Income Tax Act and all such institutions are bound to furnish information called for, though general in nature. 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 information in relation to "such points or matters" which the authority issuing notices needs. This clearly shows that 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 banking company including a nationalised bank is entitled to claim any immunity from furnishing such information as contended by the petitioners. Therefore, their allegation of discrimination against them as against immunity alleged to be given to banking companies is non-existent and therefore, this argument also has to be rejected. In 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. However, having regard to the pendency of these original petitions, I grant the petitioners six weeks time to furnish the particulars to the concerned officers. Time for furnishing information called for under the impugned notices in these original petitions are extended by six weeks from today. The original petitions are devoid of any merit and are dismissed.

