(2009) 03 KL CK 0095

In the High Court Of Kerala

Pinarayi Service Co-operative Bank Ltd. and Others — APPELLANT

Vs

ITO and Others — RESPONDENT

Date of Decision : 27-03-2009

Acts Referred:
Income Tax Act, 1961 — Section 120, 133, 272A

Citation : (2009) 03 KL CK 0095

Hon'ble Judges : K.M. Joseph, J

Bench : Single Bench

Judgement

K.M. Joseph, J.—Since common questions -arise in these writ petitions, they are disposed of by a common judgment.

2. I heard Sri K.S. Madhusoodanan, learned Counsel for the petitioners in Writ Petn. (C) No. 9737 of 2009, Sri R. Surendran, learned Counsel appearing for the petitioners in the other writ petitions besides Sri Jose Joseph, learned standing counsel for the IT department.

3. All the petitioners are primary societies. They have been served with notice u/s 133(6) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") calling upon them to provide certain information. Though objections were raised by the petitioners, overruling their objections communications have been issued. Primarily, the officers have placed reliance on two decisions of this Court in the matter. They are the decision of the learned Single Judge in M.V. Rajendran Vs. Income Tax Officer and Another, which is upheld in writ appeal filed by the co-operative societies in Kechery Service Co-operative Bank Ltd. Vs. The Commissioner of Income Tax (C.I.B.), .

4. Sri K.S. Madhusoodanan, learned Counsel for the petitioners would contend that in this case there is no enquiry pending and unless there is an enquiry pending within the meaning of Section 133(6) of the Act, the officer is not competent to call for information as has been done in this case. He purported to draw substance from the decision of the Bombay High Court in D.B.S. Financial

Services Pvt. Ltd. Vs. Smt. M. George, Second Income Tax Officer and others, and also from the decision of the Calcutta High Court in Grindlays Bank Ltd. Vs. Income Tax Officer, Annual Return-II Ors, . Apart from the fact that there is a direct Division Bench decision of this Court on the point, I would think that the matter is squarely covered against the petitioner by virtue of the decision of the apex court in Karnataka Bank Ltd. Vs. Secretary, Government of India and Others, , wherein the apex court inter alia has held as follows:

It Js 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 u/s 133(6) to issue notice, inter alia, requiring banking company to furnish information in respect of such points or matters as may he 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 CIT, as the case may be, has to be obtained. In the instant case, the notice dated 7-7-2000 indicates that it was at the instance of the Director of IT (Inv.) that the information was sought for.

5. Of course, Sri K.S. Madhusoodanan learned Counsel for the petitioners would submit that from the observations in para 3 it is not discernible whether enquiry was pending in that case. He would further rely on the second proviso to Section 133(6) of the Act and contend that while it may be true that power u/s 133(6) may be exercised to call for information in respect of proceeding even when no proceeding is pending in view of the phraseology of the second proviso to Section 133(6) of the Act, unless there is an enquiry" information cannot be called for. I see no merit in the said contention. In the first place, this issue is squarely covered by the dicta laid down by the apex Court. As already noticed, in para 3 of the judgment the apex court has categorically laid down that it is not necessary that enquiry should have commenced before the power could be exercised u/s 133(6) of the Act. What the second proviso provides is that the power u/s 133(6) cannot be exercised in respect of an enquiry in a case where no proceeding is pending unless there is approval of the Director in the case of an IT authority below the rank of Director or CIT. Therefore, it only probabilises the case of the revenue that without an enquiry pending power can be exercised u/s 133(6) of the Act. The only limitation in such case is that when there is no proceeding pending it shall be preceded by the prior approval of the Director or CIT. Learned Counsel for the petitioners pointed out that there is a change in the situation of state of the law as the word ''enquiry'' was added. I see no merit in the contention based on the amended provision which in fact is what was considered by the apex Court.

6. Sri Jose Joseph, learned standing counsel for the department submitted that the matter is squarely covered by the decision of this Court and the officer is clothed with the power u/s 133(6) of the Act with the object of getting at tax

evasion and tackled with the problem of black money prevalent in the economy.

7. Therefore, I see no merit in the contention of Sri K.S. Madhusoodanan, learned Counsel for the petitioners and the Writ Petn. (C) No. 9737 of 2009 is only to be dismissed.

8. Sri R. Surendran, learned Counsel for/the petitioners in the other writ petitions, apart from adopting the contentions of Sri K.S: Madhusoodanan, learned Counsel for the petitioners in Writ Petn. (C) No. 9737 of 2009 would further contend as follows.

Section 133(6) of the Act clothes the assessing officer with power. In all these cases notice is issued by the Income Tax Officer. He refers the definition of the assessing officer and would contend that it may not be correct to say Income Tax Officer has power. He would submit that there is no reference to the approval by the Director in the notices. It is further contended that before the grant of approval by the Director within the meaning of second proviso to Section 133(6) of the Act, particularly having regard to the penalty provided for breach of the notice u/s 133(6) vide Section 272A it is incumbent on the part of the Director to afford an opportunity of hearing to the petitioners. He would further contend that there areweritable practical difficulties in the matter of rendering compliance with Section 133. He submits that the petitioner in Writ Petn. (Civil) No. 9926 of 2009 has no computer and calling upon for providing of information of the nature sought leads to practical difficulties and the software in question is not available. It is to be done manually and it takes time, it is submitted.

9. Sri Jose Joseph, learned standing counsel would refer to the definition of the words ''assessing officer'' and the power u/s 120. The Income Tax Officer though not specifically mentioned in the definition of the assessing officer the power is available u/s 120 of the Act, he points out. Secondly, he would point out that there is no requirement in law that the Director or the CIT should grant approval under the second proviso after opportunity of being heard to the party. He points out that it is only an administrative matter. As far as practical difficulties are concerned it is submitted that mere practical difficulties pleaded cannot be a ground to refuse to comply with the requirement of a legitimate notice issued under the Act.

10. As far as the contention based on there being no reference to the prior approval by the Director, though it is stated that there is no such approval, there is clear reference in the order that permission has been obtained. I feel that there is no right to be heard before the Director takes a decision in the matter. Apparently, it is a safeguard provided for a higher authority being satisfied of the need to proceed to ask for information. The question as to whether the principles of natural justice are to be complied with, it will depend upon the facts of each case. In the matter of exchange of views between two authorities of which one decides to permit assessing officer to proceed to call for information before the Director takes such a view the person from whom information is sought need not

be given any opportunity of being heard, I would think that invoking the principles of natural justice are totally misplaced.

11. There is no challenge to the Act and therefore the issuance of notice is fully supported by the provisions of statute. It is held both by this Court and the apex court that calling for such information is permissible. In such circumstances I feel that there may not be any merit in the writ petitions and therefore, they are liable to be dismissed. But, learned Counsel for the petitioners submit that some time may be granted to comply with the notice. Having considered the facts, the petitioners in all these cases are granted six weeks'' time from today to comply with the directions in the notice.

