

IN THE HIGH COURT OF KARNATAKA, BANGALORE
DATED THIS ON THE 07 TH DAY OF December 2001

PRESENT

THE HON'BLE MR.N.K.JAIN, CHIEF JUSTICE
AND
THE HON'BLE MR. JUSTICE N.KUMAR

WRIT APPEAL Nos. 1295/2001 C/w W.A.Nos.1052-1054/2001,
1296/2001, 1133/2001, 1144/2001, 1145/2001, 1189/2001 & 1885/2001

WRIT APPEAL No.1295 of 2001

BETWEEN

(R) 1 U.G.UPADHYA
GENERAL MANAGER
JANATHA CO OPERATIVE BANK LTD
CAR STREET UDUPI

... APPELLANT

(By Sri:SARANGAN, Sr.Adv. for Sri K M NATARAJ, Advocate)

AND :

1 THE DIRECTOR OF INCOME TAX
QUEENS ROAD
BANGALORE 1

2 THE INCOME TAX OFFICER (CIB)
MANGALORE D.K

... RESPONDENTS

(By Sri:M V SHESHACHALA, Standing Council for
Respondents)

WRIT APPEAL No 1052-1054 OF 2001

BETWEEN

1 ASHOK G BYHATTI,
GENERAL MANAGER
MAHALAKSHMI CO OPERATIVE BANK LTD
BANK ROAD
DHARWAD 580 001

2 S D HATTI,
GENERAL MANAGER
THE HUBLI URBAN CO-OPERATIVE BANK TLD
LAMINGTON ROAD
HUBLI 580 020

3 N M HAVERI
MANAGER
HAVERI URBAN CO-OPERATIVE BANK LTD
MELINPET
HAVERI 581 110

... APPELLANTS
(By Sri: SARANGAN Sr. Adv. for Sri R RAMA MURTHY, Advocate)

AND :

1 THE INCOME TAX OFFICER (CBI) CENTRAL REVENUE
BUILDING ANEXE, NAVANAGAR,
HUBLI

2 THE DIRECTOR OF INCOME TAX (INV)
CENTRAL REVENUE BUILDING,
QUEENS ROAD, BLORE-1

3 UNION OF INDIA
REPRESENTED BY ITS SECRETARY
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE
CENTRAL SECRETARIAT, NEW BLOCK
NEW DELHI 110 001

... RESPONDENTS
(By Sri : M V SHESHACHALA, Standing Council
for R1 & R2)

WRIT APPEAL No 1296 OF 2001

BETWEEN

1 K. P. KARANTH
GENERAL MANAGER,
MAHALAKSHMI CO OPERATIVE BANK LTD
HEAD OFFICE, "SHIVAKRUPA BUILDING"
MARUTHI VEETHIKA
UDUPI-576 101

... APPELLANT
(By Sri: SARANGAN, Sr. Adv. for Sri B L ACHARYA, Advocate)

AND :

1 THE DIRECTOR OF INCOME T (INV)
QUEENS ROAD
BANGALORE-560 001

2 THE INCOME TAX OFFICER (CIB)
MANGALORE (D.K)

... RESPONDENTS
(By Sri: M V SHESHACHALA, Standing Council
for Respondents)

WRIT APPEAL No 1133 OF 2001

BETWEEN

1 M. S. MAHABALESHWARA BHAT
PRESENT CHIEF MANAGER,
MANAGER AND PRINCIPAL OFFICER,
THE KARNATAKA BANK LTD
HAVING ITS REG. AND HEAD OFFICE
AT KODIALBAIL, MANGALORE AND BRANCH
AMONG OTHERS AT KASTURBA ROAD

... APPELLANT

(By Sri: SARANGAN, Sr. Adv. for Sri T S KRISHNA BHAT, Advocate)

AND :

1 THE SECRETARY GOVT OF INDIA
MINISTRY OF FINANCE
(DEPT. OF REVENUE)
CENTRAL BOARD OF DIRECT TAXES
NEW DELHI

2 THE DIRECTOR OF INCOME TAXS (INV)
CR. BUILDING
QUEENS ROAD
BANGALORE-1

3 THE INCOME TAX OFFICER (CIB) II
III FLOOR, C.R. BUILDING
ANNEXE, QUEENS ROAD
BANGALORE-1

... RESPONDENTS

(By Sri: M V SHESHACHALA, Standing Council
for Respondents)

WRIT APPEAL No 1144 OF 2001

BETWEEN

1 PRAKASH S DANDIN, AGE: 44 YRS
S/O SANGAPPA DANDIN.
MANAGER,
GURUSIDDHESWAR CO-OP BANK LTD
2ND FLOOR, MADHURA PLAZA
DAJIBANPETH, P.B. NO. 724
HUBLI 580 028

... APPELLANTS

(By Sri: SARANGAN, Sr. Adv. for Sri PARTHASARATHI, Advocate)

AND :

1 THE INCOME TAX OFFICER (CIB)
CENTRAL REVENUE BUILDING ANNEXE
NAVANAGAR
HUBLI

2 THE DIRECTOR OF INCOME TAX
(INV), CENTRAL REVENUE BUILDING
QUEENS ROAD, BANGALORE-1

3 UNION OF INDIA
REP. BY ITS SECRETARY
MINISTRY OF FINANCE
DEPT. OF REVENUE, CENTRAL SECRETARIAT
NORTH BLOCK, NEW DELHI 110 001

... RESPONDENTS

(By Sri: M V SHESHACHALA, S C for Respondents)

WRIT APPEAL No 1145 OF 2001

BETWEEN

1 SRI K. RAMANANDA SHENOY
AGED ABOUT 56 YEARS.
S/O SRI K. VENKATESH SHENOY,
CHAIRMAN, M/S MANIPAL CO OPERATIVE
BANK LTD, UDUPI TQ, D.K. DIST.,

... APPELLANT

(By Sri: SARANGAN, Sr. Adv. for Sri S. PARTHASARATHI, Advocate)

AND :

1 THE INCOME TAX OFFICER (CIB)
CENTRAL REVENUE
BUILDING, 1ST FLOOR, ATTAVAR
MANGALORE 575 003

2 THE DIRECTOR OF INCOME TAX (INV)
CENTRAL REVENUE BUILDING,
QUEENS ROAD, BLORE-560001

3 UNION OF INDIA
REPTD BY ITS SECRETARY
MINISTRY OF FINANCE, DEPT. OF REVENUE,
CENTRAL SECRETARIAT
NORTH BLOCK, NEW DELHI 110 001

... RESPONDENTS

(By Sri: M V SHESHACHALA, S.C. for R1 & R2)

WRIT APPEAL No 1189 OF 2001

BETWEEN

1. I RAGHURAMA RAO,
57 YRS, S/O PUTTANNAYA P
MANAGING DIRECTOR,
SOUTH CANARA DISTRICT CENTRAL COOPERATIVE BANK LTD
POST BOX NO 721, SADSHIVA SAHAKARA
SADANA, KODAILBAIL, MANGALORE,

... APPELLANT

(By Sri: SARANGAN, Sr. Adv. for Sri S PARTHASARATHI, Advocate)

AND :

1 THE INCOME TAX OFFICER
CIB, CENTRAL REVENUE BUILDING
I FLOR, ATTAVAR, MANGALORE

2 THE DIRECTOR OF INCOME TAX
INV CENTRAL REVENUE BLDG
QUEENS ROAD, BANGALORE

3 UNION OF INDIA
REP BY ITS SEC
CMINISTRY OF REVENUE
DEPARTMENT OF REVENUE
CENTRAL SECRETARIATE
NORTH BLOCK, NEW DELHI

... RESPONDENTS

(By Sri:M V SHESHACHALA, S.C. for R1 & R2)

WRIT APPEAL No 1885 OF 2001

BETWEEN

1 GENERAL MANAGER,
TEACHERS' CO-OP BANK LTD
DR.U.R.RAO COMMERCIAL COMPLEX
THENKPET, UDUPI TQ, UDUPI
DAKSHINA KANNADA DIST., 576 101

... APPELLANT

(By Sri:SARANGAN, Sr.Adv. for
Sri P T HEBBAR, Advocate)

AND :

1 THE DIRECTOR OF INCOME TAX (INV)
CENTRAL REVENUE BLDG.,
QUEENSROAD
BANGALORE-1

2 THE INCOME TAX OFFICER (CIB)
MANGALORE,
SOUTH CANARA DIST.

3 UNION OF INDIA
I T DEPT, NEW DELHI

... RESPONDENTS

(By Sri:M V SHESHACHALA, Standing Council
for R1 & R2)

Writ Appeal No.1295/2001 is filed under section 4 of the Karnataka High Court Act praying to set aside the order passed in the W.P.No.43800/99 dated 4.1.2001.

W.A.No.1052-1054/2001 are filed under section 4 of the Karnataka High Court Act praying to set aside the order passed in W.P.No.5262-64 dated 4.1.2001.

W.A.No.1296/2001 is filed under section 4 of the Karnataka High Court Act praying to set aside the order passed in the W.P.No.43792/99 dated 4.1.2001.

W.A.No.1133/2001 is filed under Section 4 of the Karnataka High Court Act praying to set aside the order passed in W.P.No.36445/2000 dated 4.1.2001.

W.A.No.1144/2001 is filed under section 4 of the Karnataka High Court Act praying to set aside the order passed in W.P.No.5239/2000 dated 4.1.2001.

W.A.No.1145/2001 is filed under section 4 of the Karnataka High Court Act praying to set aside the order passed in W.P.No.43780/1999 dated 4.1.2001.

W.A.No.1189/2001 is filed under section 4 of the Karnataka High Court Act praying to set aside the order passed in W.P.No.42764/1999 dated 4.1.2001.

W.A.No.1885/2001 is filed under section 4 of the Karnataka High Court Act praying to set aside the order passed in W.P.No.43290/1999 dated 4.1.2001.

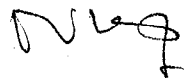
This Appeals having been heard and Reserved for Judgement, on this day the CHIEF JUSTICE pronounced the following :-

J U D G E M E N T

JUDGMENT

These Writ Appeals are directed against the common order of the learned single Judge, passed in Writ Petition No.36445/2000 and connected matters, dated 4th January, 2001.

2. In Writ Appeal No.1133/2001 the Respondents have issued a notice dated 7.7.2000 produced as Annexure-A calling upon the Appellant to furnish the information regarding repayment of loans for the period from 1.4.1997 to 31.3.2000 of all the customers of the bank as mentioned in the said notice. In all other Writ Appeals Respondents have issued notice to the Appellants bank to furnish information for the period from 1.4.1998 to 31.3.1999 in respect of the term depositors who have held cumulative balance of Rs.50,000/- and above during the said period in the proforma mentioned in the said notice. It is stated in the said notice that such enquiry is necessary for widening the tax base and unearthing black money and initiate proceedings in such cases. The aforesaid notices are issued under Section 136(6) of the Income Tax Act, 1961 (for short the 'Act').



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3. The learned single Judge considering the rival contentions , the arguments and the decisions of this Court in Controllerate of Quality Assurance Electronics (COAL) Campus Employees Credit Co-operative Society Ltd. Vs. The Income-tax Officer (CIB) III , Writ Petition No. 38360/1999, decided on 3rd November, 1999 and South Canara District Central Co-operative Bank Ltd., vs. The Income Tax Officer (W.P.No. 37905/1998) and also the decision of the Bombay High Court in D.B.S. Financial Services Pvt. Ltd. vs. Smt. M. George, [207 ITR 1077 (Bombay)], has not interfered with the issuance of notice and dismissed the Writ Petitions.

4. In W.A.No. 1144 of 2001 Annexure-A notice dated 16.11.1999 was issued asking to furnish information for the period from 1.4.1998 to 31.3.1999. In Writ Appeal Nos. 1145/01 and 1189/01 Annexure-A notices dated 4th October, 1999 were issued asking to furnish the information for the same period. So also notices were issued to 4 other respective assessee banks in four other Writ Appeals as stated.

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5. Since the controversy and points involved are identical in nature, they can be disposed of by a common order as agreed.

6. The main contention of the learned Counsel for the Appellant is that notice is not issued as per the requirement of Section 133(6) of the Act and it cannot be used to collect information unless there is an enquiry pending and therefore issuance of notice is illegal and the learned single Judge has erred in not setting aside the same. The other argument is that in the absence of any specific amount regarding repayment of loan and relevant requirement shown, the Respondents are not entitled to seek for information, if the deposit relates to Rs.50,000/- or more. The learned Counsel also submits that various safeguards have been made in the Act itself and in view of Section 139 A and Rules 114 B and C, the assessee has to comply with and for non-compliance the Department can initiate enquiry as per law and therefore issuance of notice is bad. The learned single Judge wrongly relied on the earlier

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decision in South Canara District Central Co-operative Bank and has not considered properly the decisions of the Bombay High Court in D.B.S.Financial Services Pvt.Ltd. and Calcutta HighCourt in Director of Income-Tax(Exemption) (supra).

7. The learned Advocate for the Income Tax submits that in South Canara District Central Co-operative Bank's case the power to issue notice was accepted, but the point raised is as to the mode of exercise of that power, which was disapproved by this Court and it was held that if proceedings are not pending, the Assessing Officer should obtain a prior approval of the Commissioner or the Director of Income Tax as at that time no prior approval was obtained. He further submits that with a view to find out the black money and to tackle the evasion of tax effectively necessary amendment on 1.7.1995 was made and accordingly the authorities have been empowered to collect information which will be useful or relevant to any enquiry or proceeding under the Act in case of any person. He also submitted that in South



Canara District Central Co-operative Bank's case, this point was considered, but the Writ Petition was allowed on the ground that prior approval of the Director of Income Tax had not been obtained and now necessary approval has been taken and notice has been issued. Therefore, the Appellant cannot agitate the same issue and is not entitled for any relief. He also submitted that the cases relied on, that is, D.B.S. Financial Services Pvt. Ltd. and Director of Income-Tax (Exemption) (supra) are prior to the Amendment and in those cases no permission was taken. He also submitted that in Calcutta case there is a mention about the Amended Act, but since no permission was accorded, the issuance of notice was set aside and that case will not be helpful and the learned single Judge has rightly distinguished those cases and not interfered in the Writ Petitions. The learned Counsel for the Income Tax further submits that the impugned notice issued is in accordance with law and as per Section 133(6) of the Act and this Court in Writ Petition No.38360/99 disposed of on 3.11.1999 has considered the same issue and held that the authorities have the power to seek such

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information under section 13(6) of the Act. The same was affirmed by the Division Bench in Writ Appeal No.8043/99 by order dated 7.12.1999. Therefore the notice issued is within jurisdiction and not in violation of any law.

8. In rejoinder, the learned senior Counsel argued that the point pending enquiry is a pre-condition was not agitated in earlier cases and therefore the Department cannot take advantage and the Bank cannot be stopped to argue its case on that basis.

9. We have heard the learned counsel for the parties and perused the material on record and the case laws.

10. Before considering the controversy that enquiry must be pending before issuance of notice, for appreciation it will be appropriate to consider Section 133 which gives power to call for information. As per Section 133(6) the Assessing Officer, the Deputy Commissioner (Appeals), the Joint Commissioner or the commissioner (Appeals)



may, for the purposes of the Act may 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), 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 enquiry or proceeding under the Act.

11. A perusal of the above Section will reveal that the concerned Authority mentioned in the Section can ask any person including a banking company 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 Authorities mentioned in the said Section and giving information in relation to such points or matters as in the opinion of the concerned Authority will be useful or relevant to any enquiry or proceeding.

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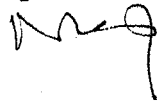
In the aforesaid Section, the word enquiry has been inserted by the Finance Act of 1995 with effect from 1.7.1995. Prior to the amendment when similar notices were issued calling for information without any proceeding pending under the Act, in the aforesaid decisions of the Bombay and Calcutta High Court it was held that the requirement of Section 133(6) of the Act were not satisfied and in the absence of any pending enquiry such information could not be sought for. However, after the amendment by inseration of the word "enquiry" in Section 133(6) of the Act, a second proviso was also inserted which provides that in respect of an enquiry, in a case where no proceeding is pending, the power 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. Therefore, even after the amendment in the absence of prior approval no such information could be called for in the absence of any pending enquiry. In fact that is the view taken by this Court in the South Canara District Central Co-operative Bank's case. However, if

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such prior approval is obtained, the power to call for information could be legitimately exercised by the Officers mentioned in the said Section. In that view of the matter the notices which are impugned in these proceedings are valid and legal as prior approval as contemplated in second proviso to Section 133(6) is obtained before issuing of such notices.

12. The next contention of the learned counsel for the Appellant was that the second proviso to Section 133(6) could be exercised only in respect of "an enquiry" and in "a case" and therefore a roving enquiry of general nature cannot be made as such the impugned notices are bad and the respondents have no power to make such roving enquiry.

This argument proceeds on the assumption the enquiry means a specific case against an assessee. The word enquiry has been defined in the Chambers 20th Dictionary as "to ask a question; to make an investigation; eager to acquire information; to ask, to seek, to make an examination". Therefore, as is clear from the Section itself the whole object of issuing such notice is to collect



information which is useful for or relevant to an enquiry for widening the tax base and to unearth black money and to initiate proceedings in such cases. Therefore, only on the basis of information collected and after examination if the authorities find evasion of tax or accumulation of unaccounted money they could initiate proceedings. Therefore, the said enquiry has to be necessarily prior to initiation of any proceedings. Secondly, a case referred to in second proviso does not mean a case pending in respect of a customer of the bank. A case referred to applies to the assessee namely the bank to whom the notice is issued. In the instant case the authorities are seeking information from the Bank and as per the requirement of law they are seeking information from a particular assessee. The assessee may have several customers and therefore the interpretation suggested by the learned counsel for the appellant is not tenable. So far as the cardinal law of interpretation is concerned, if the language is simple and unambiguous, it has to be read with clear intention of the legislature. Otherwise also, any addition/subtraction of word from the

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statute is not permissible and one has to read as a whole while interpreting and the intention and object of the legislation has to be looked upon. It is settled that words of common parlance have to be considered. Though each case depends upon the facts of its own, as stated and discussed the amendment is clear that prior approval is necessary before proceeding with the enquiry, meaning thereby the authorities can seek information or collect information with a view to make enquiry and it is not necessary that some enquiry should be pending as suggested. To our mind the argument is not acceptable that the word 'enquiry' should be read as 'pending enquiry' and unless there is some pending enquiry the authorities cannot invoke Section 133(6). As already discussed, a perusal of the Act reveals that any information which is useful can be called for. So according to us enquiry includes collection of information before proceeding with an enquiry. As the Bombay High Court and Calcutta High Court cases were prior to the amendment and no permission was taken, the argument that even the Calcutta High Court has observed the amendment

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made is not helpful. In the present case now prior approval has been taken. The argument of the learned counsel that enquiry must be pending is also not tenable on this ground also that as per the proviso to the amendment, prior permission of the Commissioner is necessary. Then once he gives permission it should be for collecting information before initiating proceedings, if necessary.

13. From the aforesaid it is clear that the impugned notices were issued by the Respondents in exercise of their power under Section 133(6) of the Act. As no proceedings were pending against the assessee to whom the notice is issued they have taken the prior approval as required in second proviso to Section 133(6) of the Act.

14. In view of the above discussion, we do not want to take a different view from the view taken earlier by this Court referred to above. We find no error or illegality in the order of the learned single Judge so as to call for any interference. Accordingly the writ appeals are dismissed.

Sd/-
Chief Justice

Sd/-JUDGE