

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH (SMC)
COCHIN
BEFORE SHRI GEORGE GEORGE K. JUDICIAL MEMBER

I.T.A. No.473 /Coch/2015
Assessment Years : 2011-12 to 2013-14)

M/s. Kakoor Service Co-operative Bank Ltd., No. 163, H.O. Kakoor P.O. Ernakulam-686 662. [PAN: AAAAS 4010R]	Vs.	The Joint Director of Income Tax (Intelligence), Kochi.
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I.T.A. No.243/Coch/2013
Assessment Year : 2013-14

M/s. Panangad Service Co-op Bank Ltd., No.655, Panangad P.O. Ernakulam. [PAN: AACAP 5632Q]	Vs.	The Joint Director of Income Tax (Intelligence), Kochi.
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I.T.A. No.544/Coch/2015
A.Y: 2011-12 to 2013-14

M/s. Muhamma Service Co-op Bank Ltd.,No.1670, Muhamma P.O., Alapupuzha. [PAN:AACAM 1602K]	Vs.	The Joint Director of Income Tax (I&CI), Kochi.
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I.T.A. No.190/Coch/2016
A.Ys : 2011-12 to 2013-14

M/s. Udayamperoor Service Co-op Bank Ltd., No. 747 PO & HO, Udayamperoor, Kochi-682 307. [PAN:AAAAU 5008M]	Vs.	The Joint Director of Income Tax (Intelligence), Kochi.
(Appellant)		(Respondent)

I.T.A. No.126/Coch/2017
Assessment Years : 2011-12 to 2013-14

M/s. Puthucode Service Co-op Bank Ltd., Puthucode Post, Palakkad-678 687. [PAN:AAAAP 9295K]	Vs.	The Joint Director of Income Tax (I&CI), Kochi.
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I.T.A. No.158/Coch/2017
Assessment Years : 2011-12 to 2013-14

M/s. Elavally Service Co-op Bank Ltd., No. F-1456, Vaka P.O., Mattam, Thrissur-680 602. [PAN:AAAAE 3099E]]	Vs.	The Ad. DIT(I&CI), Kochi.
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I.T.A. No.153/Coch/2017
Assessment Years : 2011-12 to 2013-14

M/s. Vallapuzha Service Co-op Bank Ltd., No. 19 F-1207, Nellaya P.O., Palakkad-679 335. [TAN:CHNV 00238A]	Vs.	The Ad. DIT(I&CI), Kochi.
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I.T.A. No.146/Coch/2017
Assessment Years : 2011-12 to 2013-14

M/s. Orumanayur Service Co-op Bank Ltd., No.F-1456, Orumnaayur P.O., Thrissur. [PAN:AABAT 5892M]	Vs.	The Addl. DIT(I&CI), Kochi.
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I.T.A. No.194/Coch/2017
Assessment Years : 2011-12 to 2013-14

M/s. Athanavad Service Co-operative Bank Limited, No.D 1933, Karippol P.O., Malapurram-676 552 [PAN:AADAA 0159N]	Vs.	The Addl. DIT(Intelligence), Kochi.
(Appellant)		(Respondent)

I.T.A. No.159/Coch/2017
Assessment Years : 2011-12 to 2013-14

M/s. Mullassery Service Co-operative Bank Ltd., No.R 280, Mullassery P.O., Thrissur-680 509. [PAN:AABAM 2150P]	Vs.	The Addl. DIT(I&CI), Kochi.
(Appellant)		(Respondent)

I.T.A. No.197/Coch/2017
Assessment Years : 2011-12 to 2013-14

M/s. Purathur Service Co-operative Bank Ltd., No. M 729, Purathur P.O., Malappuram-676 102. [PAN:AABAP 7965M]	Vs.	The Addl. DIT(Intelligence), Kochi.
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I.T.A. No.196/Coch/2017
Assessment Years : 2011-12 to 2013-14

M/s. Triprangode Service Co-operative Bank Ltd., No. 1890, Triprangode P.O., Malappuram. [PAN:AADAT 4532A]	Vs.	The Addl. DIT(I&CI), Kochi.
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I.T.A. No.195/Coch/2017
Assessment Years : 2011-12 to 2013-14

M/s. Tirunnavaya Service Co-operative Bank Ltd. No. D 1910, Tirunnaya P.O., Malappuram-676 301. [PAN:AADAT 4559P]	Vs.	The Addl. DIT(I&CI), Kochi.
(Appellant)		(Respondent)

I.T.A. No.152/Coch/2017		
Assessment Years : 2011-12 to 2013-14		
M/s. Chavakkad Service Co-operative Bank Ltd., No. F.9991, Beach Road P.O., Chavakkad, Thrissur-680506. [PAN :AAAAC 5942N]	Vs.	The Addl. DIT(I&CI), Kochi.
(Appellant)		(Respondent)

I.T.A. No.204/Coch/2017
Assessment Years : 2011-12 to 2013-14

M/s.Kurumbathur Service Co-operative Bank Ltd., No.F 1769, Punnathala P.O., Malappuram-676552. [PAN:AACAK 0969K]	Vs.	The Addl. DIT(Intelligence), Kochi.
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I.T.A. No. 206/Coch/2017
Assessment Years : 2011-12 to 2013-14

M/s. Kalpakanchery Service Co-operative Bank Limited, No. 1808, Kalpakanchery P.O., Malappuram-676 551.. [PAN:AADAT 6652K]]	Vs.	The Addl. DIT(Intelligence), Kochi.
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I.T.A. No.200/Coch/2017
Assessment Years : 2011-12 to 2013-14

M/s. Edarikode Service Co-operative Bank Ltd., No.F 10739, Edarikode P.O., Malappuram District. [PAN:AAAAE 4866B]	Vs.	The Addl. DIT(Intelligence), Kochi.
(Appellant)		(Respondent)

I.T.A. No.198/Coch/2017
Assessment Years : 2011-12 to 2013-14

M/s. Ananthavoor Service Co-operative Bank Limited, No. F 1545, Anathavoor P.O., Malappuram-676 301. [PAN:AADAA 0368F]	Vs.	The Addl. DIT(Intelligence), Kochi.
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I.T.A. No.202/Coch/2017
Assessment Years : 2011-12 to 2013-14

M/s. Marakkara Service Co-operative Bank Ltd., No.F 10738, Randathani P.O., Malappuram-676 510. [PAN:AADAT 9548E]	Vs.	The Addl. DIT(Intelligence), Kochi.
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I.T.A. No.201/Coch/2017
Assessment Years : 2011-12 to 2013-14

M/s. Ariyallur Service Co-operative Bank Limited, No. F-7730, Ariyallur Post, Malappuram. [PAN:AACAA 3521H]	Vs.	The Addl. DIT(Intelligence), Kochi.
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I.T.A. No.217/Coch/2017
Assessment Years : 2011-12 to 2013-14

M/s. Edathala Service Co-operative Bank Limited, No. 3430, Edathala P.O., Alwaye Ernakulam-683 564. [PAN:AAALE 0043P]	Vs.	The Joint Director of Income Tax (Intelligence), Kochi.
(Appellant)		(Respondent)

Assessee by	Shri Shri Jojo C.A., Adv.
Revenue by	Shri A. Dhanaraj, Sr. DR

Date of hearing	17/08/2017
Date of pronouncement	23/08/2017

ORDER

Per GEORGE GEORGE K., JUDICIAL MEMBER:

These 21 appeals filed by different assessee's are directed against various orders of the CIT(A)-III, Kochi for different assessment years.

2. Since common issues and identical arguments were raised in all these appeals, they were heard together and are being disposed of by this consolidated order for the sake of convenience and brevity.

3. Identical grounds are raised in all these appeal and they read as follows:

1. *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 (Intelligence) is an authority to call for information u/s. 133(6) of Income tax Act without appreciating the fact that power to call for information u/s. 133(6) is vested on the Assessing Officer, the Deputy Commissioner(Appeals), the Joint Commissioner or the Commissioner(Appeals) and therefore the Income Tax Officer (Intelligence) is not an authority to invoke provision under the said section.*
2. *The Commissioner of Income-tax(Appeals) ought to have seen that the information u/s. 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 (Intelligence), Kochi.*
3. *The Commissioner of Income-tax(Appeals) ought to have seen that the information called for u/s. 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./Joint Commissioner and the Commissioner(Appeals) may, u/s. 133 call for certain information relevant for any proceedings under the Act*

4. *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 u/s. 133(6) and that there was no mention in the notice issued by Income Tax Officer (Intelligence) about any such "enquiry" under the Income Tax Act 1961.*
5. *The Commissioner of Income-tax(Appeals) ought to have seen that the imposition of penalty is time barred u/s. 275(1)(c) of The Income Tax Act 1961 in as much as the proceedings for imposition of penalty was initiated on 12-08-14, the date of notice issued by the Income Tax Officer (Intelligence), Kochi for the initiation of such proceedings.*
6. *The Appellant prays that the penalty of Rs.11,400/- imposed by the Joint Director of Income Tax(Intelligence), Kochi in respect of non-furnishing of information called for u/s. 133(6) by the Income Tax Officer(Intelligence), Kochi be deleted.*
7. *The Appellant craves leave to add, amend, alter vary and/or withdraw any or all the above grounds of Appeal.*

4. It was submitted by both the sides that the appeal in I.T.A. No. 473/Coch/2015 concerning M/s Kakoor Service Cooperative Bank Ltd., may be taken up for adjudication first and the decision rendered therein would have application in other appeals as well.

5. The facts in relation to I.T.A. No. 473/Coch/2015 are as follows:

The assessee is a Primary Agricultural Co-operative Society. The Income Tax Officer(Intelligence), Kochi issued notice u/s. 133(6) of the I.T. Act vide letter dated 10/09/2013 to the Secretary of the assessee-Society wherein following information was sought for.

Sl. No.	Information Required
1	Details of depositors of cash exceeding Rs. 5 Lakhs during the F.Y. 2010-11, 2011-12 & 2012-13. (Information regarding cash deposits in SB account where the aggregate of cash deposits is Rs. 5 Lakhs or above for the concerned years. While furnishing the information, all the cash transaction in the account are to be reflected date wise and not merely the aggregate amount.
2.	Details of the payment of interest exceeding Rs.10,000/- made to the depositors including interest on Fixed deposits.

The above information was not furnished to the Department. Therefore, the Joint Director of Income Tax (Intelligence), Kochi initiated penalty proceedings u/s. 272A(2)(c) of the Act. Though the Secretary of the assessee-Society appeared before the officer, in the course of penalty proceedings, assessee did not furnish the required information. Therefore, the Joint Director of Income Tax(Intelligence), Kochi imposed penalty of Rs.11,400/- u/s. 274 r.w.s. 272A(2)(c) of the I.T. Act for non furnishing of information u/s. 133(6) for the financial years 2010-11 to 2012-13.

6. Aggrieved by the order of the penalty u/s. 274 r.w.s.272(2)(c) of the Act, the assessee preferred an appeal before the first appellate authority. It was contended that the ITO(Intelligence) does not have the powers to issue the notice u/s. 133(6) of the I.T. Act. Further it was contended that the order imposing penalty is barred by limitation. The CIT(A) rejected both the contentions raised by the assessee and dismissed the appeal of the assessee. The CIT(A) placed reliance on the judgment of the Hon'ble Apex Court in the

case of Kathiroom Service Co-operative Bank Ltd. and others vs. Commissioner of Income Tax and others (2013) 360 ITR 243 and held that the ITO(Intelligence) has the authority under the Income Tax Act to issue notice u/s. 133(6) of the Act. The CIT(A) also rejected the assessee's other contention that the penalty order is barred by limitation.

7. Aggrieved by the order of the CIT(A), the assessee has preferred the present appeal before the Tribunal. The Ld. Counsel for the assessee, Shri Jojo, Adv. has filed written submission which reads as follows:-

"It is most respectfully submitted that penalty proceedings was initiated on the basis of notices issued by none of the authorities mentioned in Section 133(6) of the Income Tax Act, 1961. Income Tax Officer (Intelligence) who issued the notices does not belong to any of the authorities mentioned in the said Section. As per the Act specific power is issued in the section to the officers who are 1) Assessing Officer 2) The Deputy Commissioner (Appeals) 3) The Joint Commissioner or Commissioner(Appeals) 4) Director General 5) Chief Commissioner and 6) The Director. There are other nomenclature officers similar or above the said authorities but they do not have the power u/s. 133(6). But the Notification NO. 77/2014 [F. NO. 187/37/2014(I.T.A. I)/SO 3125(E), DATED 10-12-2014 of CBDT authorizes the Director (I&CI) Kochi to delegate and issue orders in writing to the income-tax authorities subordinate to them for the exercise of such powers and functions mentioned in Section 133(6). This notification dated 10.12.2014 has no retrospective effect and therefore the notices issued by any ITO(Intelligence) before the Notification is without any authority. In the present case of the appellant the notice issued by ITO(Intelligence) is on 10.09.2012, therefore without any authority as mandated by the Act. Hence the proceedings itself is void abinitio.

2. By the Finance Act of 1987 (1998 amendment) the word income Tax Officer" was replaced by the "Assessing Officer". The implications of this amendment were: a) Before the 1988 amendment any Income Tax Officer had power u/s. 13(6) to call for information. After the amendment "an Income Tax Officer who is also an Assessing Officer" only has the power u/s. 133(6). The Income Tax Officer(Intelligence) is not an Assessing Officer or Jurisdictional Assessing Officer

of the appellant. So the notice issued by the Income Tax Officer(Intelligence) u/s. 133(6) is without power and not valid.

3. A mere approval or permission of the Director of Income Tax to the Income Tax Officer(Intelligence) is not an authorization. As per S.120 there should be a delegation of power on the direction of the CBDT dated 10.12.2014 from the Superior Officer to the Sub-ordinate Officer. The Income Tax Officer(Intelligence) got the delegated power as per the CBDT direction on 10.12.2014. But the penalty order was issued by the Income Tax Officer(Intelligence) on 19.09.2014 before the delegation of Power. So the penalty order would not sustain

4. It is most respectfully submitted that penalty proceedings was initiated on the basis of notices issued by none of the authorities mentioned in Section 133(6) of the Income Tax Act 1961. **Whether there is an authorization to Act and issue notice by Income Tax Officer(Intelligence) u/s. 2(7) a read with S.120?** Here the Income Tax Officer(Intelligence) who issued the notices does not belong to any of the authorities mentioned in the Section. We reproduce the observation made by Hon'ble Apex Court in the judgment Kathiroom Service Co-operative Bank Ltd. and others vs. Commissioner of Income Tax and others [(2013) 263 CTR (SC) 129] below:

"In 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/-". [Emphasis supplied]. So it is clear that the Hon'ble Apex Court has find that the power to call for information u/s. 133(6) is vested with "Assessing Authority" and not anybody else. **Approval of Commissioner/Director for conducting "inquiry " under Section 133(6) does not give the Income Tax Officer(Intelligence) power of an Assessing Officer u/s. 2(7)(A) and cannot be construed as an authorization under Sub section (2) of Section 120.** No where the authorization letter is produced.

5. We submit that "inquiry" and "enquiry" have different meaning in the Income Tax Act 1961 and refers to different contexts and therefore the information for the purpose of the Act which is useful for or relevant to any "enquiry" under the Act only shall be called for u/s. 133(6). Here the onus is for the Income Tax Officer to prove that the information called for is for the specific purpose of an inquiry under this Act. The Courts and Authorities which upheld the notices u/s. 133(6) had no occasion to consider this aspect. The present "inquiry" u/s. 133(6) has no nexus with any **"enquiry under the Act"** and therefore is bad in law. Hon'ble Supreme Court in **Union of India (UOI) and Ors. Vs. Gopal Das Gupta** reported in [1987] 167 ITR 39 (SC) has clearly differentiated the scope of "enquiry" in its ordinary parlance and "enquiry under the Act".

6. **There was no formation of opinion.** Under Section 133(6) 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 only shall be called for. Therefore **opinion** of anyone of the officers mentioned above on the usefulness or relevance of the information sought for, is a prerequisite to invoke power u/s. 133(6). Such **opinion**, as observed by Hon'ble Supreme Court in several other contexts cannot be mere whims and fancies of the officer who exercises the power. We most respectfully submit that the notices issued u/s. 133(6) by the Income tax Officer(Intelligence), was not in order in the absence of such **formation of opinion**.

7. **There was no mention of the purpose or usefulness or relevance** of the information sought for, expressly or implied, at any stage of the proceedings and therefore the inquiry was against the provision of Section 133(6). As observed by Hon'ble High Court of Bombay in **G.M. Breweries Ltd. & Another vs. Union of India & Others on 24 August, 1999 Equivalent citations: 2000 (2) Bom CR 160, (2000) 2 BOMLR 308**, "the expression "for the purpose of the Act" must mean for the purposes of proceedings under the Act pending before the concerned authority" . Hon'ble Supreme Court in the case of Kathiroom Service Co-operative Bank (supra) has also made this point clear in the following words: "The word "enquiry" would thus connote a request for information or questions to gather information either before the initiation of proceedings or during the pendency of proceedings; such information being **useful for or relevant to the proceeding under the Act.**" We believe that the onus to substantiate the usefulness or relevance under the Act is on the Officer who called for the details.

8. The penalty was imposed after a lapse of 6 months from the date of issue of notice by the Income Tax Officer (Intelligence) giving warning of penalty and therefore order of penalty is time barred. We rely on judgment of **Hon'ble High Court of Rajasthan in Commissioner of Income Tax, Udaypur vs. Shri Jithendra Singh Rathore on 10-01-2013.**

9. Penalty was imposed without considering and answering our averments filed before the Joint Director (I&IC) by a speaking order.

10. It is submitted that several litigations were going on between the Co-operative Societies and the Income Tax Department challenging the validity of notices issued under section 133(6) and we were under bona fide belief that the issue was yet to be resolved. We understand that the dispute is still under consideration of the Division Bench of Hon'ble High Court and remains Res

Integra. Failure to furnish the information is not intentional as the subject matter is under judicial review. Therefore, the order of penalty u/s. 272(A)(c) is to be kept in abeyance till the decision come from the Hon'ble High Court.

11. The information is sought for curbing Money laundering. The question is that whether there is any provision to assess black money under the Act."

7.1 The Ld. DR on the other hand, has also filed written submission which reads as follows:-

"The Appeal is against the order of the CIT(Appeals)-III, Kochi who confirmed the levy of Penalty u/s.274 r.w.s. 272(2)(c) of the Income Tax Act.

The Income Tax Officer (Intelligence), Kochi with permission of the Director of Income Tax (Intelligence) had issued notice u/s. 133(6) to the assessee on 10/09/2013. The Assessee failed to furnish the details called for by the Income Tax Officer.

The Income Tax Officer (Intelligence) Alleppey again on 19/05/2014 request the society to furnish the details called for, informing the Society the failure to do so will attract penalty u/s. 272A(2). Even then no reply was filed.

The Assessee has challenged the validity of notice u/s. 133(6) issued by the Income Tax Officer(Intelligence), Alleppey, stating that power to call for information u/s. 133(6) is vested with Assessing Officer, the Deputy Commissioner (Appeals), the Joint Commissioner or the Commissioner(Appeals) and therefore the Income Tax Officer(Intelligence) is not an authority to invoke provision under the said section.

Further argument is the penalty order passed by the Joint Director of Income Tax (Intelligence), Kochi was barred by limitation of time, therefore order is invalid.

The legal position of issue of the notice u/s. 133(6) has been discussed by the Apex Court in its judgment in Civil Appeal No. 7460 of 2013 arising out of S.L.P.(C) No. 3976 of 2010 in the case of Kathiroom Service Co-op Bank Ltd. Vs Commissioner of Income Tax (CIB) (copy enclosed).

In the present case notice was issued only after obtaining approval of the Director of Income Tax (Intelligence).

Regarding the argument that the order is barred by limitation of time is not correct, as verified by the CIT(A) as notice u/s. 274 was issued on 12/8/2014

and the order imposing penalty as was passed on 19/9/2014 well within the time limit prescribed u/s. 275(1)(C) of the Income Tax Act.

Hence, it is humbly submitted that Appeal of the above Assessee may be dismissed and order of the Lower Authorities up held."

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 273B 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 use ful 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 informa tion 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 CIT (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 I T 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, Cochin. 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 271D 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 273B 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 273B 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.

Order pronounced in the open court on the 23rd day of Aug 2017.

Sd/-
(GEORGE GEORGE K.)
Judicial Member

Place: Kochi

Dated: 23rd August, 2017

*Raj**

Copy to:

1. concerned Concerned assesses.
2. The Joint Director of Income-tax (Intelligence),Kochi/Addl. Director of Income-tax(Intelligence), Kochi.
3. The Commissioner of Income-tax(Appeals)-III, Kochi
4. The Pr. Commissioner of Income-tax, Kochi.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin