

Tax Review/Taxation

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FOREIGN

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v.

Commissioner of Income Tax (CIB) & Ors.

Kind regards

Mrs. Huzaima Bukhari

Editor

Lahore

Suite No. 14, Second Floor,
Sadiq Plaza, Regal Chowk, Mall Road,
Lahore 54000 Pakistan
Ph. (+9242) 36280015 & 36365582

Karachi

Ms. Sadaf Bukhari
Cell: 0301-8458701

The ongoing slide

by
A.B. Shahid

The IMF review team headed by Jeffrey Franks is satisfied with Pakistan's performance in the first quarter following IMF's sanction of its Extended Fund Facility (EFF) and its verdict is that, except for building foreign exchange reserves, Pakistan's government has done well. This view amazes most Pakistanis who helplessly watch the ongoing economic slide.

Franks has reportedly been angry with Pakistan's economic analysts for faulting the conditions set by the IMF for extending its EFF, and the consequences they have been having on the economy in terms of a steady rise in inflation, and slide of the rupee which is aggravating it to the gross discomfort of not just the ordinary, but also business and industry.

On Pakistan's failure to build exchange reserves to the level set by the IMF, Franks cited inadequate foreign inflows (not retirement of IMF's SBA facility) and SBP interventions to pull up a sliding rupee, realising little that had SBP not done that (though belatedly and inadequately), inflation and social discontent in an import-oriented country like Pakistan could have been at a much higher level.

It is worth asking whether at this critical stage of its existence (facing a huge security threat recognised by everyone around the globe), can Pakistan afford massive social discontent? Or an organised effort is being made to ensure that it does happen to turn Pakistan into a truly failed state to serve the undisclosed aims of those who want this tragedy to crystallise into a solid reality?

For years, and for valid reasons, the IMF has been unsatisfied with the tax collection performance of the FBR. Isn't it amazing that in spite of the many reform programmes that the IMF implemented to improve FBR's performance, FBR has failed to increase tax collection and cut tax evasion? Or is it that the IMF doesn't know how to increase tax collection in an unorganised economy like Pakistan?

Did we ever hear the IMF ask the government to make it mandatory for all trade bodies to include in their regulations a set of self-regulatory codes whereby every trade body member is required to obtain NTN, maintain standard books of account, file tax returns, and blackball any member found involved in malpractices, especially hoarding and price manipulation?

Tax evasion is a suicidal culture that develops in ill-regulated economies that Pakistan became over time because neither its leaders nor its advisors (like the IMF) thought about setting the right traditions. In this setting, to expect that tax-to-GDP ratio will rise and fiscal deficit drop to a realistic level is a no more than a dream that is unlikely to turn into reality.

We keep talking about 3 million retailers being outside the tax net, besides evading taxes businesses pocketing the taxes they collect on behalf of the FBR, customs authorities being involved in smuggling, and the highly subsidised agriculture sector not being taxed, but except for loading the honest taxpayers with higher taxes, do little in implementing workable systems that plug these widening gaps.

Even if you ignore the zero importance assigned to helping inculcate a tax payment culture (publishing booklets containing formats of the desired books of account, various tax returns to be filed, and guidance notes on filling them and the manner of paying taxes) the way the FBR makes last-minute changes every year to the tax return formats only worsens the collection process.

This 'suicidal' strategy conveys a clear message to honest taxpayers: exit Pakistan; you have no chance of survival. What we refuse (it seems, on purpose) to do is initiate steps that encourage tax payment - a habit that will develop if taxes are levied and collected fairly, and taxpayers see visible benefits of paying taxes - an ever-improving social and physical infrastructure.

The current strategy is a number game - cutting the fiscal deficit, no matter how it darkens the future; one indicator thereof is the urgency for withdrawing subsidies in the power tariffs - shortest route to hastening an economic collapse - and it is working. It will also ensure that, even if the EU parliament finally offers GSP Plus status to its textile exports, Pakistan won't benefit there from.

External pressure to abandon the IP gas project, and dearer and yet inadequate power supply will ensure that Pakistan fails to build its foreign exchange reserves yet again and thus disqualifies itself for continuation of IMF's current facility. This outcome seems likely and none other than tactless negotiators in Pakistan's Finance Ministry and the IMF will carry the blame there for.

In this scenario, the assertion by Jeffrey Franks that Pakistan and IMF have agreed on actions to build the exchange reserves, but these cannot be shared because of the sensitivity involved therein, deepens the doubts people already have about the future. In such an uncertain environment, how many new investors will be willing to take a business risk on Pakistan?

The only good news (really?) the Federal Finance Minister had to offer was that the Organisation of Petroleum Exporting Countries (Opec) has increased Pakistan's credit line from \$500 million to \$1.5 billion, and the International Finance Corp, will provide a trade finance facility of \$500 million (including \$200 million for oil import). How long can Pakistan survive on such bailouts?

At a World Bank conference on "Problems of Developing Countries", while commenting on Pakistan's record during the 1960s, economist Richard Eckaus said "Pakistan was a puzzle, a miracle of levitation; with

one of the lowest domestic savings rate in Asia, its economy has performed creditably,” but wondered whether foreign capital inflows that sustained its growth would last.

Pakistan’s real tragedy has been its failure to learn to survive on its own resources; its persistent low savings-to-GDP ratio reflects that. Unabated rise in inflation and government’s cover-up thereof by quoting its cooked up estimates forced payment of real negative returns to savers. Worse still, it inculcated a ‘buy now’ culture and downgraded the importance of saving.

How concerned is the government about pushing up the savings-to-GDP ratio is reflected in the fact that the headless state offices and state-owned entities also include the National Savings Directorate - an institution that has provided over Rs 2.5 billion in medium-term funding to the government at rates well below those paid on bank borrowing via 3 and 6-month Treasury Bills.

Inadequate incentives for import-substitution increased Pakistan’s dependence on imports and vulnerability to exchange rate fluctuation, which is now the biggest contributor to inflation rendering it virtually impossible to work out reliable discounted cash flows from projects that can be completed in even as low a period as three years. No wonder investment is sliding. How long can all this go on?

UAE**Gulf Banker to set up Investment Bank in DIFC**

Emad Mansour, an Arab banker, has announced that he intends to set up an investment bank in Dubai International Financial Center (DIFC), the emirate's tax-free financial zone.

Mansour, who has previously helmed the Qatar First Bank and Saudi Arabia-based Samba Financial Group, aims to launch the new investment bank in the first half of 2014. "I am currently talking to investors and expect to file an application in the next four to six weeks," he said.

In recent times regional bankers have sought to set up their own firms to reach customers who are no longer being served by the large international firms, which have been forced into retreat by capital restrictions.

Mansour's firm will focus on private equity transactions at first, before moving on to mergers and acquisitions, equity and debt capital markets advisory services and, eventually, asset management operations, he said.

DIFC offers businesses an exemption from income tax for 50 years, among other incentives. – *Courtesy tax-news.com*

European Union – United States**EU, US Meeting for Second TTIP Round**

The European Commission is hopeful that the launch of a second round of talks with the US will help foster progress toward a Transatlantic Trade and Investment Partnership (TTIP) deal.

The round was originally scheduled for October, but was pushed back by the US Government shutdown. The talks are taking place in Brussels and will continue until Friday.

The earliest sessions will be devoted to the discussion of investment rules and trade in services. Other teams of negotiators will focus on a range of regulatory issues. These include regulatory coherence, technical barriers to trade, and sectoral approaches. Finally, an attempt will be made to tackle areas including energy and raw materials, and video conferences will take place on sanitary and phytosanitary measures.

A third round is expected to be held in Washington DC in mid-December. – *Courtesy tax-news.com*

Belgium**Belgium's Di Rupo Confirms Withholding Tax Rate Changes**

In a parliamentary response, Belgian Prime Minister Elio Di Rupo confirmed the decision by both Government and parliament to reduce the rate of withholding tax levied on small- and medium-sized enterprise (SME) dividends from 25 percent to 15 percent, to encourage entrepreneurs to strengthen the capital of their companies.

Defending the decision, Di Rupo stressed that the measure, applicable to all new capital issued by SMEs from July 1, 2013, is an important provision aimed at significantly benefiting SMEs in Belgium.

Furthermore, Di Rupo explained that at the same time the Government and parliament united on plans to increase from 10 percent to 25 percent from October 1, 2014, the rate of tax imposed on liquidation proceeds, namely the amount of capital reimbursed to shareholders above paid-in capital upon liquidation. The initiative is intended to align the tax rate applied to liquidation proceeds with that levied on most other types of investment income.

The measure was deemed necessary to ensure that shareholders in receipt of liquidation proceeds contribute in the same way as other investors in Belgium, Prime Minister Di Rupo made clear. Moreover, the initiative brings the tax rates applied in Belgium nearer to those levied on capital income in most other European countries, Di Rupo added.

Concluding, Di Rupo noted that a transitional regulation is in place until October 1, 2014. Consequently, the 10 percent rate of tax will continue to apply until then for existing reserves, under the conditions provided for by law. This decision takes into account the concerns expressed by businesses in Belgium, as well as the concerns of individuals who invest in those businesses. – *Courtesy tax-news.com*

FBR to allow NBP branches for customs duty payment

The Federal Board of Revenue (FBR) will provide a facility from next month to importers and customs clearing agents for duty and payment at all the designated branches of the National Bank of Pakistan in Karachi, sources said on Monday.

Pakistan Revenue Automation (Pvt) Limited (PRAL) is in the process of facilitating taxpayers in their duty and payment, as presently only two NBP branches are accepting duty and taxes, they said.

The linkage with other NBP-designated branches will start receiving payments from next month, the deadline given by PRAL for completing the formalities, the sources said. The NBP has also informed the State Bank of Pakistan (SBP) regarding complaints of long delay in the payments of customs duty at its branches. It said that WeBOC system – the computerised system for consignment clearance – for processing of customs duty collection is developed and implemented by Pakistan Revenue Automation (Pvt) Limited.

“Therefore, the matter has been referred to Pakistan Revenue Automation (Pvt) Limited for roll out in other NBP branches, as well at all collecting places to facilitate taxpayers. Earlier, the stakeholders have approached the FBR for allowing all the designated branches of the bank in Karachi for the purpose of customs duty because only two branches were available that not only cause delay in the payment but also resulting in corruption.

The Karachi Customs Agents Association (KCAA) informed the FBR that due to high volume of goods declaration only two branches, one at the Customs House and the other at Nadir House, were not enough.

The KCAA said that at the FBR portal 60 NBP branches have been authorised in Karachi for collecting taxes. “The infrastructure is there and by only issuing User IDs to the respective authorised branches, trade can be facilitated,” Faisal Mushtaq, general secretary of KCAA, said.

The authorised branches also open the way of corruption, as Ramazan Bhatti, former member customs, and chief of the commission, constituted by the Supreme Court in Karachi bay amni case, observed in his report that massive corruption in the customs department and the NBP staff were also part of the menace. – *Courtesy International The News*

Pakistan to Fire Crooked Tax Officials

Bribery and corruption among tax officials in Pakistan will no longer be tolerated, and a new program has been launched to flush out dishonest tax workers who facilitate tax evasion.

In an effort to reduce the Pakistan's infamously high levels of tax evasion, the Federal Board of Revenue of Pakistan announced on November 11th that it will immediately launch a new program to punish any tax officials involved in corrupt practices or bribery.

The task of uncovering evidence of the bribery has been given to tax inspectors already working for the FBR, as they are deemed to have the necessary skills and expertise to determine whether any illicit activity has been taken place.

The investigations will be conducted over the course of November, with any discovered offenders being suspended by the end of the month.

The investigations are aimed at showing the public that complying with tax obligations is not optional, and that tax authorities will not tolerate any instance of tax evasion.

Pakistan currently has one of the highest rates of tax evasion in the world, and so far this year only 280 of the country's 62 000 companies have filed taxes, while only 53 000 of the country's 3 million registered individual taxpayers have filed their taxes. –
Courtesy www.taxationinfonews.com

Sugar: current stock position discussed

Sugar Advisory Board (SAB), a body comprising representatives of federal and provincial governments and sugar mills' representatives, met Tuesday in Islamabad to discuss current stock position, prices and prospects of new crop. Secretary Ministry of Industries and Production (MoI&P), Shafqat Naghmi chaired the meeting. Sugar prices in retail market have touched Rs 80 per kilogram in rural areas due to an alleged nexus between policymakers and sugar mill owners. Chairman PSMA Shunaid Qureshi did not attend the meeting.

Provincial Cane Commissioners, sources claim, informed the meeting that current stocks are of about 882,000 MT of which 150,000 MT to be procured by the Trading Corporation of Pakistan (TCP) which 500,000 MT is meant for export - a quantity approved by the Economic Co-ordination Committee (ECC) of the Cabinet.

According to the MoI&P, stocks with Punjab are of about 400,000 MT, Sindh 300,000 MT and KPK 23000 MT. This implies that stocks for open market will be about 232,000 MT till the end of current month against the monthly consumption of 390,000 MT. However, MoI&P claims that stocks are sufficient till January. MoI&P in its summary dated October 28, 2013 had claimed that stocks with the mills are 182, 861, 3 MT which would be enough till March 15, 2013.

The reason behind current prices hike is shortage of stock but the representatives of sugar mill owners are of the view that prices will come down from December with the arrivals of new sugar in the market. President Pakistan Sugar Mills Association Punjab, Riaz Qadeer Butt told that export of 500,000 MT will be materialised in five months, as 27000 MT sugar has been exported so far. At the same time, he said, mill owners are least interested in sugar export because the government has not yet issued any SRO meant for rebate. He was of the view when the local sugar rates will be better, no sugar mill will export the commodity. Replying to a question regarding floating of "black stock" in the market, he said that black stock is released during the initial crushing days, adding that now stock figures are real.

He further stated that Federal Board of Revenue (FBR) will invoke section 40 B of the Sales Tax Act, 1990 according to which tax officials can be deputed at mills to oversee sugar stocks. In reply to another question, an official of MoI&P told that Provincial Cane Commissioners informed the meeting that out of Rs 260 million, Rs 170 million of the growers are yet to be paid by the mills.

He said, the export of sugar has been linked to payment to growers and every mill which intends to export will have to produce a clearance certificate to be issued by the PSMA or Provincial Cane Commissioner. "There will be no further intervention in sugar matters till March 31, 2013. After the crushing season is over, meeting will be convened to review stock position for chalking out future strategy," he continued.

Riaz Qadeer Butt stated that those sugar mills which did not pay to growers will now pay them prior to the commencement of crushing season. He claimed that current sugar stock stood at 950,000 MT, which is more than the stocks mentioned by the MOI&P. He further claimed that Pakistan's sugar production is estimated at 5.4 million MT this year.

Answering yet another question, he said that investors and stockiest are floating their stocks in the market and making money and not the mill owners. He was of the view that mill owners are holding back stocks for export purposes. An insider who requested anonymity be quoted said that every sugar mill owner, except Jahangir Khan Tarin, is showing a loss of Rs 350 million. – *Courtesy Business Recorder*

Incomplete declarations, avoiding customs valuation rulings: Importers of cosmetics, toiletries causing revenue loss to exchequer

Some importers are causing revenue loss to the national exchequer by making incomplete declarations, avoiding application of 4 new customs valuation rulings to import expensive/branded cosmetics and toiletries in the garb of low quality products.

Sources told here on Tuesday that the Federal Board of Revenue (FBR) has directed Collectors of Customs to intercept suspected consignments of cosmetics and toiletries, where importers try to by-pass the new customs valuation rulings to evade taxes at the import stage.

It is learnt that certain importers are violating valuation ruling No 588/2013, 589/2013, 590/2013 and 596/2013 issued for accurate assessment of customs duty on the import of toiletries, perfumes and deodorants. The FBR has further directed the Collectors of Customs to exercise due vigilance at both assessment and examination level to control import of expensive/branded cosmetics and toiletries under the cover of low quality items.

The investigation carried out by the Directorate General of Customs Valuation Karachi revealed that valuation of toiletries was hitherto governed by Valuation Ruling 512/2012 dated 27.12.2012 that notified values of Unbranded Toiletries. For Branded Toiletries, no uniform practice was followed by the clearance Collectorates while assessing them to duty/taxes. For valuation of all types of Perfumes/Deodorants, Valuation Ruling No 513/2012 dated 27.12.2012 is applied.

The Directorate General of Customs Valuation has conducted the exercise of determining/revising the Customs values of Toiletries and Perfumes/Deodorants including high end branded Toiletries/Perfumes/Deodorants and unknown & inexpensive brands. After detailed consultations with stakeholders including

President and other representatives of KCCI and FPCCI, four Rulings have been issued: 589/2013 governs only the high-end branded Toiletries whereas 596/2013 applies only to low end and inexpensive brands; rest of Toiletries falls within the ambit of 590/2013. Valuation of perfumes and deodorants is governed by Valuation Ruling No 588/2013 read with its Corrigendum dated 24.10.2013. In the said four Rulings, brand-wise determination of Customs values has been done to differentiate between high end known brands from low end unknown brands. The Customs values reflect their market values.

Perusal of import data and feedback by stakeholders reveals that certain unscrupulous importers of subject goods evade Government revenue by making incomplete declarations avoiding application of valuation rulings and by importing expensive/branded goods in the garb of low-end Cosmetics & Toiletries. To circumvent any effort at import stage to manipulate description and to clear cosmetics/toiletries/perfumes of high end/ known brands at lower values, clearance Collectorates are immediately required to exercise due vigilance at both assessment and examination level. –
Courtesy Business Recorder

Cosmetics units: FBR fails to collect Rs 583 million FED

Despite having directives from ministry of finance, the Federal Board of Revenue (FBR) has so far appears toothless to recover Federal Excise Duty (FED) amounting to around Rs 583 million from cosmetics manufacturers, it was learnt here on Tuesday. According to sources, the Directorate of Intelligence and Investigation (DI&I), Karachi on the directives of Federal Tax Ombudsman (FTO) had raised a demand of around Rs 583 million against seven cosmetics manufacturers for the period July 2007 to June 2012 and communicated the case to Regional Tax Office (RTO)-II.

Instead of taking action on DI&I report, the RTO-II contested the case and termed it as incorrect. The RTO-II was of the view that these units were not required to pay FED as they instead of manufacturing goods by themselves had entered into an arrangement with another entity having its factory located at Mingora, Swat. These units only distribute these goods, manufactured in tax-free area, in tariff area. Therefore, these units are not liable to pay FED in pursuance of SRO 200(I)/2011 dated March 14, 2011.

However, the DI&I rebutted the contention of the RTO-II and termed it as contrary to facts and misleading. The DI&I was of the view that agreement between the FBR and group of cosmetics manufacturers and toiletries, Mingora related to tax period 2006-2007 whereas the non-payment of FED was for the tax years from 2007 to 2012. The issue was brought in light by Moin Aziz Mirza, M.A Mirza & Associates at FTO office Islamabad. The ministry of finance on the complaint of Mirza had also directed chairman FBR to take further necessary action in this case but the board after the lapse of almost five months was unable to resolve the issue for the reason known to the FBR.

The complaint filed by the Mirza in FTO, office alleged that some unscrupulous elements had exploited agreement signed between FBR and a group of cosmetic manufacturers and getting windfall by charging FED from consumers on various items including soap and cosmetics at the prescribed rate. However, these units only pay taxes on fixed-amount basis, which is much less than amount realised from the consumers.

The complaint said that this cosmetics mafia, which was involved in giving financial shocks of Rs 400 million, approximately, to the national kitty per annum, had been doing this illicit activity for the last 14 years with the connivance of tax officials. In early 90s, the revenue generated from these units in the absence of 'agreement' was about Rs 200 million, however, the FBR after agreement had only collected Rs 130 million in 24 equal instalments in a year in FY07, the compliant said. For the last few years, this surplus or difference has been camouflaged as license fee, royalty, etc. The complaint said that arrangement of 'agreed' FED was only for 16 units but many more companies were being benefited. – *Courtesy Business Recorder*

2013 TRI 1839 (S.C. Ind.)

SUPREME COURT OF INDIA

**H.L. Dattu and
Sudhansu Jyoti Mukhopadhaya, JJ.**

*Kathiroor Service Cooperative Bank Ltd.
v.
Commissioner of Income Tax (CIB) & Ors.*

FACTS/HELD

Section 133(6): AO empowered to launch fishing and roving enquiry with a view to detect tax evasion

1. The ITO issued a notice u/s 133(6) to the assessee-bank u/s 133(6) of the Act calling for general information regarding details of all persons who have made cash transactions and time deposits of Rs. 1,00,000/- and above for the period of three years between 01.04.2005 and 31.03.2008. The assessee claimed that s. 133(6) does not empower the ITO to conduct a roving or fishing enquiry into the affairs of the assessee or regarding the deposits made by its customers. It was also contended that the AO can only seek “case specific” or “area specific” information u/s 133(6). The High Court dismissed the Writ Petition. On appeal by the assessee to the Supreme Court HELD dismissing the appeal:

The legislative intention behind s. 133(6) was to give wide powers to the income-tax department to gather general particulars in the nature of survey and store those details in the computer so that the data so collected can be made use of for checking evasion of tax effectively. It would not fall under the restricted domains of being “area specific” or “case specific.” S. 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 (Karnataka Bank Ltd vs. Government of India (2002) 9 SCC 106 followed; M.V. Rajendran vs. ITO 260 ITR 442 (Ker) approved)

Order accordingly.

Civil Appeal No. 7460 of 2013 (Arising out of S.L.P.(C) No. 3976 of 2010) with C.A.NO.7487-7517 of 2013 @ S.L.P.(C)No.3994-4024 of 2010, C.A.NO.7518-7532 of 2013 @ S.L.P.(C)No.5194-5208 of 2010, C.A.NO.7461 of 2013 @ S.L.P.(C)No.11135 of 2010, C.A.NO.7468-7481 of 2013 @ S.L.P.(C)No.11454-11467 of 2010, C.A.NO.7483 of 2013 @ S.L.P.(C)No.13778 of 2010, C.A.NO.7482-7484 of 2013 @ S.L.P.(C)No.11909-11911 of 2010, C.A.NO. 7534 of 2013 @ S.L.P.(C)No.4442 of 2011 and C.A.NO.7486 of 2013 @ S.L.P.(C)No.21114 of 2011

Decided on: 27th August, 2013.

JUDGMENT

. Leave granted in all the Special Leave Petitions.

. Since the facts involved in all these appeals are similar, we take Civil Appeal No.7460 of 2013 @ S.L.P.(C)No.3976 of 2010 as the lead case.

Civil Appeal No. 7460 of 2013@ S.L.P.(C)No.3976 of 2010:

3. This appeal by special leave is directed against the common judgment and order passed by the High Court of Kerala at Ernakulam in Writ Appeal No. 1854 of 2009 and other connected matters, dated 24.11.2009, whereby the Division Bench has dismissed the said Writ Appeals and Writ Petitions filed by the appellant-assessee(s) herein and upheld the judgments and orders of the learned Single Judge and notices issued under Section 133(6) of the Income Tax Act, 1961 (for short 'the Act'), respectively.

4. Since the appellant-assessee(s) herein are similarly placed societies registered under the Kerala Co-operative Societies Act engaged in banking business, for brevity and convenience of reference, we would confine the discussion to factual matrix in the lead case. The appellant-assessee before us is a Service Co-operative Rural Bank. The Income Tax Officer (CIB), Calicut issued a notice bearing F.No. ITO (CIB)/Clt/2008-09 to the assessee under Section 133(6) of the Act calling for general information regarding details of all persons (whether resident or non-resident) who have made (a) cash transactions (remittance, transfer, etc.) of Rs. 1,00,000/- and above in any account and/or (b) time deposits (FDs, RDs, TDs, etc.) of Rs. 1,00,000/- or above for the period of three years between 01.04.2005 and 31.03.2008, dated 02.02.2009. It was expressly stated therein that failure to furnish the aforesaid information would

attract penal consequences. The assessee objected to the said notice on grounds, inter alia, that such notice seeking for information which is unrelated to any existing or pending proceeding against the assessee could not be issued under the provisions of the Act and requested for withdrawal of the said notice by its letter-in-reply, dated 26.02.2009. The Assessing Authority addressed to the objections raised by the assessee and accordingly rejected them by letter dated 05.03.2009. The relevant paragraphs of the said letter are as under:

2. Your contention that this office does not enjoy the powers to call for information under section 133 (6) does not hold water in view of the Hon'ble High Court's judgment dated 24th December, 2002 in the case of M.V. Rajendran vs. Income Tax Officer and Another reported in 260 ITR 442, wherein it is categorically stated that—

“.....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 the 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 claim any immunity from furnishing such informationIn 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.”

Since the Hon'ble High Court of Kerala is the jurisdictional High Court and the decisions relied upon by you are superceded by the order of Hon'ble Kerala High Court, I failed to find any merit in your objection for not furnishing the information called for under section 133(6). In this connection, you may also refer the following decisions of the Hon'ble High Court of Kerala –

1 186 CTR 310 (Kerala)

2 263 ITR 161 (Kerala)

3. As can be seen from Para-1 above, the powers to initiate an inquiry, in a case where no proceedings is pending, can only be exercised by an authority above the rank of Director or the Commissioner. Accordingly, prior permission has been obtained from the Commissioner of Income Tax (CIB), Cochin before

issuing the notice to you calling for the details of transactions/ deposits above Rs.1 lakh made by customers in your institution. It is hereby pointed out that I am well within my authority calling for information from you and have not exceeded my powers. Further, the Hon'ble High Court in its above judgment has stated that –

‘.....If co-operative banks and co-operative societies are allowed to maintain deposits beyond the scrutiny of the Income Tax Department, then the societies will become safe havens for hoarding back 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....’

5. The assessee, aggrieved by the aforesaid, filed Writ Petition No. 9737 of 2009 before the High Court challenging the notice dated 02.02.2009. The learned Single Judge has discussed the case of the assessee including the submissions made by the parties in extenso and reached the conclusion that the impugned notice was validly issued under the provisions of the Act and therefore, dismissed the said petition by judgment and order dated 27.03.2009.

6. Thereafter, the assessee approached the Division Bench of the High Court by way of Writ Appeal No. 1854 of 2009 questioning the said notice on grounds, inter alia, that the issuance of such notice under Section 133(6) is bad in law as Section 133(6) only provides for power to seek information in case of pending proceedings under the Act and does not contemplate the powers to seek fishing information which is unrelated to any existing proceedings or which may enable the Assessing Authority to decide upon institution of proceedings under the Act. The Division Bench has observed that the questions raised therein are no longer res integra in view of the decision of this Court in *Karnataka Bank Ltd. v. Secretary, Government of India and Ors.*, (2002) 9 SCC 106 and accordingly, dismissed the said appeal by the impugned judgment and order dated 24.11.2009.

7. Aggrieved by the aforesaid, the assessee is before us in this appeal.

8. We would refer to the submissions made by the learned counsel for the parties to the lis a little later.

9. In the instant case, the point which arises for our consideration and decision is with respect to the possible construction that could be placed on the interpretation of Section 133(6) of the Act.

10. At the outset, we would briefly refer to the relevant provisions of the Act and the legislative history thereto. Section 133 provides for the

power of authorities under the Act to call for information for the purposes prescribed therein. Sub Section (6) of Section 133 of the Act, as it stood originally, had provided for calling 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 thereof. It was settled law that unless a proceeding is pending, the powers under Section 133(6) could not be exercised by the Assessing Authorities. In such circumstances, an amendment was made by the Finance Act, 1995 (Act 22 of 1995), with effect from 01.07.1995, inserting the words “enquiry or” before “proceeding” in Section 133(6) and the second proviso to the said provision. Besides the aforesaid amendment in 1995, Section 133(6) was amended by Finance Act, 1977 and the Direct Tax Laws (Amendment) Act, 1987 whereby certain authorities were included and the first proviso was inserted, respectively. Further, Finance Act, 2011 inserted the third proviso with effect from 01.06.2011. The amended Section 133(6) reads as under:

“Section 133 - Power to call for information: 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 1[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 enquiry 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.

Provided also that for the purposes of an agreement referred to in section 90 or section 90A, an income-tax authority notified under sub-section (2) of section 131 may exercise all the powers conferred under this section, notwithstanding that no

proceedings are pending before it or any other income-tax authority.”

[Emphasis supplied]

11. The addition of the word “enquiry” expanded the ambit of exercise of powers by the authorities under Section 133(6) to seek for information which would be useful for or relevant to any enquiry besides proceeding under the Act. The second proviso to Section 133(6), specified that the power in respect of an enquiry, in 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 said authorities.

12. The effect of the amendments made by the Finance Act (Act 22 of 1995) was explained by the CBDT in the Circular No. 717, dated 14th Aug., 1995 (See Taxmann’s Direct Taxes Circulars, Vol. 4, 2002 Ed., p. 2.1759, 2.1782) 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 useful 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 information in specific cases in respect of which any proceeding is pending as at present. However, an income-tax authority below the rank of 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.”

[Emphasis supplied]

13. Keeping in view the aforesaid, we would now refer to the contentions of the learned counsel for the parties. It is the case of the assessee that though this Court in Karnataka Bank case (supra) has

considered the powers of respondent-authorities to issue notice under Section 133(6) but has not considered as to whether the said provision clothes the respondent-authorities with any power for conducting a roving or fishing enquiry into the affairs of the assessee or regarding the deposits made by its customers. Further, that this Court has considered only “case specific” or “area specific” information sought under Section 133(6). Learned Counsel for the assessee would therefore submit that the High Court has erred by not appreciating the decision of this Court in Karnataka Bank case (supra) and erroneously dismissed the case of similarly placed banks.

14. Au contraire learned Solicitor General for the Assessing Authority, would support the impugned judgment and order and contend that for the purposes of enquiry under the provisions of the Act, the Assessing Authority can issue such notice under the said Section.

15. Having noticed the aforesaid, in order to appreciate the contentions canvassed by the parties to the lis, we must examine the import of the term “enquiry” under Section 133(6) of the Act. In common parlance, “to enquire” would mean to seek information and “enquiry” would refer to the process of gathering such information. The Longman Dictionary of Contemporary English defines “enquiry” as

“1[countable] a question you ask in order to get information;
2[uncountable] the act or process of asking questions in order to get information; 3[countable] an official process to find out about something.”

The Merriam-Webster Unabridged Dictionary states that the words “Inquiry or Enquiry” connote:

- “1: examination into facts or principles
- 2: a request for information
- 3: a systematic investigation often of a matter of public interest.”

The Cambridge Advanced Learner's Dictionary & Thesaurus defines inquiry or enquiry as “question” or “the process of asking a question.” The Oxford Advanced Learner's Dictionary defines enquire as:

“an official process to find out the cause of something or to find out information about something; a request for information about somebody/something; a question about somebody/something; the act of asking questions or collecting information about somebody/something”

16. The Black's Law Dictionary, 9th Ed., 2009, p. 864 defines “enquiry” as “a request for information, either procedural or substantive”. The expression inquiry under Encyclopedia Law Lexicon, Vol. 4, Ashoka Law House, 2008/09, p. 2356 and K.J. Aiyar's Judicial Dictionary, Vol. 1,

Lexis Nexis Butterworths Wadhwa, 15th Edition, 2011, p. 838 follows the explanation hereunder:

“According to the New Standards Dictionary, the word inquiry includes investigation into facts, causes effects and relations generally; “to inquire”, according to the same dictionary means to “exert oneself to discover something.” Chambers 20th Century Dictionary lays down that the meaning of the term “to inquire” is “to ask, to seek” and the meaning of the term “inquiry” is to give as: “in search for knowledge; investigation; a question” (Also *Real Value Appliances Limited v. Canara Bank* and others, (1998) 5 SCC 554)”

17. Since the language of the Section 133(6) is wholly unambiguous and clear, reliance on interpretation of statutes would not be necessary. Before the introduction of amendment to Section 133(6) in 1995, the Act only provided for issuance of notice in case of pending proceedings. As a consequence of the said amendment, the scope of Section 133(6) was expanded to include issuance of notice for the purposes of enquiry. The object of the amendment of section 133(6) by the Finance Act, 1995 (Act 22 of 1995) as explained by the CBDT in its circular shows that the legislative intention was to give wide powers to the officers, of course with the permission of the CIT or the Director of Investigation to gather general particulars in the nature of survey and store those details in the computer so that the data so collected can be made use of for checking evasion of tax effectively. The assessing authorities are now empowered to issue such notice calling for general information for the purposes of any enquiry in both cases: (a) where a proceeding is pending and (b) where proceeding is not pending against the assessee. However in the latter case, the assessing authority must obtain the prior approval of the Director or Commissioner, as the case maybe before issuance of such notice. 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.

18. This Court in *Karnataka Bank Ltd. v. Secretary, Government of India and Ors.*, (2002) 9 SCC 106 has examined the proposition whether a notice under Section 133(6) could be issued to seek information in cases where the proceedings are not pending and construed Section 133(6) of the Act. The petitioner therein was a financial institution which had impugned the notice issued under section 133(6) on grounds that the notice requiring furnishing of information in respect of its customers regarding payment of loans when no enquiry was pending was not envisaged by the said sub-section. This Court has observed as follows:

“3. It is 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 under Section 133(6) to issue notice, inter alia, requiring a banking company to furnish information in respect of such points or matters as may be 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 Commissioner, as the case may be, has to be obtained.”

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 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.

In C.A.NO.7487-7517 of 2013 @ S.L.P.(C)No.3994-4024 of 2010 with C.A.NO.7518-32 of 2013 @S.L.P.(C)No.5194-5208 of 2010 with C.A.NO.7461 of 2013 @S.L.P.(C)No.11135 of 2010 with C.A.NO.7468-81 of 2013@S.L.P.(C)No.11454-11467 of 2010 with C.A.NO.7483 of 2013 @ S.L.P.(C)No.13778 of 2010 with C.A.NO.7482-7484 of 2013@ S.L.P.(C)No.11909-11911 of 2010 with C.A.NO.7534 of 2013 @

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*Kathiroor Service Cooperative Bank Ltd. v.
Commissioner of Income Tax (CIB) & Ors.*

(S.C. Ind.)

S.L.P.(C)No.4442 of 2011 and with C.A.NO.7486 of 2013 @
S.L.P.(C)No.21114 of 2011

In view of the order passed in Civil Appeal No.7460 of 2013 @
S.L.P.(C) No.3976 of 2010 above, all these appeals also stands dismissed.

Ordered accordingly.
