

(2013) 01 KL CK 0168

High Court Of Kerala

Case No: Writ Petition (C) No. 30626 of 2012 (C)

Mangalam Service Co-operative
Bank Ltd. and Another

APPELLANT

Vs

Income Tax Officer and Others

RESPONDENT

Date of Decision: Jan. 2, 2013

Acts Referred:

- Income Tax Act, 1961 - Section 133(6), 142(1), 2(31)

Citation: (2013) 258 CTR 452 : (2013) 351 ITR 312 : (2013) 213 TAXMAN 406

Hon'ble Judges: Antony Dominic, J

Bench: Single Bench

Advocate: P. Ramakrishnan, C. Anil Kumar and Pratap Abraham Varghese, for the Appellant; Jose Joseph for Income-tax, for the Respondent

Judgement

Antony Dominic, J.

Heard the counsel for the petitioner and the learned standing counsel for the Revenue. The petitioners are co-operative societies. The first petitioner has been issued exhibits P3, P5 and P7 notices and the second petitioner has been issued exhibits P8 and P9 notices. By these notices, information as provided u/s 142(1) of the income tax Act, 1961, is called for from the petitioners. It is challenging these notices the writ petition has been filed and the contention raised by the learned counsel for the petitioners is that the petitioners are not "persons" as contemplated in section 142(1) of the Act. Therefore, according to them, the notices are without jurisdiction and are illegal.

2. In support of the above contention, counsel contended that on an earlier occasion, notices were issued by the income tax Department to the co-operative societies, invoking the power u/s 133(6) of the income tax Act and that those notices were challenged before this court. It is stated that the notices were upheld by the single Bench and division Bench of this court and that in a SLP filed, the apex court

has issued notice and stayed the proceedings. On this basis counsel seeks interference of this court, in this writ petition.

3. From the submission made on behalf of the petitioners itself, it is obvious that the proceedings which are the subject-matter of the SLP now pending before the apex court were u/s 133(6) of the income tax Act, whereas the impugned notices which are called in question in this writ petition, are issued u/s 142(1) of the Act. Section 142(1) enables the Assessing Officer to require the persons mentioned in the section to furnish the information as mentioned therein. The expression "person" has been defined in section 2(31) of the Act.

4. A combined reading of section 142(1) and section 2(31), in my view, leads to the only conclusion that co-operative societies like the petitioners herein are also "persons" as defined in the income tax Act. If that be so, notices which are impugned in this writ petition cannot be held as issued without jurisdiction.

5. In so far as the proceedings which are pending before the apex court are concerned, as I have already stated, those were initiated under sections 133(6) of the Act. The terms of section 133(6) and section 142(1) are incomparable and, therefore, the pending proceedings before the apex court cannot be of any assistance to the petitioners. Even if it is assumed that the proceedings are of any relevance, since this court is bound by the Division Bench judgment of this court, the fact that the apex court has stayed the judgment is no reason to entertain the writ petition. The legal position in this behalf has been clarified by a Division Bench of this court in the judgment in [Abdu Rahiman Vs. District Collector](#), . Writ petition fails and is dismissed.