

Power to call for information

133. The Assessing Officer, the Deputy Commissioner (Appeals), the Joint Commissioner or the Commissioner (Appeals) may, for the purposes of this Act,—

- (1) require any firm to furnish him with a return of the names and addresses of the partners of the firm and their respective shares;
- (2) require any Hindu undivided family to furnish him with a return of the names and addresses of the manager and the members of the family;
- (3) require any person whom he has reason to believe to be a trustee, guardian or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian or agent, and of their addresses;
- (4) require any assessee to furnish a statement of the names and addresses of all persons to whom he has paid in any previous year rent, interest, commission, royalty or brokerage, or any annuity, not being any annuity taxable under the head "Salaries" amounting to more than one thousand rupees, or such higher amount as may be prescribed, together with particulars of all such payments made;
- (5) require any dealer, broker or agent or any person concerned in the management of a stock or commodity exchange to furnish a statement of the names and addresses of all persons to whom he or the exchange has paid any sum in connection with the transfer, whether by way of sale, exchange or otherwise, of assets, or on whose behalf or from whom he or the exchange has received any such sum, together with particulars of all such payments and receipts ;
- (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 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 Principal Director General or Director-General, the Principal Chief Commissioner or Chief Commissioner, the Principal Director or Director or the Principal Commissioner or Commissioner or the Joint Director or Deputy Director or Assistant Director:

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 Principal Director or Director or Principal Commissioner or Commissioner, other than the Joint Director or Deputy Director or Assistant Director, without the prior approval of the Principal Director or Director or, as the case may be, the Principal Commissioner or 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.

Summary of Section 133

When the information is obtained in connection with a pending proceeding, it would generally relate to a single person or an entity. But when it is in connection with an inquiry, large amounts of data or voluminous information in respect of a number of persons could be obtained. Such large scale information can then be verified and utilized for initiating proceedings, wherever called for. However, for ensuring that there is adequate control on the use of this power, when the information is sought to be obtained for an inquiry and not in connection with a pending proceeding in a particular case, the approval of a Senior Officer of the rank of a Commissioner or Director of Income Tax is required to be obtained.

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Section 133(6) is a section in the Income Tax Act which grants investigative power to the assessing officers. The investigative power includes demanding information that is relevant for any proceedings under the Income Tax Act. The investigative power also includes the making of enquiries and the verification of cash deposits under the 'Operation Clean Money'. The assessing authorities are empowered to issue a notice under for general information for the purpose of enquiry in cases where there are no pending liabilities of income tax or other obligations. In this article, Section 133(6) of the Income Tax Act is explained. There is no farmed time limit for the calling for information.

Eligibility Criteria

As per section 133(6), the power to call is given to the below following:

- Under sub-sections 1 to 5 of section 133 power can be called for by the Assessing Officer (AO), Joint commissioner or commissioner.

- Under section 133(6), it provides the power to call information to the AO, Joint Commissioner or Commissioner, Director or Commissioner and Director General or Chief Commissioner as well.
- In the case of Double Taxation Avoidance Agreement (DTAA) under section 90, the powers under section 133(6) can be permitted only by the authority above the rank of Assistant Director or Assistant Commissioner as per section 131(2), despite the fact, there are no proceedings pending or any other income-tax authority.

Relevant Provisions

--F. No. System/ITBA/AIMS/2019-20/1942 dated 28.02.2020

It is requested that the field formation should not carry out any enquiry u/s 133(6) or issue notice u/s 148 of the Act on the basis of the data presently available in either AIMS Module of the ITBA or the AIR information earlier shown in the ITD till further directions are issued. Section 133(6) notice is given to tax payer or related parties seeking certain details of transaction done during the year under consideration.

Even if there are no transactions as stated in your query, the person who receives such notice from government authorities is required to give reply stating his factual position. The person cannot ignore such notices as it may lead to further action by the issuer of the notice.

Reopening for cash deposits for non response to notice u/s 133(6) is illegal where assessment was completed u/s 143(3)/147 and 4 years have lapsed.

The notice u/s 147 which is solely based on non-response to the notice u/s 133(6)/ Operation Clean money and does make out a case with materials that such cash deposits or bank accounts are not forming part of the return of

income, financial statements etc. then the reassessment proceeding can be challenged as mere change of mind and arising out of suspicion and initiated merely for verification of certain documents or facts, which is not contemplated in the Act. It is interesting to note that in many notices issued u/s 133(6) the subject line itself mentions that the information has been called for for the “verification of AIR/CIB information”.

As said earlier, CBDT had also issued Instruction No. 4/2017 on the subject of issue of notice u/s 133(6) for verification of cash deposits under operation Clean money. Therefore reassessment proceedings initiated on the basis of mere non response to such notices meant for verification would be without jurisdiction. It has been judicially held in numerous cases that mere cash deposits in bank account do not suggest escapement of income.

There is one more aspect that should be carefully looked into. As per the second proviso to section 133, the power to call for information or to make inquiry, in a case where no proceeding is pending, shall not be exercised except by or with the approval of income tax authorities of the rank of Principal Director or Director or Principal Commissioner. The section has been mellowed down but with effect from AY 2017-18.

However, it has been observed that in many cases the notice u/s 133(6) has been issued by an Assessing Officer/Income tax Authority of a rank lower than the prescribed one. Moreover, such notices also do not specify that they have been issued with prior approval of the Income Tax authorities with the rank as prescribed in second proviso to section 133. Therefore depending on the facts of

the case, the notice issued u/s 133(6) itself can be challenged as without jurisdiction and thus void ab initio.

Issue of notice under section 133(6) for verification of cash deposits under ‘Operation Clean Money’

Vide Instruction No. 3/2017, dated 21-02-2017, in file of even number, CBDT has issued a SOP to be followed by the Assessing Officer(s) for Online Verification of Cash Transactions pertaining to the demonetization period. In continuation thereof, the Board hereby prescribes a Template, to be used for issue of notices under section 133(6) in appropriate cases, for Online Verification of Cash Deposits.

Following issues may kindly be kept into consideration while issuing notices under section 133(6) of the Act, in applicable cases:-

- i. Notice under section 133(6) of the Act is required to be issued, after obtaining prior approval of Pr. CIT/CIT/ Pr. DIT/DIT as provided in the Act, in cases where the ‘person under verification’ fails to file Online response in a timely manner in spite of issue of reminder by the Assessing Officer.
- ii. Response to notice under section 133(6) of the Act has to be furnished within the stipulated period only through the Online mode.
- iii. Notice shall be generated through the ITD System only. Hence, no hand written/typed notice is required to be issued by the Assessing Officer in an individual case.
- iv. In case no response is furnished within the specified timeframe, Assessing Officer may form a view that ‘person under verification’ has no plausible explanation to offer regarding the cash deposits in his/her bank account(s) and consequentially, the case may be escalated as “Not-

Acceptable” for further action in accordance with the procedure prescribed in the SOP of CBDT vide Instruction No. 3/2017, dated 21-02-2017.

Judicial Pronouncements

CIT V.SMT. BASANA RANI SAHA 111 TAXMAN 712/243 ITR 780 (GAUHATI)

It cannot be disputed that the assessing authority has the powers to require any person to give information in relation to such points or matters which in his opinion will be useful for value and proof in any enquiry or proceeding under the Act. The words ‘any person’ used in the sub-section would also include a Valuation Officer.

U.G. UPADHYA V. DIRECTOR OF INCOME-TAX 121 TAXMAN 532/255 ITR 502(KAR.)

‘The argument that the word ‘enquiry’ should be read as ‘pending enquiry’ and unless there is some pending enquiry, the authorities cannot invoke section 133(6)’, is unacceptable. A perusal of the Act reveals that any information which is useful can be called for. So an ‘enquiry’ includes collection of information before proceeding with an enquiry.

D.B.S. FINANCIAL SERVICES (P.) LTD. V. SMT. M. GEORGE, SECOND ITO 73 TAXMAN 640/207 ITR 1077 (BOM.)

The term ‘proceeding’ used in section 133(6) must be confined to its normal ambit of a ‘pending’ or existing’ proceeding.

**KATHIROOR SERVICE COOPERATIVE BANK LTD. VS
COMMISSIONER OF INCOME TAX (CIB) & ORS. (SUPREME
COURT OF INDIA)**

The addition of the word “inquiry” 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 inquiry, 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.

Assessing officer can issue ‘general’ notice under section 133(6) to Financial Institutions to furnish information regarding account holder with cash transactions or deposits of more than Rs. 1,00,000/-.

Notices to Durga Puja Committees

There have been reports in the media about Income Tax notices being issued to Durga Puja Committees in Kolkata recently. The reports also mention that Income Tax notices were sent to the Durga Puja Committee Forum in the last few weeks. It is unequivocally stated that the said reports are factually incorrect and are strongly denied. It is a fact that no notice was issued to the Durga Puja Committee Forum by the Department. However, as the Department had been getting information that several contractors who were doing work for the Puja committees were not paying due taxes, therefore notices under Section 133(6) of the Income Tax Act, 1961 were issued in December, 2018 to about 30 committees, calling for details of tax deducted at source on payments made to contractors and event managers etc. engaged by the committees for the Puja events, including the TDS statement. This was part of an exercise carried out by the TDS wing of the Department to ensure that the contractors and event

managers pay their due taxes in time. Many of the committees complied and furnished evidence of tax deducted at source as well as deposit of the same into the Government account. It is reiterated that the aforesaid exercise is in no manner whatsoever against the Puja Committees, but has been undertaken to ensure that the contractors and event managers pay their due taxes correctly within the stipulated time.

KULATHUPUZHA SERVICE CO-OPERATIVE BANK LTD. V. ITO 47 TAXMANN.COM 290(KER.)

Income-tax Officer can issue notice for information for enquiry purposes even in a case where proceedings are not pending against the assessee- bank in order to ensure that transactions of depositors are transparent after taking prior approval of Director or Commissioner.

DAULATRAM V. ITO 181 ITR 119(AP)

The information which is contemplated by section 133 is only with reference to either the assessee or any person concerned with the assessee and not with reference to any authority or person belonging to the revenue. A Superintending Engineer or a District Valuation Officer cannot be said to be a person from whom information is sought to be obtained.

KARNATAKA BANK LTS. V. SECRETARY, GOVERNMENT OF INDIA 123 TAXMAN 219(SC)

It is clear from the mere reading of section 133 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. 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.

THALIPARAMBA MUNICIPAL VANITHA SERVICE SAHAKARANA SANGHAM LTD. V. ITO 329 ITR 609 (KER.)

Notice issued by ITO to petitioner requiring it to furnish particulars/information in connection with the proceedings to be pursued under sections 201(1), 201(1A) and 271C could not be categorized as an instance coming within purview of section 133(6) to have any restrictive hurdle as provided under second proviso thereunder, requiring prior sanction by Director/ Commissioner.

PATTAMBI SERVICE CO-OPERATIVE BANK LTD. V. UOI, 387 ITR 299, 304(KER.)

When legislation, especially one in the fiscal realm, is being examined by courts to check whether it infringes the right of individuals to privacy in own affairs, it has to be borne in mind that the larger public & economic interest of nation is to be balanced against such right to privacy.

Penalty for Non- Compliance

M/S. ALLEPPEY NORTH SERVICE CO-OPERATIVE BANK LIMITED VERSUS THE JOINT DIRECTOR OF INCOME-TAX (I & CI) KOCHI.

Penalty u/s 272A(2)(c) r.w.s. 274 - non furnishing of information sought by the ITO(intelligence) u/s 133(6). It is held that assessee has not offered any valid reason for not furnishing the information called for u/s 133(6). Many of the notices issued by the ITO (Intelligence) were never responded to by the

assessee. In many instances the AO 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.

Since there is no reasonable cause furnished by the assessee as mentioned u/s 273B for non furnishing of information sought by the ITO(intelligence) u/s 133(6) that the order imposing penalty cannot be quashed

Failure to furnish an information or statement of account required under section 133 entails penalty under section 272A(2)(c).

If any person fails to furnish in due time any of the returns, statements or particulars mentioned in section 133, then he shall pay by way of penalty a sum which shall be between Rs. 100 and Rs. 200, for every day during which the failure continues. Penalty under above section shall be imposed by an income-tax authority only after giving opportunity of being heard.

As a consequence of the said amendment, the scope of Section 133(6) was expanded to include issuance of notice for the purposes of inquiry. 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 inquiry 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

“inquiry” 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.

It would not fall under the restricted domains of being “area specific” or “case specific.” Section 133(6) does not refer to any inquiry about any particular person or assessee, but pertains to information in relation to “such points or matters” which the assessing authority issuing notices requires.