

**Central Information Commission**

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Appeal : No. CIC/LS/A/2010/001044DS

Appellant /Complainant : Sh. Manoj Kumar Saini, Jaipur

Public Authority : The Chief Commissioner, Income Tax,Jaipur  
(Sh.Amrit Meena, CPIO through Video conferencing)

Date of Hearing : 03 Jan, 2011

Date of Decision : 24 March, 2011

**FACTS OF THE CASE:**

1. Vide his RTI Application dated 15.09.2009, the Applicant sought information pertaining to income tax returns of his fatherinlaw for the period 2000 to date along with the information pertaining to process for initiating tax evasion petition.
2. The CPIO vide his order dated 06.10.2009 denied disclosure of information citing the provisions of Section 8(1)(j) of the RTI Act,2005 (hereinafter "the Act"). Information was provided pertaining to the process of submitting tax evasion petition.
3. The Applicant preferred appeal dated 13.10.2009 before the FAA who adjudicated upon it vide his order of 06.11.2009 by upholding the order of the CPIO and dismissing the appeal.
4. The Applicant has come before this Commission in second appeal. The Appellant made an impassioned plea for disclosure of information sought by him on the grounds that he was a young man who is involved in defending himself in a criminal case against the State of Rajasthan pertaining to dowry related issues. He emphasized that the litigation was not a private matter against his wife / fatherinlaw and therefore, the denial of information could not be justified on the grounds that there was no public interest in the matter and that the issue was purely a personal one. The Appellant stated that in a welfare state, such as ours, the life and security of every individual was a matter which involved the state. Denial of information to him would result in

a prolonged litigation of 10 years and more resulting in his losing the best years of his life and career.

5. Respondent stated that he had ascertained that Shri Munna Lal Saini does not file any income tax returns in this income tax office Ward 3(1). Appellant stated that with the issue of PAN card which is a unique number, it will not be difficult to ascertain in which ward Shri Saini was filing his returns.

DECISION NOTICE:

6. I have carefully considered the submissions made by the Appellant with great thrust and also by the Respondents.

7. The conviction and thrust with which the Appellant had pursued his case and made his submission explaining the reasons for which he needs the information are plausible. But, however unfortunate as it may seem, the noise of motivation behind seeking the information falls upon deaf ears as far as the Act is concerned. Section 6(2) of the Act clearly states that the Applicant shall not be required to give any reason for requesting the information. Thus, the Act does not aim to judge the motivation or the reason behind seeking certain information, as each applicant may have a different line of reasoning, each one being equally passionate and emotionally driven.

8. What, in fact, matters is whether certain information which has been sought can actually be furnished under the Act. The information has been classified as either public information or personal information under the Act. There is no question of doubt whatsoever that every public information need be furnished upon receiving a request to that effect. However, in case of personal information, the Act stands on a different footing, and the present appeal before us is the best example of that. The Applicant has to satisfy the legislative intent enshrined in Sections 8(1)(j) of the Act which mandates the requirement of “larger public interest” that can justify the disclosure of such personal information.

9. Section 8(1)(j) of the Act is as follows: “8. (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,

XXX XXX XXX

XXX XXX XXX

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.”

10. Now I shall deal with each of the respective contentions raised by the Appellant in the appeal before me.

11. The Appellant has contended that the information pertaining to the Income Tax returns filed by his father inlaw is an information within the ambit of Proviso to Section 8(1)(j), i.e. those IT returns cannot be denied to the Parliament or a State Legislature. Here, we look towards the enlargement of intent of this proviso by Hon’ble Sanjiv Khanna J. in his decision dated 30.11.2009 in Writ Petition (Civil) Nos.. 8396/2009, 16907/2006, 4788/2008, 9914/2009, 6085/2008, 7304/2007, 7930/2009 AND 3607 OF 2007, wherein he stated ” The proviso in the present cases is a guiding factor and not a substantive provision which overrides Section 8(1)(j) of the RTI Act. It does not undo or rewrite Section 8(1) (j) of the RTI Act and does not itself create any new right. The purpose is only to clarify that while deciding the question of larger public interest i.e. the question of balance between ‘ public interest in the form of right to privacy and ‘public interest in access to information is to be balanced.” It is now apposite to peruse through Section 138 of the Income Tax Act, 1961 (43 of 1961), which is as follows:

“Section 138 – DISCLOSURE OF INFORMATION RESPECTING ASSESSEES.

(1)

(a) The Board or any other income-tax authority specified by it by a general or special order in this behalf may furnish or cause to be furnished to -

(i) Any officer, authority or body performing any functions under any law relating to the imposition of any tax, duty or cess, or to dealings in foreign exchange as defined in section 2(d) of the Foreign Exchange Regulation Act, 1947 (7 of 1947); or (ii) Such officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in

the public interest, specify by notification in the Official Gazette in this behalf, any such information received or obtained by any income-tax authority in the performance of his functions under this Act as may, in the opinion of the Board or other income-tax authority, be necessary for the purpose of enabling the officer, authority or body to perform his or its functions under that law.

(b) Where a person makes an application to the Chief Commissioner or Commissioner in the prescribed form for any information relating to any assessee received or obtained by any income-tax authority in the performance of his functions under this Act, the Chief Commissioner or Commissioner may, if he is satisfied that it is in the public interest so to do, furnish or cause to be furnished the information asked for and his decision in this behalf shall be final and shall not be called in question in any court of law.

(2) Notwithstanding anything contained in sub-section (1) or any other law for the time being in force, the Central Government may, having regard to the practices and usages customary or any other relevant factors, by order notified in the Official Gazette, direct that no information or document shall be furnished or produced by a public servant in respect of such matters relating to such class of assesses or except to such authorities as may be specified in the order.”

12. The legislative mandate is absolutely clear on the front that the Income Tax Returns of an assessee are held by the Chief Commissioner, Income Tax only and such cannot be accessed by any other body or authority except when the Chief Commissioner himself is of the opinion that such returns be furnished to a third party in light of public interest. In *R. K. Jain Vs. Union of India* (1993) 4 SCC 120 it was held that factors to decide the public interest immunity would include (a) where the contents of the documents are relied upon, the interests affected by their disclosure; (b) where the class of documents is invoked, whether the public interest immunity for the class is said to protect; (c) the extent to which the interests referred to have become attenuated by the passage of time or the occurrence of intervening events since the matter contained in the documents themselves came into existence; (d) the seriousness of the issue in relation to which the production is sought; (e) the likelihood that production of the documents will affect the outcome of the case; (f) the likelihood of the injustice if the documents are not produced” It was further stated “The courts would allow the objection if it finds that the documents relates to the affairs of the state and its disclosure would be injurious to the public interest, but on the other hand, if it reaches the conclusion that the document does not relate to the affairs of state or that the public interest does not compel its

nondisclosure or that the public interest in the administration of justice in the particular case before it overrides all other aspects of public interest, it will overrule the objection and order disclosure of the document". I am inclined to say that the information sought is not granted immunity from disclosure as class of information. Protection of disclosure has to be ensured by balancing the two competing aspects of public interest i.e. when disclosure would cause injury or unwarranted invasion of privacy and on the other hand if nondisclosure would throttle the administration of justice.

13. It brings me to the second contention of the Appellant which revolves around the concept of "larger public interest". According to the Appellant, the "State" is pursuing a criminal case against him and that since "State" has decided to prosecute him because of legal fiction created under Section 405 of IPC, automatically a "larger public interest" is involved in the matter. Section 405 of the IPC states that "Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits 'criminal breach of trust'." Dowry Cases invariably have the component of 'Criminal Breach of Trust' relating to misappropriation of property. In case, the State relies upon the fiction of misappropriation, then the other party should have a right to know the details of property reflected in IT Returns which is alleged to be misappropriated.

14. The mandate of the RTI Act to disclose personal information under Section 8(1)(j) is even stricter since it appends the expression "larger" to "public interest". Mere public interest will not suffice in the disclosure of personal information such as the IT Returns of an assessee unless the Applicant can prove that a "larger" public interest demands such disclosure. The expression "larger" cannot be defined or carved into a straight jacketed formula and neither can it be easily disposed of. If the Applicant incessantly stresses on the argument that false dowry cases are a matter of "larger public interest" and that the information relating to IT returns of his fatherinlaw be furnished to him, then an equally challenging rebuttal could be that the Income Tax Act, which defines the procedure of disclosure of such IT Returns to him, is a public policy which has been enacted by the State keeping in mind the larger good of the society. It is not the case of the Respondents that objection to disclosure of the documents is taken on the ground that it belongs to

a class of documents which are protected irrespective of their contents, because there is no absolute immunity for documents belonging to such class.

15. In my view, having assessed the factual situation and the legal reasoning at hand, the correct position of law is that the right forum for seeking the IT Returns of an assessee by a third person is either the Chief Commissioner, Income Tax or the Concerned Court, if the matter is subjudice. My view is furthered by the fact that the position after the repealing of Section 137 of the Income Tax Act, 1961 by Finance Act, 1964 is that the Court in a subjudice matter can direct the IT Authorities to furnish the information pertaining to IT Returns of an assessee for inspection by the Court. Thus, disclosure will be warranted if such line of action is followed. There is no absolute ban on disclosure of IT returns.

16. Since, the present appeal raises important questions of law; it is our duty to apply the law as it stands today. In *SP Gupta vs. UOI* ([1982] 2 SCR 365), a seven judges bench of the Apex Court held that “the Court would allow the objection to disclosure if its finds that the document relates to affairs of State and its disclosure would be injurious to public interest, but on the other hand, if it reaches the conclusion that the document does not relate to the affairs of State or the public interest does not compel its nondisclosure or that the public interest in the administration of justice in a particular case overrides all other aspects of public interest, it will overrule the objection and order the disclosure of the documents.” It was further held that “in balancing the competing interest, it is the duty of the Court to see that there is the public interest that harm shall not be done to the nation or public service by disclosure of the document and there is a public interest that the administration of justice shall not be frustrated by withholding the documents which must be produced if justice is to be done.”

17. In light of the above view taken by the Apex Court, I am inclined to make an observation in this case. I have already discussed the settled point of law regarding public interest but it is in the pursuance of the principle of that public interest only where we feel that the information pertaining to net taxable income of an assessee for the period of year 2000 till date be furnished by following the Section 10 of the RTI Act to his Income Tax Returns. We shall distinguish the present case from the decision of the CIC in the case of *Milap Choraria vs. Central Board of Direct Taxes* (Appeal No. CIC/AT/A/2008/00628) as decided on 15.06.2009 and in the case of *P.R. Gokul vs. Commissioner, Income Tax, Kottayaam* (CIC/AT/A/2007/00405) decided on 15.06.2007. The *Milap Choraria Case* (supra) did not deal with the

issue of information pertaining to net taxable income per se while the Gokul Case (supra) was not centered around the issue of larger public interest for the purpose of disclosure of net taxable income, unlike the present case. In S.P. Gupta case (Supra), Supreme Court stated “The language of the provision is not a static vehicle of ideas and as institutional development and democratic structures gain strength, a more liberal approach may only be in larger public interest.”

18. We direct the CPIO to furnish the information pertaining to the net taxable income of Shri Munna Lal Saini, the fatherinlaw of the Appellant, for the period of year 2000 till 15.09.2009 (i.e. the date of the Appellant’s RTI Application) to the Appellant within 10 days.

19. The Appeal is accordingly disposed of. (Smt. Deepak Sandhu)

Information Commissioner (DS)

Authenticated true copy:

(T. K. Mohapatra)

Dy. Registrar

Copy to:

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2. The Central Public Information Officer  
The Chief Commissioner of Income Tax  
O/o the Commissioner of Income Tax  
Ward 3(1), Jaipur

3. The Appellate Authority  
Addl. Commissioner of Income Tax,  
Range.3 Ward 3(1), Jaipur.