



**Jammu and Kashmir State Information Commission**

(Constituted under Right to Information Act 2009)

Old Assembly Complex, Srinagar, Fax No. 0194-2484269, 2484262

Wazarat Road Near DC Office, Jammu, Fax No. 0191-2520947, 2520937

www.jksic.nic.in

\*\*\*\*\*

File No: SIC/J/A/21/2014  
Decision No: SIC/J/A/21/2014/64

Sh. Vikas Sharma (Advocate)  
On behalf of  
Smt. Poonam Sharma

Present

**(Appellant)**

Sh. Rakesh Kumar  
Jt. Commissioner of Income Tax Range-(2)

FAA

Present

Sh. B.K Raina  
Income Tax Officer W 2(1) Jammu

PIO

Present

**(Respondents)**

**25<sup>th</sup> February, 2014  
Jammu**

Briefly, the facts in this appeal are that Smt. Poonam Sharma w/o Sh. Ankush Magotra, C/o Vikas Sharma (Adv) Bar Room No.2, Table No.4, District Court Complex Janipur Jammu filed an application on 28-10-2013 before Sh. B.K. Raina, Income Tax Officer, Ward-2(1), Railhead Complex, Jammu, (State Public Information Officer), under section 6 of J&K RTI Act, 2009 where under she sought following information:-

1. Whether the income of Ankush Magotra S/o Krishan Kumar Magotra R/o 224, Hari Nagar, Patoli Morh, Old Janipur, Jammu, having Permanent Account No. AKQPM7734F is accessible to Income Tax.
2. If reply to query (1) is in affirmative, how much of Income from all sources was disclosed and Tax deposited by Sh. Ankush Magotra for the financial year 2011-12 with your department.

3. Certified copy of Income Tax receipt issued by your department in favour of Ankush Magotra having PAN No. AKQPM7734F for the financial year 2011-12.

This RTI application is send through registered post on 28-10-2013.

This RTI application has been disposed of by Sh. B.K. Raina Income Tax Officer Ward-2(1), Jammu (Central Public Information Officer) vide order no: ITO/W-2(1)/JMU/2013-14/7790 dt.19.11.2013 stating that his office received application of Smt. Poonam Sharma on 30.10.2013. The information asked for being 3<sup>rd</sup> party information, the concerned party Sh. Ankush Mangotra was asked to state whether he has any objections in providing the requisite information. In his reply, Sh. Ankush Magotra submitted that the information called for has no relationship to any public activity or interest and it would cause unwarranted invasion of his privacy as per section 8(1)(i) of the J&K Right to Information Act, 2009. So, he requested CPIO not to provide the required information to the applicant.

The PIO has observed that taking into account reply of the concerned party and in views of section 8 (1) (d) and 8(1) (i) of J&K RTI Act, 2009 the information called for is in respect of individual person and the applicant has not indicated how public interest served by such disclosure. Therefore, same cannot be provided.

Aggrieved by the order CPIO as stated above, the information seeker filed appeal before 1<sup>st</sup> Appellate Authority Joint Commissioner Income Tax Range-II, Jammu on the grounds that Public Information Officer has violated the provision of J&K RTI Act section 7(1); that Public Information Officer has not followed the procedure as laid down in section 11 of the Act and that the information did not fall under exemptions as laid down in section (8) of the RTI Act. Accordingly, he has prayed to allow the appeal and direct Public Information Officer to furnish requisite information and also imposed penalty as provided by J&K RTI Act, 2009.

This appeal has been disposed of and decided by Sh. Rakesh Kumar Joint Commissioner of Income Tax Range-II, AAykar Bhawan, Rail Head Complex, Jammu vide order no. JCIT/R-2/JMU/2013-14/856 dt.02-01-2014, the operative part of which decision is as under:-

"In conclusion, after considering all the relevant material and facts of the case, i am of the considered view that the Income Tax Officer.W-2(1), Jammu (CPIO), has rightly denied the passing of information. The action of the Officer in denying the information sought by Smt. Poonam Sharma, W/o Sh. Ankush Mangotra, C/o Vikas Sharma, Advocate, Bar Room No.2, Table No.4 Distt. Court Complex, Janipur, Jammu is in line with the provisions of section 8(1) (i) of the J&K Right to Information Act, 2009. The refusal of information by the Officer is held not to be bad in law as well as on facts.

In view of the above, the appeal filed by the appellant is dismissed."

Aggrieved by the aforesaid order 1<sup>st</sup> Appellate Authority, the appellant preferred a 2<sup>nd</sup> appeal before the Commission on 27-01-2014 on similar grounds as stated in the 1<sup>st</sup> Appeal with the prayer to allow the appeal, direct respondent to provide requisite/complete information and impose penalty beyond the periods of 30 days.

The Public Information Officer in his counter reply to the 2<sup>nd</sup> appeal submitted that decision taken is in accordance with the relevant provisions of the J&K RTI Act, 2009 and there is no deliberate or mala-fide intention to withhold the information as alleged by the appellant. The Central Public Information Officer has drawn the attention of the Commission to section (11) of J&K RTI Act, 2009 and submitted that decision taken by the Public Information Officer was based on the above provisions of the Act; as is evident from the following action taken by him:-

The third party was served with a notice as provided in Sub-section 1 of section 11 and in response to the said notice 3<sup>rd</sup> party objected to the disclosure of the information to the appellant.

The onus was on the applicant to establish that how the disclosure of information will serve the public interest and its disclosure outweighs any possible harm or injury to the interests of the third party and the applicant has not established in any manner that the disclosure will serve larger public interest. Therefore, it was decided not to disclose the information.

The CPIO has also drawn the attention of the Commission in the case of **Milap Choraria V Central Board of Direct Taxes wherein** similar issue came up before

the Full Bench of the Central Information Commission in appeal No. CIC/AT/A/2008/000628 and the Commission vide its decision dated 15.06.2009 held that;

**“The income tax return have been rightly held to be personal information exempted from disclosure under clause (j) of section 8(1) of the RTI Act by the CPIO and the Appellant Authority, and the appellant herein has not been able to establish that a larger public interest would be served by disclosure of this information.”**

**Further, he has also submitted to that the matter came up before the Hon’ble Supreme Court of India in Special Leave Petition (Civil) No.27734 of 2012 and the Hon’ble Supreme Court in its judgment dated 3<sup>rd</sup> October, 2012 at Para no.14 of its order has held:-**

**“The details disclosed by a person in his income tax returns are “personal information” which stand exempted from disclosure under clause (j) of section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information”.**

In conclusion the CPIO has submitted that taking into consideration all the above facts, the Appellant in the instant case has not established ‘that the information sought for is for the larger public interest’ and keeping in view the judgment of the Hon’ble Supreme Court as referred to above, the details disclosed by a person in his income tax returns are “personal information” which stands exempted from disclosure under clause (i) of section 8(1) of the J&K RTI Act, 2009 and therefore cannot be provided to the applicant.

During the course of proceeding, the counsel for the appellant requested the Commission that his client seeks information only to the extend whether Sh. Ankush Magotra is an income tax assessee or not. He pleaded that his client is legally wedded wife of Sh. Ankush Magotra, as such she has every right to know whether her husband is an income tax assessee. The council for the appellant also cited case filed No: CIC/AD/A/2012/003341-SA (Jyoti Seherawat vs. Home (General) Dept., GNCTD) of Central Information Commission in support of his

contention that a spouse has a right to information about the particulars of income of other spouse especially for the purpose of the maintenance.

The Commission is of the view that the information related to income tax returns are personal information which stands exempted from disclosure under section 8(1) (i) of J&K RTI Act, 2009 and therefore cannot to be provided to the appellant. However, the information, whether the respondent is an income tax assessee, do not attract the provision of section 8(1)(i) of J&K RTI Act, 2009 and can be disclosed as it is of general nature.

The PIO is therefore, directed to furnish the limb of information sought at point (1) of RTI application 'whether 3<sup>rd</sup> party Sh. Ankush Magotra having PAN-AKQPM7734F is an income tax assessee as per records of Income Tax Department' within 2 weeks from the date of receipt of this order.

The appeal is disposed of with the above directions.

Sd/-  
(Er. Nazir Ahmad)  
State Information Commission

Sd/-  
(Dr. S.K. Sharma)  
State Information Commission

Copy to :

5. The First Appellate Authority / Jt. Commissioner of Income Tax, Range-2, Jammu.
6. Public Information Officer / Income Tax Officer, Ward 2(1), Jammu.
7. Smt. Poonam Sharma w/o Sh. Ankush Magotra, C/o Vikas Sharma (Adv) Bar Room No.2, Table No.4, District Court Complex Janipur Jammu.
8. Guard file.

(Khalid. A. Shah)  
Dy. Registrar  
State Information Commission