



J&K State Information Commission
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File No: SIC/J/A/232/2013
Decision No: SIC/J/A/232/2013/65

Shri R.S. Pathania Advocate On behalf of Shri Raj Kumar (Appellant)	Present
Shri Vikas Sharma Inspector Income Tax On behalf of First Appellate Authority	Present
Shri Sanjeev Raina Inspector Income Tax On behalf of PIO Ward 1(1), Jammu	Present

Jammu
25.02.2014

Brief facts of this appeal are that Shri Raj Kumar village, Basantgarh, Tehsil Ramnagar moved an application dated: 14.3.2013 before the PIO, office of the Commissioner Income Tax, J&K State under Right to Information Act 2009, where under he sought the following information:

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“ Certified copies of details of all the IT returns for every assessment year, filed till today by Sh. Harshdev Singh S/o Lt. Sh. Thakar Dass (M.L.A Ramnagar) R/o Kothi No. 6, Gandhi Nagar, Jammu under PAN No: AFGPS6857R”

Deputy Commissioner of Income Tax Headquarters(HQ)-cum-CPIO Jammu transferred the application of the information seeker to the Income Tax Officer-cum-CPIO Ward No 1(i) Jammu for further necessary action at his end. The Income tax Officer vide No: 1(1)/CPIO informed the applicant on 16.4.2013 through speed post as under:-

“ that the information sought cannot be provided as it relates to the 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 as per section 8(1)(j) of the RTI Act 2005”.

The CPIO further observed that the applicant has not mentioned in his RTI application the public activity or interest behind the information sought.

Feeling aggrieved with the order of the CPIO, the appellant filed first appeal before the Joint Commissioner of Income Tax Range I Jammu alleging therein that the CPIO has failed to spell out any cogent reasons behind the rejection of his RTI application. The appellant also took the plea before the First Appellate Authority that the people of the Assembly segment, to whom he represents, have a right to know of his income tax returns submitted before the Assessing Authority. The appellant also relied on the case of Rakesh Gupta v/s Commissioner Income Tax, New Delhi disposed of by the Central Information

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Commission, in which income tax returns regarding individual businessman have been ordered to be made public to the applicant and in the instant case, the larger public interest also justifies disclosure of income tax returns to the applicant in respect of a 'public representative' representing applicant's constituency in J&K Legislative Assembly.

The First Appellate Authority/Joint Commissioner of Income Tax Range I, Jammu has given an opportunity of being heard to the appellant on 6.6.2013 at 11.00 a.m as conveyed to him vide letter No: JCIT/R/JMU/2013-14 dated: 22.5.2013. Thereafter, the First Appellate Authority vide order No: JCIT/ R-1/JMU/2013-14 dated: 30.7.2013 decided the appeal with the following observations:-

“Considering the reasons given by the appellant and keeping in view the provisions of section 8(1)(i) of the Jammu & Kashmir Right to Information Act 2008, I am of the considered opinion that the information relates to personal information, the disclosure of which has no relationship to any public activity or interest and the disclosure of which would cause unwarranted invasion of the privacy of the individual whose information is being sought for by the appellant. I am also satisfied, considering the facts of the case that no larger public interest is at stake so as to justify the disclosure of the information sought by the appellant. Hence, the ITO, Ward 1(1), CPIO Jammu was under no obligation to give the information sought by the appellant”.

Aggrieved with the order of the First Appellate Authority, the appellant preferred second appeal dated: 17.9.2013 before the Commission in which the appellant almost took the same stand and grounds which he had taken before the First

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Appellate Authority and prayed that the PIO be directed to provide the requisite information as sought by him in RTI application.

The CPIO-cum- Income Tax Officer, Jammu in his counter statement submitted that the income tax returns and other details concerning the assessing of income tax are not to be disclosed unless warranted for requirement of public purposes. The applicant is seeking information for his personal interest and not for public purposes. The applicant has not made a case of bonafide public interest for disclosure of returns of income tax.

The information sought by the information seeker is third party information in terms of section 11 of State RTI Act, 2009. Section 16(5) mandates that if any appeal preferred relates to information of a third party, the Information Commission shall give a reasonable opportunity of being heard to that third party. Therefore, in accordance with provisions of section 16(5), a notice was sent to Shri Harsh Dev Singh, MLA Ramnagar constituency and he filed written objections on 2.1.2014 through his counsel Shri Shailender Sharma, relevant contents of which are reproduced as under:-

“It is pertinent to mention here that the legislators are paid out of the public exchequer but the money paid to them is their salaries and they can utilize their salaries. How a legislator utilizes his salary is his personal information which neither involves any Public Interest not is related to any Public Activity. Income Tax returns do not contain the information of the items on which the legislators have spent their salaries. Disclosure of information as to how a person, whether legislators or not, utilize his salary does not serve any public purpose nor this information is

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available with the Income Tax Authorities. As far as the information relating to the quantum of money paid to the legislators out of the public exchequer is concerned, the said information is already in the public domain. And if the appellant still wants said information he can seek said information from the concerned public authority. The purpose for which the appellant wants to seek the IT returns cannot be fulfilled by the disclosure of Income tax returns. Undoubtedly, the Income Tax returns of an assessee are his personal information and these returns can be disclosed only if the bar too the disclosure of said information as prescribed in section 8(1)(i) of the J&K RTI Act, 2009 8(1)(j) of the Central Act is not attracted. In the instant case the purpose for which the appellant seeks the IT returns of the answering respondent cannot be fulfilled by the disclosure of his IT returns and the appellant has also failed to make out a case for the disclosure of IT returns of the appellant”.

In the memo of arguments filed by the counsel for appellant, it is submitted that lacs and crores of public money are being spent on providing perks and salaries to ‘public representatives’ but the public who elects these representatives have no access to their income details. It is his submission that the information sought for has reasonable nexus/relationship with the object sought to be achieved by the appellant herein as he wants to see if there is total congruence in the IT returns of MLA Ramnagar and his assets submitted before the J&K Legislative Assembly or Election Commission authorities while putting in his nomination papers. He has further argued that on the intervention of Hon’ble High Court of J&K in a case titled “B.R. Manhas Vs State” annual returns submitted by all the legislators of J&K were provided to the applicant when State Information Commission was not in existence. He has further argued that view of PIO/Appellate Authority is contrary to the vires of Central Information Commission’s decision in Rakesh Gupta Vs Commissioner Income Tax, New Delhi where IT returns regarding an individual businessman have been ordered to be made public to the applicant. In conclusion, he has submitted that larger public interest in the subject case also justifies disclosure of IT returns in respect of a ‘public representative’ on the plea that applicant is in possession of records which comes to show that MLA Ramnagar is in possession of assets more than his known sources of income and he wants to see the income tax returns in order to arrive at a more just conclusion with respect to his assets and liabilities and

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further see to it if they are contrary/different as compared to his list of assets submitted before the J&K Legislative Assembly or Election Commission authorities while putting in his nomination papers.

The issue of disclosure of income tax returns and other financial aspects of a third party has come up before the Central Information Commission in a series of case. It would, therefore, be in order to refer to some of these cases before arriving at a decision in this matter:-

- (i) In P.R Gokul Vs. Commissioner of Income Tax, Kottayaam (Decision No. 110/1C(A)/2006-F.No.CIC/MA/A/2006/00274 dated 13th July 2006), the Appellant had sought information regarding the gross income of Shri K. Diwakar Panikar as disclosed in his Income Tax Returns for a certain number of years. The Commission had held that disclosure of information sought was exempted u/s 8(1)(e)&(j) of the RTI Act.
- (ii) In Smt. Shobha R. Arora Vs. Commissioner of Income Tax Mumbai (Decision No. 119/IC(A)/2006 – F.No CIC/MA/A/2006/00220 dated: 14th July 2006), the Appellant had sought copies of the ITRs and balance sheet filed by M/s Eastern International Hotel Limited, Mumbai. In this case also the Commission had held that disclosure of this information was exempted u/s8(1)(e)&(j) of the RI Act.
- (iii) In Prashant A. Shah Vs. Commissioner of Income Tax, Ahmedabad (F.No CIC/AT/A/2007/01374 dated: 3rd April, 2008), the Appellant had sought copies of IT Returns for certain number of years of certain persons on the ground that they were suspected to be evading income tax. The Commission had dismissed the appeal on the ground that uncorroborated allegation of concealment of income by third parties could not form the basis of 'public interest override' provision of section 8(i)(j) or section 8(2) of the RTI Act.
- iv) In Rasik Lal S. Wardia Vs. Department of Income Tax (F.No CIC/AT/A/2007/01439 dated: 9th May 2008), the Appellant had requested for a copy of the Assessment Order of a particular year of a leading business family. The Commission had dismissed the appeal on the ground that a generalized assertion of public interest without supporting evidence

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cannot be allowed to be cited to revoke exemptions undoubtedly available to this category of information.

- v) In T. Seturaman Vs. Commissioner of Income Tax Tiruchrapalli (F.No CIC/AT/A/2007/00336 dated: 15th June 2007) the Appellant had sought the third party information with which he was having a civil dispute. The Commission had dismissed the appeal and held that the information sought attracted several exemption clauses, including clause (d) and (j) etc.
- vi) In Ms. Neeru Bajaj Vs. Commissioner of Income Tax, Lucknow (F.No. CIC/AT/A2006/00644 dated: 21st February, 2007) the Appellant had sought access to the IT assessments of a third party, who was an income tax assessee, on the ground of unearthing suspected tax-evasion by such third party. While dismissing the appeal, the Commission had held that the information sought is 'personal' and belongs to a third party and disclosure thereof is prohibited under section 8(i)(j) of the RTI Act, especially when it involves no public interest.

Recently, Hon'ble Supreme Court of India in Girish Ramachandran Deshpande v/s Central Information Commission in special leave petition civil No:27734 of 2012 has observed in para 14 that the details disclosed by a person in his income tax returns are "personal information" which stand exempted from disclosure in clause (j) of section 8(1) of the RTI Act (Central Act) unless it involves a larger public interest and the Central Public Information Officer or the State PIO or Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information.

The above case relates to seeking information of an employee of Regional Provident Fund, Ministry of Labour, Government of India which interalia includes disclosure of his income tax returns. It is, therefore, obvious that the 3rd respondent in the above case is a public servant. This information has been

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denied by the Central Public Information Officer and upheld by the Hon'ble Supreme Court of India as referred above.

In the appeal under reference, the income tax details of Shri Harsh Dev Singh, MLA Ramnagar has been sought. As per definition of the public servant, elected MLA is also a public servant. Therefore, the decision of the Hon'ble Supreme Court shall equally apply in this case also. After going through the prayer of the appellant and also his arguments, the Commission do not find any cogent reasons/justification which would serve any larger public interest in disclosure of information sought.

In view of the aforesaid facts and observations, it is clear that the appellant in the instant case have not made a bonafide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of the privacy of the individual under section 8(i) of the J&K Right to Information Act, 2009.

We are, therefore, of the view that the appellant has not succeeded in establishing that the information sought for is for the larger public interest. That being the fact, the order passed by the CPIO and the First Appellate Authority require no interference and are upheld.

Sd/-
(Er. Nazir Ahmed)
State Information Commissioner

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

Copy to :

1. The First Appellate Authority / Jt. Commissioner of Income Tax, Range-1, Jammu.
2. Public Information Officer / Income Tax Officer, Ward 1(1), Jammu.
3. Shri Raj Kumar village, Basantgarh, Tehsil Ramnagar .
4. Guard file.

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