

CENTRAL INFORMATION COMMISSION
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File No. CIC/RM/A/2014/000210/BS/8301
10 August 2015

Relevant Facts emerging from the Appeal:

Appellant : Mr. Chandratan B Somani
A-73, Eeshita Towers,
Navrangpura,
Ahmedabad - 380009

Respondent : CPIO & Income-Tax Officer, ward-2(4)
Income Tax Department
O/o the Income Tax officer ward -2(4)
Room No – 119, Aayakar Bhavan,
Majura Gate, Surat – 395001

CPIO & Joint Commissioner of Income-tax, Range-2
Income Tax Department
O/o Joint Commissioner of Income-tax, Range -2
Room No – 102, Aayakar Bhavan,
Majura Gate, Surat- 395001

CPIO & Commissioner of Income-tax-I
Income Tax Department
O/o Commissioner of Income-tax-I
1st Floor, Room No – 123, Aayakar Bhavan,
Majura Gate, Surat- 395001

RTI application filed on : 12/08/2013
PIO replied on : 21/08/2013 & 20/08/2013 & 27/08/2013
First appeal filed on : 25/09/2013
First Appellate Authority order : 28/10/2013
Second Appeal dated : 05/11/2013

Information sought:-

The appellant has sought the following information related to Status of tax returns, arrears & cases against Radheyshyam Somani (PAN: ADOPS 3006P) and Purushottam Somani (PAN: ADOPS 3003J) addressed at 303, Empire State Building, Ring Road, Surat – 395 002.

- a. Whether Radheyshyam Somani (PAN: ADOPS 3006P) and Purushottam Somani (PAN: ADOPS 3003J) have regularly filed their tax returns from A.Y. 2000-01 onwards? If no, for which years, they have filed tax returns & how much tax they have paid?
- b. All facts/documents related to Radheyshyam Somani (PAN: ADOPS 3006P) and Purushottam Somani (PAN: ADOPS 3003J) for their annual year 2003-04 with copies of their A/o. passed u/s 143(3) with copies of orders of CIT (A)-II along with copies of tribunal orders for ITA Nos. 2168, 2220 & 2222/Ahd/2009.

- c. Considering their large scale violation of laws & gross irregularities detected in A.Y. 2003-04 tax returns, whether their tax returns of earlier years & later years were scrutinized for detection & recovery of total amount unduly hidden & grabbed by them during these years?
- d. Whether the department is aware about their all benami & fictitious export firms addressed at 303, Empire State Building, Ring Road, Surat – 395002 & elsewhere as mentioned in enclosed sheet? If yes, provide information on these firms & their tax status. If no, whether department will consider for doing the needful to identify it all for finding their total hidden income to ascertain real amount of due tax & arrears in their name as well as in their firms?
- e. What actions the department has taken against them for recovery of tax arrears/dues as well as to facilitate their prosecution for their economic & criminal offences?
- f. Whether department is having track on their present operations, whereabouts, properties etc.?

Grounds for the Second Appeal:

The CPIO has not provided the desired information.

Relevant Facts emerging during Hearing:

The following were present

Appellant: Mr. C. Somani through VC;

Respondent: Mr. Varghese K. Philip, CPIO through VC; Mr. H. K. Lal, FAA through VC;

The appellant stated that he has not received the information sought in his RTI application dated 12/08/2013. The FAA stated that the information relates to two assesses viz. Shri Radheshyam Somani and Shri Purushottam Somani and is exempted from disclosure under Section 8(1)(j) of the RTI Act. In support of his contention he cited Hon'ble Supreme Court's decision dated 03/10/2012 in the matter of Girish Ramchandra Deshpande and Hon'ble Delhi High Court's decision dated 24/11/2014 in the matter of CIT Vs Rakesh Kumar Gupta. The appellant contested quoting CIC decision dated 24/03/2011 in the matter of Manoj Kumar Saini Vs CIT (File no. CIC/LS/A/2010/001044/DS) wherein the Commission had allowed disclosure of net taxable income of Munna Lal Saini.

The FAA strongly argued that the Hon'ble Supreme Court's decision in the matter of Girish Ramchandra Deshpande is clear wherein the Court has held that "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."

The appellant alleged that the assesses are fraudsters and are involved in a scam of over Rs.100/-Cr. and Mr. Radheshyam Somani is still at large and two criminal cases are pending against them including one in CBI Court. He vehemently argued that there is larger public interest in the matter as the Commission has held that disclosure of information will lead to greater transparency and accountability. He pointed out that the Hon'ble Supreme Court in the matter of S.P. Gupta Vs President of India AIR 1982 SC 149 has held that public interest means "redressing public injury, enforcing public duty, protecting social, collective, "defused" rights and interest." The FAA argued that the Hon'ble Supreme Court's decision cited by the appellant was given in response to a PIL whereas the decisions cited by him are under the RTI Act and consequently binding on the Commission under article 143 of the Constitution.

The appellant asserted that as per the proviso to Section 8(1)(j) information which cannot be denied to Parliament cannot be denied to him.

Decision notice:

The appellant in his submissions has alleged that Somani brothers are fraudsters involved in a scam, have criminal cases against them and are absconding; hence, there is public interest in the disclosure of the information.

The appellant's assertion that public interest is involved in the disclosure of personal information relating to Somani brothers is flawed. The right to privacy has been recognized as a fundamental right to which a citizen is entitled to, therefore, unless the condition mentioned in Section 8(1)(j) is satisfied, the information cannot be provided. In a case where personal information relating to third party is sought the burden on the applicant to show larger public interest is much more onerous than may be a routine case.

The assessment proceedings are not public proceedings where all and sundry are allowed to participate and add their opinion to the proceedings. Merely because a spirited citizen wishes to expose alleged fraudsters the same cannot be stated to be in larger public interest. On the contrary, larger public interest would require that assessment proceedings are completed expeditiously and by the authorities who are statutorily empowered to do so.

The Hon'ble Supreme Court in the matter of Girish Ramchandra Deshpande has held that information relating to income tax return of an assessee is "personal information" which stands exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless the CPIO is satisfied that larger public interest justifies the disclosure of such information.

The appellant has contended that information which cannot be denied to Parliament cannot be denied to him. This issue has also been elaborately clarified by the Hon'ble Delhi High Court in its decision dated 30/11/2009 in the matter of *Union Of India Thr. Director vs Central Information Commission & ors.* WRIT PETITION (CIVIL) NO. 8396 OF 2009 holding as under:

*"43. A proviso can be enacted by the legislature to serve several purposes. In **Sundaram Pillai versus Patte Birman** (1985) 1 SCC 591 the scope and purpose of a proviso and an explanation has been examined in detail. Normally, a proviso is meant to be an exception to something in the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. A proviso cannot be torn apart from the main enactment nor can it be used to qualify and set at naught, the object of the main enactment Sarthi on "Interpretation of Statutes", referred to in the said judgment, states that a proviso is subordinate to the main section and one of the principles which can be applied in a given case is that a proviso would not enlarge an enactment except for compelling reasons. It is unusual to import legislation from a proviso into the body of the statute. But in exceptional cases a proviso in itself may amount to a substantive provision. **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 form of right to privacy' and 'public interest in access to information' is to be balanced.**"*

In terms of Section 8(1)(j) of the RTI Act 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 would fall within the exempted category, unless

the authority concerned is satisfied that larger public interest justifies the disclosure of such information. It is, therefore, to be understood clearly that it is a statutory exemption which must operate as a rule and only in exceptional cases would disclosure be permitted, that too, for reasons to be recorded demonstrating satisfaction to the test of larger public interest. It will not be in consonance with the spirit of these provisions, if in a mechanical manner, directions are passed by the appropriate authority to disclose information which may be protected in terms of the above provisions.

In the matter at hand the appellant has not succeeded in establishing that the information sought is for larger public purpose. It being so, there is no need to interfere with the respondent's decision.

The matter is closed.

BASANT SETH
Information Commissioner

Authenticated true copy:

(R. L. Gupta)
Dy. Registrar/Designated Officer