

Mr.Rakesh Kumar Gupta Vs. Cbdt

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Court : Central Information Commission CIC

Decided On : Oct-10-2011

Appellant : Mr.Rakesh Kumar Gupta

Respondent : Cbdt

Judgement :

In the Central Information Commission at New Delhi CIC/DS/A/2011/001128

Date of Hearing: Sep 16, 2011 Date of Decision: October 10 , 2011 Parties: Appellant Shri Rakesh Kumar Gupta 102 SFS Flats DDA, C & D Block, Shalimar Bagh, Outer Ring Road New Delhi - 110 088 The Applicant was present in person

Respondents 1. The Central Public Information Officer Director of Income Tax (Intelligence) 3A, 1st Floor, ARA Centre E2, Jhandewalan Extension New Delhi 2. The Appellate Authority, Director of Income Tax (Intelligence) 3A, 1st Floor, ARA Centre E2, Jhandewalan Extension New Delhi

Represented by: Shri Manoj Tiwari, ITO (HQ)/Intelligence Shri Gunjan Prasad, DIT (Intelligence)

Information Commissioner

: Mrs. Annapurna Dixit

CIC/DS/A/2011/001128 ORDER Background

1.

The Applicant filed an RTI request dated 20.11.2010 with the Director of Income Tax (Intelligence) seeking detailed information against five specific points, about tax evasion petition/information received by the DGIT (Intelligence Office) Delhi since 2000 in a specific excel format and also information about the yearwise reward paid to employees of income tax and informers till date by the DIT (Intelligence Office). He also sought an inspection of records alongwith copies of records identified on inspection. While stating that information sought in the RTI application being statistical in nature could not be treated as exempt, he further placed reliance on the decision of Bhagat Singh versus Central Information Commission [146 (2008) DLT 385] passed by the Hon'ble High Court of Delhi. The Applicant simply stated that as per the decision, information is to be supplied. However, the point of law where reliance was placed or similarity of the instant case with the relied judgment has not been established.

2.

The CPIO responded by his letter dated 05/06.01.2011 providing the information against the first three points as were available with them in the specified format. While denying information against the points four and five, the PIO stated that no reward had ever been disbursed by their office and also that reports about the tax evasion had been already sent to the Assessment charges (viz. officers handling assessment of tax).

3.

Aggrieved by the denial of information by the CPIO, the Applicant filed a First Appeal dated 11.01.2011 alleging that incomplete information had been supplied by the PIO against points 1 and 5. The ITO (HQs.) (Intelligence) by another communication dated 17.01.2011 provided some additional information against the point 1. Responding about the point 5, the ITO elaborated that final decision on the

reports sent to the Assessing officers were awaited and hence the investigation could not be considered to have been concluded pending adjudication of the tax liability and also until all stages of appeals and revisions as well as final decision of prosecution are complete. Thus exemption under Section 8 (1) (h) of the RTI Act 2005 were sought by the ITO. While deciding the First Appeal, the Appellate Authority passed a detailed and reasoned order holding that the Bhagat Singh case was distinguishable and not applicable in this case. The AA further stated that the disclosure of information would impede the process of investigation and compromise the safety and security of the lives of the source of

information. Thus while upholding the decision of the CPIO, the AA also laid emphasis on the exemptions provided by Section 8 (1) (j) and Section 8 (1) (h) of the RTI Act 2005.

4.

Being repeatedly denied the information, the Appellant approached the Central Information Commission with the instant Second Appeal dated 31.01.2011 reiterating all his contentions while once again placing also mentioning on the decision of Bhagat Singh passed by the Hon'ble High Court of Delhi which discusses under what circumstances information ought to be supplied. However, like in his RTI application, the Applicant did not mention which aspect of the decision he placed reliance on to substantiate his case at hand. The Appellant further alleged that no sound basis has been given for the statement that disclosure of information will hamper investigation. Apart from rebutting each of the grounds of exemption as sought by the ITO/CPIO largely based on the decisions of the Delhi High Court and Supreme Court, the Appellant has also taken the plea of public interest being the reason behind seeking the information.

Decision

5.

The hearing was held as stipulated, at the Central Information Commission in the presence of the parties as noted above. Both the parties reiterated their respective

contentions. The primary concern of the Appellant revolved around information against points 3 and 5 of the RTI application. The basic contention of the Respondent was that in so far as the information about total amount of tax evaded is concerned, the final amount is not quantified at the level of this Respondent Public Authority and that what they forward to concerned authorities is only an estimate. In fact, the Respondent submitted that theirs is a specialized Directorate which deals exclusively with the Trans Border Taxation aspect and acts only upon receipt of complaints. The investigations in each case are initiated at the discretion of the Directorate itself. The Respondent highlighted that being essentially a fact finding body, the Directorate, while acting on complaints, carries out raids, searches, seizure of documents and other relevant articles followed by analysis of the seized articles and documents and preparation of the Report for appraisal at the next level viz. at the level of the Appraising Officer for the relevant zone. However till final adjudication by the Appraising Officer, followed by Appeals and Revisions, the exact amount of tax evasion is not possible to be quantified. Thus it became clear during the arguments that information about the exact quantification of the tax evaded is not available in the hands of the DIT (Intelligence) since the adjudication is not completed at the hands of this Respondent, as discussed above. At this stage, the Appellant stated that an estimate about the amount of tax evaded would then suffice for him. The Respondent resisted the disclosure contending that the information relates to Third Party and also that a bare estimate of tax evasion based on complaints could be very different from the final figure arrived at after the completion of Appraisals, Appeals, Revisions. The Respondent also argued that information is being held by the DGIT in a fiduciary relationship with the assessee since while conducting the inquiry pursuant to the filing of a tax evasion petition/complaint, the information is collected from various documents/records available with the assessee and such information is given to the Respondent in a fiduciary capacity by the assessee. The Respondent added further that the Appraisal Reports contain information relating to the Complainant which also makes the Appraisal Reports highly classified documents.

The Commission, after hearing both sides, is of the opinion that such an argument as put forth by the Respondents in para 5 hereinabove, with respect to applicability of Section 8(1)(e) of the RTI Act, is meritorious only to a certain extent. The Commission finds it relevant at this juncture to revisit the meaning of fiduciary relationship as given in the decision of the Honble Kerala High Court in the case of Treesa Irish vs Central Information Commission [ILR 2010 (3) Kerala892]: 16. [] it is clear that 'fiduciary relationship', although arises out of a transaction involving trust between two parties, it requires something more than mere trust to make the relationship fiduciary. It also cannot be equated with mere privacy or confidentiality. At the heart of fiduciary relationship lie reliance, de facto control and dominance. A fiduciary relationship exists when confidence is reposed on one side and there is resulting superiority and influence on the other. The Canadian Courts have developed the following tests for determining whether fiduciary relationship has been established, viz. a) The fiduciary has the scope for the exercise of some discretion or power; b) The fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiary's legal or practical interests; and c) The beneficiary is peculiarly vulnerable to or at the mercy of the fiduciary holding the discretion or power. Based on the legal principles arising from the above discussion, I am inclined to add one more to the same viz. d) The fiduciary is obliged to protect the interests of the other party. From the material available on the subject, I am satisfied that those tests can be applied for deciding the question as to whether there is fiduciary relationship between two parties.

7.

The aforementioned tests as discussed in the quoted decision above, clearly indicate that a) The fiduciary has the scope for the exercise of some discretion or power; b) The fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiary's legal or practical interests; and c) The fiduciary is obliged to protect the interests of the other party. Therefore, the fiduciary relation exists when there is a scope for the Fiduciary to protect the rights or interests so as to benefit the beneficiary. This aspect of exercising the powers vested in the fiduciary to benefit or protect the rights of the beneficiary has been defined by Waker and quoted in the same judgment of Treesa Irish vs Central Information Commission

[ILR 2010 (3) Kerala 892] as : A fiduciary is a person in a position of trust, or occupying a position of power and confidence with respect to another such that he is obliged by various rules of law to act solely in the interest of the other whose rights he has to protect. He may not make any profit or advantage from the relationship without full disclosure. .. The discussion hereinabove reflects that in order to constitute a Fiduciary relation, the element of protection of rights of the beneficiary is essential. Since the trust is reposed by the beneficiary on a person he chooses to establish as a fiduciary, it is evident that the beneficiary is bestowed with the discretion to choose such a

person(fiduciary) . However, when these key elements are applied in the present scenario, wherein the information is provided by the assessee who is under scrutiny, to the DIT official, no benefit can be seen to accrue to the assessee. Such information is clearly being given under pressure to the official of DIT and there is no element of choice left with the assessee. The information though confidential in nature cannot therefore be construed as being held in a fiduciary relationship by DIT. Hence, exemption from disclosure of information under Section 8 (1) (e) of the RTI Act 2005, as argued by the Respondents, is definitely not applicable in the instant case at hand. 8. While the above discussion in para 7 deals with the case of an assessee who voluntarily discloses the information before the DIT officials on being questioned during scrutiny, in a situation where the Respondent authority has to employ forceful means (through raids) to elicit certain information from the assessee, the information received in such a situation will definitely not satisfy the essential criteria for a fiduciary relationship as detailed hereinabove. Therefore, like in the case of the voluntary disclosure of information as discussed in the preceding paragraph, the information which the Respondent authority collects or receives during a raid or by exercising the legal powers vested in them by virtue of their office, cannot be considered to be held in a fiduciary relationship by the Public Authority. It may also be noted at this stage in any case, the Pubic Authority is only discharging the duties assigned to it and that the information is therefore being held by the Public Authority as a part of a routine exercise and hence not being held in a fiduciary relationship and hence cannot be considered as exempt u/s8(1)(e) of the RTI Act, as contended by the Respondent. 9. However, the attention of the Commission was also drawn towards another line

of argument placed forth by the Respondents to deny the information also Section 8(1)(h) of the RTI Act, besides 8(1)(e) which has already been discussed in the preceding paragraph. This line of argument also arises from the aforementioned judgment in the Bhagat Singh case wherein the Court had held that the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. There are two key aspects in the above said observation made by the Honble Delhi Court which are discussed as given below:

a)The authority denying the disclosure of information must withhold such information. In the present case, it is noted that once a preliminary assessment report is prepared by the Respondent authority, it is thereafter sent to the Appraising Officer (AO), IT Department (next stage) for further enquiry to finalize the matter. Although the concerned AO, at the next stage, is not bound by the factual observations made in such preliminary Assessment report prepared by officials of DIT (Intelligence) while enquiring further into the matter, it is clear that once the assessment report has been prepared and sent to the AO by the Respondent authority, it is no more held by the latter . Hence, the question of denying information does not arise, because as discussed above, the Respondent does not hold the information as sought by the Appellant (since he has passed it on for further action) and therefore cannot withhold the same from the Appellant.

b) merely pendency of an ongoing inquiry is not a valid ground for denying information and the Public authority has to substantiate as to how the disclosure of such information would hamper the process of investigation.

It is observed that the Respondent authority sends the preliminary or tentative/ assessment enquiry report to the AO, IT Department for appraisal as a part of the process of the ongoing enquiry. The latter authority (AO) may or may not act upon such an assessment report but what the AO, IT Department does after the assessment report has been received by him is not at all binding on the Assessing Officer in DIT. Therefore, it is held that the Respondent authority (DIT) is conducting an enquiry which has yet to reach a finality, to be completed at the next stage by the Appraising officer, and hence information at the DIT level is exempt

from disclosure under Section 8(1)(h) of the RTI Act, as already pointed out by the PIO in his reply dated 17.1.11. It is therefore also held that any disclosure of the tentative/assessment report to any citizen under the RTI Act, will surely hamper the process of investigation which is to be further carried out by the AO of the IT department. There is a great possibility that the preliminary assessment enquiry report, if disclosed by the Respondent authority, may reach the hands of those who can then influence witnesses and destroy material evidence which are relevant to the enquiry being conducted by the AO of the IT Department. Therefore, the preliminary report prepared by the Respondent authority after conducting an initial assessment, which is only a tentative report, cannot be disclosed by the Respondent under Section 8(1)(h) of the RTI Act.

10.

Having dealt with the applicability of the Section 8 (1) (h) of the RTI Act in the instant case, the Commission observes that the Respondent has also relied upon Section 8 (1) (g) of the RTI Act to deny some information stating that another essential reason and prime concern behind the denial of disclosure of information is the physical safety of the person (the informer/Complainant). It is the considered opinion of the Commission that the Respondent is justified in denying the disclosure of information received from the Complainant/witnesses,/informers, leading to or during the course of the enquiry, under the provisions of Section 8 (1) (g) of the RTI Act 2005.

11.

The perusal of records further brings forth the fact that from the very outset of the case, the Appellant has relied upon the decision of the Honble Delhi High Court in the Bhagat Singh case [146 (2008) DLT 385] and has urged that the present case is squarely covered by the said decision. The Respondent on the other hand has rebutted that the facts of the Bhagat Singh case are distinguishable from the present matter and thus, the ratio of that case doesn't apply to the instant matter. Upon careful consideration of the contents of the judgment of the Honble Delhi High Court in the Bhagat Singh case, the Commission is of the opinion that it does not serve as a precedent in the present matter. The peculiar circumstances of that

case, which were also acknowledged by the Learned Single Judge in paragraph 18 of the judgment, are not analogous to the factual matrix of the present case. While in the Bhagat Singh case, the information was sought by a Husband in relation to a Tax Evasion Petition (TEP) filed by him against his wife before the IT Department, the Information seeker (Husband) being

personally and directly involved in the proceedings pending before the IT Department and hence seeking information regarding the preliminary investigation reports which had been prepared by the IT Department in pursuance of his own TEP filed against his wife. Therefore, neither was the husband seeking information about some inquiry being conducted in a completely different matter bearing no relevance to him personally nor was he seeking such information which was vague or general in nature. In the special facts and circumstances of that case, the husband was seeking information specifically pertaining to his own TEP and the inquiry proceedings being conducted by the IT Department in pursuance thereof. There was no way, as held by the Court, that providing such information could have hampered the process of investigation, even if such investigation was at a preliminary stage. However, this cannot be considered as a general rule or principle. In the present case, there is no direct interest or right of the Appellant which is involved in the various complaints or the TEPs in relation to which he is seeking certain information through his RTI Application. Therefore, at the outset itself, the Commission holds that the Bhagat Singh case is not applicable in the instant case. Each case is decided on its own merits and whether the disclosure of information in a given case will hamper the process of investigation or not has to be determined on the basis of the peculiarity of facts and circumstances. Thus, to sum up the discussion, the judgment of the Honble Delhi High Court in the Bhagat Singh case, being totally on different premises than the instant case, in view of the peculiarity of the situation in the Bhagat Singh case, the said judgment is neither applicable to the instant case, nor does it warrant the disclosure of information in the present case.

It is pertinent to point out to the Appellant at this stage that the information as sought by the Respondent regarding tax evasion (point 3 of the RTI application) is being actually held more accurately at the hands of the Commissioner, Income Tax and can be obtained from him using an already established efficacious legal provision for disclosure under Section 138(b) of the IT Act 2000 which reads as given below: .Where a person makes an application to the Chief Commissioner or Commissioner in the prescribed form 1413b for any information relating to any assessee received or obtained by any incometax 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.

13.

In the light of the foregoing discussion, the Commission is of the opinion that information as sought by the Appellant cannot be divulged being exempt under the various provisions of law as discussed hereinabove.

14. The appeal is hence dismissed.

(Annapurna Dixit) Information Commissioner Authenticated true copy:

(G. Subramanian) Deputy Registrar

Decision announced in Open Court of Information Commissioner, Mrs. Annapurna Dixit on 10th October, 2011

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2. The Central Public Information Officer Director of Income Tax (Intelligence) 3A, 1st Floor, ARA Centre E2, Jhandewalan Extension New Delhi 3. The Appellate Authority, Director of Income Tax (Intelligence) 3A, 1st Floor, ARA Centre E2, Jhandewalan Extension New Delhi 4. Officer in charge, NIC

