

CENTRAL INFORMATION COMMISSION

Room No. 305, 3rd Floor, CIC Bhavan, Baba Gangnath Marg, Munirka,
New Delhi-110067, website:cic.gov.in

Appeal No.:-CIC/CCITD/A/2017/129613-BJ

Appellant : Mr. Vikas Jain,
Respondent : CPIO,
ITO Ward 34(5)
Office of the Income Tax Officer,
Room No. 713, 7th Floor,
Block E-2, Dr. S. P. Mukherjee Civic Centre,
JLN Marg, Minto Road, New Delhi 110002

Date of Hearing : 08.06.2018
Date of Decision : 11.06.2018

Date of RTI application	30.10.2016
CPIO's response	23.12.2016
Date of the First Appeal	09.01.2017
First Appellate Authority's response	23.02.2017
Date of diarised receipt of Appeal by the Commission	04.05.2017

ORDER

FACTS:

The Appellant vide his RTI application sought information on 03 points regarding the current status on his TEP application made in September, 2013 against Mr. Abhishek Jain whose PAN No. as mentioned in the RTI application along with the investigation report, if the investigation reached to its finality etc.

The CPIO, vide its reply dated 23.12.2016 provided a point-wise information to the Appellant. Dissatisfied by the response, the Appellant approached the FAA. The FAA, vide its order dated 23.02.2017 provided additional information to the Appellant.

HEARING:

Facts emerging during the hearing:

The following were present:

Appellant: Mr. Vikas Jain;

Respondent: Absent;

The Respondent remained absent during the hearing, despite prior intimation. The Appellant while re-iterating the contents of the RTI application stated that a TEP had been filed by him against Mr. Abhishek Jain in September, 2013 wherein the desired information had not been

received, till date. Further, in support of his contention, the Appellant also referred to the judgement of the Hon'ble High Court of Delhi in the matter of Hon'ble High Court Delhi in *Bhagat Singh v. CIC & Ors.* WP(C) 3114/2007 and several other decisions of the Commission to submit that the broad outcome of the investigation ought to be provided to him.

The Commission was in receipt of an objection letter dated 06.06.2018 from the Third Party i.e. Smt. Manju Jain, whose information the Appellant was seeking in his RTI application, wherein Smt. Manju Jain had objected to the disclosure of any information in respect of their Assessment Proceedings conducted u/s 147 & 148 of the Income Tax Act, 1961. It was further prayed to the Commission to direct the CPIO/ITO Ward 34(5) not to share/provide any information to the Appellant without any cause of rhyme.

On perusal of the records, it was observed that the CPIO/FAA had given a suitable reply to the Appellant informing that the investigation in the matter was in progress and disclosure of any information pertaining to investigation was likely to hamper the investigation process.

The Commission referred to the decision of the Hon'ble High Court of Delhi in *Bhagat Singh v. CIC & Ors.* WP(C) 3114/2007 wherein information on 03 points was sought regarding (i) Fate of Petitioner's complaint (tax evasion petition) dated 24.09.2003 (ii) What is the other source of income of petitioner's wife Smt. Saroj Nimal than from teaching as a primary teacher in a private school ' iii)What action the Department had taken against Smt. Saroj Nimal after issuing a notice u/s 131 of the Income 'tax Act, 1961, pursuant to the said Tax Evasion Petition. The Hon'ble High Court after careful examination of the matter had held as under:

*“14. In the present case, the orders of the three respondents do not reflect any reasons, why the investigation process would be hampered. The direction of the CIC shows is that **the information needs to be released only after the investigation and recovery in complete.** Facially, the order supports the petitioner's contention that the claim for exemption made by respondent Nos. 2 and 3 are untenable. Section 8(1)(j) relates only to investigation and prosecution and not to recovery. Recovery in tax matters, in the usual circumstances is a time consuming affair, and to withhold information till that eventuality, after the entire proceedings, despite the ruling that investigations are not hampered by information disclosure, is illogical. The petitioner's grouse against the condition imposed by the CIC is all the more valid since he claims it to be of immense relevance, to defend himself in criminal proceedings. The second and third respondents have not purported to be aggrieved by the order of CIC as far as it directs disclosure of materials; nor have they sought for its review on the ground that the CIC was misled and its reasoning flawed. Therefore, it is too late for them to contend that the impugned order contains an erroneous appreciation of facts. The materials available with them and forming the basis of notice under the*

Income Tax act is what has to be disclosed to the petitioner, i.e the information seeker.

15. As to the issue of whether the investigation has been complete or not, I think that the authorities have not applied their mind about the nature of information sought. As is submitted by the Petitioner, he merely seeks access to the preliminary reports investigation pursuant to which notices under Sections 131, 143(2), 148 of the Income Tax have been issued and not as to the outcome of the investigation and reassessment carried on by the Assessing Officer. As held in the preceding part of the judgment, without a disclosure as to how the investigation process would be hampered by sharing the materials collected till the notices were issued to the assessee, the respondents could not have rejected the request for granting information. The CIC, even after overruling the objection, should not have imposed the condition that information could be disclosed only after recovery was made.

16. In view of the foregoing discussion the order of the CIC dated 8th May 2006 in so far as it withholds information until tax recovery orders are made, is set aside. The second and third respondents are directed to release the information sought, on the basis of the materials available and collected with them, within two weeks.”

The Commission in the decision of Shri Virag R. Dhulia v. Income Tax Department, Kolkata in CIC/LS/A/2009/001179 dated 18.02.2010 had held as under:

“It is to be noted that investigation into a TEP cannot be allowed to go on ad-infinitum and that it should be concluded in a reasonable time frame where after **the broad outcome thereof needs to be communicated to the appellant** i.e. whether the allegations made in the TEP are fully true, partially true or untrue. No further information needs to be disclosed at this stage.”

This Commission referred to the order dated 18/06/2013 (File No. CIC/RM/A/2012/000926 Sh. Ved Prakash Doda v/s ITO) wherein it was held as under:

“6. It has been the stand of the Commission that in respect of a tax evasion petition, **once the investigation is completed, the appellant should be informed the broad results of the investigation, without disclosing any details.** The appellant has a right to know as to whether the information provided by him was found to be true or false.”

The Commission however observed that the Hon’ble High Court of Delhi in a similar matter in *Pr. DIT (Inv) (1) vs. Ashwani Kumar, W.P.(C) 11591/2017* dated 22.12.2017 had stayed the decision of the Commission wherein a

direction was issued to the Pr. DIT (Inv) (1) to inform the status of the Petition/Complaint dated 12.02.2016 addressed to PMO, within a period of 30 days from the date of receipt of this order. In the said matter, the Hon'ble High Court had also directed the Department to file an affidavit unequivocally stating that the complaint in question is a matter being investigated by the DGIT (Inv.) and not any other office of the IT Authority.

The Respondent was not present to contest the submission of the Appellant or to substantiate their claims further.

DECISION

Keeping in view the facts of the case and the submissions made by the Appellant, the Commission instructs the Respondent to inform the updated status of the investigation to the Appellant within a period of 15 days from the date of receipt of this order.

The Appeal stands disposed accordingly.

(Bimal Julka)
Information Commissioner

Authenticated True Copy:

(K.L.Das)
Deputy Registrar