

HIGH COURT OF DELHI

Date of Decision: 28 February 2024

CORAM:HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.(C) 340/2023 & CM APPL. 1348/2023

CENTRAL PUBLIC INFORMATION OFFICER ...PETITIONER

VERSUS

KAILASH CHANDRA MOONDRA ...RESPONDENT

Legislation:

Section (1)(j) of the Right to Information Act, 2005

Section 80G(2)(b), 138(1)(b) of the Income Tax Act, 1961

Article 225 of the Constitution of India

Subject: Petition challenging the order of the Central Information Commission (CIC) concerning the denial of information under the Right to Information Act, regarding an application for exemption/deduction under Section 80G(2)(b) for donations to SHRI RAM JANMABHOOMI TEERTH KSHETRA.

Headnotes:

Challenge to CIC Order – Petition filed by the Central Public Information Officer against the order of the CIC directing disclosure of information under RTI – Information sought related to the application for exemption/deduction under Section 80G(2)(b) for SHRI RAM JANMABHOOMI TEERTH KSHETRA [Para 1].

Right to Information – Scope and Limitations – Deliberation was made on the limitations of the Right to Information Act, particularly in relation to seeking information that requires interpretation or deduction. The Court cited the Supreme Court's interpretation of the scope of information under the RTI Act. [Para 6, 35]

Application of Section 138(1)(b) of Income Tax Act – highlighted – The Court emphasized the applicability of Section 138(1)(b) of the Income Tax Act, which restricts the disclosure of information about an assessee, overriding the provisions of the RTI Act. The necessity of the satisfaction of the specified authorities before disclosing such information was underscored. [Para 7]

Judicial Precedence and Compliance – The Court observed the necessity for the Central Information Commission to adhere to the precedents set by larger benches and the Apex Court, underscoring the legal obligation to follow judicial hierarchy and prior decisions.

Decision – Quashing of CIC Order – The Court set aside the impugned order of the Central Information Commission, which had allowed the disclosure of information under the RTI Act, citing the overriding effect of the specific provisions of the Income Tax Act over the RTI Act. [Para 8]

Referred Cases:

- CPIO/Dy. Commissioner of Income Tax HQ Exemption, New Delhi vs. Girish Mittal [W.P.(C) 10193/2022 dated 22.01.2024]
- Rakesh Kumar Gupta v. Income Tax Appellate Tribunal (ITAT), 2007 SCC OnLine CIC 315
- Chief Information Commr. v. High Court of Gujarat, (2020) 4 SCC 702
- CBSE vs. Aditya Bandopadhyay & Ors. [CIVIL APPEAL NO.6454 of 2011]
- G.R. Rawal v. Director General of Income Tax (Investigation), 2008 SCC OnLine CIC 1008

Representing Advocates:

For Petitioner: Mr. Zoheb Hossain, Mr. Vivek Gurnani, Mr. Sanjeev Menon, Ms. Abhipriya, and Mr. Vivek Gaurav

For Respondent: None present

ORDER

% **28.02.2024**

1. The present petition has been filed by the Petitioner seeking quashing of the Order dated 30.11.2022 passed by the Ld. Central Information Commission (CIC).
2. None for the Respondent.
3. Notice was issued in the writ petition on 12.01.2023
4. The matter came up for hearing on 03.10.2023. On 03.12.2023, there was no appearance on behalf of the Respondent and the matter was adjourned to today i.e., 28.02.2024.
5. The facts, in brief, leading to the filing of the writ petition are that the Respondent herein filed an RTI application dated 16.02.2021 seeking the following information:

“(1) Please send the copy of complete application (with all annexures) filed by SHRI RAM JANMABHOOM1 TEERTH KSHETRA for getting exemption / deduction u/s 80G(2)(b) for it’s donations as information.

- (2) Please send the copy of Trust Deed of SHRI RAM JANMABHOOMI TEERTH KSHETRA which was filed with the application for getting exemption / deduction u/s 80G(2)(b) for it's donations as information.
- (3) Please send the copies of all the documents, reports, department's internal reports, objects and notes available on the official file of the application for getting exemption / deduction u/s 80G(2)(b) for donations to SHRI RAM JANMABHOOMI TEERTH KSHETRA as information.
- (4) Please send the copy of Declaration if any filed on behalf of SHRI RAM JANMABHOOMI TEERTH KSHETRA with the application for getting exemption / deduction u/s 80G(2)(b) for it's donations as information."
6. The aforesaid information was denied to the Respondent under Section 8(1)(j) of the Right to Information Act, 2005 vide Order dated 05.04.2021. The Respondent, thereafter, filed an appeal against the said Order dated 05.04.2021 which was rejected by the Appellate Authority vide Order dated 09.06.2021. The Respondent, thereafter, filed a second appeal before the Ld. CIC against the said Order dated 09.06.2021. In the Second Appeal, the Ld. CIC allowed the Second Appeal filed by the Respondent vide the Impugned Order dated 30.11.2022. Relevant portion of the said Order dated 30.11.2022 reads as under:
- "DECISION:*
- Keeping in view the facts of the case and the submissions made by both the parties and in the light of the decisions cited above, the Commission directs the Respondent to re-examine the matter and furnish the information sought by the Appellant....."*
- Keeping in view the square applicability of the above decision to the instant matter, the Commission rejects the denial of the information by the CPIO as well as the FAA.*
- Having observed as above the Commission directs the CPIO to revisit points 1 & 2 of the instant RTI Application and provide the available information to the Appellant within 15 days from the date of receipt of this order. A compliance report to this effect shall be duly sent to the Commission by the CPIO immediately thereafter.*
- It may be noted that no action is warranted with respect to points 3 & 4 of the RTI Application as the Appellant has not sought for a specific record as per Section 2(f) of the RTI Act but has raised speculative queries requiring the CPIO to interpret and deduce the relevance of records, if any available. In this regard, the Appellant's attention is drawn towards a judgment of the Hon'ble Supreme Court on the scope and ambit of Section 2(f) of RTI Act in the matter of CBSE vs. Aditya Bandopadhyay & Ors. [CIVIL APPEAL*

NO.6454 of 2011) wherein it was held as under:

"35. At this juncture, it is necessary to clear some misconceptions about the RU Act. The RTI Act provides access to all information that is available and existing..... A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to on applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of „information' in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act"

7. Learned Counsel appearing for the Petitioner states that the information pertaining to an assessee cannot be granted under the RTI Act in view of Section 138(1)(b) of the Income Tax Act, 1961. He places reliance upon a Judgment dated 22.01.2024 passed by this Court in **W.P.(C) 10193/2022** in the case of "CPIO/Dy. Commissioner of Income Tax HQ Exemption, New Delhi vs. Girish Mittal" wherein this Court has observed as under:

15. Applying the said ratio to the facts of the present case, Section 138 (1)(b) and Section 138 (2) of the IT Act which lays down a specific procedure relating to disclosure of information relating to a third party under the IT Act would override Section 22 of the RTI Act. The information sought for by the Respondent herein is clearly covered by Section 138(1)(b) of the IT Act. The satisfaction of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is, therefore, necessary before such information can be divulged. That satisfaction cannot be abrogated to any other authority under a general Act for divulging the information sought for.

16. The said judgment has been followed by the Apex Court in Rakesh Kumar Gupta v. Income Tax Appellate Tribunal (ITAT), 2007 SCC OnLine CIC 315.

17. In Chief Information Commr. v. High Court of Gujarat, (2020) 4 SCC 702, when an issue was raised over furnishing of information of certified copies obtained from the High Court of Gujarat by invoking the provisions of the RTI Act, the Apex Court, while resorting to the Gujarat High Court Rules, has observed as under:

"35. The non obstante clause of the RTI Act does not mean an implied repeal of the High Court Rules and orders framed under Article 225 of the Constitution of India; but only has an overriding effect in case of inconsistency. A special enactment or rule cannot be held to be overridden by a later general enactment simply because the latter opens up with a non obstante clause, unless there is clear inconsistency between the two legislations. In this regard, we may usefully refer to the judgment of the Supreme Court in R.S. Raghunath v. State of

Karnataka [R.S. Raghunath v. State of Karnataka, (1992) 1 SCC 335 : 1992 SCC (L&S) 286] wherein, the Supreme Court held as under : (SCC pp. 356-57, para 38)

“38. In Ajoy Kumar Banerjee v. Union of India [Ajoy Kumar Banerjee v. Union of India, (1984) 3 SCC 127 : 1984 SCC (L&S) 355] , Sabyasachi Mukharji, J. (as his Lordship then was) observed thus : (SCC p. 153, para 38)

*„38. ... As mentioned hereinbefore if the Scheme was held to be valid, then the question what is the general law and what is the special law and which law in case of conflict would prevail would have arisen and that would have necessitated the application of the principle “*generalia specialibus non derogant*”. The general rule to be followed in case of conflict between the two statutes is that the later abrogates the earlier one. In other words, a prior special law would yield to a later general law, if either of the two following conditions is satisfied:*

“(i) The two are inconsistent with each other.

(ii) There is some express reference in the later to the earlier enactment.”

If either of these two conditions is fulfilled, the later law, even though general, would prevail.”

(emphasis supplied)

18. Applying the said analogy to the facts of the present case, Section 138(1)(b) of the IT Act which specifically states that information relating to an assessee can only be supplied subject to the satisfaction of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, would prevail over Section 22 of the RTI Act.

*19. The issue raised herein has been settled by a Bench of three Member Bench of the CIC which, in the opinion of this Court, is binding on the Bench which has passed the impugned order. A Bench of three Commissioners of the CIC in G.R. Rawal v. Director General of Income Tax (Investigation), **2008 SCC OnLine CIC 1008**, while considering the very same issue has observed as under:*

“15. Thus, both the Right to Information Act, 2005 and Section 138 of the Income Tax Act, 1961 deal with disclosure of information. While Right to Information Act is a general law concerning the disclosure of information by the public authorities, Section 138 of the Income Tax Act is a special legislation dealing with disclosure of information concerning the assesses. This Commission in “Rakesh Kumar Gupta v. ITAT, decided on 18th September, 2007 decided by a Full Bench, has dealt with the issue of applicability of special law to the exclusion of the general law. The Commission has relied upon the Hon'ble Apex Court's decision in “Chandra Prakash Tiwari v. Shakuntala Shukla — AIR 2002 SC 2322”. The following two

paragraphs from the said decision of the Commission are pertinent and quoted below:

37. A special enactment or Rule, therefore, cannot be held to be overridden by a later general enactment or simply because the latter opens up with a nonobstante clause unless there is clear inconsistency between the two legislations — one which is later in order of time and the other which is a special enactment. This issue came again for consideration before the Hon'ble Apex Court in *Chandra Prakash Tiwari v. Shakuntala Shukla* — AIR 2002 SC 2322 and the Hon'ble Supreme Court quoted with approval the Broom's Legal Maxim in reference to two Latin Maxims in the following words:

“It is then, an elementary Rule that an earlier Act must give place to a later, if the two cannot be reconciled - lex posterior derogate priori - non est novum ut priores leges ad posteriors trahantur (Emphasis supplied) - and one Act may repeal another by express words or by implication; for it is enough if there be words which by necessary implication repeal it. But repeal by implication is never to be favoured, and must not be imputed to the legislature without necessity, or strong reason, to be shown by the party imputing it. It is only effected where the provisions of the later enactment are so inconsistent with, or repugnant to, those of the earlier that the two cannot stand together²; unless the two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time a repeal cannot be implied; and special Acts are not repealed by general Acts unless there be some express reference to the previous legislation, or a necessary inconsistency in the two Acts standing together, which prevents the maxim generalia specialibus non derogant (Emphasis supplied) from being applied. For where there are general words in a later Act capable of reasonable application without being extended to subjects specially dealt with by earlier legislation, then, in the absence of an indication of a particular intention to that effect, the presumption is that the general words were not intended to repeal the earlier and special legislation, or to take away a particular privilege of a particular class of persons.”

38. In the aforesaid case, the Hon'ble Apex Court also cited with approval an earlier decision in *Maharaja Pratap Singh Bahadur v. Thakur Manmohan Dey* - MANU/SC/0202/1966, in which it was indicated that an earlier special law cannot be held to have been abrogated by mere implication. That being so, the argument regarding implied repeal has to be rejected for both the reasons set out above.”

Propriety demanded that the CIC ought to have followed the opinion of the larger Bench, which is binding on it.

8. In view of the above, the writ petition is allowed. The Impugned Order dated 30.11.2022 passed by the Ld. CIC is set aside. Pending applications, if any, also disposed of.

9. However, it is always open for the Respondent to approach the appropriate authority under the Income Tax Act to seek information as sought for in the RTI application.

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