

Designated Appellate Authority : Appellate Authority

Postal Address : Joint Commissioner of Income Tax
Room No-225-C, Range – 31,
C R Building, IP Estate
New Delhi – 110 002
Ph – 011-23370189 (2253)

Date : 25/09/2012

Name and Address of the appellant : Anil Bairwal,
National Coordinator,
Association for Democratic Reforms

Name and address of the PIO & ACIT : Mr Sanjaya Kumar Chaurasia
Public Information Officer & ACIT, Circle 31(1)
C R Building, IP Estate
New Delhi – 110 002

Date of submission of RTI request : 21/08/2012

Date of payment of Additional fee (if any) : None

Particulars of the order appealed against:

That the information sought by the appellant pertains to third party and the third party has raised objection in providing the necessary information. Therefore under Section 8(1)(j) & 8(1)(e) of the Right to Information Act, 2005, the information cannot be provided to the applicant (Annexure-1).

Brief facts of the case:

This is with reference to my RTI application No: ADR04/RTI/PIO-JDS/02 dated 21-08-2012 asking for copies of all pages of the IT returns filed by Janata Dal (Secular) for the Assessment years 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12. A copy of the above mentioned RTI application filed on 21/08/2012 is attached herewith. (Annexure-2)

As per the reply from the ITO in letter No: F.No. ACIT/Circle 31(1)/2012-13/264 dated 18/09/2012, I was informed that the Income Tax Returns of the said political party was available for the assessment years 2007-08, 2008-09, 2009-10 and 2010-11 but could not be provided as the information sought by the appellant was covered under the purview of section 8(1)(j) & 8(1)(e) of the Right to Information Act, 2005.

About the Appellant:

Anil Bairwal is part of Association for Democratic Reforms (ADR) which works for improving governance, democratic, political and electoral process in the country. Earlier also, ADR had filed a Public Interest Litigation (PIL) in Delhi High Court which resulted in the landmark and historic judgment of Supreme Court (March 13, 2003) making it mandatory for candidates contesting elections of State Assemblies and Parliament to disclose their criminal and financial antecedents, by way of a sworn affidavit to be filed as an essential part of the nomination form.

Also, based on a RTI application filed by it to get Income Tax details of the Political Parties, the Information Commission vide its order number *CIC/AT/A/2007/01029 & 1263-1270*; *Date of Decision: 29.04.2008* directed the public authorities (Income Tax Departments) holding Income Tax returns of the political parties to make them available to the appellant. (Annexure-3)

Grounds for appeal:

1. Section 8(1)(j) of the Right to Information Act, 2005 is not applicable here because of the following reasons-

Section 8(1)(j) of the RTI Act, 2005 states:

"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 unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information."

The information sought is in the larger public interest and does not warrant to invasion of the privacy of the individual. In fact, the Central Information Commission vide its order number *CIC/AT/A/2007/01029 & 1263-1270*; *Date of decision: 29/04/2008* directed the public authorities (Income Tax Departments) holding Income Tax returns of the political parties to make them available to the appellant. It passed the judgement stating that the tax returns of political parties were to be made public and also directed the authorities to furnish copies of the IT returns of the parties to the public.

The Commission in its order said that:

"In this case, the information asked for is available with the public authority, i.e. Income Tax Department and is asked for by a citizen. The information relates to various political parties and has been provided by them to a Public Authority in obedience to the provisions of law."

.....

"Thus, information which is otherwise exempt, can still be disclosed if the public interest so warrants. That public interest is unmistakably present is evidenced not only in the context of the pronouncements of the Apex Court but also the recommendations of the National Commission for the Review of the Working of the Constitution and of the Law Commission."

2. Section 8(1)(e) reads as follows:

"Information available to a person on his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information"

A fiduciary relationship implies that a person voluntarily places confidence in another person (in this case, The Income Tax Department), to share the information with that person. **The information provided by the political party to the Income Tax Department is a statutory requirement and is not done in fiduciary capacity.** It is part of political party's public duty and is done in relation to public and legal activity and not in fiduciary capacity. Hence Section 8(1)(e) is not applicable in this case and the requested information should be given to the applicant.

3. Also, in one of the judgements of CIC (CIC/DS/A/2011/000666 Dated 02/11/2011), in response to the complaint by the appellant (Association for Democratic Reforms), **a show-cause notice was issued to the PIO, Kozhikode for not providing the IT returns of a political party as requested by the appellant.** (Annexure-4)

The Commission in its order said that

"The Commission expresses surprise at the manner in which the CPIO and the first Appellate Authority while being in the full knowledge of the decision of the Central Information Commission dated 29 April referred to above have chosen to ignore it"

.....

"Through this order notice is issued to the CPIO under provisions of Section 20(1) to show cause why penalty should not be imposed upon him for mala-fidely denying the request for information and knowingly obstructing the furnishing of information:

4. Moreover, the same department (Office of the PIO & ACIT, Circle 31(1), Room No. 185(A), IP Estate, New Delhi) had provided the sought information to the appellant via letter number ACIT/Circle 31(1)/2011-12/339 dated 08/11/2011

Hence as per the directions of the Central Information Commission the information sought by the appellant is clearly to be made available under the Right to Information Act.

Prayers or relief sought and grounds thereof:

Based on the above mentioned judgement of the Central Information Commission, the appellant has already sought information pertaining to Income Tax Returns of various Political Parties from Income Tax Department and has been provided the same for a number of political parties.

Hence keeping in mind the above grounds for appeal and the fact that **this information is clearly to be given under RTI as per the order of Central Information Commission**, I request you to kindly direct the PIO/CPIO concerned to provide the requested information to the undersigned at the earliest.

I hereby declare that the aforementioned facts are true to the best of my knowledge.

Appellant's signature

Anil Bairwal
National Coordinator, Association for Democratic Reforms
Table no. 04
B-1/6, Hauz Khas
New Delhi- 110016
Phone – 011-40817601

Enclosures:

Annexure 1: Copy of the letter from the concerned ITO

Annexure 2: Copy of the original RTI Application

Annexure 3: Copy of the CIC Judgement: *CIC/AT/A/2007/01029 & 1263-1270*

Annexure 4: Copy of the CIC Judgement: *CIC/DS/A/2011/000666*



भारत सरकार
GOVERNMENT OF INDIA
कार्यालय मुख्य आयकर आयुक्त, ओडिशा
OFFICE OF THE CHIEF COMMISSIONER OF INCOME TAX, ODISHA
आयकर भवन, राजस्व विहार
AAYAKAR BHAWAN, RAJASWA VIHAR,
भुवनेश्वर-751007
BHUBANESWAR - 751007
Phone: 0674-2586966 Fax: 0674-2580263; 2580267

F.No.CCIT/Estt./RTI Corresp/2012-13/
Dated, Bhubaneswar the 03rd October 2012.

To

**The Joint Commissioner of Income Tax,
Range-1,
Aayakar Bhawan,
Bhubaneswar.**

Sir,

Sub: Forwarding of Application for Appeal under the RTI Act, 2005 of Shri Anil Bairwal – reg.

Kindly find enclosed herewith an application for appeal under the RTI Act, 2005 received from Shri Anil Bairwal on 28.09.2012. Shri Bairwal has filed First Appeal under section 19 of the RTI Act, 2005 against the order the Income Tax Officer, Ward-1(2), Bhubaneswar & CPIO. As you are the First Appellate Authority in this case, the same is forwarded herewith for necessary action at your end.

Yours faithfully,

Encl: As above.

Sd/-
(Dipi Agrawal)
Asst. Commissioner of Income Tax (Hqrs)(Admn) & CPIO,
Office of the Chief Commissioner of Income Tax,
Bhubaneswar.

Memo No.CCIT/Estt./RTI Corresp/2012-13/13996
Dated, Bhubaneswar the 03rd October 2012.

✓ Copy to: Shri Anil Bairwal, National Coordinator, Association for Democratic Reforms, Table No.04, B-1/6, Hauz Khas, New Delhi- 110016 for kind information.

(Signature)
(Dipi Agrawal)
Asst. Commissioner of Income Tax (Hqrs)(Admn) & CPIO,
Office of the Chief Commissioner of Income Tax,
Bhubaneswar.

D. No. 574

RTI MATTER/MOST URGENT

Order u/s 19 of the Right to Information Act, 2005.

- (i) Name of the Applicant : Shri Anil Bairwal
National Coordinator,
Association for Democratic Reforms,
B-1/6, Upper Ground Floor, Hauz Khas ,
New Delhi-110016.
- (ii) Name , Designation and Address of CPIO : Sh. Sanjay Kumar Chaurasia
- (iii) Date of order of CPIO appealed against : 18-09-2012
- (iv) Date of receipt of appeal : 27-09-2012
- (v) Date of order : 8-10-2012

1. Vide his application dated 21-08-2012 appellant sought information on 4 points with respect to Income –tax returns and assessment orders of the Janta Dal (Secular) from CPIO, Asstt. Commissioner of Income-tax, Circle 31(1), New Delhi.
2. Vide his order dated 18-09-2012 CPIO provided part information and denied copy of assessment orders citing Section 8(1) (e) & 8(1) (j) of the RTI Act,2005.
3. Vide his appeal dated 25-09-2012 received on 27-09-2012 appellant filed first appeal. Appellant was given opportunity of being heard vide letter dated 28-09-2012 and case was fixed on 05-10-2012.

On 05-10-2012 Ms. Laxmi and Mr. Manoj Kumar appeared for the appellant and pleaded for setting aside of CPIO's order dated 18-09-2012 w.r.t. point 3 of RTI application dated 21-08-2012 in light of CIC's order No. CC/AT/A/2007/01029 and 1263-1270 dated 29-04-2008.

4. I have gone through the submission of the Appellant..

With regard to not providing returns of income and assessment orders of scrutiny of political parties citing Section 8(1) (e) & 8(1) (j) of the RTI Act, it is stated that, vide order dated

29-04-2008, CIC/AT/A/2007/01029, 1263-01270, Information Commissioner dismissed the arguments of the department citing section 8(1)(d), 8(1)(e) & 8(1) (j) for not providing returns and assessment orders of the political parties and held that it is in public interest that the Income-tax returns be disclosed and directed Public Authorities to provide Income-tax returns and assessment orders of the political parties for the period mentioned by the appellant, without disclosing PANs of those parties.


In view of the order of Information Commissioner dated 29-04-2008 the order of CPIO dated 18-09-2012 w.r.t.point(3) of RTI application denying information citing section 8(1) (c) & 8(1) (j) of RTI Act 2005 is set aside and CPIO is directed to examine the application for information under Right to Information Act of the appellant in light of order of Information Commission dated 29-04-2008 CIC/AT/A/2007/ 01029, 01263-01270.

5. The appeal against this order may be filed with Central Information Commission (CIC), 2nd Floor, Bhikaji Cama Place, New Delhi as per provisions of Right to Information Act, 2005.

(Pradeep Kumar Meel)
Appellate Authority –cum-
Joint Commissioner of Income-tax
Range-31, New Delhi.

Copy to : Sh. Anil Bairwal, National Coordinator, Association for Democratic Reforms, B-1/6,
Upper Ground Floor, Hauz Khas, New Delhi-110016.

CPIO, ACIT, C-31(1), New Delhi.


(Pradeep Kumar Meel)
Appellate Authority –cum-
Joint Commissioner of Income-tax
Range-31, New Delhi.

(PRADEEP KUMAR MEEL)
Jt. Commissioner of Income Tax
Range-31, New Delhi

