

CENTRAL INFORMATION COMMISSION
'B' Wing, August Kranti Bhawan
Bhikaji Cama Place
New Delhi-110 066

CIC/AT/A/2007/01029	CIC/AT/A/2007/01263	CIC/AT/A/2007/01264
CIC/AT/A/2007/01265	CIC/AT/A/2007/01266	CIC/AT/A/2007/01267
CIC/AT/A/2007/01268	CIC/AT/A/2007/01269	CIC/AT/A/2007/01270

Total : 9 Appeals

Dated, the 29th April, 2008.

Appellant : Ms. Anumeha, C/o Association for Democratic Reforms, B1/6, Hauz Khas, New Delhi-110 048.

Respondents : (i) Chief Commissioner of Income Tax-XI, New Delhi;
(ii) Chief Commissioner of Income Tax-IX, Mumbai;
(iii) Chief Commissioner of Income Tax-X, Mumbai;
(iv) Chief Commissioner of Income Tax-III, Hyderabad;
(v) Chief Commissioner of Income Tax-IV, Chennai;
(vi) Chief Commissioner of Income Tax-NWR, Chandigarh;
(vii) Chief Commissioner of Income Tax-V, Chennai;
(viii) Chief Commissioner of Income Tax, Bhubaneswar;
(ix) Commissioner of Income Tax (ITA), CBDT.

Facts of the case:

This second-appeal by the appellant, Ms. Anumeha has been filed under Section 19(3) of the RTI Act against the orders of nine Appellate Authorities of the Department of Income Tax, in regard to disclosure of the Income Tax Returns and the Assessment Orders pertaining to political parties.

2. The appellant filed an application under Section 6(1) of the Right to Information Act, 2005 before the CPIO, Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, North Block, New Delhi-110001 vide letter dated 28.02.2007, seeking information on the following points:-

- (i) Whether the political parties mentioned in the RTI-application have submitted their Income Tax Returns for the years 2002-03, 2003-04, 2004-05, 2005-06, 2006-07.
- (ii) PAN Nos. allotted to these parties.
- (iii) Copies of the Income Tax Returns filed by the political parties for the afore-mentioned years along-with the corresponding assessment orders, if any.

3. The CPIO, Ms. Renu Johri, Director (ITA-II) transferred the application to the appropriate CPIOs in the office of Chief Commissioners of Income Tax at New Delhi, Delhi, Chennai, Mumbai, Chandigarh, Hyderabad, Guwahati, Jammu & Kashmir and Bhubaneswar vide her letter dated 07.03.2007. The CPIO in the office of Commissioner of Income Tax, Jammu & Kashmir, Jammu, provided information in respect of Income Tax Returns of Jammu & Kashmir People's Democratic Party and the CPIO in the office of Commissioner of Income Tax, Guwahati provided information in respect of Income Tax Returns of Asom Gana Parishad. All other CPIOs declined to divulge the information citing various reasons, some of which are summarized as below:-

- (i) Information is exempt under Section 8(1)(d) of the Right to Information Act, 2005 since it contains details and particulars of commercial activities of the political parties. The CPIO, Mumbai stated that information has been submitted by the assesseees in commercial confidence.
- (ii) The returns are submitted by the assesseees in fiduciary capacity and they are confidential in nature and, as such, disclosure thereof is exempted under Section 8(1)(e).
- (iii) The disclosure of information has no relationship with public activity and no public interest is involved and, as such, it cannot be disclosed under Section 8(1)(j).
- (iv) Permanent Account Number (PAN) is a statutory number which functions as an unique identification of each taxpayer. Making PAN number public can result in misuse of this information by other persons and could compromise the privacy of the financial transactions linked with PAN.
- (v) Information relates to third parties who have objected to the disclosure of this information.
- (vi) Information is subject to confidentiality under Section 138 of the Income Tax Act, 1961.
- (vii) Sections 8(1)(g), 8(1)(h) and 8(1)(j) of the Right to Information Act, 2005 make it amply clear that there is no obligation to give any information which had been tendered in confidence for law enforcement or information which would impede the process of investigation or prosecution of offenders or information the disclosure of which would cause unwarranted invasion of the privacy of the individual.

4. The appellant thus received varying replies from the CPIOs in response to her main RTI-application submitted before the CBDT, Department of Revenue, Ministry of Finance. The appellant filed separate appeals before the appropriate Appellate Authorities. An appeal was separately filed before the Commissioner of Income Tax (ITA), Department of Revenue, Ministry of Finance.

5. The First Appellate Authority, Chief Commissioner of Income Tax, Bhubaneswar remanded back the matter to the CPIO, Commissioner of Income Tax, but other First Appellate Authorities, i.e. Chief Commissioners of Income Tax, Chennai, Hyderabad, Mumbai, Delhi and Chandigarh dismissed the appeals.

6. The appellant in her appeal petition before this Commission has submitted that:

- (i) The avowed objective of a political party in a democracy is to represent people in Parliament and Legislature that are lawmaking bodies through the process of elections and that their very existence is indicative of their goal of representing the interests of the people who elect them to power.
- (ii) Each and every act of theirs should be open to public scrutiny. Transparency in their working and financial operation is essential in larger public interest and all sections of government, including the Income Tax Department are duty bound to hold the public interest above the interests of political parties.
- (iii) The disclosure of financial information relating to political parties including I.T. Returns and Assessment Orders to general public would promote such transparency and reduce the role of black money and other undesirable, even illegal activities in the operation of political parties.
- (iv) Various political parties in respect of whom information has been sought from Central Board of Direct Taxes and the Income Tax Department have all enjoyed fruits of political power at the national level or in one or more of the States.
- (vi) The information sought by the applicant in respect of political parties should be made available to the applicant and also to general public, in wider public interest.

7. The second appeal was received in the Commission on 31.07.2007 and was listed to be heard on 18.10.2007. The CPIO, New Delhi, submitted his written-submissions on 17.10.2007 stating, *inter-alia*, as follows:-

- (i) Information sought in this case relates to the third parties, most of who have objected to the disclosure of the same. Therefore, information with regard to PAN Number, Income Tax Returns and the Assessment Orders and copies thereof may not be made available to the applicant.
- (ii) Information regarding PAN Number, details and copies of the Income Tax Returns and the Assessment Order of tax payers is personal information of the concerned tax payers which is subject to confidentiality under Section 138 of the Income Tax Act. Although the provisions of the RTI Act override the provisions of Section 138

of the Income Tax Act, Section 8(1)(j) of the RTI Act itself clearly envisages that personal information, the disclosure of which has no relationship to any public interest or disclosure of which would cause unwarranted invasion of privacy cannot be disclosed.

- (iii) Since the disclosure of information has been objected to by most of the political parties, a uniform decision was taken not to disclose information. The CPIO also attached copies of the objections filed by some of the political parties along with written submissions.

8. The hearing on 18.10.2007 was attended by the appellant. On behalf of the respondents, Commissioner of Income Tax, Delhi was present. Since information concerned various political parties, who were not before the Commission, it was decided that they be afforded a hearing. The Commission, therefore, directed that notices be issued to all the third-parties as well as to the Election Commission and the Ministry of Law and Justice. Accordingly, the notices were issued by the Commission on 12.11.2007 to the following political parties asking them to file their written-submissions by 18.12.2007:-

1. The General Secretary, Bahujan Samaj Party, 12, Gurudwara Rakabganj Road, New Delhi – 110001.
2. The General Secretary, Bharatiya Janata Party, 11, Ashoka Road, New Delhi-110001.
3. The General Secretary, Communist Party of India, Ajoy Bhavan, Kotla Marg, New Delhi – 110002.
4. The General Secretary, Communist Party of India (Marxist), A.K. Gopalan Bhawan, 27-29, Bhai Vir Singh Marg (Gole Market), New Delhi – 110001.
5. The General Secretary, Indian National Congress, 24, Akbar Road, New Delhi – 110001
6. The General Secretary, Nationalist Congress Party, 10, Bishambhar Das Marg, New Delhi – 110001.
7. The General Secretary, People's Democratic Party, Nowgam Bye-Pass, Srinagar, Jammu & Kashmir.
8. The General Secretary, Rashtriya Janata Dal, 13, V.P. House, Rafi Marg, New Delhi.
9. The General Secretary, Biju Janata Dal, Naveen Nivas, Aerodrome Gate, Bhubaneswar – 751009 (Orissa).
10. The General Secretary, Janata dal (United), 7, Jantar Mantar Road, New Delhi.
11. The General Secretary, Indian National Lok Dal, 100, Lodhi Estate, New Delhi.
12. The General Secretary, National Conference, Nawai Subh Complex, Zero Bridge, Srinagar.

13. The General Secretary, Janata Dal (Secular), 5, Safdarjung Lane, New Delhi – 110003.
14. The General Secretary, Samajwadi Party, 18, Copernicus Lane, New Delhi – 110001.
15. The General Secretary, Dravida Munnetra Kazhagam, Anna Arivalayam 268-269, Anna Salai, Teynampet, Chennai – 600018, Tamil Nadu.
16. The General Secretary, All India Anna Dravida Munnetra Kazhagam, 275, Avvai Shanmugam Salai, Royapettah, Chennai – 600014, Tamil Nadu.
17. The General Secretary, Shiromani Akali Dal, House No. 256, Sector 9-C, Chandigarh.
18. The General Secretary, Telugu Desam Party, Telugu Desam Party Office, N.T.R. Bhavan, Road No. 2, Banjara Hills, Hyderabad – 500033.
19. The General Secretary, Shiv Sena, Shivsena Bhavan, Gadkari Chowk, Dadar, Mumbai.
20. The General Secretary, Asom Gana Parishad, Head Office: - Gopinath Bordoloi Road, Guwahati – 781001. Assam.

9. In pursuance of the Notice issued by the CIC, the Election Commission and the Ministry of Law & Justice both filed their comments. Ministry of Law & Justice, vide their letter dated 18.12.2007, stated that it would not be appropriate for them to express any opinion on the issue on which decision is essentially to be taken by the Central Information Commission in discharge of its statutory functions. The Ministry also urged that expressing any opinion or view could amount to conflict of interest because public authority, against whom Central Information Commission might pass an order, may be a Government Ministry / Department or an officer of the Government.

10. The Election Commission in their response stated that under the law the political parties are not required to furnish to the Commission information about their Income Tax Returns. However, under Section 29C of the Representation of the People Act, 1951, the political parties are required to prepare a report in respect of the contributions received by them from any person or company in excess of Rs.20,000/- in a financial year and the report is to be submitted to the Commission under the Conduct of Elections Rules, 1961. However, filing of this report is optional. The Commission also stated that they have submitted a proposal suggesting an amendment so as to make it mandatory for the political parties to publish their audited accounts annually for information and scrutiny of the general public.

11. The Communist Party of India, vide their letter dated 04.04.2007 addressed to the Commissioner of Income Tax, New Delhi, stated that they have had no

objection if information concerning them was disclosed. The Communist Party of Marxists also submitted 'no objection' to the disclosure of information. The Communist Party of India, vide their letter dated 28.08.2007, reiterated the position before the Commission.

12. The Bahujan Samaj Party objected to the disclosure of information on the following grounds:-

- (i) The disclosure of information is exempted under Section 8(1)(d) of the Right to Information Act, 2005. It also stated that there could not be any public interest, much less larger public interest, warranting disclosure of desired information.
- (ii) The Income Tax Department cannot divulge such confidential information to strangers and thereby become party to political maneuverings of the rival political parties which is not the object and purpose of Right to Information Act.

The Bahujan Samaj Party also requested, vide letter dated 6.4.2007, for an opportunity of personal hearing in the matter.

13. The Nationalist Congress Party (NCP) first submitted their preliminary objections as well as para-wise reply to the appeal petition on 14.12.2007. Subsequently, they filed written submissions after the matter was heard. The gist of their submissions in the para-wise response and in the written submissions is summarized below:-

- (i) The Nationalist Congress Party (NCP) is not a public authority in terms of provisions of Section 2(h) of the RTI Act and thus the basis itself of the appellant's case is incorrect and that the RTI application is liable to be dismissed on this ground alone as baseless.
- (ii) The disclosure of Balance Sheets, Profit & Loss statement and audit reports of political parties, from which income tax returns are derived entirely, contain both personal information of the assessee as well as commercial confidence nature of information, which can harm the competitive position of a political party.
- (iii) The appellant has equated the political parties with companies while the fact is that political parties are not Companies incorporated under the Companies Act, 1956 and are thus under no obligation to file their Balance Sheets etc. with the Registrar of Companies under Section 220 of the Companies. Act.
- (iv) The Income Tax Returns are submitted by the assessee to the Government in a fiduciary capacity.
- (v) The Income Tax Returns are not public documents and it is only the respondent who can generally inspect and have certified copies of the documents.

- (vi) The disclosure of information pertaining to tax assessment order, which contains personal information such as PAN, sources of income and other business related details would cause unwarranted invasion of privacy of the assessee.
- (vii) Most of the third parties have objected to providing the required information and there is no larger public interest which justifies disclosure of this information.
- (viii) The information has been sought with a political motive and for causing harm and detriment to the political parties.
- (ix) It is denied that the disclosure of information relating to political parties including assessment returns and assessment orders to general public would promote transparency and reduce the role of black money and other undesirable and illegal activities in the operation of political parties as alleged.
- (x) The income tax return is not a public document. The contents of the documents filed cannot be disclosed to third parties except to the extent permitted under Section 138 of the Act.
- (xi) The copies of the Income Tax Returns filed by NCP; PAN number of NCP and information regarding the fact whether NCP has submitted its Income Tax Returns for the assessment years 2002-03 to 2006-07 is confidential in nature and private in character and thus cannot be disclosed.

14. The NCP also referred to the insertion of Section 13A to the Income Tax Act by the insertion of Section 13A by the Taxation Laws (Amendment) Act, 1978 w.e.f. 1.4.1979 and in support of their arguments they cited the “Statement of Objects and Reasons” which reads as under:-

“Political parties are essential in any democratic set-up. The taxation of their income, however, reduces their disposable funds thereby adversely affecting their capacity to finance their activities from legitimate sources of income. It is, therefore, proposed to provide for exemption from income tax in respect of specified categories of income derived by political parties, namely income from investments both in movable and immovable properties and income by way of voluntary contributions, the proposed exemption will be available only in the case of political parties which are registered or deemed to be registered with the Election Commission of India under the Election Symbols (Reservation and Allotment) Order, 1968. The exemption will not be allowed unless the political party maintains proper books of accounts; records the name and address of every person who has made a voluntary contribution of more than ten thousand Rupees at a time; and the accounts of the political party are audited by a chartered accountant or other qualified accountant.”

15. The Samajwadi Party objected to the disclosure of information on the following grounds:-

- (i) Information has been asked for with a political motive.
- (ii) Under the provisions of Section 138(2) of the Income Tax Act, the confidentiality of information provided by the assesseees is to be maintained.
- (iii) In Writ Petition (Civil) No. 633 of 2005, an order was passed by the Hon'ble Supreme Court directing the President of Samajwadi Party and other family members to file their Income Tax and Wealth Tax Returns and the Returns have already been filed in sealed cover before the Supreme Court. Since the matter is still pending before the Hon'ble Apex Court, the disclosure of information will be pre-judicial to the sanctity of the proceedings pending before the Supreme Court.

16. The Bharatiya Janata Party, in their written-submissions, has objected to the disclosure of information on the ground that the Income Tax Returns were confidential information, parting with which, will amount to infringement of certain privacy rights of the members of the political parties. The BJP has contended that the disclosure of information was exempted under Section 8(1)(j).

17. Dravida Munnetra Kazhagam (DMK) filed their detailed written-submissions vide letter dated 10th December, 2007 stating, *inter-alia*, as under:-

- (i) While making a request for information, an applicant may not be required to give any reasons or any other personal details except those that may be necessary for contacting him but Section 6(2) does not give a blanket exemption to the appellant to reveal the bonafide of her / his conduct once an appeal is preferred under the RTI Act.
- (ii) A request for copies of assessment orders is motivated inasmuch as an appellant has no public knowledge of an assessment made. Incomes of political parties are exempt under Section 13A of the Income Tax Act and in the absence of any violation of Section 13A, the information sought for is frivolous and academic.
- (iii) The appellant should have first exhausted her remedies under Section 138 of the Income Tax Act and that the provisions of RTI Act do not apply when an alternative remedy is available under the Income Tax provisions. The Returns of Income filed by the assesseees under the provisions of Income Tax Act are confidential information which include details of commercial activities. These are submitted in fiduciary capacity. There is no public interest involved in the matter. Disclosure of information is, therefore, exempted under Section 8(1)(j) of the Right to Information Act.

18. The Samajwadi Party in their detailed written submissions filed on 17.12.2007 reiterated their objections made earlier and in support of their case, they cited following decisions of the Commission:-

- (i) S.N. Bhargav Vs. HPCL, DPCL (Decision No. 154/IC(A)/2006 dated 1.8.2006.
- (ii) Anupam Shar Vs. CIT.
- (iii) Hemant K. Jain Vs. CIT.
- (iv) K.L. Bansal Vs. CIT, Decision No. 174/IC (A)/2006 dated 17th August, 2006.
- (v) Shri Jayesh Shah (Decision No. 302/IC(A)/2006-F, No. CIC/MA/A/2006/00447 dated 23.9.2006.
- (vi) Shri Anjani Kumar Chiripal (F.No. CIC/AT/A/2006/00555 dated 31.3.2007.
- (vii) Shri Amol Ganpat Rackvi (F.No. CIC/AT/A/2007/00317 dated 17.5.2007).
- (viii) Arun Verma Vs. DGIT, Appeal 05/IC(A)/CIC/2006 dated 03.03.2006.

19. All India Congress Committee (AICC) in their response filed on 12.11.2007 has made following submissions:-

- (i) The Applicant/Appellant is a busy body having malafide intent and that they are seeking the information for ulterior motives.
- (ii) The Applicant/Appellant has failed to come up with any substantive/cogent reasons for its requests for the information and as to what use and purpose the said information would be put to.
- (iii) The documents relating to Income Tax Returns and Assessment Orders are both personal information of the political parties and also contain commercial confidential nature of data, the disclosure of which is barred under Section 8(1)(d) and (j) of the Right to Information Act.
- (iv) It is now a well settled proposition that Income Tax Returns filed by the assessee before Income Tax Authority are personal as well as fiduciary entrustment and thereby attract the exemptions under Sections 8(1)(e) and 8(1)(j) of the Right to Information Act, 2005.
- (v) The Income Tax Returns contain commercial information for enabling the Income Tax Department to determine the tax liability flowing from it such returns also attract provisions of Section 8(1)(d) of the RTI Act.
- (vi) The PAN Number is a statutory number and making it public would compromise the privacy of any financial transaction linked with the PAN.

20. In her rejoinder to the replies submitted by the third-arties, the appellant vide her written-submission dated 21.01.2008 has stated as follows:-

- (i) That she herself and her organization are completely non-political and non-partisan. The Association for Democratic Reforms (ADR) which she represents works for improving the governance, democratic, political and electoral processes in the country. Earlier also, they have filed Public Interest Litigations (PIL) in the Delhi High Court, which resulted in the landmark and historic judgment of Supreme Court (March 13, 2003) making it mandatory for candidates contesting elections to State Assemblies and Parliament to disclose their criminal antecedents, if any; assets and liabilities; and educational qualifications, by way of a sworn affidavit to be filed as an essential part of the nomination form.
- (ii) Since political parties are working in public domain and using public funds as mentioned above, it is obvious that disclosure of financial information about political parties is, and will be, in the public interest.
- (iii) The Chief Election Commissioner, Shri T.S. Krishnamurthy in his letter dated July 8, 2004 addressed to the Prime Minister of India, a copy whereof has been annexed by the Election Commission in their response to the CIC's Notice in this appeal case, has recommended that the political parties must be required to make public their accounts (at least abridged version) annually for information and scrutiny of the general public and all concerned, for which purpose the maintenance of such accounts and their auditing to ensure their accuracy is a pre-requisite. The Election Commission has reiterated these proposals with the modification that the auditing may be done by any firm of auditors approved by the Comptroller and Auditor General. The audited accounts should be available for information of the public.
- (iv) It is also pertinent to refer to the recommendations of the Law Commission of India contained in their 170th Report on "Reform of the Electoral Laws". An extract from para 3.1.2.1 of which is reproduced below:-

"It is therefore, necessary to introduce internal democracy, financial transparency and accountability in the working of the political parties. A political party which does not respect democratic principles in its internal working cannot be exposed to respect those principles in the governance of the

country. It cannot be dictatorship internally and democratic in its functioning outside.”

- (v) In this connection, it is worth mentioning that the original application under Section 6(1) of the Right to Information Act, 2005 and the subsequent First and Second Appeals have nothing at all with the President of any political party whatsoever, including the Samajwadi Party. The appellant has merely asked the Income Tax Department to furnish the copies of Income Tax returns and copies of Assessment Orders of political parties by way of an RTI application.

21. The appellant also made additional written-submissions on 21.1.2008 stating that RTI Act was a special statute qua matters relating to seeking of information. To ascertain as to whether an act is general or special, one must focus on the principal subject matter of the Act and its particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special. It is a settled position of law that when there is a special enactment in respect of a particular subject (for e.g. Right to Information) it would oust the jurisdiction of all other enactments having similar provisions albeit the fact that those enactments are special in respect of the subject matter it deals with (e.g. Income Tax).

22. In support of this, the appellant has cited the case of *LIC vs. D.J. Bahadur, 1981 (1) SCC 315* in which, the issue before the Hon'ble Supreme Court was whether the Life Insurance Corporation Act, 1956 was a special statute and the Industrial Disputes Act, 1947 a general statute. Applying the above test, the Hon'ble Supreme Court held –

“The Industrial Disputes Act is a special statute devoted wholly to investigation and settlement of industrial disputes which provides definitionally for the nature of industrial disputes coming within its ambit. It creates an infrastructure for investigation into, solution of and adjudication upon industrial disputes. It also provides the necessary machinery for enforcement of awards and settlements. From alpha to omega the ID Act has one special mission – the resolution of industrial disputes through specialized agencies according to specialized procedures and with special reference to the weaker categories of employees coming within the definition of workmen. Therefore, with reference to industrial disputes between employers and workmen, the ID Act is a special statute, and the LIC Act does not speak at all with specific reference to workmen. On the other hand, its powers relate to the general aspects of nationalization, of management when private businesses are nationalized and a plurality of problems which incidentally, involve transfer of service of existing employees of insures. The workmen qua

workmen and industrial disputes between workmen and the employer as such are beyond the orbit of and have no specific or special place in the scheme of the LIC Act.”

23. The appellant has further submitted that in the instant case, the Income Tax Act, 1961 is an Act regulating the levy and recovery of income tax. The Right to Information Act, 2005 (RTI Act) on the other hand, is a specific and special piece of legislation directed towards providing for access to information under the control of public authorities and as such **with regard to citizen’s access to information, the RTI Act is the special statute** while the Income Tax Act is the special statute on matters of levy, assessment and collection of income tax.

24. The issue at hand pertains to the appellants’ right to seek information held with the Income Tax Authorities and is in substance an issue of disclosure of information by a public authority and thus falls squarely within the ambit of the RTI Act, which is a special enactment governing access to information under control of public authority, while the Income Tax Act, 1961 is but a general law on this aspect. The maxim *generalia specialibus non derogat* clearly applies and therefore the general law must yield to the special law. The Maxim has been accepted in several judgments of the Hon’ble Supreme Court. [See *J.K. Cotton Spinning & Weaving Mills Co. Ltd. vs. State of U.P. (1961) 3 SCR 185; AIR 1961 SC 1170; UP State Electricity Board Vs. H.S. Jain (1979) 1 SCR 355; 1978 (4) SCC 16; LIC vs. D.J. Bahadur 1981 SCC 315*].

25. According to the appellant, there is absolutely no exception made to Section 22, which makes it abundantly clear that access to information held by public authorities is wholly governed by the RTI Act, 2005. While enacting the RTI Act the legislature was cognizant of the fact that several statutes had disclosure provisions and yet no exception was provided in the RTI Act unlike the RBD Act above. Therefore, **the only interpretation which furthers the intention of the legislature would be the one which gives overriding effect to the RTI Act.** Even otherwise, the RTI Act, 2005 being a later enactment would prevail over the Income Tax Act, 1961, particularly in matters of access to information by citizens.

26. The appellant has also submitted that where plural remedies occur under different enactments, even if inconsistent, they empower a person to choose one, [*Bihar State Cooperative Marketing Unions Ltd. vs. Uma Shankar Saran, AIR 1993 SC 1222*]. In the alternative, assuming without prejudice that there is no inconsistency or discordance between the provisions of the RTI Act and Section 138 of the Income Tax Act and both can be given effect to, then the existence of an alternative remedy under Section 138 of the Income Tax Act or any other act would not bar a citizen from seeking information under the RTI Act, 2005 and to accept any interpretation would mean to render the RTI to a nullity. The RTI Act

is an encompassing piece of legislation and Section 2(f) of the said Act specifically defines “information” to include “...information relating to a private body which can be assessed by a public authority *under any other law for the time being in force.*” The Right to Information Act, 2005 (RTI Act) on the other hand is a specific and special piece of legislation directed towards providing for access to information under the control of public authorities.

27. ISSUES FOR DETERMINATION:

Whether income tax returns of an assessee along with its assessment order and PAN of various political parties can be considered to be exempted under Sections 8(1) (d), (e), (g), (h) and (j) of the RTI Act and as to whether such information can be disclosed in larger public interest?

DECISION AND REASONS:

28. Political parties are an unique institution of the modern Constitutional State. These are essentially civil society institutions and are, therefore, non-governmental. Their uniqueness lies in the fact that in spite of being non-governmental, political parties come to wield or directly or indirectly influence, exercise of governmental power. It is this link between State power and political parties that has assumed critical significance in the context of the Right of Information — an Act which has brought into focus the imperatives of transparency in the functioning of State institutions. It would be facetious to argue that transparency is good for all State organs, but not so good for the political parties, which control the most important of those organs. For example, it will be a fallacy to hold that transparency is good for the bureaucracy, but not good enough for the political parties which control those bureaucracies through political executives.

29. In modern day context, transparency and accountability are spoken of together — as twins. Higher the levels of transparency greater the accountability. This link between transparency and accountability is sharply highlighted in the Preamble to the RTI Act. In T.N. Seshan, CEC of India Vs. Union of India & ors. the Apex Court referred to the Preamble to the Constitution of India and observed that the preamble of our Constitution proclaimed that we were a Democratic Republic and “democracy” being the basic feature of our constitutional set-up, there could be no two opinions that free and fair elections to our legislative bodies alone would guarantee the growth of a healthy democracy in the country. In People’s Union for Civil Liberties (PUCL) and Ors Vs. Union of India and Anr. (AIR2003SC2363), the apex court stated that it is true that the elections are fought by the political parties, yet election would be a farce if the voters are unaware of antecedents of candidates contesting elections. Their decisions to vote either in favour of ‘A’ or ‘B’ candidate would be without any basis. Such election would

be neither free nor fair. In *Union of India v. Association for Democratic Reforms & another* (AIR 2002 SC 2112) also, the Apex Court has observed as follows:-

“To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted.”

30. The RTI Act aims at expanding accountability through transparency at all levels of governance. It is difficult to be persuaded by the argument that though political parties control the political executive — who are their appointees — these parties should be allowed to be insulated from the demands of transparency. In other words, political parties be allowed to escape the obligations / norms transparency imposes, and inferentially, escape accountability, even though these parties almost always influence and, frequently control, State power through the organs of the State. That shall be an unacceptable proposition — especially in a democracy — as accountability is the underpinning of the actions of all stake-holders who have anything to do with State power.

31. The question that additionally needs to be asked is whether the avowed purpose of the RTI Act, as set out in its Preamble — to combat corruption — is being achieved by allowing the finances of the political parties to remain beyond public scrutiny or even public view. There is now widespread concern about a hyphenated relationship developing between party finance and political corruption. The lack of openness and transparency in party finance is matched by the lack of adequate State regulation of such finance.

32. The National Commission to Review the Working of the Constitution in its report submitted in March 2002 has ***recommended that the political parties as well as individual candidates be made subject to a proper statutory audit of the amounts they spend. These accounts should be monitored through a system of checking and cross-checking through the income-tax returns filed by the candidates, parties and their well-wishers. At the end of the election each candidate should submit an audited statement of expenses under specific heads.*** The National Commission has further suggested that the Election Commission should devise specific formats for filing such statements so that fudging of accounts becomes difficult. Also, the audit should not only be mandatory but it should be enforced by the Election Commission.

33. The Supreme Court in *People's Union for Civil Liberties Vs. Union of India* (AIR2003SC2363) considered the report of the Law Commission, National Commission to Review the Working of the Constitution, conclusion drawn in the report of Shri Indrajit Gupta and Ethics Manual applicable in an advance democratic country and observed that it is apparent that for saving democracy from the evil influence of criminalization of politics, for saving the election from muscle and money power, for having true democracy and for controlling corruption in politics, the candidate contesting the election should be asked to disclose his antecedents including assets and liabilities. Thereafter, it is for the voters to decide in whose favour he should cast his vote.

34. In *Common Cause (A Registered Society) Vs. Union of India* (AIR 1996 SC 3081), Supreme Court dealt with election expenses incurred by political parties and submission of return and the scope of Article 324 of the Constitution, where it was contended that cumulative effect of the three statutory provisions, namely, Section 293A of the Companies Act, 1956, Section 13A of the Income Tax Act, 1961 and Section 77 of the Representation of the People Act, 1951, was to bring transparency in the election funding. The people of India must know the source of expenditure incurred by the political parties and by the candidates in the process of election. It was contended before the Supreme Court that elections in the country were fought with the help of money power which was gathered from black sources and once elected to power, it becomes easy to collect tons of black money, which is used for retaining power and for re-election and that this vicious circle had polluted the wellspring of democracy in the country. The Court held that purity of election was fundamental to democracy and the Election Commission could ask the candidates about the expenditure incurred by the candidates and by a political party. The Apex Court summed up the position thus:-

"...The political parties in their quest for power spend more than one thousand crore of rupees on the General Election (Parliament alone), yet nobody accounts for the bulk of the money so spent and there is no accountability anywhere. Nobody discloses the source of the money. There are no proper accounts and no audit. From where does the money come nobody knows. In a democracy where rule of law prevails this type of naked display of black money, by violating the mandatory provisions of law, cannot be permitted."

35. In *Common Cause (A Registered Society) Vs. Union of India* (AIR 1996 SC 3081), the Apex Court has further observed that to combat this naked display of unaccounted/black money by the candidates, declaration of assets was likely to check violation of the provisions of the P.R. Act and other relevant Acts including Income Tax Act. The Apex Court did not agree that the declaration of assets would result in infringement of the right of privacy. The following observations of the Court in this context are quite relevant:-

“Similarly, with regard to the declaration of assets also, a person having assets or income is normally required to disclose the same under the Income Tax Act or such similar fiscal legislation. Not only this, but once a person becomes a candidate to acquire public office, such declaration would not affect his right or privacy. This is the necessity of the day because of statutory provisions of controlling wide spread corrupt practices as repeatedly pointed out by all concerned including various reports of Law Commission and other Committees as stated above.

36. In *Dr. P. Nalla Thampy Terah v. Union of India and Ors.* [1985 Suppl. SCC 189], the Apex Court considered the validity of Section 77(1) of the Representations of People’s Act and referred to the report of the *Santhanam Committee on Prevention of Corruption*, which says:

“The public belief in the prevalence of corruption at high political levels has been strengthened by the manner in which funds are collected by political parties, especially at the time of elections. Such suspicions attach not only to the ruling party but to all parties, as often the opposition can also support private vested interests as well as members of the Government party. It is, therefore, essential that the conduct of political parties should be regulated in this matter by strict principles in relation to collection of funds and electioneering. It has to be frankly recognized that political parties cannot be run and elections cannot be fought without large funds. But these funds should come openly from the supporters or sympathizers of the parties concerned.”

37. These judicial pronouncements unmistakably commend progressively higher levels of transparency in the functioning of political parties in general, and their funding in particular. Quite importantly, these pronouncements by the nation’s Supreme Court were made much before the RTI Act came into being and, in a sense, even before transparency was enshrined, through the RTI Act, as an avowed objective of governance, Supreme Court delineated the evolutionary process that would culminate in the year 2005 in adoption of the historic enactment of RTI Act by India’s Parliament. The convergence of approach of the nation’s Supreme Court and its Supreme Legislature — the Parliament — in preparing the country to embrace the values of transparency in all aspects of governance is striking. It was their response to an idea, whose time had come. And, it is in this context that the case for transparency in political funding — and its concomitant, the case for disclosure of Income Tax Returns of political parties — is to be evaluated.

38. The laws of the land do not make it mandatory for political parties to disclose the sources of their funding, and even less so the manner of expending

those funds. In the absence of such laws, the only way a citizen can gain access to the details of funding of political parties is through their Income Tax Returns filed annually with Income Tax authorities. This is about the closest the political parties get to accounting for the sources and the extent of their funding and their expenditure. There is unmistakable public interest in knowing these funding details which would enable the citizen to make an informed choice about the political parties to vote for. The RTI Act emphasizes that “democracy requires an informed citizenry”, and that transparency of information is vital to flawless functioning of constitutional democracy. It is nobody’s case that, while all organs of the State must exhibit maximum transparency, no such obligation attaches to political parties. Given that political parties influence the exercise of political power; transparency in their organization, functions and, more particularly, their means of funding is a democratic imperative, and, therefore, is in public interest. Insofar as the Income Tax Returns of political parties contain funding details these are liable for disclosure.

39. In fact provision for disclosure of such information exists in the Income Tax Act itself. Section 138(1)(b) of the Income Tax Act empowers the Commissioner of Income Tax to disclose, “in public interest”, any information which comes into the hands of the public authority. That Section reads as follows:-

“(b) Where a person makes an application to the [Chief Commissioner or Commissioner] in the prescribed form for any information relating to any assessee [received or obtained by any income-tax 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.”

40. What this Section states is that any information in the hands of the Income Tax authorities would be ordinarily held as confidential, but can be made public, if in the judgement of the Commissioner of Income Tax, it serves public purpose. Therefore, the contention that all Income Tax Returns — an information provided by assesseees to Income Tax authorities — are permanently barred from disclosure, is not correct. This information can be disclosed in public interest, either in a given case, or a class of cases, under Income Tax laws. As has been shown in the preceding paragraphs there is public interest in disclosing the class of information, viz. Income Tax Returns of the Political Parties.

41. During the hearing before the Commission, the counsel appearing on behalf of certain national political parties argued that the appellant should seek the information from the appropriate Income Tax authorities under the Income Tax

law as the RTI Act was inapplicable in such cases. It was also submitted that the Right to Information Act was a general Act whereas the Income Tax Act was a special Act and, as such, in regard to the disclosure of Income Tax Return submitted by the political parties, the special law would apply to the exclusion of the general law. It has also been submitted that the Income Tax Act was a complete code in itself and, an applicant seeking information concerning Income Tax Returns must take recourse only to the Income Tax law. It has been further argued that Section 22 of the RTI Act, which provides for the RTI Act overriding other laws, can be operative only when there is 'inconsistency' between the RTI Act and other provisions of law. The Central Information Commission in its Full Bench decision dated 18.9.2007 in Rakesh Kumar Vs. ITAT(CIC/AT/2006/00586) has elaborately discussed this matter. Based on the various rulings of the Supreme Court, it has been conclusively determined by the Commission that RTI Act does not repeal or substitute any pre-existing law including the provisions of Income Tax Act concerning dissemination of information. But, it does not mean, that since there is a pre-existing law, the provisions of the RTI Act shall be either inapplicable or be rendered redundant. It is true that Section 138 of the Income Tax Act provides for disclosure of certain information but so does the RTI Act. In this case, the appellant has exercised her option and has submitted application under the RTI Act of 2005 and not under the Income Tax Act. Now, if the appellant were to be prevented from availing her right under the RTI Act, it would amount to rendering infructuous the right conferred by RTI Act on a citizen. Commission can never become an instrument of such denial. Every citizen is entitled to seek the information from the Income Tax Department either under the Income Tax Act or under the Right to Information Act, 2005 and thus, he has a choice, which once exercised should be recognized and respected.

42. As has been pointed out earlier, there is no inconsistency between the Income Tax Act and the RTI Act. In the Income Tax Act, an information can be disclosed in public interest whereas under the RTI Act, every information held by the Public Authority is disclosable unless it is "exempted" as specified under Sections 8 or 9 of the Act. The Right to Information Act, 2005 was enacted to secure access to information under the control of Public Authorities in order to promote transparency and accountability in the working of every Public Authority. The Act recognizes that a functional democracy requires an informed citizenry and transparency of information is vital to its functioning and also to contain corruption and to hold the Government and their instrumentalities accountable to the governed. The Act intends to harmonize the conflict of interest between efficient operations of the Government, preservation of confidentiality of sensitive information on one hand and disclosure of information on other. The Preamble of the Act makes it very clear that while harmonizing these conflicting interests, the Act seeks to preserve the paramountcy of the democratic ideal.

43. Accordingly, Section 3 of the RTI Act provides that all citizens shall have the right to access information held by public authorities. This Section makes this right subject only to the various provisions of the Act. The right is, therefore, not absolute, but is subject only to the provisions of the Right to Information Act. Section 22 of the Act contains the non-obstante clause which provides an overriding power to the provisions of the Act. Section 22 reads as under:

“**Sec.22**— The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

44. From the provisions of Section 3 and Section 22, read in the context of the Preamble of the Act, it can be inferred that a citizen is entitled to access information available with and held by a Public Authority unless:-

- (a) such information is exempted under Section 8 or Section 9;
- (b) The information relates to an organization exempted under Section 24 subject to exceptions provided for in the proviso to subsection (1) in case of an organization established by the Central Government and subsection (4) in the case of an organization established by State Governments;
- (c) Information which relates to or has been supplied by a third party and has been treated as confidential by that third-party. In case such an information is intended to be disclosed, the procedure set out in Section 11 need to be followed.

45. The scheme of the Act makes it abundantly clear that disclosure of information to a citizen is the norm and non-disclosure by a Public Authority an exception and it necessitates justification for any decision not to disclose an information.

46. 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. The Commission has been consistently holding that the Income Tax Returns and other details concerning an assessee are not to be disclosed unless warranted by requirements of public purpose. (*Mrs. Shobha R. Arora Vs. Income Tax, Mumbai (Appeal No.CIC/MA/A/2006/00220; Decision No.119/IC(A)/2006; Date of Decision:14.7.2006)* and *Ms. Neeru Bajaj Vs. Income Tax (Appeal Nos.CIC/AT/A/2006/00644 & CIC/AT/A/2006/00646; Date of Decision 21.2.2007)*

47. Thus, an 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.

48. Political financing and its potentiality for distorting the functioning of the government, has been the subject of wide public debate in contemporary democracies. It is recognized that political parties do need large financial resources to discharge their myriad functions. But this recognition is tinged with the apprehension that non-transparent political funding could, by exposing political parties, and through it the organs of State which come under the control or its influence, to the corrupting influence of undisclosed money, can inflict irreversible harm on the institutions of government. There is public purpose in preventing such harm to the body-politic.

49. Democratic States, the world over, are engaged in finding solutions to the problem of transparency in political funding. Several methodologies are being tried such as State subsidy for parties, regulation of funding, voluntary disclosure by donors — at least large donors — and so on. The German Basic Law contains very elaborate provisions regarding political funding. Section 21 of the Basic Law enjoins that political parties shall publicly account for the sources and the use of their funds and for their assets. The German Federal Constitutional Court has in its decisions strengthened the trend towards transparency in the functioning of political parties. It follows that transparency in funding of political parties in a democracy is the norm and, must be promoted in public interest. In the present case that promotion is being effected through the disclosure of the Income Tax Returns of the political parties.

50. The Commission directs that the public authorities holding such information shall, within a period of six weeks of this order, provide the following information to the appellant:-

Income Tax Returns of the political parties filed with the public authorities and the Assessment Orders for the period mentioned by the appellant in her RTI-application dated 28.02.2007.

The Commission also directs that the PAN of those political parties whose Income Tax Returns are divulged to the applicant shall not be disclosed. It has been decided not to disclose PAN in view of the fact that there is a possibility that this disclosure could be subjected to fraudulent use, reports of which have lately been appearing. It is, therefore, considered practical that while Income Tax Returns and the Assessment Orders pertaining to political parties be disclosed, there should be no disclosure of the PANs of such parties.

51. Appeal allowed.

Sd/-
(A.N. TIWARI)
INFORMATION COMMISSIONER

Authenticated by –

Sd/-
(D.C. SINGH)
Under Secretary & Asst. Registrar

Address of parties:

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3. Ms. Pamela Bhandari, Chief Commissioner of Income Tax-XI & Appellate Authority, Delhi-XI, C.R. Building, New Delhi.
4. Mr. A.M. Sangma, Commissioner of Income Tax-XVI, Mumbai & CPIO, Matru Mandir, Tardeo Road, Mumbai-400 007.
5. Mr. Shaikh Naimuddin, Chief Commissioner of Income Tax-IX & Appellate Authority, Room No.532, 5th Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400 020.
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9. Mr. M. Narasimhappa, Chief Commissioner of Income Tax, Hyderabad-III & Appellate Authority, 7th Floor, Aayakar Bhawan, Bhasheerbagh, Hyderabad-500 004.
10. Mr. P.K. Sarangi, Commissioner of Income Tax, Chennai-VIII (i/c) and

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33. The General Secretary, Samajwadi Party, 18, Copernicus Lane, New Delhi – 110001.
34. The General Secretary, Dravida Munnetra Kazhagam, Anna Arivalayam 268-269, Anna Salai, Teynampet, Chennai – 600018, Tamil Nadu.
35. The General Secretary, All India Anna Dravida Munnetra Kazhagam, 275, Avvai Shanmugam Salai, Royapettah, Chennai – 600014, Tamil Nadu.
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