

केन्द्रीय सूचना आयोग
Central Information Commission
बाबा गंगनाथ मार्ग, मुनिरका
Baba Gangnath Marg, Munirka
नई दिल्ली, New Delhi – 110067

द्वितीय अपील संख्या / Second Appeal No.:- CIC/CCITJ/A/2017/134766-BJ

Mr. Champa Lal Soni

...अपीलकर्ता/Appellant

VERSUS

बनाम

CPIO & ITO Ward -3,
Office of the ITO, Ward- 3, ITO Office,
Room No. 09, Aayakar Bhawan,
Mandia Road, Pali – 306401

...प्रतिवादीगण /Respondent

Date of Hearing : 14.08.2018
Date of Decision : 16.08.2018

Date of RTI application	24.10.2016
CPIO's response	08.11.2016
Date of the First Appeal	13.12.2016
First Appellate Authority's response	10.02.2017
Date of diarised receipt of Appeal by the Commission	24.05.2017

ORDER

FACTS:

The Appellant vide his RTI application sought information on 06 points regarding the copy of authorization letter issued for conducting survey on 06th and 07th February, 2014 under Section 133A in the case of the Appellant, the proprietor of Jai Laxmi Jewellers, Raipur, copy of the proposal and approval granted by the JCIT/ Addl. CIT for conduct of survey and issues related thereto.

The CPIO, vide its letter dated 08.11.2016 provided a point wise response. Dissatisfied by the response, the Appellant approached the FAA. The FAA, vide its order dated 10.02.2017, directed the CPIO, to provide the copies of authorization issued u/s 133A of the IT Act for the survey conducted on 02.02.2014. As regards points 02, 05 and 06, the FAA concurred with the response of the CPIO. However, for point no. 03 and 04, the CPIO was directed to provide the desired information to the Appellant.

HEARING:**Facts emerging during the hearing:**

The following were present:

Appellant: Mr. Surendra Mehta, Advocate Appellant's representative through VC;

Respondent: Mr. Harish Chandra Gurjar, ITO Ward (3) through VC;

The Appellant's representative reiterated the contents of his RTI application and stated that information on points 02, 05 and 06 of his RTI application were not satisfactorily provided, till date. Explaining that the information was not denied while referring to any specific exemption clause u/s 8 of the RTI Act, 2005, the Appellant's representative submitted that the Appellant being the Assessee himself was entitled to get a copy of the proposal and approval granted by the JCIT/ Addl./ CIT for conduct of survey, certificate granted to Inder Mal H Bagcha as approved valuer and copy of the survey report submitted by the authorised officer. In support of his contention, the Appellant's representative also made a reference to the decision of the Commission in File No, CIC/LS/A/2010/000174 dated 23.04.2010. Thus, while stating that the survey regarding which information was sought was already completed, it was prayed to allow disclosure of information. In its reply, the Respondent while re-iterating the CPIO/ FAA's reply stated that the survey related information was confidential in nature and formed part of department's internal mechanism, hence the same was not shared with the Appellant. It was also stated that as per the general practice the concerned Assesses were informed about the proceedings at the time of surveys. Furthermore with regard to point no. 05, it was stated that the same was a third party information which was not maintained by them but the O/o the CCIT. On being queried, if there existed any specific provision regarding non-disclosure of survey related information to the concerned Assessee, he cited the provision of the Finance Bill, 2017.

Having heard both the parties and on perusal of the available records, the Commission observed that as per the provisions of Section 19 (5) of the RTI Act, 2005, in an Appeal proceeding, the onus to prove that a denial of a request was justified shall be on the CPIO. Neither the Respondent present during the hearing nor the CPIO responding to the RTI application, could justify their position as to how the disclosure of information would be in contravention to any of the provisions enshrined under Section 8 of the RTI Act, 2005

While observing that in order to deny information under any of the exemption mentioned under Section 8 (1) of the RTI Act, 2005, the Respondent is required to provide justification or establish the reason why such exemption was claimed, the Commission referred to the decision of the Hon'ble High Court of Delhi in the matter of Dy. Commissioner of Police v. D.K. Sharma, WP (C) No. 12428 of 2009 dated 15.12.2010, wherein it was held as under:

"6. This Court is inclined to concur with the view expressed by the CIC that in order to deny the information under the RTI Act the authority concerned would have to show a justification with reference to one of the specific clauses under Section 8 (1) of the RTI Act. In the instant case, the Petitioner has been unable to discharge that burden. The mere fact that a criminal case is pending may not by itself be sufficient unless there is a specific power to deny disclosure of the information concerning such case."

Moreover, as per the provisions of Section 7 (8) (i) of the RTI Act, 2005, where a request for disclosure of information is rejected, the CPIO shall communicate the reasons for such rejection.

DECISION:

Keeping in view the facts of the case and the submissions made by both the parties, Commission instructs Mr. Narendra Kumar, Commissioner of Income Tax, Jodhpur to re-examine the matter and provide a reasoned response on points 02, 05 and 06 of the RTI application to the Appellant within a period of 30 days from the date of receipt of this order under intimation to the Commission.

The Appeal stands disposed accordingly.

Bimal Julka (बिमल जुल्का)
Information Commissioner (सूचना आयुक्त)

Authenticated true copy
(अभिप्रमाणित सत्यापित प्रति)

K.L. Das (के.एल.दास)
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दिनांक / Date: 16.08.2018

Copy to:

1. Mr. Narendra Kumar, Commissioner of Income Tax - I and II, Paonta 'C' Road, Near Aakashwani Bhawan, Jodhpur