

# Saurabh Gupta vs Chief Commissioner Of Income Tax (Cca) , ... on 13 May, 2020

**Author: Neeraj Kumar Gupta**

**Bench: Neeraj Kumar Gupta**

Central Information Commission

Baba Gangnath Marg, Munirka  
, New Delhi - 110067

/ Second Appeal No. CIC/CCITJ/A/2018/629028

Shri Saurabh Gupta

...

/Appellant

VERSUS

The CPIO, O/o The Income Tax  
Officer, N.C.R. Building, Statue  
Circle, Jaipur, Rajasthan.

...

/Respondent

Relevant dates emerging from the appeal:

RTI : 29.05.2018

FA : 30.06.2018

SA : 18.08.2018

CPIO : 14.06.2018

FAO : 14.08.2018

Hearing : 05.05.2020

ORDER

1. The appellant filed an application under the Right to Information Act, 2005 (RTI Act) before the Central Public Information Officer (CPIO), O/o The Income Tax Officer, Ward 4(2), N.C.R. Building, Statue Circle, Jaipur, Rajasthan seeking information on nine points, including, inter-alia: "(i) A copy of the income tax return for Assessment Year 2018-19; (ii) A copy of the income tax return for the Assessment Year 2017-18; (iii) A copy of the income tax return for Assessment Year 2016-17; (iv) A copy of the income tax return for Assessment Year 2015-16; (v) Gross Total Income, Income chargeable under the Head Salaries, Income from other sources and Total taxable Income for Assessment year 2018-19; (vi) Gross Total Income, Income chargeable under the Head Salaries, Income from other sources and Total taxable Income for Assessment year 2017-18; (vii) Gross Total Income, Income chargeable under the Head Salaries, Income from other sources and Total taxable Income for Assessment year 2016-17; (viii) Gross Total Income, Income chargeable under the Head Salaries, Income from other sources and Total taxable Income for Assessment year 2015-16; and (ix) Any property transaction done between periods Sep,2016-May,2018."

2. As the CPIO had not provided the requested information, the appellant filed the first appeal dated 30.06.2018 requesting that the information should be provided to him. The first appellate authority was ordered on 14.08.2018 and disposed of his first appeal. He filed a second appeal u/Section 19(3) of the RTI Act before the Commission on the ground that information has not been provided to him and requested the Commission to direct the respondent to provide complete and correct information.

Hearing:

3. The appellant attended the hearing through video-call. The respondent, Shri Shailesh Kotiyal, Income Tax Officer, Ward-IV (2) & CPIO attended the hearing through video-call.

4. The appellant submitted his written submissions dated 26.04.2020 and the same has been taken on record.

5. The appellant submitted that the information has been wrongly denied to him by the respondent under Section 8(1)(j) of the RTI Act. The appellant stated that he is the legally wedded husband of Ms. Neha Khandelwal and he has the right to get this information. The appellant further stated that he needs this information because he is entangled in a web of frivolous maintenance cases, false cruelty and dowry case (on his aged parents and himself) under domestic violence act, 2005. In support of his arguments, the appellant referred to various orders of the Commission viz.

"CIC Judgement - (a) Kritiya Narang vs CPIO Circle 21(2), New Delhi, Date of Decision: 05.03.2020 Appeal Number: - CIC/CCITD/A/2018/149667-BJ. As an outcome of the judgement, complete Income tax returns of spouse were provided to the appellant.

(b) CIC Judgement - Manoj Chaudhari vs CPIO ITO Ward(3), Pune, Date of Decision: 28.01.2020 Appeal Number: CIC/CCITP/A/2018/625333-BJ. As a outcome of this Judgement, Generic income details of spouse was shared to the appellant. In the said judgement, CIC referenced Honorable Madhya Pradesh High court Judgement - Smt. Sunita Jain vs. Pawan Kumar Jain and others W.A. No. 168/2015 and Smt. Sunita Jain vs. Bharat Sanchar Nigam Limited and others W.A. No. 170/2015.

(c) CIC Judgement: Dr. Sanjeev Malhotra vs CPIO & ITO Ward(1), Date of decision 20.04.2017 As an outcome, Generic information of net taxable income/ gross income particulars of his wife to facilitate judicious decision in this case.

(d) Ravindra Ramkrushna Karanjkar v. PIO, EPFO, Thane (CIC/EPFOG/A/2017/1783299) As and outcome, spouse details were not considered strictly third party and the same were shared. e) Kirubananthan K v. PIO, EPFO, Chennai, CIC judgment CIC/EPFOG/A/2017/315385 In the CIC order, it was established that Husband can defend his interest seeking the salary details and employment status of wife.

(f) Juhi Jadli vs CBDT, CIC Judgement CIC/RM/A/2012/000038/LS In the CIC order, it was established that Spouse is not a third party if marriage subsists."

6. The respondent submitted that they have informed the appellant that the information sought by him is exempted from disclosure under Section 8(1)(j) of the RTI Act. He further submitted that third party consent was also sought but third party had denied disclosure of her information sought. The respondent further referred to the judgements of Hon'ble Supreme Court in Civil Appeal No. 22 of 2009 dated 31.08.2017 in the case of Canara Bank Vs. C.S. Shyam & Anr.. He further referred to Hon'ble High Court of Delhi in W.P. 85/2010 & CM No. 156/2010 & 5560/2011 dated 24.11.2014 in the case of Naresh Kumar Trehan Vs. Rakesh Kumar Gupta. He further referred to Hon'ble High Court of Bombay in W.P. 8753 of 2013 dated 06.05.2015 in the case of Shailesh Gandhi Vs. CIC. The respondent submitted that the FAA vide order dated 14.08.2018 had upheld the reply given by the CPIO.

Decision:

7. The Commission, after hearing the submissions of the parties and after perusal of records, referred to the definition of information u/s 2(f) of the RTI Act, 2005 which is reproduced below:

"information" means any material in any form, including records, documents, memos, e- mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, report, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force."

Furthermore, a reference can also be made to the relevant extract of Section 2(j) of the RTI Act, 2005 which reads as under:

"(j) right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes ....."

In this context a reference was made to the Hon'ble Supreme Court decision in 2011 (8) SCC 497 (CBSE Vs. Aditya Bandopadhyay), wherein it was held as under:

35..... "It is also not required to provide 'advice' or 'opinion' to an 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."

Furthermore, the Hon'ble Supreme Court of India in Khanapuram Gandaiah Vs. Administrative Officer and Ors. Special Leave Petition (Civil) No.34868 OF 2009 (Decided on January 4, 2010) had

held as under:

6. "....Under the RTI Act "information" is defined under Section 2(f) which provides: "information" means any material in any form, including records, documents, memos, e- mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, report, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force."

This definition shows that an applicant under Section 6 of the RTI Act can get any information which is already in existence and accessible to the public authority under law. Of course, under the RTI Act an applicant is entitled to get copy of the opinions, advices, circulars, orders, etc., but he cannot ask for any information as to why such opinions, advices, circulars, orders, etc. have been passed."

7. "....the Public Information Officer is not supposed to have any material which is not before him; or any information he could have obtained under law. Under Section 6 of the RTI Act, an applicant is entitled to get only such information which can be accessed by the "public authority" under any other law for the time being in force. The answers sought by the petitioner in the application could not have been with the public authority nor could he have had access to this information and Respondent No. 4 was not obliged to give any reasons as to why he had taken such a decision in the matter which was before him."

Furthermore, the Commission referred to the judgment of the Hon'ble Supreme Court of India in Girish Ramchandra Deshpande vs. Central Information Commission & ors. SLP(C) No. 27734 of 2012 dated 03/10/2012 wherein it was held as under:

14. The details disclosed by a person in his income tax returns are "personal information" which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information."

However, making a distinction with the said judgment, the Division Bench of the Hon'ble High Court of M.P. in the matter of Smt. Sunita Jain vs. Pawan Kumar Jain and others W.A. No. 168/2015 and Smt. Sunita Jain vs. Bharat Sanchar Nigam Limited and others W.A. No. 170/2015 dated 15.05.2018 had in a matter where the information seeker had sought the salary details of her husband from the employer held as under:

"While dealing with the Section 8(1)(j) of the Act, we cannot lose sight of the fact that the appellant and the respondent No.1 are husband and wife and as a wife she is entitled to know what remuneration the respondent No.1 is getting. Present case is distinguishable from the case of Girish Ramchandra Deshpande (supra) and therefore the law laid down by their Lordships in the case of Girish Ramchandra

Deshpande (supra) are not applicable in the present case. In view of the foregoing discussion, we allow the appeal and set aside the order passed by the Writ Court in W.P. No.341/2008. Similarly, the W.A. No.170/2015 is also allowed and the impugned order passed in W.P. No.1647/2008 is set aside."

8. Moreover, the Hon'ble High Court of Bombay (Nagpur Bench) in the matter of Rajesh Ramachandra Kidile vs. Maharashtra SIC and Ors in W.P. No. 1766 of 2016 dated 22.10.2018 held as under:

"8. Perusal of this application shows that the salary slips for the period mentioned in the application have been sought for by the Advocate. As rightly submitted by the learned counsel for the petitioner, the salary slips contain such details as deductions made from the salary, remittances made to the Bank by way of loan instalments, remittances made to the Income Tax Authority towards part payment of the Income Tax for the concerned month and other details relating to contributions made to Provident Fund, etc. It is here that the information contained in the salary slips as having the characteristic of personal nature. Any information which discloses, as for example, remittances made to the Income tax Department towards discharge of tax liability or to the Bank towards discharge of loan liability would constitute the personal information and would encroach upon the privacy of the person. Therefore as held by the Hon'ble Apex Court in the case of Girish Ramachandra Deshpande (supra) such an information could not be disclosed under the provisions of the RTI Act. This is all the more so when the information seeker is a person who is totally stranger in blood or marital relationship to the person whose information he wants to lay his hands on. It would have been a different matter, had the information been sought by the wife of the petitioner in order to support her contention in a litigation, which she filed against her husband. In a litigation, where the issue involved is of maintenance of wife, the information relating to the salary details no longer remain confined to the category of personal information concerning both husband and wife, which is available with the husband hence accessible by the wife. But in the present case, as stated earlier, the application has not been filed by the wife.

9. Then, by the application filed under the provisions of the TI Act, information regarding mere gross salary of the petitioner has not been sought and what have been sought are the details if the salary such as amounts relating to gross salary, take home salary and also all the deductions from the gross salary. It is such nature of the information sought which takes the present case towards the category of exempted information.

10. All these aspects of the matter have not been considered by the authority below and, therefore, I find that its order is patently illegal, not sustainable in the eyes of law."

9. The Commission further observed that the cases/orders as referred by the respondent in support of their arguments are different from the facts of the cases as referred by the Commission above.

10. Keeping in view the facts of the case and the submissions made by both the parties and taking into consideration the aforementioned analysis and the judgments of the Higher Courts, the Commission directs the respondent to inform the appellant about the generic details of the net taxable income/ gross income of his wife held and available with the Public Authority within a period of 15 days from the date of receipt of this order.

11. The details/copy of income tax returns and other personal information viz. details of PAN card, etc. (and other information sought in the RTI application) of third party need not to be disclosed to the appellant except as mentioned at para no. 10 above.

12. With the above observations, the appeal is disposed of.

13. Copy of the decision be provided free of cost to the parties.

Neeraj Kumar Gupta ( ) Information Commissioner ( ) /  
Date:-05.05.2020 Authenticated true copy ( # ) S. C. Sharma ( . . ),  
Dy. Registrar ( - ), (011-26105682) Addresses of the parties:

1. The CPIO, O/o the Income Tax Officer & Nodal CPIO, RTI Cell, Ward 4(2), N.C.R. Building, Statue Circle, Room No. 208, Jaipur, Rajasthan - 302005.

2. Shri Saurabh Gupta,