

**CENTRAL INFORMATION COMMISSION**

2<sup>nd</sup> Floor, August Kranti Bhawan, Bhikaji Cama Place  
New Delhi-110066, website:cic.gov.in

Appeal No.:-CIC/BS/A/2015/001840/CBODT-BJ-Final

Appellant : Chairman,  
Income Tax Settlement Commission  
New Delhi

Respondent : i.) Mr. R K Jain  
New Delhi

ii.) CPIO & Jt. Commissioner of Income Tax,  
Income Tax Settlement Commission ,  
New Delhi

iii.) CPIO & DIT (Inv.),  
Income Tax Settlement Commission  
New Delhi

Date of Hearing : 29.06.2017, 07.09.2017  
Date of Decision : 29.06.2017, 11.10.2017

|                                                             |               |
|-------------------------------------------------------------|---------------|
| Date of filing of RTI application                           | 26.08.2013    |
| CPIO's response                                             | 26.09.2013    |
| Date of filing the First appeal                             | Not on Record |
| First Appellate Authority's response                        | 21.10.2013    |
| Date of diarised receipt of second appeal by the Commission | 07.04.2015    |

**ORDER**

**FACTS:**

The Appellant (Chairman, ITSC) represented that he was aggrieved by the response of the CPIO, ITSC, Principal Bench, New Delhi vide letter dated 26.09.2013 and the order passed by the FAA, ITSC, Principal Bench, New Delhi on 21.10.2013 who had allowed partial disclosure of information to the RTI Applicant.

Explaining the background of the case, the Appellant stated that it was a Public Authority and the RTI applicant had sought information regarding the functioning of the Respondent Public Authority. The FAA had partly allowed the First Appeal of the RTI applicant which was without any authority of law and was erroneous, unjustified, unwarranted and deserved to be quashed under the law since the information pertaining to the working of a quasi judicial body could not be disclosed under Section 8(1)(b) of the RTI Act,2005.

The RTI Applicant (Respondent no.1) vide his letter dated 21.06.2017 had sought adjournment of 06 weeks in the instant matter and had requested the Commission to fix a new date of hearing. Moreover, it was also informed that a copy of the Second Appeal was not served upon him and that the present

Appeal by the Chairman, ITSC was not maintainable under Section 19 of the RTI Act, 2005.

**Facts emerging during the hearing on 29.06.2017:**

The following were present:

**Appellant:** Mr. Raman Kant Garg, Addl. Director IT and Mr. Bipin Kumar, AO representing Chairman, Income Tax Settlement Commission;

**Respondent:** Absent;

The Respondents remained absent despite prior intimation. Explaining the background of the case, the Appellant stated that Mr. R.K Jain( RTI applicant/Respondent no.1) filed an RTI application before the Public Authority which was responded by the CPIO vide its letter dated 26.09.2013. Dissatisfied by the reply of the CPIO, the RTI applicant approached the FAA. The FAA vide its order dated 21.10.2013 had partly allowed the Appeal filed by the RTI applicant. In the meanwhile, the Chairman, ITSC had revised the jurisdiction of the CPIOs vide its office order dated 29.07.2013 by which two CPIOs were appointed in the Principal Bench of ITSC. It was felt that the CPIO/JDIT(Inv) and the FAA/DIT(Inv) had erroneously responded to the RTI application without their jurisdiction and authority to do so in deciding administrative matters. The Chairman, ITSC observed that the information sought by the RTI applicant was administrative information regarding the pendency and disposal of not only by the Principal Bench but also by other Benches in the country and therefore accordingly the said RTI application should have been responded by the Administrative officer. Thereafter, the Chairman, ITSC had cancelled the orders of the FAA/CPIO vide its order sheet noting dated 27.11.2013 stating them as *ab initio void*. Subsequently, in compliance with the order of the Chairman dated 27.11.2013, the AO/CPIO, ITSC, Principal Bench, New Delhi vide its letter dated 14.12.2014 provided a suitable response to the RTI applicant. Aggrieved by the action of the Chairman, ITSC for annulling the said orders of the FAA/CPIO, the RTI applicant approached the Hon'ble High Court in *R.K Jain v. Chairman, ITSC & Ors.* (WP(C) 2939/2014 dated 05.12.2014) wherein it was held as under:

*"12. Although the allegations made by the petitioner may warrant an enquiry, I am not inclined to examine the same in these proceedings and it would be open for the petitioner to approach the CIC under Section 18 of the RTI Act in respect of these allegations. The CIC has the necessary power to initiate an enquiry in respect of such complaints by virtue of Section 18(2) of the RTI Act.*

*13. In view of the above, the impugned order is set aside. However, it will also be open for the respondents to approach the CIC to assail the orders dated 26.09.2013 and 21.10.2013 passed by respondent no.2 and respondent no.4 respectively. Needless to mention that if an appeal is filed before the CIC by the public authority (the Income Tax Settlement Commission), the same would be considered in accordance with law."*

The Appellant therefore submitted that in compliance with the judgment of the Hon'ble High Court of Delhi, the present Appeal was filed before the Commission.

The Commission is in receipt of a letter dated 21.06.2017 from Respondent no.1, Mr. R.K Jain wherein he had sought adjournment for six weeks in the

instant matter and had requested the Commission that a next date may be fixed for hearing.

### **INTERIM DECISION:**

Keeping in view the facts of the case and submission made by the Appellant and the request made by the Respondent no.1 for seeking adjournment in the instant matter and in the interest of natural justice, the matter stands adjourned for further hearing. In the meanwhile, the Commission directs the Appellant to provide a copy of the Second Appeal to Respondent no.1 within a period of 10 days from the date of receipt of this order.

The Dy. Registrar is instructed to fix the next date for hearing in the matter.

**Note: Subsequently the Dy. Registrar, vide its letter dated 16.08.2017 issued fresh notices and fixed 07.09.2017 as the next date of hearing in the matter.**

### **HEARING:**

#### **Facts emerging during the hearing on 07.09.2017**

The following were present:

**Appellant:** Mr. Bipin Kumar, AO representing Chairman, Income Tax Settlement Commission (Arrived late);

**Respondent:** Mr. R. K. Jain;

The Appellant's representative arrived late for the hearing, despite prior intimation to reach the venue of hearing, 30 minutes before the scheduled time of hearing. While re-iterating the background of the matter explained during the last hearing, the Appellant referred to para 13 of the order of the High Court of Delhi in W.P. (C) No. 2939/2014 dated 05.12.2014 to submit that the decision of the Hon'ble High Court allowed them to approach the Commission to assail the orders dated 26.09.2013 and 21.10.2013 which were to be considered in accordance with law.

Respondent (2) and (3) remained absent despite prior intimation. In reply, Respondent no. 1 at the outset, argued that the Second Appeal filed before the Commission was not maintainable as it was not in proper format and was without verification. It was also submitted that the present Appeal was time barred since it was filed beyond 90 days as prescribed in Section 19 (3) of the RTI Act, 2005 and the Appellant had not made any application/ prayer for condonation of delay nor had shown any sufficient cause for it. It was explained that the High Court of Delhi in para 13 of its order dated 05.12.2014 had granted liberty to the Settlement Commission to assail orders dated 26.09.2013 and 21.10.2013 with the observation that the CIC would consider the same in accordance with law. Therefore, the Hon'ble High Court had not given any relaxation from the time limit in filing the appeal to the CIC. Accordingly, the time limit provided under the RTI Act for filing the Appeal would be applicable to the present Appeal not from the date of order, but from the date of judgement of High Court i.e., 05.12.2014. During the hearing, the Respondent no. 1 also conveyed that the Second Appeal was filed before the Commission on 07.04.2015 i.e., beyond the stipulated period of 90 days of the order of the High Court which was an open Court pronouncement hence effective from the date on which it was pronounced. It was also argued that the

Appellant had not served a complete copy of Appeal on him therefore he was being denied with a fair opportunity of meeting the case wrongly and falsely put up by the Appellant.

The Respondent No. 1 further argued on merits that it was wrong that the CPIO and FAA travelled outside their jurisdiction in passing the order on the RTI application. As per own admission of Appellant the CPIO passed an order on 26.09.2013 but the Appellant took no remedial measures against the said order if it was illegal or without jurisdiction. The Appellant should have challenged the order if it was illegal but since the order was in their favour the Appellant did not challenge the same. Respondent no. 1 further denied ground B of the Appeal and submitted that there was only one CPIO/ FAA at the Income Tax Settlement Commission at the time when he had filed the RTI application/ First Appeal. In order to negate the order passed by the FAA an antedated order of appointment of two CPIOs and two FAA was passed. A reference was made to para 11 and 12 of the order of the Hon'ble High Court of Delhi to submit that he had filed the RTI application as per the information available on the website as well as after verifying it from the O/o the Income Tax Settlement Commission. The fact that CPIO/ FAA were not even aware of the order dated 29.07.2013 even after 03 months as the FAA passed the order on 21.10.2013 went on to prove that the so called order dated 29.07.2013 was in fact passed after 26.09.2013 to overreach the order dated 21.10.2013 of the FAA. It was also stated that he had filed a Complaint registered as CIC/BS/C/2016/000545 listed for hearing before the Commission on 21.09.2017. Since the orders were passed by the competent authorities as per the existing notifications, therefore the Appellant's claim about lack of jurisdiction was incorrect and malafide. Further a copy of notification dated 29.07.2013 was not served on him hence grounds B and C had no substance and were liable to be rejected. As regards ground D, it was stated that there was no genuine and truthful cause of action regarding how the orders came to the notice of the Chairman, ITSC which resulted in passing of his order dated 27.11.2013 concealing the quasi judicial orders passed by the CPIO and the Appellate Authority. It was also submitted that CPIO/FAA were housed in the same building where the O/o the Chairman was situated therefore there could not be situation of non-communication of the notification issued by the Chairman of the Income Tax Settlement Commission. Also, the Appellant had not brought any notification to prove the genuineness of notification dated 29.07.2013. It was further argued that quasi judicial orders passed by an authority were not confidential and the contemporaneous authority i.e, Central Excise Settlement Commission was making available their orders under RTI on payment of Rs. 2/- per page. Even the website of Income Tax Settlement Commission provided for uploading of orders of the Principal Bench of Income Tax Settlement Commission. The Respondent no. 1 also stated that Customs and Excise Settlement Commission also on its menu provided for uploading of orders of the special benches, principal benches and additional benches of the CCE Settlement Commission. Since the orders of the Income Tax Settlement Commission were subject to judicial review, therefore they could not be treated as private and confidential. Moreover the orders related to public revenue and therefore in larger public interest they were disclosable under Section 8 (2) of the RTI Act and exemption under Section 8 (1) (b) [incorrectly mentioned as (d)] had no applicability as the publication of the orders was not expressly

forbidden nor their disclosure amounted to Contempt of Court. Moreover, ITSC was neither a Court nor a Tribunal therefore Section 8 (1) (b) [incorrectly mentioned as (d)] had no applicability to the present case. It was also stated that Shri Feroz Khan, Director of IT (INB), Income Tax Settlement Commission and FAA had appeared before CIC in case No. CIC/RM/A/2013/001009 on 21.01.2014 in relation to order passed by him on 30.08.2013 which also proved that the so called notification dated 29.07.2013 did not exist even on 30.08.2013. It was argued that the said order was not challenged by the Chairman of the Settlement Commission which proved that the action of Chairman, ITSC was incorrect and lacked bonafide. The Respondent also stated that in his RTI Application he had merely sought statistical information which was not barred by any provision of law. Moreover, the information was disclosable in Larger Public Interest and most of such information for the past period was disclosed in the Annual Report of the Finance Ministry as submitted in the Parliament. It was therefore submitted that the order of the FAA in this respect was correct, legal and liable to be upheld.

The Appellant's representative submitted a letter of Secretary, Income Tax Settlement Commission dated 07.09.2017, wherein a request was made to adjourn the hearing in the matter and to reschedule it with the hearing to be held on 21.09.2017.

The Commission observed that the hearing scheduled for 21.09.2017 pertained to a different file CIC/BS/C/2016/000545 on a complaint instituted by Respondent No. 01 on different issues as per the observations of the Hon'ble High Court of Delhi wherein it was recorded that "*according to the petitioner, the administrative order of respondent no.1 referred to in the impugned order was conjured up only to overreach the order dated 21.10.2013 passed by the First Appellate Authority.*" The High Court of Delhi therefore granted Respondent no. 1 the liberty to file a complaint under Section 18 of the RTI Act in respect of the allegations made by him in the writ petition. Thus both the matters would be dealt with separately.

The Commission at the outset felt that the Appellant was ill-prepared to contest the submissions of the Respondent or to substantiate their claims further. Moreover, the Appellant was also unable to satisfactorily respond to the queries raised by the Commission.

On the issue on maintainability of Appeal on the ground that it was time barred being not filed within 90 days from the date of the order of the Hon'ble High Court of Delhi, the Commission on a careful consideration of the order of the Hon'ble High Court of Delhi, observed that in para 13 no specific period of limitation was prescribed by the High Court for the Appellant to file this present Appeal. Moreover, the RTI Act, 2005 only specified the limitation period with regard to Reply of CPIO, filing of First Appeal, order of First Appellate Authority and Second Appeal to the Commission against the order of the First Appellate Authority and does not stipulate the limitation period for filing the Appeal in compliance with the direction of High Court. The only relevant provision with regard to filing of Second Appeal is Section 19 (3) of the RTI Act, 2005, as per which a Second Appeal against the decision of the First Appellate Authority shall lie within 90 days from the date on which the decision should



have been made or was actually received, with the Central Information Commission. This provision is inapplicable in the present facts and circumstances since order of the FAA had been passed long before in the year 2013 and the Appellant approached the Commission in compliance with the order of the High Court of Delhi. The Commission referred to the decision of the Hon'ble High Court of Karnataka in *N. Rajanna v. Rajaneesh Goel and Ors.* in CCC No. 925/ 2016 (Civil) decided on 25.10.2016 where the issue under consideration was if no time limit was fixed for compliance of the order, whether action for contempt of court was maintainable in law? The Hon'ble High Court of Karnataka relied on the decision of the Hon'ble Supreme Court of India in *Union of India v. M/s Oswal Woollen Mills Ltd.*, AIR 1984 SC 1264 which had held as under:

**“The High Court not having set any limit of time for the disposal of the applications, it was not for the writ petitioners to impose a time limit and demand that their applications should be disposed of forthwith. If the writ petitioners were aggrieved by the failure of the authorities to dispose of their applications expeditiously, it was open to them to seek a further direction from the court fixing a limit of time within which the applications were to be disposed of. We fail to see how the Chief Controller of Imports & Exports or the Deputy Chief Controller of Imports & Exports could be said to have committed any contempt of Court, even prima facie, by their mere failure to take action in the matter of the disposal of the applications of the writ petitioners.”**

The Hon'ble High Court of Karnataka while ruling that if no time limit is fixed for compliance of the order, action for contempt of court in such a case is not maintainable in law held as under:

“5. A Division Bench of this Court in *New Hope Granites v. Lokanath* 1995(1) Kar. L.J. 56 has stated that, where no time limit is fixed for compliance, a period of one month would be the time for compliance. A Division Bench of the Orissa High Court in *Sri Binayak Swain v. Bijaya Kumar Pattanik* [MANU/OR/0041/2005 : 99(2005) CLT 587] has stated that, in the absence of any time limit, a period of ninety days would be the time for compliance. These two decisions referred to by the learned Counsel for the complainant were rendered without noticing the decision of the Supreme Court in *Oswal Woollen Mills Ltd.* [MANU/SC/0140/1984 : AIR 1984 SC 1264]. Hence, they are per incuriam to the extent they are contrary to the observations made by the Supreme Court in *Oswal's* case.

6. In our opinion, if no time limit is fixed for compliance of the order, action for contempt of court in such a case is not maintainable in law. In the present case, no time limit is fixed for compliance of the order, whose disobedience is complained of herein. Hence, the petition is not maintainable in law and is accordingly dismissed.”

In the facts of the case, the order of the High Court of Delhi dated 05.12.2014 was unambiguous to the extent that no time limitation was provided and

Respondent no. 01 did not seek a further direction from the court fixing a time limit within which the Second Appeal was to be filed. Thus in the light of above analysis, the Appeal is admitted by the Commission.

As regards the issue of breach of jurisdiction by the CPIO/ FAA and their competence to hear and decide the RTI application/ First Appeal, the Commission felt that it was an internal administrative matter which was required to be dealt with by the Respondent Public Authority and did not require any interference of the Commission. Also, the Hon'ble High Court of Delhi in para 6 of its order dated 05.12.2014 had held that the orders under consideration were passed under the RTI Act and in that sense were in exercise of the statutory powers. Moreover, the High Court of Delhi in its decision dated 05.12.2014 had also observed as under:

“11. The petitioner has specifically pleaded that the website of the Income Tax Settlement Commission had disclosed respondent no.2 as the CPIO. The same has not been disputed by the respondents. It is noted that by virtue of Section 4(1)(b)(xvi) of the RTI Act, the public authority is required to publish the name, designation and particulars of public information officers. Admittedly, the name and designation of respondent no.2 and no other, was published as the CPIO in relation to the Principal Bench of the Income Tax Settlement Commission.”

Furthermore, all available information was already provided by the CPIO/ FAA vide their reply/ order dated 26.09.2013 and 21.10.2013 respectively hence there remains nothing more to adjudicate for the Commission. As per the provisions of Section 2(j) of the RTI Act, 2005, only such information which is available and held with the Public Authority is required to be furnished.

In this context, the Commission referred to the decision of the Hon'ble Supreme Court of India in the matter of CBSE Vs. Aditya Bandopadhyay Civil Appeal No. 6454 of 2011, wherein it had been 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.”*

The Hon'ble Supreme Court of India in the matter of 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.”*

**FINAL DECISION:**

Keeping in view the facts of the case and the submissions made by both the parties, no further intervention of the Commission is warranted in the matter.

The Commission however felt that there was palpable lack of communication/ internal co-ordination within the Public Authority that needs to be revisited and strengthened within the Public Authority itself.

The Appeal stands disposed accordingly.

**(Bimal Julka)**  
**Information Commissioner**

Authenticated True Copy:

(K.L. Das)  
Deputy Registrar