

केन्द्रीय सूचना आयोग
Central Information Commission
बाबागंगनाथमार्ग, मुनिरका
Baba Gangnath Marg, Munirka
नईदिल्ली, New Delhi – 110067

File No : CIC/CBODT/A/2021/127048

Jagminder Aggarwal

.....अपीलकर्ता/**Appellant**

VERSUS
बनाम

CPIO,
Ministry of Finance,
Department of Revenue, Central
Board Of Direct Taxes, RTI Cell,
Room no 255, North Block,
New Delhi -110001

....प्रतिवादीगण /**Respondent**

Date of Hearing : 07/09/2022
Date of Decision : 07/09/2022

INFORMATION COMMISSIONER : Saroj Punhani

Relevant facts emerging from appeal:

RTI application filed on : 12/03/2021
CPIO replied on : 17/06/2021
First appeal filed on : 27/04/2021
First Appellate Authority order : Not on record
2nd Appeal/Complaint dated : 26/06/2021

Information sought:

The Appellant filed an RTI application dated 12.03.2021 seeking the following information:

“Kindly intimate whether deduction of Donation in Corona Relief Fund is to be allowed at the rate of 100% or 50% for income tax purpose.”

Having not received any response from the CPIO, the appellant filed a First Appeal dated 27.04.2021. FAA’s order, if any, is not available on record.

The CPIO furnished a reply to the appellant on 17.06.2021 stating as follows:-

“.....the information sought in your RTI application is already available in public domain. You may refer Income Tax Act, 1961 and Income Tax Rules, 1962, available on website, <http://www.incometaxindia.gov.in> to seek replies of your queries.”

Feeling aggrieved and dissatisfied, the appellant approached the Commission with the instant Second Appeal.

Relevant Facts emerging during Hearing:

The following were present:-

Appellant: Not present.

Respondent: Not present.

Decision:

The Commission based on a perusal of the facts on record observes that the CPIO has provided an appropriate reply to the RTI Application as per the provisions of the RTI Act. It is pertinent to note that the Appellant has sought for a clarification by the CPIO which does not constitute as “information” as per Section 2(f) of the RTI Act.

The Appellant shall note that outstretching the interpretation of Section 2(f) of the RTI Act to include deductions and inferences to be drawn by the CPIO is unwarranted as it casts immense pressure on the CPIOs to ensure that they provide the correct deduction/inference to avoid being subject to penal provisions under the RTI Act. For the sake of clarity, the provision of Section 2(f) of the RTI Act is reproduced hereunder:

“2. Definitions. —In this Act, unless the context otherwise requires,—

(f) “information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, 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;..”

In this regard, the Appellant’s attention is drawn towards a judgment of the Hon’ble Supreme Court on the scope and ambit of Section 2(f) of RTI Act in the matter of **CBSE vs. Aditya Bandopadhyay & Ors.**[CIVIL APPEAL NO.6454 of 2011]wherein it washeld as under:

*“35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information **that is available and existing.....A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. 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.” (Emphasis Supplied)***

Similarly, in the matter of **Khanapuram Gandaiah vs Administrative Officer &Ors.** [SLP (CIVIL) NO.34868 OF 2009], the Hon’ble Supreme Court held as under:

*“7....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....”***
(Emphasis Supplied)

And, in the matter of **Dr. Celsa Pinto, Ex-Officio Joint Secretary, (School Education) vs. The Goa State Information Commission** [2008 (110) Bom L R 1238], the Hon'ble Bombay High Court held as under:

"..... In the first place, the Commission ought to have noticed that the Act confers on the citizen the right to information. Information has been defined by Section 2(f) as follows.

Section 2(f) -Information means any material in any form, including records, documents, memos e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, 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;

*The definition cannot include within its fold answers to the question why which would be the same thing as asking the reason for a justification for a particular thing. **The Public Information Authorities cannot expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification because the citizen makes a requisition about information. Justifications are matter within the domain of adjudicating authorities and cannot properly be classified as information.**" (Emphasis Supplied*

Having observed as above, no action is warranted against the reply of the CPIO.

However, the Commission takes grave exception to the absence of the CPIO during the hearing without intimating any reasons thereof. The CPIO is hereby directed to send a written explanation to the Commission to this effect within 15 days from the date of receipt of this order failing which stricter action may be initiated in the matter.

The appeal is disposed of accordingly.

Saroj Punhani (सरोजपुनहानि)
Information Commissioner (सूचनाआयुक्त)

Authenticated true copy
(अभिप्रमाणित सत्यापित प्रति)

(C.A. Joseph)

Dy. Registrar

011-26179548/ ca.joseph@nic.in

सी. ए. जोसेफ, उप-पंजीयक

दिनांक /

