

**CENTRAL INFORMATION COMMISSION**  
**Club Building, Old JNU Campus,**  
**Opposite Ber Sarai, New Delhi 110 067.**  
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**Decision No. CIC/LS/A/2009/000647/SG/5887**  
**Appeal No. CIC/LS/A/2009/000647**

**Relevant facts emerging from the Appeal:**

Appellant : Mr. Rakesh Kumar Gupta,  
102, SFS Flats DDA, C & D Block  
Shalimar Bagh, Outer Ring Road  
Delhi 110088

Respondent : The Public Information Officers  
C/o Commissioner of Income Tax  
CIT (Central)-2, Room No. 341  
E-2, ARA Centre, Jhandewalan Ext.,  
New Delhi-110055

RTI application filed on : 14/01/2009  
PIO replied : 16/02/2009  
First Appeal filed on : 19/02/2009  
First Appellate Authority order : 08/05/2009  
Second Appeal filed on : 13/05/2009

**Information sought:**

All records available with the income tax department including assessment records of all the levels with regard to:

1. Escorts Limited AY (1998-99 to 2005-2006)
2. Mr. Rajan Nanda AY (1998-99 to 2005-2006)
3. Escorts Heart Institute & Research Centre Chandigarh (Society) AY (2001-2002)
4. Escorts Heart Institute & Research Centre Delhi (Society) AY (1998-99 to 2001-2002)
5. Dr. Naresh Trehan AY (1998-99 to 2005-2006)
6. Escorts Heart Institute & Research Centre Limited Chandigarh AY (2000-2001 to 2005-2006)
7. Big Apple Clothing (P) Limited AY (1998-99 to 2005-2006)
8. AAA Portfolio (P) Limited (1998-99 to 2005-2006)

Required:

1. Inspection of all records in above respect.
2. Kindly provide the copies of documents mentioned at the time of inspection.
3. Kindly provide the officers (from assessing officers to CCIT), who are the officers to take action on "Tax Evasion Petition" given by me from 01/08/2008 till date.

**PIO's Reply:**

The PIO vide his reply stated that as the information related to third parties, they were sent the notice accordingly. Third parties in reply to the notice objected strongly against the inspection as well as disclosure of information relating to their income tax records. Third Parties submitted that the information sought included certain personal documents and details which were part of the Income Tax Proceedings and if these details were released, they might have potential to expose the assessee to grave danger from unscrupulous and criminal elements. According to the PIO the Applicant was not able to substantiate as to what is the overriding public interest in disclosing the information relating to third parties and unless the case of public interest is established, the disclosure would lead to an invasion of privacy of the assesseees.

In umpteen number of cases the CIC has observed that income tax related information are personal information of the third parties and therefore, should not be disclosed as such u/s 8 (1) (j) of the RTI Act 2005.

In so far as the issue mentioned at Sl. No. 3 of the petition is covered, this is under compilation and action as deemed fit would be taken in due course time.

**Grounds for First Appeal:**

PIO's refusal to grant information.

**Order of the First Appellate Authority:**

The FAA upheld PIO's reasons to refuse to grant the information and therefore, did not allow the appeal. With regards to supply of copies of TEPs, PIO was directed to supply copies along with the action taken thereon.

**Grounds for Second Appeal:**

Nothing was stated in the information presently given to the Applicant as to what has been done by the Income Tax Department on the Tax Evasion Petition given by others. Various TEPs were not given to him related to Escorts Limited, Mr. Rajan Nanda and others. Refusal to give information not valid.

**Relevant facts emerging during hearing on 18/08/2009:**

The following were present.

Appellant: Mr. Rakesh Gupta

Respondent: Mr. VM Mahidhar, PIO, Asst. Commissioner IT

The PIO stated he was not prepared for the hearing. The Commission also felt that since third parties have objected they should be heard. The Commission decided to adjourn the matter and also asked the respondent to serve the notice on all the third parties and give them copies of all the documents. The next hearing was fixed on 18 September 2009 at 4.30pm.

**Relevant facts arising during the hearing held on 18/09/2009:**

The following persons were present:

**Appellant:** Mr. Rakesh Kr. Gupta

**Respondent:** Mr. VM Mahidhar, PIO, Asst. Commissioner IT, Central Circle 3

**Third parties:** Mr. PR Rajhans on behalf of Dr. Naresh Trehan;

**Mr. Arun Kumar Bhatia** on behalf of Escorts Ltd. (Delhi & Chandigarh); AAA Portfolios Pvt. Ltd., Big Apple Clothings Pvt. Ltd., and Mr. Rajan Nanda,  
**Mr. NL Gandhi** on behalf of Escorts Heart Institute and Research Centre.

Mr. Rajhans stated the following “Disclosure of information in the course of an income tax assessment does not constitute an invasion on the privacy of an individual and is in accordance with statutory obligation. Disclosure of information to any third party amounts to invasion of privacy as these are personal information furnished to income tax department in course of assessments”.

Mr. Bhatia and Mr. Gandhi were asked if they wanted to make any oral submissions. They stated that whatever they wanted to say was stated in the written submissions.

The PIO Mr. Mahidhar stated that “all the assessments were completed on the basis of the information forwarded by the investigation wing and also based on the information claimed to be furnished by the Appellant and all these assessments were challenged by the third parties and were pending before different Appellate Authorities that is ITAT level, Hon’ble High Court, New Delhi and Hon’ble Supreme Court. Logically no investigation could be said to be complete unless it has reached a point where the final decision on the basis of that investigation is taken. In this context the progress of assessments are therefore exempt from disclosure under Section 8(1)(h).”

The Commission asked the PIO to give reasons as to how Section 8(1)(h) would apply in the instant case. He states “one assessment in the case of EHIRC, Chandigarh Society for the AY 2001-2002 was restored back to an assessing officer by the Hon’ble ITAT Chandigarh. Because it is in the initial stages it would impede the process of investigation”. He did not give any explanation how the investigation would be impeded. He further claimed exemption under Section 8(1)(e) and (j).

The Commission asked Mr. Bhatia of Escorts who has submitted Decision No. CIC/AT/A/2006/00586 of 18/09/2007 how this decision was relevant in the instant case. Mr. Rajhans stated that information should be sought in public interest.

Mr. Rakesh Kumar Gupta stated that Section 8(1) (j) cannot apply to legal entities and corporates and only applies to individuals. Mr. Gupta further states that Dr. Naresh Trehan’s assessment was revised upwards by Rs. 14.7 crores at the CIT (Appeal). This is based on information received from RTI Application. The CIT (Appeal) has confirmed the addition of Rs. 14.7 crores over and above the returned income. But ITAT has restored back the issue to the Assessing officer to reassess the income. The Appellant alleges that this addition of Rs. 14.7 crores is only of book value which only about 20% of the market value.

The order was reserved on 18/09/2009. The Respondents were directed to send written submissions by 23/09/2009 and the Appellant was asked to respond by 30/09/2009.

**Decision announced on 14 December 2009:**

The Commission has received written submissions on behalf of Dr. Naresh Trehan on 23/09/2009 and 01/10/2009. The Commission has also received submissions from the Appellant 23/09/2009.

After perusing the submissions made during the hearing and considering the submissions made during the hearing, it appears that the following exemptions have been claimed by the Department and the Third parties- Section 8(1)(b), (d), (e), (h), and (j). Section 3 of the RTI Act very succinctly states '*Subject to the provisions of this Act, all citizens shall have the right to information.*' Thus according to the RTI Act, if the information as defined under Section 2(f) is not exempt from disclosure under Section 8(1) or 9 of the Act, and is held by a public authority as defined under 2 (h), it has to be disclosed. It is clear that the information sought is information as defined under Section 2(f) of the RTI Act and is held by the Income Tax department which is a Public authority. Therefore, the Commission will examine the applicability of the exemption clauses claimed by the Department and the Third parties.

The Citizen's right to Information can only be restricted, if the disclosure is exempt under Section 8 (1) of RTI Act 2005. The Commission will examine the applicability of each of the exemptions:

**Section 8(1) (b)** of the Act provides-

*8. (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*

*(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;*

Four third parties have relied on an earlier order of the Commission dated 18/09/2007 in Appeal No. CIC/AT/A/2006/00586 to claim that information should not be disclosed to the Appellant. One of the grounds referred to by the Commission in this order is Section 8(1)(b).

This exemption clause can be applied only when the disclosure of information has been expressly forbidden by any court of law or tribunal. In its earlier order the Commission had referred the matter back to the First Appellate Authority on the ground that a determination had to be made whether the tribunal had expressly forbidden the disclosure of information or not. Therefore it is clear that in the earlier order of the Commission the exemption under Section 8(1)(b) had not be applied. Furthermore, in the present case the Department and the Third Parties have not established before the Commission that there exists an order of any Court or tribunal which forbids the disclosure of the information that has been sought by the Appellant. Since no evidence has been shown that the disclosure of the exemption has been expressly forbidden by any court of law or tribunal, there appears to be no ground for claiming exemption under Section 8 (1) (b).

**Section 8(1) (d)** of the Act provides-

*8. (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*

*(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;*

This ground for exemption has been relied on by three third parties. The Commission has held in *Shivaji Pandurang Raut v. Income Tax, Pune* CIC/MA/A/2006/00806 dated 05/02/2007 that denial of information relating to the details of taxes assessed and paid by the people of the Satara District under Section 8(1)(d) is not justified.

Furthermore, none of the third parties have explained before the Commission how this ground can apply in the present case and how the information which the Appellant has been sought is of commercial confidence and that its disclosure would harm their competitive interest. Unless both conditions are established, this exemption cannot apply. The last year for which information is sought relates to AY 2005-2006 ie. financial year ending 2005. It is extremely unlikely that there would be any information relating to 2005, which if revealed in 2009 could harm the competitive position of any of the third parties. No arguments have been advanced even to justify that the information is one where 'commercial confidence, trade secrets or intellectual property' will get disclosed. In view of this the claim for this exemption has been made without any grounds.

**Section 8(1) (e)** of the Act provides-

*8. (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*

*(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;*

The Department and all the third parties have relied on this ground of exemption. For Section 8(1)(e) of the RTI Act to apply there must be a fiduciary relationship and holder of information must hold the information in his fiduciary capacity. The traditional definition of a **fiduciary** is a person who occupies a position of *trust* in relation to someone else, therefore requiring him to act for the latter's benefit within the scope of that relationship. In business or law, we generally mean someone who has specific duties, such as those that attend a particular profession or role, e.g. financial analyst or trustee. The information must be given by the holder of information when there is a choice- as when a litigant goes to a particular lawyer, or a patient goes to particular doctor. It is also necessary that the principal character of the relationship is the trust placed by the provider of information in the person to whom the information is given. An equally important characteristic for the relationship to qualify as a fiduciary relationship is that the provider of information gives the information for using it for the benefit of the giver. All relationships usually have an element of trust, but all of them cannot be classified as fiduciary.

In the present case, the information the Appellant is seeking information which the Department has received from members of the public as a result of their statutory obligation to file tax returns. Members of the public who have sent this information to the Department did not have any **choice** with regard to who they would like to send this information to. In fact, as there is a legal obligation to file these returns, members of the public have **no choice** with regard to the disclosure of this information to the Department. Traditionally, lawyer-client relationship and doctor-patient relationship have been considered to be examples of fiduciary relationship. In both these relationships, the lawyer and the doctor act on behalf and in the interest of their client and patient. The Department makes a tax assessment or takes any other action on this information based on the law and regulations relating to income tax. The Department does not take this

action for the benefit of the tax assesseees or in their personal interest. If the department were to take action for the benefit of the assesseees, it would be considered a corrupt practice. The element of trust involve in such a situation is not the one required for a fiduciary relationship. As the Department cannot be considered to be holding the information in a fiduciary capacity, information sought by the Appellant, therefore, cannot be denied on this ground.

**Section 8(1) (h)** of the Act provides-

*8. (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*

*(h) information which would impede the process of investigation or apprehension or prosecution of offenders;*

Dr. Naresh Trehan, one of the third parties, and the Department have relied on this ground of exemption. Both parties have stated that as the process of assessment has not been finalized till date and investigation is still underway, exemption under Section 8(1)(h) applies. But the mere fact that an investigation is underway and that assessment has not been finalized is not a sufficient ground for the application of Section 8(1)(h). The High Court of Delhi has held in *Bhagat Singh v. CIC & Ors.* WP (C) No. 3114/2007 that-

*“It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1)(h) and other such provisions would become the haven for dodging demands for information”*

The PIO has contention that, “Logically no investigation could be said to be complete unless it has reached a point where the final decision on the basis of that investigation is taken. In this context the progress of assessments are therefore exempt from disclosure under Section 8(1)(h)”, only states that the investigation is not over. No claim has been made that the process of investigation would be impeded in any manner.

Neither party has been able to establish before the Commission how the disclosure of information to the Appellant would impede the process of investigation. Therefore, Section 8(1)(h) cannot be applied in the present case to claim exemption from disclosure of information.

**Section 8(1) (j)** of the Act provides-

*8. (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*

*(j) information which relates to personal information the disclosure of which has **no relationship** to any public activity or interest, or which would cause **unwarranted** invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:*

*Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.*

The final exemption claimed by the Department, Dr. Naresh Trehan and three other third parties is under the Section 8(1)(j). The three other third parties are the Escorts Heart Institute and Research Centre, Delhi, Escorts Heart Institute and Research Centre, Chandigarh and Escorts Heart Institute and Research Centre Ltd. Section 8(1)(j) is with regard to personal information and therefore it can only be claimed by natural persons and not by corporate entities. The three Institutes cannot claim to have 'personal' information. There is a difference between having a personality, i.e. a legal personality, and owning 'personal information'. Personal information is information relating to a natural person, not a legal person. Words in a law should normally be given the meanings given in common language. In common language we would ascribe the adjective 'personal' to an attribute which applies to an individual and not to an Institution or a Corporate. From this it flows that 'personal' cannot be related to Institutions, organisations or corporates. Hence **Section 8(1)(j) cannot be applied when the information concerns institutions, organisations or corporates.** Therefore, the Commission is of the opinion that Section 8(1)(j) cannot be relied on by these three third parties as they are not natural persons.

With regard to the information relating to Dr. Naresh Trehan it has been argued by his representative that the information sought is personal as it contains personal financial information of the assessee including various assets, income and expenditure and the disclosure of this information has no relationship with any public activity or interest. It has been alleged that the information has been sought with ill will and malice, with the motive to harass and blackmail the assessee. Furthermore, the Appellant is likely to misuse the information and could endanger the life and property of the assessee if the information goes in the hands of unsocial elements. There is no larger public interest served in disclosing this information to the Appellant.

The Commission has considered the submissions made by the Appellant, the Department and the representative of Dr. Naresh Trehan. To qualify for this exemption the information must satisfy the following criteria:

***1. It must be personal information.***

There is no doubt that information with regard to Dr. Naresh Trehan is personal information.

***2. It must not have been disclosed to the public authority as part of a public activity***

The phrase 'disclosure of which has no relationship to any public activity or interest' means that the information must have been given in the course of a Public activity. Various Public authorities in performing their functions routinely ask for 'personal' information from Citizens, and this is clearly a public activity. When a person applies for a job, or gives information about himself to a Public authority as an employee, or asks for a permission, licence or authorisation, all these are public activities. Also when a Citizen provides information in discharge of a statutory obligation, this too is a public activity. Therefore, information provided by an assessee to the Department for purposes of income tax assessment is information disclosed in relation to a public activity and therefore this part of Section 8(1)(j) is inapplicable in the present case.

**3. *The disclosure of the information would lead to unwarranted invasion of the privacy of the individual.***

Certain human rights such as liberty, freedom of expression or right to life are universal and therefore would apply uniformly to all human-beings worldwide. However, the concept of 'privacy' is a cultural notion, related to social norms, and different societies would look at these differently. Therefore referring to laws of other countries to define 'privacy' cannot be considered a valid exercise to constrain the Citizen's fundamental Right to Information in India.

Parliament has not codified the right to privacy so far, hence in balancing the Right to Information of Citizens and the individual's Right to Privacy the Citizen's Right to Information would be given greater weightage.

**The State has no right to invade the privacy of an individual.** There are some extraordinary situations where the State may be allowed to invade the privacy of a Citizen. In those circumstances special provisions of the law apply; usually with certain safeguards.

Therefore where the State routinely obtains information from Citizens, this information is in relationship to a public activity and will not be an intrusion on privacy. As this information has been provided by the assessee to meet his legal obligations, there is no unwarranted invasion of his privacy by the state. Therefore the disclosure of the same information to another person cannot be construed as being an unwarranted invasion of the privacy of the individual.

Given our dismal record of misgovernance and rampant corruption which colludes to deny Citizens their essential rights and dignity, it is in the fitness of things that the Citizen's Right to Information is given greater primacy with regard to privacy.

Hence information provided by individuals in **fulfillment of statutory requirements** will not be covered by the exemption under Section 8 (1) (j).

It has come out during the hearing before the Commission,- and through the submissions made by the various parties,- that the Appellant is an informer for the Department. Escorts has also raised the matter in its written submissions of 17 September 2009, and asked the Commission to decide "Whether an informer of the I.T. department can seek information in respect of the records of a third party for an ulterior motive?" The ulterior motive being referred to appears to be the reward money which the appellant might get.

The Appellant has given a list of additions made by various Tax evasion officers relating to the information being sought by him:

**Escorts Limited. Page K-5 of Letter dated 22/9/2009**

**Escorts limited . Page k-5 & k-7**

A Y 2001-2

Amount in



	Crore
<b>Addition Income( Tax evasions) by Assessing Officer</b>	106.94
<b>On Hospital theft case only</b>	88.11
<b>On Hospital theft case confirmed by CIT (A)</b>	86.40
<b>ITAT had reduce hospital theft case amount</b>	Zero

**Mr Rajan Nanda . Page K-12 of Letter dated 22/9/2009**

	A Y 2003-4 Amount in Crore
<b>Addition Income( Tax evasions) by Assessing Officer</b>	8.05
<b>Addition Income( Tax evasions) confirmed by CIT (A)</b>	8.05
<b>Addition Income ( Tax evasions) confirmed by ITAT</b>	0.35

**Escorts Heart Institute & Research Centre Chandigarh  
Page K-10 of Letter dated 22/9/2009**

Page k -10	A Y 2001-2
<b>Escorts Heart Institute &amp; Research Centre Chandigarh ( Society) . PageK 12</b>	Amount in Crore
<b>Addition Income( Tax evasions) by Assessing Officer</b>	<b>154.34</b>
Addition Income( Tax evasions) confirmed by CIT (A)	149.08
ITAT had remanded back case to Assessing officer to reassess tax evasion	

**Escorts Heart Institute & Research Centre Limited Chandigarh  
Page K-11 of Letter dated 22/9/2009**

	Amount in Crore <b>A Y 2003-4</b>
<b>Addition Income( Tax evasions) by Assessing Officer</b>	<b>100.68</b>
Addition Income( Tax evasions) confirmed by CIT (A)	0.13
No appeal by assesee and income tax department.	

**Escorts Heart Institute & Research Centre Delhi ( Society)  
Page K-8 of Letter dated 22/9/2009**

	A y 2001-2 Amount in Crore
<b>Addition Income( Tax evasions) by Assessing Officer</b>	<b>156.44</b>

Further Proceeding are stayed by Delhi High Court  
Vide WP ( C ) 11909/2005 on assesee appeal.

**Dr Naresh Trehan  
Page K-9 of Letter dated 22/9/2009**

A Y 2001-2

	Amount in Crore
<b>Addition Income( Tax evasions) by Assessing Officer</b>	<b>10.08</b>
Addition Income( Tax evasions) confirmed by CIT (A)	14.7
ITAT had remanded back case to Assessing officer to reassess tax evasion	

**Big Apple Clothing (P) Limited**  
**Page K-13 of Letter dated 22/9/2009**

	<b>A Y 2001-2</b> Amount in Crore
<b>Addition Income( Tax evasions) by Assessing Officer</b>	<b>6.44</b>
Addition Income( Tax evasions) confirmed by CIT (A)	7.35
appeal pending with ITAT	

**AAA Portfolio (P) Limited**  
**Page K-14 of Letter dated 22/9/2009**

	<b>A y 2001-2</b> Amount in Crore
<b>Addition Income( Tax evasions) by Assessing Officer</b>	<b>8.5</b>
Addition Income( Tax evasions) confirmed by ITAT	6.81

Thus the appellant has pointed out that Assessing officers have added hundreds of crores as additional income and CIT (A) has also confirmed some of them. He fears that a lot of alleged tax evasion will go unpunished leading to a loss of revenue and perhaps his reward money. If Citizens monitor this through RTI, it could be a major gain for public revenue and perhaps a good check on corrupt officials.

It has been statutorily provided that informers to the Income tax Department would be rewarded. Hence the State has recognized that the informer who gives information about tax evasion is valued and needs to be rewarded to motivate and recognize the contribution of the informer. Therefore, if the Appellant is assisting the Department by bringing instances of tax evasion to its notice, and if he is using information that he has received through RTI Applications for this purpose, it cannot be considered to be misuse of information in any way, nor can it be considered to be an unwarranted invasion of privacy of the assessee. In that case even if any of the exemption clauses of Section 8 (1) were applicable it certainly serves a larger public interest, if tax evasion is curbed. It is the stated objective of the Act, - as spelt out in its preamble,- to curb corruption and it is widely accepted that evasion of taxes is facilitated because of large scale corruption in Government offices.

Hence, the arguments raised by Dr. Trehan that the RTI application is motivated by ill will and malice, with the motive to harass and blackmail the assessee are unfounded because as stated above a public interest is served if tax evasion is curbed. Further no harm can be caused to the privacy of Dr. Trehan in this case because the assessing authority in this case has already confirmed that in some cases tax has been evaded. The contention that the Appellant is likely to misuse the information and could endanger the life and property of the assessee also cannot be accepted. Denying information under the RTI Act on the mere apprehension that there is likelihood that the information sought can be misused would defeat the very objective of the RTI Act which seeks to ensure the

information is freely accessed. Thus if an informer is using RTI to get information which could help him to claim a reward by showing that tax has been evaded, it cannot be denied that a large public interest is being served of getting the public's due taxes and curbing corruption.

The Commission concludes that no case has been made showing that any of the exemption clauses apply to the information sought by the appellant. The onus to prove that a denial of information was justified is on the PIO as per Section 19(5) of the RTI Act. Though it is not necessary, the appellant has also shown that a larger public interest of increasing public revenue and reducing corruption may be served by disclosure of the information, which would outweigh any harm to any protected interest.

**The Appeal is allowed.**

The PIO is directed to provide the inspection of the records and also the other information sought by the appellant before 15 January 2009. The Respondent is further directed to send a copy of this order to the Third parties immediately.

This decision is announced in open chamber.

Notice of this decision be given free of cost to the parties.

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

**Shailesh Gandhi**  
**Information Commissioner**  
**14 December 2009**

*In any case correspondence on this decision, mention the complete decision number)*