

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 24.11.2014

+ **W.P.(C) 85/2010 & CM Nos.156/2010 & 5560/2011**

NARESH TREHAN Petitioner

versus

RAKESH KUMAR GUPTA Respondent

AND

+ **W.P.(C) 251/2010 & CM No.526/2010**

AAA PORTFOLIO PVT LTD AND ANR. Petitioners

versus

RAKESH KUMAR GUPTA Respondent

AND

+ **W.P.(C) 206/2010 & CM No.392/2010**

ESCORTS LTD Petitioner

versus

RAKESH KUMAR GUPTA Respondent

AND

+ **W.P.(C) 214/2010 & CM No.445/2010**

CPIO CUM ASSISTANT COMMISSIONER
OF INCOME TAX Petitioner

versus

RAKESH KUMAR GUPTA Respondent

AND

+ **W.P.(C) 202/2010 & 389/2010**

ESCORTS HEART INSTITUTE AND
RESEARCH CENTRE Petitioner

versus

RAKESH KUMAR GUPTA

..... Respondent

AND

+ **W.P.(C) 207/2010 & CM No.394/2010**

RAJAN NANDA

..... Petitioner

versus

RAKESH KUMAR GUPTA

..... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr Rajiv Nayar, Sr. Advocate with Ms Shyel Trehan and Ms Manjira Dasgupta in W.P.(C) 85/2010.

Mr Sandeep Sethi, Sr. Advocate with Mr Simran Mehta and Mr Prabhat Kalia in W.P.(C) Nos. 251/2010, 206/2010 & 207/2010.

Mr Rohit Puri in W.P.(C) 202/2010.

For the Respondent : In person.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. These petitions are filed *inter alia* impugning a common order dated 14.12.2009 passed by the Central Information Commission (hereafter 'CIC') directing the Public Information Officers, Commissioner of Income-tax (hereafter 'PIO') to provide inspection of the records and also other information sought for by the respondent relating to the income tax returns filed by the petitioners (other than the petitioner in W.P.(C) No.214 of 2010).

2. Brief facts which are relevant for examining the controversy in the present petitions are that on 13.01.2009, Rakesh Kumar Gupta – respondent, who is stated to be an informer to the income tax department, filed an application under the Right to Information Act, 2005 (hereafter the ‘Act’) with the PIO *inter alia* seeking information and all the records available with the Income tax department in respect of nine assesseees (out of the said assesseees one assessee was deleted due to repetition) for various assessment years. The respondent had also sought:-

- “1. Inspection of all records in above respect.
2. Kindly provide the copies of the 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 1/8/2003 till date.

Request

4 If you want to treat the above information as third party information and want to send the notice to so called third parties inviting their objection, then kindly send the complete request to them including all the annexure e.g. citing public interest by me due to which information should be given to me.”

3. The details sought by the respondent of the eight assesseees (hereinafter collectively referred to as ‘assesseees’) including the details of the assessment years are as under:-

- i) Dr. Naresh Trehan - petitioner in W.P.(C) No.85/2010 pertaining to Assessment Year 1998-99 to 2005-06

- ii) Mr. Rajan Nanda - petitioner in W.P.(C) No.207/2010 pertaining to Assessment Year 1998-99 to 2005-06
 - iii) AAA Portfolio Pvt. Ltd. – petitioner in W.P.(C) No.251/2010 pertaining to Assessment Year 1998-99 to 2005-2006
 - iv) Big Apple Clothing Pvt. Ltd. – petitioner in W.P.(C) No.251/2010 pertaining to Assessment Year 1998-99 to 2005-06
 - v) Escorts Ltd. - petitioner in W.P.(C) No.206/2010 pertaining to Assessment Year 1998-99 to 2005-06.
 - vi) Escorts Heart Institute & Research Centre Ltd. (Delhi) - petitioner in W.P.(C) No.202/2010 pertaining to Assessment Year 1998-99 to 2001-02.
 - vii) Escorts Heart Institute & Research Centre Chandigarh (Society) pertaining to Assessment Year (2001-2002)
 - viii) Escorts Heart Institute & Research Centre Limited, Chandigarh pertaining to Assessment Year 2000-01 to 2005-06.
4. Since the information sought by the respondent is third party information, the Deputy Commissioner of Income-tax issued separate notices dated 04.02.2009 under Section 11(2) of the Act to the assesseees. The assesseees submitted their separate objections and objected to the inspection and furnishing of the information. PIO considered the objections of the assesseees and rejected the RTI application of the respondent, by its common order dated 16.02.2009, on the ground that the respondent has failed to substantiate the public interest involved in disclosing the

information relating to third parties. PIO, however, held that the Tax Evasion Petition is under compilation and would be provided in due course.

5. The respondent preferred separate appeals before the First Appellate Authority - Addl. Commissioner of Income-tax (hereafter the 'FAA') against the order of PIO. By a common order dated 08.05.2009, FAA rejected the appeal of the respondent. Aggrieved by the order dated 08.05.2009 of FAA, the respondent preferred an appeal before the CIC. By the impugned order dated 14.12.2009, the CIC allowed the appeal and directed PIO to provide inspection of the records and also other information sought for by the respondent.

6. The learned counsel for the petitioner contended:-

6.1 that the information sought for by the respondent such as income tax returns are personal information and are exempt from disclosure under Section 8(1)(j) of the Act. Reliance was placed on decision of Supreme Court in **Girish Ramchandra Deshpande v. Central Information Commr.:** (2013) 1 SCC 212, decision of Full Bench of this Court in **Secretary General, Supreme Court of India v. Subhash Chandra Agarwal & Anr.:** 166 (2010) DLT 305 and decision of Full Bench of the CIC in **G R Rawal v. Director General of Income Tax (Investigation):** Appeal No. CIC/AT/A/2007/00490, decided on 05.03.2008.

6.2 that the disclosure of the income tax returns is prohibited under Section 138 of the Income Tax Act, 1961 and can be made only if the Commissioner is satisfied that the disclosure is in public interest, which in the present case was rejected by the Commissioner. Reference was made to

Hanuman Pershadganeriwala v. The Director of Inspection, Income Tax, New Delhi: (1974) 10 DLT 96.

6.3 that the disclosure of information is also exempted under Section 8(1)(e) of the Act as the income tax department is holding the information of the assessee in fiduciary capacity.

6.4 that the respondent has failed to disclose the public interest which is a mandatory requirement under Section 11 of the Act for disclosure of confidential and personal third party information.

6.5 that the disclosure of the information sought for would be violative of the right to privacy, which has been read into Article 21 of the Constitution of India. Reference was made to paragraph 110 to 112 of the decision of this court in **Secretary General, Supreme Court of India v. Subhash Chandra Agarwal & Anr.: 166 (2010) DLT 305.**

6.6 that the disclosure of income tax returns is expressly forbidden to be published by a tribunal, in the present case and the CIC therefore, exempted under Section 8(1)(b) of the Act.

7. The respondent contended:-

7.1 that he is an informer with the income tax department and sought the information in public interest in order to recover the tax evaded by the petitioners, to recover the properties mis-appropriated by the petitioners and to curb corruption and therefore, the exemptions provided under Section 8(1)(e) and (j) of the Act are not applicable.

7.2 that the bank details and tax details should be given to public, where *prima facie* wrong doing is detected by the government. Reliance was placed on **Ram Jethmalani & Ors. v. Union of India: (2011) 8 SCC 1.**

7.3 that the activities performed by the income tax department are public in nature and the income tax records are public documents. Reliance was placed on **Bhagat Singh v. Chief Information Commissioner and Ors.: 146 (2008) DLT 385.**

7.4 that the disclosure of information under Section 3 of the Act is the rule and exemption under Section 8 of the Act is the exception.

8. The controversy that needs to be addressed is whether income tax returns and the information provided to the income tax authorities during the course of assessment and proceedings thereafter, are exempt under the provision Section 8(1) of the Act and further whether in the given circumstances of this case, the CIC was correct in holding that such information was required to be disclosed in public interest.

9. By virtue of Section 3 of the Act all citizens have a right to information subject to provisions of the Act. The expression “information” is defined under Section 2(f) of the Act as under:-

“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;”

(emphasis provided)

10. It is also relevant to note that by virtue of Section 22 of the Act, the provisions of the Act have an overriding effect over any other inconsistent law or instrument.

11. The petitioners have contended that the income tax returns and other information provided by the assesseees during the course of assessment would be exempt from disclosure by virtue of section 8(1)(d), Section 8(1)(e) and 8(1)(j) of the Act. It is thus necessary to examine the applicability of each of the above provisions with respect to the information sought by the respondent.

12. Section 8(1)(d) of the Act expressly provides an exemption in respect of such information. At this stage, it is necessary to refer to Section 8(1)(d) of the Act which reads as under:-

“8. Exemption from disclosure of information.— (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

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(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;

13. Certain petitioners had specifically pleaded that information provided in the income tax returns could not be disclosed as the information was provided in confidence. The CIC rejected the same by holding that the parties had failed to explain as to how that ground could apply or how

disclosure of information relating to commercial confidence would harm their competitive interest.

14. The income tax returns filed by an assessee and further information that is provided during the assessment proceedings may also include confidential information relating to the business or the affairs of an assessee. An assessee is expected to truly and fairly disclose particulars relevant for the purposes of assessment of income tax. The nature of the disclosure required is not limited only to information that has been placed by an assessee in public domain but would also include information which an assessee may consider confidential. As a matter of illustration, one may consider a case of a manufacturer who manufactures and deals in multiple products for supplies to different agencies. In the normal course, an Assessing Officer would require an assessee to disclose profit margins on sales of such products. Such information would clearly disclose the pricing policy of the assessee and public disclosure of this information may clearly jeopardise the bargaining power available to the assessee since the data as to costs would be available to all agencies dealing with the assessee. It is, thus, essential that information relating to business affairs, which is considered to be confidential by an assessee must remain so, unless it is necessary in larger public interest to disclose the same. If the nature of information is such that disclosure of which may have the propensity of harming one's competitive interests, it would not be necessary to specifically show as to how disclosure of such information would, in fact, harm the competitive interest of a third party. In order to test the applicability of Section 8(1)(d) of the Act it is necessary to first and

foremost determine the nature of information and if the nature of information is confidential information relating to the affairs of a private entity that is not obliged to be placed in public domain, then it is necessary to consider whether its disclosure can possibly have an adverse effect on third parties.

15. Insofar as the applicability of Section 8(1)(e) of the Act is concerned, I am unable to accept the contention that a fiduciary relationship within the meaning of Section 8(1)(e) of the Act can be attributed to a relationship between an assessee and the income tax authority. The Supreme Court in the case of **CBSE v. Aditya Bandopadhyay**: (2011) 8 SCC 497 had explained that the words “information available to a person in its fiduciary relationship” could not be construed in a wide sense but has to be considered in the normal and recognized sense. The relevant extract of the said decision is quoted below:-

"41. In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to the students who participate in an examination, as a Government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the words “information available to a person in his fiduciary relationship” are used in Section 8(1)(e) of the RTI Act in its normal and well-recognised sense, that is, to refer to persons who act in a fiduciary capacity, with reference to a specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the actions of the fiduciary—a trustee with reference to the beneficiary of the trust, a guardian with reference to a minor/physically infirm/mentally challenged, a parent with reference to a child, a lawyer or a chartered accountant with reference to a client, a doctor or nurse with reference to a patient, an agent with

reference to a principal, a partner with reference to another partner, a Director of a company with reference to a shareholder, an executor with reference to a legatee, a Receiver with reference to the parties to a lis, an employer with reference to the confidential information relating to the employee, and an employee with reference to business dealings/transaction of the employer. We do not find that kind of fiduciary relationship between the examining body and the examinee, with reference to the evaluated answer books, that come into the custody of the examining body."

16. The information provided by an assessee in its income tax return is in compliance of the provisions of the Income Tax Act, 1961 and thus, could not be stated to be information provided in course of a fiduciary relationship.

17. Four of the petitioners (Dr Naresh Trehan, Escorts Heart Institute and Research Center, Delhi, Escorts Heart Institute and Research Center, Chandigarh and Escorts Heart Institute and Research Center Ltd.) had further contended that information sought by the respondent was exempt under Section 8(1)(j) of the Act. Section 8(1)(j) of the Act exempts information which relates to personal information. The said clause is quoted below for ready reference:-

"8. Exemption from disclosure of information.— (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

XXXX XXXX XXXX XXXX XXXX

(j) information which relates to personal information the disclosure of which has not 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.”

18. The question whether the information provided by an individual in his income tax returns is exempt from disclosure under Section 8(1)(j) of the Act is no longer *res integra* in view of the decision of the Supreme Court in **Girish Ramchandra Deshpande v. Central Information Commr.:** (2013) 1 SCC 212. The relevant extract of the said judgment is quoted below:

“11. The petitioner herein sought for copies of all memos, show-cause notices and censure/punishment awarded to the third respondent from his employer and also details viz. movable and immovable properties and also the details of his investments, lending and borrowing from banks and other financial institutions. Further, he has also sought for the details of gifts stated to have been accepted by the third respondent, his family members and friends and relatives at the marriage of his son. The information mostly sought for finds a place in the income tax returns of the third respondent. The question that has come up for consideration is: whether the abovementioned information sought for qualifies to be “personal information” as defined in clause (j) of Section 8(1) of the RTI Act.

12. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show-cause notices and orders of censure/punishment, etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression “personal information”, the disclosure of which has no relationship to any public activity or

public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if 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, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

13. 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.

14. The petitioner in the instant case has not made a bona fide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the RTI Act.”

19. The CIC rejected the aforesaid contention by holding that the expression “personal information” would necessarily only apply to an individual and could not be applicable in case of corporate entities.

20. It has been contended by the petitioners that the expression “personal information” must also extend to information relating to corporate entities. Inasmuch as they may also fall within the definition of expression “person” under the General Clauses Act, 1897 as well as under the Income Tax Act, 1961. However, I am unable to accept this contention for the reason that the expression “personal information” as used in clause (j) of Section 8(1) of the Act has to be read in the context of information relating to an individual. A plain reading of the aforesaid clause would indicate that the

expression “personal information” is linked with “invasion of privacy of the individual”. The use of the word “the” before the word “individual” immediately links the same with the expression “personal information”

21. Black’s law dictionary, sixth edition, *inter alia*, defines the word “personal” as under:-

"The word “personal” means appertaining to the person; belonging to an individual; limited to the person; having the nature or partaking of the qualities of human beings, or of movable property."

22. A perusal of the above definition also indicates that the ordinary usage of the word “personal” is in the context of an individual human being and not a corporate entity. The U.S. Supreme Court has also interpreted the expression “personal” to be used in the context of an individual human being and not a corporate entity. In the case of **Federal Communications Commission v. AT&T Inc: 2011 US LEXIS 1899** the US Supreme Court considered the meaning of the expression “personal privacy” in the context of the Freedom of Information Act, which required Federal Agencies to make certain records and documents publically available on request. Such disclosure was exempt if the records “*could reasonably be expected to constitute an unwarranted invasion of personal privacy*”. The U.S. Supreme Court held that the expression “Personal” used in the aforesaid context could not be extended to corporations because the word “personal” ordinarily refers to individuals. The Court held that the expression “personal” must be given its ordinary meaning. The relevant extract of the said judgment is as under:

““Person” is a defined term in the statute; “personal” is not. When a statute does not define a term, we typically “give the phrase its ordinary meaning.” *Johnson v. United States*, 559 U.S. ___, ___, 559 U.S. 133, 130 S. Ct. 1265, 176 L. Ed. 2d 1, 8 (2010). “Personal” ordinarily refers to individuals. We do not usually speak of personal characteristics, personal effects, personal correspondence, personal influence, or personal tragedy as referring to corporations or other artificial entities. This is not to say that corporations do not have correspondence, influence, or tragedies of their own, only that we do not use the word “personal” to describe them.

Certainly, if the chief executive officer of a corporation approached the chief financial officer and said, “I have something personal to tell you,” we would not assume the CEO was about to discuss company business. Responding to a request for information, an individual might say, “that's personal.” A company spokesman, when asked for information about the company, would not. In fact, we often use the word “personal” to mean precisely the opposite of business-related: We speak of personal expenses and business expenses, personal life and work life, personal opinion and a company's view.

Dictionaries also suggest that “personal” does not ordinarily relate to artificial “persons” such as corporations. See, e.g., 7 OED 726 (1933) (“[1] [o]f, pertaining to . . . the individual person or self,” “individual; private; one's own,” “[3] [o]f or pertaining to one's person, body, or figure,” “[5] [o]f, pertaining to, or characteristic of a person or self-conscious being, as opposed to a thing or abstraction”); 11 OED at 599-600 (2d ed. 1989) (same); Webster's Third New International Dictionary 1686 (1976) (“[3] relating to the person or body”; “[4] relating to an individual, his character, conduct, motives, or private affairs”; “[5] relating to or characteristic of human beings as distinct from things”); *ibid.* (2002) (same)."

23. In my view, the aforesaid reasoning would also be applicable to the expression “personal” used in Section 8(1)(j) of the Act. The expression ‘individual’ must be construed in an expansive sense and would include a body of individuals. The said exemption would be available even to unincorporated entities as also private, closely held undertaking which are in substance alter egos of their shareholders. However, the expression individual cannot be used as a synonym for the expression ‘person’. Under the General Clauses Act, 1897 a person is defined to “*include any company or association or body of individuals, whether incorporated or not*”. Thus, whereas a person would include an individual as well as incorporated entities and artificial persons, the expression ‘individual’ cannot be interpreted to include such entities. The context in which, the expression “personal information” is used would also exclude its application to large widely held corporations. While, confidential information of a corporation is exempt from disclosure under Section 8(1)(d) of the Act, there is no scope to exclude other information relating to such corporations under Section 8(1)(j) of the Act as the concept of a personal information cannot in ordinary language be understood to mean information pertaining to a public corporation.

24. It would also be relevant to refer to the decision of a Division Bench of this Court in the case of **Ashok Kumar Goel v. Public Information Officer Vat Ward No. 64 & Anr.**: (2012) 188 DLT 597 whereby it was held that information of the returns made to the Sales Tax Commissioner in relation to a firm was exempt under Section 8(1) of the Act. The relevant portion of the said judgment is quoted as under:-

“7. It is not in dispute that the information in the form of returns filed by the respondent No. 2's firm is in the nature of commercial confidence which is clearly inferable from Section 98 of the Act. Such information can be given only if larger public interest warrants the disclosure of this information. All the authorities below including the learned Single Judge has held and rightly so that no public interest is at all involved in seeking of this information by the appellant from the Sales Tax Commissioner. What to talk of public interest, the finding is that the information is sought with oblique motive to settle personal scores.”

25. Indisputably, Section 8(1)(j) of the Act would be applicable to the information pertaining to Dr Naresh Trehan (petitioner in W.P.(C) 88/2010) and the information contained in the income tax returns would be personal information under Section 8(1)(j) of the Act. However, the CIC directed disclosure of information of Dr Trehan also by concluding that income tax returns and information provided for assessment was in relation to a “public activity.” In my view, this is wholly erroneous and unmerited. The act of filing returns with the department cannot be construed as public activity. The expression “public activity” would mean activities of a public nature and not necessarily act done in compliance of a statute. The expression “public activity” would denote activity done for the public and/or in some manner available for participation by public or some section of public. There is no public activity involved in filing a return or an individual pursuing his assessment with the income tax authorities. In this view, the information relating to individual assessee could not be disclosed. Unless, the CIC held that the same was justified “in the larger public interest”

26. At this stage, it may be appropriate to consider the nature of information that is provided by an assessee to its Assessing Officer. In case of Income from business and profession, the income tax returns mainly disclose the final accounts (i.e. profit and loss account and balance sheets). This information is otherwise also liable to be disclosed by companies and is available in public domain since it is necessary for a company to file its annual accounts with the Registrar of Companies. Other incorporated entities are similarly required to also publically disclose their final accounts. However, an Assessing Officer may call for further information while determining the assessable income, which may include all books and papers maintained by an entity. Such information may also have information relating to other parties, the disclosure of which may be exempt under Section 8(1) of the Act. As a matter of illustration, the books of accounts would record transactions of commercial nature which may enjoin the parties to the transactions to keep the information confidential. Further, the books of accounts would also record salaries and other payments to other individuals. Disclosure of such information would affect not just the assessee but also other parties. In the circumstances, it would be necessary to examine the details of information that are sought from the public authority. In the present case, the respondent seems to have sought for an omnibus disclosure of all records and returns. In my view, the same could not be allowed without examining the nature of information contained therein.

27. The Supreme Court in the case of **Thalappalam Ser. Coop. Bank Ltd. and others v. State of Kerala and others**: Civil Appeal No. 9017 of 2013,

decided on 07.10.2013. considered the question whether a society registered would fall within the definition of a public authority under Section 2(h) of the Act. The Court also clearly stated that the information supplied by a society to the Registrar of Societies could be disclosed except for the information that was exempt under Section 8(1) of the Act and that included accounts maintained by members of society. The relevant passage from the said judgment is quoted below:-

"52. Registrar of Cooperative Societies functioning under the Cooperative Societies Act is a public authority within the meaning of Section 2(h) of the Act. As a public authority, Registrar of Co-operative Societies has been conferred with lot of statutory powers under the respective Act under which he is functioning. He is also duty bound to comply with the obligations under the RTI Act and furnish information to a citizen under the RTI Act. Information which he is expected to provide is the information enumerated in Section 2(f) of the RTI Act subject to the limitations provided under Section 8 of the Act. Registrar can also, to the extent law permits, gather information from a Society, on which he has supervisory or administrative control under the Cooperative Societies Act. Consequently, apart from the information as is available to him, under Section 2(f), he can also gather those information from the Society, to the extent permitted by law. Registrar is also not obliged to disclose those information if those information fall under Section 8(1)(j) of the Act. No provision has been brought to our knowledge indicating that, under the Cooperative Societies Act, a Registrar can call for the details of the bank accounts maintained by the citizens or members in a cooperative bank . Only those information which a Registrar of Cooperative Societies can have access under the Cooperative Societies Act from a Society could be said to be the information which is "held" or "under the control of public authority". Even those information, Registrar, as already indicated, is not legally obliged to provide if those information falls under the exempted

category mentioned in Section 8(j) of the Act. Apart from the Registrar of Co-operative Societies, there may be other public authorities who can access information from a Co-operative Bank of a private account maintained by a member of Society under law, in the event of which, in a given situation, the society will have to part with that information. But the demand should have statutory backing.

53. Consequently, an information which has been sought for 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, the Registrar of Cooperative Societies, even if he has got that information, is not bound to furnish the same to an applicant, unless he is satisfied that the larger public interest justifies the disclosure of such information, that too, for reasons to be recorded in writing."

28. It is apparent that information submitted by an assessee in the course of assessment, may also include information relating to other persons. The exclusions available under Section 8(1) of the Act, would also be available in respect of that information.

29. Section 137 of the Income Tax Act, 1961 provided that the information furnished by an assessee was confidential and was not liable to be disclosed. Section 137 of the Income Tax Act, 1961 was deleted by the Finance Act, 1964 and simultaneously, Section 138 the Income Tax Act, 1961 was substituted. Section 138 of the Income Tax Act, 1961 is quoted below:-

“138. Disclosure of information respecting assessee.- (1)(a) The Board or any other income-tax authority specified by it by a general or special order in this behalf may furnish or cause to be furnished to-

- (i) any officer, authority or body performing any functions under any law relating to the imposition of any tax, duty or cess, or to dealings in foreign exchange as defined in clause (n) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999); or
- (ii) such officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public interest, specify by notification in the Official Gazette in this behalf,

any such information received or obtained by any income-tax authority in the performance of his functions under this Act, as may, in the opinion of the Board or other income-tax authority, be necessary for the purpose of enabling the officer, authority or body to perform his or its functions under that law.

(b) Where a person makes an application to the Chief Commissioner or Commissioner in the prescribed form for any information relating to any assessee received or obtained by any income-tax authority in the performance of his functions under this Act, the Chief Commissioner or Commissioner may, if he is satisfied that it is in the public interest so to do, furnish or cause to be furnished the information asked for and his decision in this behalf shall be final and shall not be called in question in any court of law.

(2) Notwithstanding anything contained in sub-section (1) or any other law for the time being in force, the Central Government may, having regard to the practices and usages customary or any other relevant factors, by order notified in the Official Gazette, direct that no information or document shall be furnished or produced by a public servant in respect of such matters relating to such class of assessee or except to such authorities as may be specified in the order.”

30. In the case of *Hanuman Pershad* (*supra*), this Court considered the question whether there was any bar on the Income Tax Department from disclosing records produced during the assessment proceedings. The said controversy was answered by the following words:-

“It is undoubtedly open to the authorities to disclose information received by them from assessments or other proceedings under the Act. However, there are restrictions contained in Section 138 as now existing concerning the manner in which that information is to be disclosed. Leaving aside sub-clause (a) of sub-section (1) it seems that under sub-clause (b), the Commissioner can disclose information if he is satisfied that it is within the public interest to do so. Hence, if some other authority applies to the Commissioner to obtain information, the same may be disclosed in the discretion of the Commissioner. Under Sub-clause (a) there is also a power to furnish information to other authorities. As this matter has not been fully argued or discussed in the present case, it is sufficient to note that there is no power to disclose information to other authorities and officers outside the provisions of the Section. As far as the information already given is concerned, we have no power to give any direction concerning the same.”

31. Although by virtue of Section 22 of the Act, the provisions of the Act have an overriding effect over any other inconsistent law, the said provisions of the Act insofar as they are not inconsistent with other statutes must be read harmoniously. Undoubtedly, the income tax returns and information provided to Income Tax Authorities by assesseees is confidential and not required to be placed in public domain. Given the nature of the income tax returns and the information necessary to support the same, it would be exempt under Section 8(1)(j) of the Act in respect of individual and unincorporated assesseees. The information as disclosed in

the income tax returns would qualify as personal information with regard to several private companies which are, essentially, alter egos of their promoters. However, in cases of widely held companies most information relating to their income and expenditure would be in public domain and the confidential information would be exempt from disclosure under Section 8(1)(d) of the Act. Further, even in cases of corporate entities, the income tax returns and other disclosure made to authorities would also include transactions with other parties and those parties can also claim the exception under Section 8(1) of the Act. One has to also bear in mind that an authority may not have any obligation to provide any information other than in the form in which it is available and the information provided by an assessee may not have been edited to remove references to other persons. Keeping all the aforesaid considerations in view, the parliament has enacted Section 138 of the Income Tax Act, 1961 to provide for disclosure only where it is necessary in public interest. Similar provisions are enacted under the Act and clauses (d), (e) and (j) of Section 8(1) of the Act that specify that information exempt from disclosure under those clauses, could be disclosed in larger public interest. Section 8(2) of the Act also provides for a non obstante clause which permits disclosure of information in larger public interest.

32. It would also be necessary to refer to Section 11 of the Act, which provides for a notice to a third party before any third party information is disclosed. The proviso to Section 11 of the Act also specifies that disclosure of trade or commercial secrets, which are protected by law

would not be allowed unless their disclosure is necessary in public interest.

Section 11(1) of the Act reads as under:-

"11. Third party information.—(1) Where a Central Public Information Officer or the State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party."

33. In the above context where the nature of income tax returns and other information provided for assessment of income is confidential and its disclosure is protected under the Income Tax Act, 1961 it is not necessary to read any inconsistency between the Act and Income Tax Act, 1961. And, information furnished by an assessee can be disclosed only where it is necessary to do in public interest and where such interest outweighs in importance, any possible harm or injury to the assessee or any other third party. However, information furnished by corporate assesseees that neither

relates to another party nor is exempt under Section 8(1)(d) of the Act, can be disclosed.

34. In view of the aforesaid, the principal question that is to be addressed is whether the CIC has misdirected itself in concluding that disclosure of income tax returns and other information relating to assessment of income of the petitioners was in public interest.

35. In order to address this controversy, it is important to understand the purpose of the respondent in seeking such information. The proceedings under the Income Tax Act, 1961 with respect to assessment of income are at different stages. It is stated that in some cases, assessment is complete and appeal proceedings are pending in other fora. In one case, it is contended that the Appellate Authorities have remanded the matter of assessment to the Assessing Officer. It is apparent that the assessment proceedings have thrown up contentious issues which are being agitated between the income tax authorities and the assesseees. The respondent, essentially, wants to intervene in those proceedings by adding and providing his contentions or interpretation as to the information provided by the assesseees or otherwise available with the Income Tax Authorities.

36. In my view, the CIC has misdirected itself in concluding that this was in larger public interest. The CIC arrived at this conclusion by noting that disclosure of information was in larger public interest in increasing public revenue and reducing corruption. The assessment proceedings are not public proceedings where all and sundry are allowed to participate and add their opinion to the proceedings. Merely because a spirited citizen

wishes to assist in assessment proceedings, the same cannot be stated to be in larger public interest. On the contrary, larger public interest would require that assessment proceedings are completed expeditiously and by the authorities who are statutorily empowered to do so.

37. In the present case, there was no material to indicate that there was any corruption on the part of the income tax authorities which led to a justifiable apprehension that the said authorities were not performing their function diligently. In any event, the CIC has not found that the proceedings relating to assessment were not being conducted in accordance with law and/or required the intervention of the respondent. Assessment proceedings are quasi-judicial proceedings where assessee has to produce material to substantiate their return of income. Income tax has to be assessed by the income tax authorities strictly in accordance with the Income Tax Act, 1961 and based on the information sought by them. In the present case, the respondent wants to process the information to assist and support the role of an Assessing Officer. This has a propensity of interfering in the assessment proceedings and thus, cannot be considered to be in larger public interest. The CIC had proceeded on the basis that the income tax authorities should disclose information to informers of income tax departments to enable them to bring instances of tax evasion to the notice of income tax authorities. In my view, this reasoning is flawed as it would tend to subvert the assessment process rather than aid it. If this idea is carried to its logical end, it would enable several busy bodies to interfere in assessment proceedings and throw up their interpretation of law and facts as to how an assessment ought to be carried out. The propensity of this to

multiply litigation cannot be underestimated. Further, the proposition that unrelated parties could intervene in assessment proceedings is wholly alien to the Income Tax Act, 1961. The income tax returns and information are provided in aid of the proceedings that are conducted under that Act and there is no scope for enhancing or providing for an additional dimension to the assessment proceedings.

38. The Supreme Court in **Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi: (2012) 13 SCC 61** held that the statutory exemption provided under Section 8 of the Act is the rule and only in exceptional circumstances of larger public interest the information would be disclosed. It was also held that ‘public purpose’ needs to be interpreted in the strict sense and public interest has to be construed keeping in mind the balance between right to privacy and right to information. The relevant extract from the said judgment is quoted below:

“21. Another very significant provision of the Act is Section 8(1)(j). In terms of this provision, 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 would fall within the exempted category, unless the authority concerned is satisfied that larger public interest justifies the disclosure of such information. It is, therefore, to be understood clearly that it is a statutory exemption which must operate as a rule and only in exceptional cases would disclosure be permitted, that too, for reasons to be recorded demonstrating satisfaction to the test of larger public interest. It will not be in consonance with the spirit of these provisions, if in a mechanical manner, directions are passed by the appropriate authority to disclose information which may be protected in terms of the above provisions. All information which has come

to the notice of or on record of a person holding fiduciary relationship with another and but for such capacity, such information would not have been provided to that authority, would normally need to be protected and would not be open to disclosure keeping the higher standards of integrity and confidentiality of such relationship. Such exemption would be available to such authority or department.

22. The expression “public interest” has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression “public interest” must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the Act. In its common parlance, the expression “public interest”, like “public purpose”, is not capable of any precise definition. It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs (*State of Bihar v. Kameshwar Singh* [AIR 1952 SC 252]). It also means the general welfare of the public that warrants recognition and protection; something in which the public as a whole has a stake [*Black's Law Dictionary* (8th Edn.)].

23. The satisfaction has to be arrived at by the authorities objectively and the consequences of such disclosure have to be weighed with regard to the circumstances of a given case. The decision has to be based on objective satisfaction recorded for ensuring that larger public interest outweighs unwarranted invasion of privacy or other factors stated in the provision. Certain matters, particularly in relation to appointment, are required to be dealt with great confidentiality. The information may come to knowledge of the authority as a result of disclosure by others who give that information in confidence and with complete faith, integrity and fidelity. Secrecy of such information shall be maintained, thus, bringing it within the ambit of fiduciary capacity. Similarly, there may be cases where the disclosure has no relationship to any public activity or interest or it may even cause unwarranted invasion of privacy of the individual. All these protections have to be given their

due implementation as they spring from statutory exemptions. It is not a decision simpliciter between private interest and public interest. It is a matter where a constitutional protection is available to a person with regard to the right to privacy. Thus, the public interest has to be construed while keeping in mind the balance factor between right to privacy and right to information with the purpose sought to be achieved and the purpose that would be served in the larger public interest, particularly when both these rights emerge from the constitutional values under the Constitution of India.”

39. Applying the aforesaid judgment to the facts of this case, it is apparent that disclosure of information as directed has no discernable element of larger public interest.

40. Accordingly, the petitions are allowed and the impugned order is set aside. The parties are left to bear their own costs.

NOVEMBER 24, 2014
RK

VIBHU BAKHRU, J