



How To Use The RTI Act For Maximum Benefit In Income-tax Matters

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This article deals with Income-tax Issues, though some parts of it will be applicable to Indirect tax issues also.

RTI & Professionals

Citizens in general and professionals alike in the financial fields are more often than not stuck in a major traffic jam of bureaucrats, red tapism, 'babudom', corrupt officials, unconcerned staff, rude misbehaviour, etc. There is almost no way to wade through this. There are a lot of tiny issues that are present in the government departments which are so deeply imbibed into their system that they are almost synonymous with the department in itself. The common man too has this fixed negative notion towards these departments but has never tried to change it since he thinks that his individual effort would go entirely futile and that a mass movement is required to extract this absorbed venom from the veins of our democracy. October 2005 was the lucky time when the Government came up with the anti-venom, the Right to Information Act.

The Right to Information Act (RTI Act) became effective law w.e.f. 12-10-2005. It is a short and simple Act comprising 31 sections but extremely powerful, the likes of which India has never before witnessed.

The RTI Act has heralded citizens' right to be recognised and thereby made participative democracy possible. If well implemented and well used, real swaraj will dawn.

As we proceed into the eighth year of the use of the RTI we need to look – not only at the shortcomings which we always do – but at our immense gains. Not so much to compliment ourselves as to strengthen our resolve to carry on with millions of our struggles that its use has spawned. The RTI has forced the redistribution of power, demanded participatory decision-making and specific accountability. It has legitimised questioning as a part of decision-making. It has questioned representative democracy and pushed the system to acknowledge, though reluctantly, that it has an obligation to the sovereign citizen.

The RTI Act empowers citizens. RTI is a tool to know how Governments function. Information can be demanded from public authorities; i.e. all Government departments and any body owned, controlled or substantially financed directly or indirectly by appropriate Government, i.e. NGOs, PSUs, co-operative societies, etc.

RTI is fundamental to a democracy and democracy, in order to stay alive with its principles in fact, needs the RTI.

The RTI Act has the power to lead to transparency and accountability in governance, and to contain corruption.

I request professionals to become part of RTI users' family. We urge you to join this movement to benefit you and to benefit your clients & others. Your rights under the RTI Act include:

Inspection of work, documents, records, taking certified samples of material used for any project, obtaining information in the form of floppies, tapes or any other electronic media or through printout, etc.

All citizens have a right to know status of their applications for any matter such as ration card, passport, water-connection, Income-tax refund due, etc. Any citizen may like to know how his MP/MLA has used funds allocated to him and how funds are earmarked for different projects.

Common Issues in Income Tax

Grievances and the Income Tax Department are almost synonymous for the common taxpayer. There are some very general and rather common issues that are faced by many taxpayers due to certain inbuilt cracks in the walls of the Income Tax Department. Hereunder I deal with those issues, their nature, how RTI can help and refer the judgments that have already been pronounced on these common issues.

The following are the common issues faced and the common inquiries made by way of RTI applications to the Income Tax Department along with their outcomes and relevant judgments:

1. Information on Income Tax Refunds
2. Information on Rectification Applications
3. Information regarding Income Tax Returns of third parties
4. Information regarding PAN and TAN of third parties
5. Information on Search, Seizure, Raids
6. Information relating to an ongoing court trial
7. Information on status of tax evasion petitions

1. Information on Income Tax Refunds

Refunds are the one of the most common issues faced by the assesseees. This issue has sky-rocketed after the introduction of the electronic system as there is still a huge gap between the electronic and the manual system in terms of updation and coordination. This widespread complaint that the taxpayers have, has been noticed because of following two reasons:

- a. E-filing of Income Tax returns and lack of coordination between the Assessing Officer and the Centralised Processing Centre (CPC) in relation to revised returns and/or Rectification Applications filed online and vice versa;
- b. Adjustment of arrears in demand payable against any existing refunds; an electronic adjustment that generally skips any applications/letters filed manually with the Assessing Officer.

An RTI application can in most cases, solve this issue in a very simple and hassle free manner. The procedure to file an RTI application for a refund is very simple:

Please refer the sample of RTI application at the end of this article. The following points must be taken care of while drafting of an RTI application for obtaining Income Tax Refund:

- The question posed before the PIO (as termed in the RTI Act i.e. your assessing officer. PIO is acronym of public information officer) must not be "Why is my Income Tax Refund not being processed/released?" No direct allegations of any kind whatsoever must be made. The purpose of the RTI is to receive relevant information held and on record and not accuse the functioning of the system.
- The question must be, "Please provide the status of my Income Tax Refund" or "As per the schedule of issuing Income Tax refunds, when I can expect to get my refund?"
- Further, the PAN of the assessee, the assessment year for which refund is pending, amount of refund are details that must be mentioned in the application with all details.
- Any prior correspondences with the Department, Rectification Applications or any other documents filed must also be duly enclosed.

However, in some cases these RTI applications are rejected or incomplete/incorrect information is provided to the assessee.

The following application made to the CPIO is an interesting example of how an application was blindly rejected and what the grounds were for it:

| | |
|----------------------|--|
| Applicant | Smt. Usha Devi Agarwal |
| Respondent | Income Tax Officer, Mumbai |
| Query | "Will you please provide me information on when I will get my Income Tax Refund for the A.Y. 2008-09 along with interest till the date of payment?" |
| Reply | "The above information sought by the applicant is exempted from disclosure as per the provisions of Section 8(1) (j) of the RTI Act, since the information sought by her relates to personal information, the disclosure of which has no relationship to any public activity or interest. Hence, the application filed by the applicant is hereby rejected. However, as far as the refund for the A.Y. 2008-09 is concerned, the same is under consideration." |
| Final Outcome | The application was forwarded to the concerned CPIO and the said refund was subsequently received by the applicant within the stipulated time period. |

In the above case, the applicant has requested information pertaining to her very own tax refund. The information thus, does not pertain to any third party or any Public Authority. Her application has been rejected on the grounds of it being "personal information not related to any public activity or interest". The information solicited is undoubtedly personal information but of the very same individual who is requesting the information. The clause of non-disclosure of personal information is applicable only if the information sought belongs to some third party and/or Public Authority; which obviously is far from the current scenario. But well, the irony is that genuine applications are blindly rejected on such unsustainable grounds causing citizens further trouble of having to move the Appellate Authorities. (In this case, First Appellate Authority (FAA) is Additional/ Joint commissioner of that A.O). It is also pertinent to note that the CPIO, in spite of rejecting the application has concluded in a statement that says that the refund is under consideration and the refund was subsequently received by the applicant as well. Now, this sort of non-disclosure along with an open statement towards the end is not only confusing for a genuine applicant but also shows the level of ignorance on part of the Public Authority.

In most cases though, as also in the abovementioned one, the RTI application does certainly expedite the process of receiving the Income Tax Refund thereby fulfilling the motto of the applicant.

FAQs

1. Can I file a single RTI for refunds pertaining to multiple assessment years?
 - ✓ Yes. A single RTI application containing specific details of every assessment year can be filed. The application must clearly mention the PAN of the assessee, the assessment years for which refund is pending, amount of refund for each assessment year and other relevant details.
2. Can a CA make an application on behalf of the assessee?
 - ✓ No. A CA cannot apply on behalf of the assessee. The RTI application must be signed by the assessee himself. However, an assessee may authorize a CA or an Advocate or any other person to represent the assessee in the course of hearing before the PIO or the Appellate Authorities by way of a Power of Attorney that specifically provides for delegation of power with respect to RTI matters.
3. Who is my PIO?
 - ✓ Your Assessing Officer is your PIO. If you file your application with another PIO, he shall forward your application to your concerned PIO within a period of 5 days.
4. Can I ask why my refund has not been issued?

- ✓ It is not advisable to ask “Why”. However, questions can be on the status of the refund, whether it has been processed, when has it been dispatched, if so, whether it has been returned from the assessee's address, etc.

2 Information on Rectification Applications

Rectification Applications filed in the Income Tax Department often remain pending for long periods of time. Filing an RTI application to inquire about the status of the Rectification Application provides the assessee with the requisite information and also expedites the process of rectification by alerting the concerned officer.

Refer **Annexure** – as noted in issue 1 above A Sample RTI Application also covers to know the status of the Rectification Application already filed with the Income Tax Department.

3 Information regarding Income Tax Returns of third parties

Income Tax Returns have been declared as confidential information as per Section 138 of the I.T. Act. The information contained in Income Tax Returns is of high importance and very confidential to the said individual. Thus, as can be observed from a list of judgments; Income Tax Returns of third parties (i.e., any person other than self) are confidential information which are exempted from the purview of disclosure u/s. 8(1)(j) of the RTI Act.

However, there are certain exceptions to the above exemption:

- If a ‘larger public interest’ derived from obtaining the ITRs can be proved
- If the ITR is requested as a Shareholder/Stakeholder in the Public Authority/ Private Institution
- If the ITR pertains to a Political Party
- Matters relating to ‘dowry’ have a larger public interest for the society and hence disclosure of information required for defence in alleged false dowry cases is permitted. Income Tax Returns as required have to be provided.

In the case of *Shri Girish Ramchandra Deshpande vs. CIC and others (2012) 351 ITR 472 (SC) (pg. 46)* the Hon'ble Supreme Court held: “The details disclosed by a person in his income tax returns are ‘personal information’ which stands exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless it 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. On facts, as the Petitioner 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 u/s. 8(1)(j) of the RTI Act.”

FAQs:

1. Can a CA apply for copies of his client's Income Tax Returns of previous years?
 - ✓ No. A CA cannot apply on behalf of the assessee. The application has to be made by the assessee himself. An assessee can ask for copies of his Income Tax Returns of previous years for the purpose of maintaining records or for submitting them before some other Authorities.
2. Can an assessee apply for copies of Income Tax Returns of his family members?
 - ✓ An assessee may apply for Income Tax Returns of his family members. However, as per the provisions of Section 11 of the RTI Act, the PIO will release the copies of the third parties only after obtaining a written confirmation from them for the same. If they approve, the Income Tax returns of the family members may be provided to the assessee.

What is a ‘third party’?

As per Section 2(n) of the RTI Act, “third party” means a person other than the citizen making a request for information and includes a Public Authority.

Section 11 of the RTI Act deals with the 'Disclosure of third party information'. The following are the important clauses with respect to the said section:

- If an individual wishes to seek any information pertaining to a **third party** and the concerned PIO intends to disclose any information or record, or part thereof on a request made under the RTI 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 (CPIO) or State Public Information Officer (SPIO), 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 CPIO or SPIO, as the case may be, intends to disclose the information on 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
- The third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure
- The CPIO or SPIO shall, within forty days after receipt of the RTI application, if the third party has been given an opportunity to make representation, make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party
- The notice given by the CPIO or SPIO, shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 of the RTI Act against the decision
- 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.

4. Information regarding PAN and TAN of third parties

PAN and TAN of any individual/authority are the unique identification numbers provided to them by the Income Tax Department. These identifications numbers carry all the important and sensitive information of the assessee. Disclosure of these numbers would open the doors to all this sensitive information and could prove very destructive for the assessee. Hence, **disclosure of PAN and TAN** of individuals/companies/authorities is not permissible as held in *Shri. Arun Verma vs. DGIT(Systems), New Delhi*.

In the abovementioned case, the First Appellate Authority stated that *"PAN is a unique identification and required to be disclosed by a person whenever he is required to do so by operation of law. It is the number which is personal to the holder and its disclosure to any other person would cause unwarranted invasion of privacy of the holder. Further, the appellant has failed to make a case that information sought by him is in larger public interest"*.

Supporting the view of the FAA, the Commission decided that, *"PAN is a statutory number, which functions as a unique identification for each tax payer. Making PAN public can result in misuse of this information by other persons to quote wrong PAN while entering into financial transactions and also could compromise the privacy of the personal financial transactions linked with PAN. This also holds true for TAN. Information relating to PAN and TAN, including the dates of issue of these numbers, is composite and confidential in nature under Section 138 of Income-tax Act. The appellant has not made a case of bona fide public interest for disclosure of PAN/TAN Numbers of 26 companies in the grounds of submissions of their application for above purposes"*

My comments: The PAN and TAN are undoubtedly sensitive information whose non-disclosure can be justified. However, it is pertinent to mention at this stage that obtaining the PAN or TAN of any individual/company is not a difficult task in our technology-friendly age. The official website of the Income Tax Department itself has a feature called "Know your PAN" whereby one can obtain any PAN by a mere input of the Name and the Date of Birth/Date of Incorporation of the individual/company. Also, obtaining information about the name and Date of Birth/Date of Incorporation is very simple with the help of the large spread social media and openly available online databases. Thus, when it is as easy to gain information about the PAN and TAN online, then non-disclosure of the same under the RTI Act certainly builds up a conflicting string of interest for the citizens.

FAQs:

1. Can I know the status of my own PAN application?
 - ✓ Yes. An RTI application can be filed to know the status of your own PAN or TAN application.

2. Can I know the status of correction application made for PAN/TAN details?
 - ✓ Yes. An RTI application can be filed to know the status of the correction application made for your own PAN or TAN.
3. Can a CA make an application to know the status of a client's PAN or TAN application?
 - ✓ No. A CA cannot apply on behalf of the assessee. The RTI application has to be signed by the assessee himself.

5. Information on Search, Seizure, Raids

The highest authority questionable in case of Search, Seizure and Raids conducted under the Income-tax Act, 1961 is the DGIT (Investigation). Now, u/s. 24 of the RTI Act, the DGIT (Investigation) has been declared as an "exempted organisation" and hence, is no more questionable. No queries/applications pertaining to the DGIT (Investigation) are replied to under the RTI Act. This exemption to the DGIT (Investigation) did not form part of the original RTI Act but was later paved in by way of an amendment to The Second Schedule of the RTI Act on 27-3-2008, as disclosure of information relating to Searches, Seizures and Raids was hampering the process of unbiased investigation that needed to be carried out.

FAQs:

1. Can I know the reasons for selection of my case for scrutiny assessment?
 - ✓ Yes. An RTI application can be filed to know the reasons for selection of your case for scrutiny assessment.
2. Can I know by when will my seized books of account be released and returned to me?
 - ✓ Yes. An RTI application can be filed to know by when your seized books of account will be released. The release of books of account seized is possible only after completion of the assessment to the satisfaction of the Revenue Authorities and an RTI before completion of assessment shall not receive a positive reply.
3. Can I know under whose directions was the search/seizure activity conducted on me?
 - ✓ No. The DGIT (Investigation) is the revenue authority in charge of searches, raids, etc. and it has been specifically excluded from the purview of the RTI Act.

6. Information relating to an ongoing court trial

The RTI is often used as a tool to procure certain information that would help the applicant in another court of law by acting as evidence. This is permissible and not specifically exempted. However, trying to procure a decision using the RTI Act, when the same matter is already pending before some other court of law is generally not appreciated. The CIC has in several cases held that it cannot pronounce a verdict or an opinion on a matter that is subjudice as it could be prejudicial to the interest of the applicant as well as could hamper the current proceedings of the law. Thus, generally, information can be obtained but pronouncements on subjudice matters are not made.

In the case of *Smt. Durgesh Kumari vs. Income Tax Department*, the Full Bench of the CIC held that "the process of 'prosecution' is not yet over and it is still continuing, for, it is open to the court to affirm, modify or reverse the trial court judgment and thereupon any of the parties may further agitate the matter before the apex court. The process of prosecution, thus, is a continuing process which can be said to be over only when all judicial remedies have been fully exhausted."

Also, the RTI Act does not have the power to announce decisions in areas where specific trial courts/redressal mechanisms are already set up and functional. For instance, the Income Tax Department has a well defined hierarchy moving from the Assessing Officer to the Income Tax Appellate Tribunal and/or the High Court and the Supreme Court. One can surely procure information using the RTI Act to facilitate the proceedings at any of the above courts but cannot expect the SIC/CIC to pronounce judgments on technical matters already in consideration by the specified courts. The above has been reiterated by a Full Bench of the CIC in *Shri Rakesh Kumar Gupta vs. ITAT, New Delhi*. In the said case, the

Commission inferred that, "It is our conclusion, therefore, that given that a judicial authority must function with total independence and freedom, should it be found that an action initiated under the RTI Act impinges upon the authority of that judicial body, the Commission will not authorise the use of RTI Act for any such disclosure requirement. Section 8 (1) (b) of the RTI Act is quite clear, which gives a total direction to the court or the Tribunal to decide as to what should be published. An information seeker should, therefore, approach the concerned court or the Tribunal if he intends to have some information concerning a judicial proceeding and it is for the concerned Court or Tribunal to take a decision in the matter as to whether the information requested is concerning judicial proceedings either pending before it or decided by it can be given or not."

7. Information on status of Tax Evasion petitions

Tax Evasion Petitions (TEPs) are filed with the Income Tax Department by people who feel that some people are evading taxes very evidently and they wish to bring these malpractices to the notice of the Department. Being an open democracy, our country encourages such whistleblowers and also has certain compensation/awards for the ones who file true TEPs and help the Department. Thus, wanting to know the outcome of a TEP filed does fall under one's Right to Information.

However, the courts have been of the view e.g. in *Shri Brij Ballabh Singh vs. DGIT (Investigation), Lucknow* that complete disclosure of the outcome of a certain TEP can be misused and thus only a broad outcome can be provided as information to the initiator of the TEP. Thus, in case of information requested on the status of a TEP, the broad outcome can be provided without disclosing the details of the investigation and any other data that could hamper the process of investigation.

FAQs:

1. Can I know the status of Tax Evasion Petition filed by me?
 - ✓ Yes. An RTI application can be filed to know the status of Tax Evasion Petition filed by you.
2. Can I know the status of the reward I am supposed to receive as a whistleblower?
 - ✓ Yes. An RTI application can be filed to know the status of the reward you are eligible to receive as a whistleblower.

Above noted seven issues as stated are common income-tax issues. There may be more, common or non-common. In this connection, one point needs to be noted:

Vide Notification dated 31-7-2012 of DoPT certain Central Government RTI rules have been amended. One of the amendments reads as under:

3. Application Fee: An application under s/s (1) of section 6 of the Act shall be accompanied by a fee of rupees ten and shall ordinarily not contain more than five hundred words, excluding annexures, containing address of the Central Public Information Office and that of the applicant.

Provided that no application shall be rejected only on the ground that it contains more than five hundred words.

Hence, if you cover more than one issue in one RTI application, please be careful that words refund to above do not exceed 500.

- The Right to Information Act is not grievance resolution mechanism, for which the departments have separate scheme. This Act is for seeking information. However, indirectly it achieves in large measure compliance and redress of grievance such as non-receipt of refunds, etc.

If response is not given within the time as prescribed, the concerned Public Information Officer is liable for penalty or for persistent default even disciplinary action can be taken under the applicable service rules.

- Default can be one of the following six types: If PIO—
 - Refuses to receive an application for information.
 - Does not furnish information within the time specified under sub-section (1) of section 7.
 - Malafidely denies the request for information.
 - Knowingly gives incorrect, incomplete or misleading information.
 - Destroys information which was the subject of the request.

— Obstructs in any manner of furnishing the information.

Penalty, I would say, is steep though many RTI activists opine that it is mild. It is ₹ 250 for each day till the application is received or information is furnished. The upper cap is ₹ 25,000. Same is to be paid personally by the concerned officer. Of course before the penalty is imposed the officer is given a reasonable opportunity of being heard to submit that default was not without reasonable cause.

- All economic laws and many other laws prescribe penalties for citizens and power is granted to the administrative officer. To say something in lighter vein:
Citizens offer bribe to the officers to save them from levy of penalties. Day should not come when the officers offer bribe to the citizens to save them from levy of penalties!
- We, professionals, suffer very often in our practice, so also our clients suffer all the time. It is often that we do not get proper hearing, do not get adequate notice for hearing. The assessee does not get the assessment order or appellate order in time because he has refused to pay “consideration” for it. Very often, in number of cases, refunds do not get issued. We do nothing about it, sometime citizens (clients) do not allow us to do anything and everyone suffers.
- Neither we professionals nor the officers of the department bother to see implementation of the Citizen’s Charter of Income Tax Department. This Charter shows that the department has made certain commitments. It is our duty and that of the citizens as victims of non-performance of the officials’ duties to enquire about the level of implementation, if any, of the points noted in the Charter.
- Under RTI, we cannot ask: Why you have not issued refund due to me but we can ask when you will issue refund due to me. Isn’t this interesting! As soon as one seeks this information, like magic wand, refund arrives on your table within 30 days, cost only ₹ 10!
- I advise all professionals to use facilities available in RTI Act, it is an opportunity to minimise corruption and improve accountability. Let professionals become catalysts for change, catalyst to bring better tax-administration through the use of Right to Information.

Abbreviations

RTI: Right to Information

A.O: Assessing Officer

CA: Chartered Accountant

CPIO: Central Public Information

DGIT: Director General of Income Tax

DoPT: Department of Personnel & Training

FAA: First Appellate Authority

ITR: Income Tax Return

NGO: Non Government Organisation

PAN: Permanent Account Number

PIO: Public Information Officer

PSU: Public Sector Undertaking

SPIO: State Public Information Officer

TAN: Tax Deduction Account Number.

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