

Procurement of Information from Income Tax Authorities

With the deletion of Section-137 by Finance Act-1964 in Income Tax Act-1961, legislature clarified its intention that they are not in favour of absolute privacy of information of assessee maintained with Income Tax Department in fiduciary capacity. At present, provision related to disclosure of information are mentioned in Section 138 of the Act. For the purpose of deliberation or understanding, we can go clause by clause in Section 138 of the Act.

Suo-Moto En Masse Disclosure

Section 138(1)(a) provide for suo-moto disclosure of the information by Central Government, CBDT or any other authority authorized by Board by general or special order. In this section disclosure is limited for two type of authorities.

1. Any Authority, which is performing assessment function under any law which provide imposition of tax, duty or cess. We have to keep in mind that here legislature used the word "tax" not the indirect or direct tax as such. Similarly, used the word "duty" not particularly excise or custom duty as such. In general, where assessment of statutory dues vested in officers of the executive in public interest by vesting the power of civil court and barring the jurisdiction of the civil court therefore sharing the information will be vital for assessment of statutory due as well as serving the interest of public in general. For example, authorities performing function of assessment of statutory dues under GST Act, State Tax, Municipal Tax, PF or ESIC Act etc. One exception is carved out here that preventive authorities are included that are dealing in Foreign Exchange for example RBI or Enforcement Directorate etc.
2. In second clause, the scope of suo-moto is widened where authority is given to Board or Income Tax Authorities to share information with any other authority even performing the administrative functions under any other Act where authorities are not performing the assessment function but sharing of information will serve the public interest in the opinion Central Government and Central Government has issued a Gazette notification in this regard.

It is clear that intention of the legislature is Section 138(1)(a) that legislature moved from absolute prohibition to conditional disclosure in this regard. Here, legislature has taken a balanced approach between right of privacy and public interest. Where assessing authorities are performing assessing function that means they are functioning like civil court so disclosure is automatic while in other cases authority is given to Central Government to authorize any administrative authority through Gazette notification in public interest.

Disclosure in Individual Cases on Request

In section 138(1)(b), in individual cases legislature has left the scope the disclosure wide open. This section is not limited the disclosure to public authorities but used the wording "**A Person**" that means any individual can apply for disclosure of information in public interest. This is two step procedure where at first step any individual will apply for disclosure of the information and at second step, Commissioner will decide that whether public interest in

involved or not. This is matter of individual therefore decision of Commissioner is final whether public interest is involved or not as this is administrative function of the Commissioner and he is not bound to provide any opportunity of hearing against the rejection of the application. Commissioner cannot be questioned in any court of law to disclose the reasons of the rejection whether decision is fair, biased or reasoned etc. There are few misconceptions in Income Tax Department in this regard.

1. Only Commissioner can disclose information: - This is not true as this is not job of the Commissioner to disclose the information as disclosure is the job of jurisdictional officer or custodian of documents. Role of the Commissioner is to decide the public interest only. In case, information is requested by any person or authority where public interest is inherent then custodian of information need not to refer the matter to Commissioner for deciding the public interest before disclosure. For example, custodian has received order of the any authority under RTI Act-2005 duly establishing the public interest then custodian is duty bound to disclose the information as public interest is already established by appropriate authority.
2. Any order received from competent authority which is acting in public interest and competent to order custodian to disclose the information then also custodian is duty bound to disclose the information without approval of Commissioner. For example, any summon is received from any court of law for disclosure of the information. It is inherent that court of law always works in public interest. Moreover, any court of law being the judicial authority is competent to order the custodian for disclosure of the information so both the conditions are stand satisfied so custodian is duty bound to disclose the information. At this stage, custodian can't take the plea that he will take the permission of the Commissioner then only he will disclose the information which is generally being done in Income Tax Department. I have stated above that Commissioner is only performing administrative functions under section 138 of the Act and order of the court is judicial order so any administrative authority cannot sit or adjudicate on the order of judicial authority and judicial authority is always supreme so custodian is duty bound to disclose information. This issue was clarified by Hon'ble Apex Court in the matter of **Dagi Ram Pindi Lal And Anr vs Trilok Chand Jain And Ors on 4 February, 1992 1992 AIR 990, 1992 SCR (1) 545.**
3. There is one more misconception that Commissioner is the final authority for disclosure of the information. This is not correct as Commissioner is not final authority to decide on the disclosure of the information but he is given the authority to decide whether public interest is involved or not as this section is allowing even private individuals for apply for disclosure of the information. It is well clarified in point no 1 & 2 that public interest may be pre-decided or inherent so in that case disclosure will automatically flow.
4. Wording of the Hon'ble Apex Court in above said case found resonance when legislature incorporated the Right to Information(RTI) Act in 2005. Information Commissioner is the final authority to decide whether public interest is involved or not and he is performing quasi-judicial function. In case, any applicant applied for disclosure of the information and same was denied by Income Tax Authorities.

Suppose, matter reached at the level of Information Commissioner level and he decided that public interest involved in the application out weight the right of privacy of the individual assessee. In that case, both CPIO and custodian is duty bound to disclose the information even if prior to rejection of the RTI application or later on they have taken approval of the Commissioner under section 138 of the Act that no public interest is involved. In this case, there may be clash between the order of the Commissioner and Information Commissioner but order of the Information Commissioner will prevail for the following reasons;

- (a) Order of the Information Commissioner is judicial order therefore it will prevail over administrative order of the Commissioner under Section 138 of the Act.
- (b) RTI Act-2005 is the special piece of legislation in the matter of disclosure of the information so its provision will prevail over any general clause contained in any general nature of the Act.
- (c) RTI Act-2005 was incorporated later on section 138 in Income Tax Act-1961. It is presumed that provisions of Section 138 were in the knowledge of the legislature when legislature was framing RTI Act-2005 even then legislature incorporated it. So, it established that legislature has given priority to provisions of RTI Act or provisions of Section 138 of the Act.

In case, we go through section 138, then we can say that Central Government i.e. executive is given full authority for disclosure of the information through Gazette Notification about any individual assessee or class of assesses. Executive can't claim sole right or responsibility in the matter of public interest. Judicial authorities always considered supreme and acting in the public interest so **any court of law or any authority performing judicial function or any authority with the power of civil court to summon information or documents** can order for disclosure of the information where Central Government, Board or Income Tax Authorities are competent to order for disclosure. Any authority notified under Section 138(1)(b) can request for disclosure of the information even for administrative functions if that authority is notified by Central Government in official Gazette Notification.

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