

CENTRAL INFORMATION COMMISSION

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**F.No.CIC/AT/A/2007/01074
Dated, the 28th December, 2007.**

Appellant : Shri Arun Shankar, Shreeshylam, Opposite Transport Bus Station, Ettumanoor-686 631, Kottayam, Kerala.

Respondents : Shri Kamlesh C. Varshney, CPIO & OSD (ITA.I), Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, North Block, New Delhi-110 001.

Shri Dinesh Verma, Commissioner of Income Tax(ITA) & Appellate Authority, Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, North Block, New Delhi-110 001.

This second-appeal by Shri Arun Shankar is against the order of the Appellate Authority (AA), dated 26.6.2007. The appellant, who appears to be a highly educated and intelligent person, have had certain concerns about interpretation of Income Tax Laws pertaining to Trusts by Assessing Authorities of the Income Tax Department. He, therefore, filed an RTI-petition dated 20.2.2007 before the CPIO, Shri Kamlesh C. Varshney, OSD(IT.A), Central Board of Direct Taxes (CBDT), and received the CPIO's reply on 28.2.2007. The RTI-application of the appellant is reproduced in full below:-

“As you know, Section 11 of the Income Tax Act, 1961, speaks of tax exemption to wholly charitable or religious trusts. Circular: No.100 [F.No.195/1/72-IT(A-I)], dated 24-1-1973 issued by the Board states that : ‘Section 11 required 199 per cent of the income of a charitable and religious trust to be applied for religious and charitable purposes to be entitled to the exemption under the said section’.

However, some Assessing Officers in Kerala are found to levy Income Tax on trusts wholly for ‘charitable AND religious’ purposes under the argument that the term ‘wholly charitable or religious’ in Section 11 means ‘wholly charitable’ or ‘wholly religious’ and a trust being wholly for charitable ‘AND’ religious purposes does not qualify for exemption u/s 11.

Under Section 6, read with section 2(f) of the ‘Right to Information Act 2005’, I desire to obtain all information, especially the opinion and advice of the Board, in this regard.

I request you to provide the information as expeditiously as possible. I am willing to pay the cost – if any – of providing the information, as stipulated by the RTI Act.”

2. The CPIO's reply informed the appellant that since what he (the appellant) was asking through his RTI-application amounted to eliciting the public authority's opinion about certain categories of tax liability, it was not liable to be disclosed as it was not covered by the definition of 'information' under Section 2(f) of the RTI Act.

3. The appellant approached the first AA in first-appeal on 20.3.2007. The AA remitted the matter back to the CPIO pointing out that the CPIO had not appreciated the appellant's request in proper perspective possibly because the appellant's request was not worded clearly enough. The appellant had apparently clarified to the AA that he did not wish to have the opinion or the view of the CPIO on the provisions of Section 11 of the Income Tax Act, but wished to have "*extracts of any opinion or advice on such subject in the records of the board*". The AA concluded that 'opinions' and 'advices' included in the files and records of a public authority were 'information' in terms of Section 2(f) of the RTI Act.

4. Following the direction of the AA, the CPIO sent a communication dated 15.5.2007 to the appellant, the operative portion of which read as follows:-

"In this connection you are informed that a copy of opinion of Standing Counsel which was obtained by the Commissioner of Income Tax, Kannur, is available in the ITA.I Section of the Board. A copy of the same along with the copy of Circular No.100 dated 24-1-1973 is being provided to you."

5. The appellant went up in first-appeal the second time on 24.5.2007. He acknowledged that CPIO had provided to him the opinion of the Standing Counsel rendered to the Commissioner of Income Tax, Kannur, but pointed out that this opinion of the Standing Counsel pertained to "PARTLY charitable and religious trusts and not WHOLLY charitable and religious trusts", which was actually the question raised by the appellant. He thanked the CPIO for having provided to him the same nevertheless. Secondly, he acknowledged the other information viz. Circular No.100 dated 24.1.1973 of the CBDT provided by the CPIO to him. The appellant pointed out that this Circular "*addressed different topics*" and "*not more than one sentence was of utility to the appellant*". He charged that "*the CPIO has not bothered even to extract that information*". He pointed out that under Section 2(j)(ii) of the RTI Act, 'Right to Information' included taking extracts of documents or records. It was his contention that this should mean that the appellant had the right to direct a public authority / CPIO to extract for him "*relevant information*" pertaining to the request made.

6. The appellant went on to explain the reason why he was seeking this information, which was the lack of clarity about whether the expression wholly charitable "or" religious in Section 11 of the I.T. Act meant wholly charitable "and" religious. He charged that the CPIO had kept silent on this aspect. He further charged that there were other circulars as well, which contained these expressions and, he wondered why the CPIO and the CBDT 'pretend ignorant' [sic] of this information available in the records.

7. The AA overruled the contention of the appellant. The AA recorded his findings as follows:-

“3. The main grievance of the appellant is that the CPIO has not given him the extract of information in the form that he desired it to be in. The CPIO has given him a copy of the circular no.100, whereas according to the appellant he wanted him to provide him an extract from that circular summarized as under:

‘Wholly charitable or religious trusts (include) / (do not include) wholly charitable and religious trusts and they (are) / (are not) eligible for exemption under section 11 of the Income Tax Act, 1961’.

The appellant’s second grievance, which is in fact linked to the one above is that the CPIO has not said any thing about his query whether the phrase wholly charitable ‘or’ religious in section 11 also means wholly charitable ‘AND’ religious.

4. I have considered carefully the order dated 15.5.07 passed by the CPIO in pursuance to the directions given by me in my order dated 20.4.2007. The CPIO has provided the copies of circulars that were available to him. The appellant’s grievance that he has provided to him the whole circular and not the ‘extract’ that he wanted appears to be ill founded. This is giving undue emphasis on the word ‘extract’ used in the RTI Act, which probably referred to situations when the information sought by a person forms a small portion of some bulky document or file. A circular of one or two page does not warrant further extraction of information as requested for by the appellant. Further, the CPIO cannot be expected to provide a tailor made extract from a technical document dealing with a legal issue to suit the interpretation that the appellant wants it to be given. It needs hardly be emphasized that the subject matter of information are provisions of Income tax law which are complicated and which are subject to more than one interpretation. The very fact that there is a plethora of decisions of various Tribunals and courts including the Supreme Court on almost every provision of the Income Tax Act is a pointer to the fact that it may not be possible for the CPIO to make a clear cut statement about any provision of the Act, for that will tantamount to giving an ‘opinion’ and not ‘information’. Under the RTI Act a CPIO can provide only ‘information’ and not an ‘opinion’ or ‘interpretation’ on a given provision of law. Information in such a context would mean copies of the provisions of law or any circular or Instruction issued by the Board. It is not the case of the appellant that the CPIO has not provided him with the relevant circular. The ground that what he wanted was an ‘extract’ and not the whole circular appears therefore to be baseless. Similarly, the ground that the CPIO has not provided him the interpretation of the word ‘OR’ used in Section 11 is not tenable for what the appellant wanted to provided was an ‘opinion’ or ‘interpretation’ and not information.”

8. The appellant challenged this order of the AA before the Commission on the following grounds:-

“1. My request u/s 6 was not for the opinion or advice of the public authority, but for all information on the subject, including the opinion or advice u/s 2(f), forming part of the records of the CBDT.

2. What the CPIO has furnished is not the relevant information available in the records of CBDT and therefore this is a fit case to invoke the powers of this hon. Commission u/s 19(8)(a)(i).

3. Find that the First Appellate Authority has refused to grant the appeal even when available of further information in the records of CBDT was specifically pointed out by the appellant.

4. The Respondents have failed to adhere to the provisions of Section 7(8) and 7(9) of the RTI Act.

5. The Respondents have caused undue delay in attending to the request.

6. The Respondents have considered the application without due application of mind and that they have not bothered to accustom themselves with the provisions of the RTI Act.

7. For their malafides and recalcitrant attitude, the Respondents are liable for penalties u/s 20(1).

8. The Respondents have provided misleading information and so the case is to be recommended for disciplinary action u/s 20(2).

9. By refusing the information at the first stage and by providing incomplete and misleading information at the second stage, the Respondents have forced the Appellant to resort to the appeals and therefore they are personally liable u/s 19(8)(b) of the RTI Act and the regulation No.21 of the Central Information Commission (Management) Regulations 2007, to compensate the costs and expenses incurred by the Appellant in this regard.”

and prayed that,

“1. The relevant information available in the records of the CBDT be provided either by extracting from each record; or by extracting the gist of such records, as is convenient to the authority.

2. The Respondents be levied penalty for having deliberately and malafidely provided incomplete and misleading information, and for not complying with the various provisions of the RTI Act.

3. *Suitable strictures be issued to the Respondents that they familiarize themselves with the provisions of the RTI Act and the Income Tax Act.*
4. *The Costs incurred by me for the appeal process may kindly be allowed from the Respondents.”*
9. Parties were called for a hearing on 26.12.2007. The appellant was present in person and submitted his case, while the respondents were represented by the AA, Shri Dinesh Verma and Shri Jagdeep Goel, Director (ITA).
10. The appellant argued that information solicited by him should be provided to him ‘relevant’ to his RTI-query. He urged that it was not open to the respondent-CPIO to provide to him an entire document / circular when that circular dealt with multiple subjects, without at the same time, pointing out which parts of the circular corresponded to the queries raised by the appellant. He has, therefore, complained that the information provided to him was incomplete as well as misleading.
11. The short-point for decision by the Commission is whether the term “*taking notes, extracts or certified copies of documents or records*” appearing in 2(j)(ii) of the RTI Act entitles an applicant to receive “*relevant extracts*” of documents and records, etc. According to the appellant, his right to take extract can be translated into meaningful action only when the public authority identifies the relevant extracts from the record / file and transmits the same to the appellant.
12. I am afraid this argument is bereft of merit. The appellant has imported into the wording of Section 2(j)(ii) an adjective ‘relevant’ before ‘extracts’, which does not appear in the Act. The AA has very rightly pointed out that right to take extracts of a document implies that it is for the appellant to identify the extracts which he wishes to have from the public authority and not the other way around. Any process of identifying an extract from a larger document for the benefit of an applicant in itself amounts to rendering an opinion and offering an interpretation, which it has been held in the earlier decisions of the Commission, does not comprise ‘information’ in terms of Section 2(f) of the RTI Act. It also needs to be emphasized here that a circular or a clarification issued by a competent authority about a legal matter, such as provisions of tax laws, is itself a public document. When questions are asked about such a document, it would suffice if the public authority / the CPIO informed the appellant as to where that document or circular could be had. In the alternative, they may even helpfully supply a copy of that public document / circular to the appellant. But to expect that a public authority would identify the extracts of the circular relevant to the appellant’s RTI-queries for the benefit of appellant would amount to giving to him the public authority’s interpretation of Income Tax Laws / instructions, which the appellant is not authorized to receive, nor is the respondent obliged to provide, under the provisions of the RTI Act.
13. The appellant also urged, that the Commission has, in earlier cases such as *Bhagat Singh Vs. Delhi Police; Appeal No.CIC/AT/A/2006/00144; Date of Decision:*

21.11.2006, directed the respondents therein to provide a 'synopsis' / 'gist' to those appellants. He urged that abbreviating an information for the sake of an appellant amounts to interpreting that information. In that analogy, he is entitled to receive an extract of the Circular which the CPIO has provided to him. The appellant is right in saying this, but where he has gone wrong is that he has failed to understand the context of the Commission's order for supplying such synopsis to applicants. In those cases, the respondents were willing to give, and the appellants were ready to accept a synopsis, as the requested information contained elements exempted under Section 8(1) the RTI Act and thus could have been wholly barred from disclosure. The Commission, therefore, directed the respondents therein to excise the exempted information and provide a synopsis of disclosable elements to the appellant. However, in the present case, the respondents have declined to disclose to the appellant any such extracts / synopsis.

14. In view of the above, the order of the AA is upheld.

15. The appeal is rejected.

Sd/-
(A.N. TIWARI)
INFORMATION COMMISSIONER

Authenticated by –

Sd/-
(D.C. SINGH)
Under Secretary & Asst. Registrar

Address of parties:

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2. Shri Kamlesh C. Varshney, CPIO & OSD (ITA.I), Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, North Block, New Delhi-110 001.
3. Shri Dinesh Verma, Commissioner of Income Tax(ITA) & Appellate Authority, Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, North Block, New Delhi-110 001.