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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 2952/2016 & C.M.No.12344/2016

RAHUL KESARWANI

..... Petitioner

Through

Mr.Prag Chawla with Mr.Abhay Narula,
Advocates.

versus

CENTRAL INFORMATION COMMISSION & ANR

..... Respondents

Through

None

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Date of Decision : 5th April, 2016

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed with the following prayers :-

(a) This Hon'ble Court may issue a writ of Certiorari and or any other appropriate Writ and or direction to set aside the order of the Respondent No.1 dated 7.1.2016 passed in Rahul Kesarwani Vs. CPIO/Joint Commissioner of Income Tax, Income Tax Department CIC/RM/A/2014/903298/BS/9466.

(b) This Hon'ble Court may issue a writ of mandamus and or any other appropriate writ and or direction against the Respondent No.2 directing them to provide the Action Taken Report on the Tax Evasion petition filed by the Petitioner alongwith documents including representations and replies filed by Ms.Sunita Bhuyan.

(c) Direct the Respondent No.2 to produce the said record before the Court of Ms.Charu Gupta, Ld. Metropolitan Magistrate, Saket District Court, New Delhi pressing over the proceedings of FIR No.198 of 2012.

(d) Any other order or direction which this Hon'ble Court may deem fit and necessary in the facts and circumstances of the case may also be passed.

2. It has been averred in the petition that vide impugned order dated 7th January, 2016 passed by respondent no. 1-CIC, the information sought by the petitioner regarding action taken report in reference to his letter dated 21st February, 2014 was rejected on the ground that information sought is exempt under Section 8(1)(j) of the Right to Information Act, 2005 (for short 'RTI Act, 2005').

3. It has been stated in the petition that an FIR No. 198/2012 was registered against the petitioner under Sections 498A/406 IPC by his wife Ms. Sunita Bhuyan. It has been further stated that petitioner filed a tax evasion petition before the Chief Commissioner of Income Tax to investigate the allegations of Ms. Sunita Bhuyan relating to her alleged income and expenditure during the wedding.

4. Learned counsel for the petitioner states that the information sought is crucial for the adjudication in the aforesaid criminal case pending against the petitioner. In support of his submissions, he relies upon the judgment of the Division Bench in ***Director of Income Tax (Investigation) and Anr. Vs. Bhagat Singh and Anr. in LPA No.1377/2007 decided on 17th December, 2007***, wherein it has been held as under:-

“.....It is for the appellant to show how and why investigation will be impeded by disclosing information to the

appellant. General statements are not enough. Apprehension should be based on some ground or reason. Information has been sought for by the complainant and not the assessed. Nature of information is not such which interferes with the investigation or helps the assessed. Information may help the respondent No. 1 from absolving himself in the criminal trial. It appears that the appellant has held back information and delaying the proceedings for which the respondent No. 1 felt aggrieved and filed the aforesaid writ petition in this Court. We also find no reason as to why the aforesaid information should not be supplied to the respondent No. 1. In the grounds of appeal, it is stated that the appellant is ready and willing to disclose all the records once the same is summoned by the criminal court where proceedings under Section 498A of the Indian Penal Code are pending. If that is the stand of the appellant, we find no reason as to why the aforesaid information cannot be furnished at this stage as the investigation process is not going to be hampered in any manner and particularly in view of the fact that such information is being furnished only after the investigation process is complete as far as Director of Income Tax (Investigation) is concerned. It has not been explained in what manner and how information asked for and directed will hamper the assessment proceedings.”

5. After hearing the learned counsel for the petitioner, this Court is of the view that as the criminal proceeding filed by the petitioner's wife is still pending and her cross-examination is not complete, the petitioner can cross-examine her with regard to her income-tax returns and/or the petitioner can file an appropriate application for production of the relevant income tax records. The petitioner can also summon the witnesses from the income-tax department with regard to the tax evasion petition filed by him. Needless to say, the said request shall be considered by the Trial Court in accordance with law.

6. Consequently, as the petitioner has an alternative efficacious remedy for seeking the documents, this Court is of the view that no further orders are called for in the present writ petition.

7. This Court also clarifies that the Division Bench judgment relied upon by learned counsel for the petitioner in *Director of Income Tax (supra)* only refers to Section 8(1)(h) and not 8(1)(j) of the RTI Act, 2005. Accordingly, the present writ petition and the application are dismissed.

MANMOHAN, J

APRIL 05, 2016
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