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

\+ W.P.(C) 14703/2024 & CM Nos.61795/2024 & 61796/2024

SH. PRASHANT YADAV .....Petitioner

Through: Ms. Divya Tripathi & Ms. Jyoti Thakur, Advs.

Versus

CHIEF COMMISSIONER OF INCOME-TAX & ORS.....Respondents

Through: Mr. Sanjay Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE TARA VITASTA GANJU

<u>O R D E R</u>

% **21.10.2024**

1. Issue notice.

2. The learned counsel appearing for the respondents accepts notice.

3. The petitioner has filed the present petition impugning the order dated 23.07.2024 whereby the petitioner's application for certain information under Section 138(1)(b) of the Income Tax Act, 1961 (hereafter *the Act*) was rejected by the Income Tax Officer (ITO), Ward 36(I), New Delhi. A plain reading of the said order indicates that the learned ITO set out the provisions of Section 138(1)(b) of the Act and summarily dismissed the petitioner's application with the observation that the "*.....application for information being beyond the purview of the above referred condition/prescriptions, is hereby rejected*".

4. The impugned order does not indicate as to why the petitioner's application for information was found to be beyond the purview of Section 138 of the Act.

5. The petitioner had sought information from the income tax authorities relating to the income and assets disclosed by one Mr. Rameshwar Yadav (father-in-law of the petitioner) in connection with the matrimonial dispute

between the petitioner and his wife. In the said proceedings the petitioner's wife and her father (Sh. Rameshwar Yadav) had made allegations regarding incurring expenditure and making payments.

6. The petitioner's application under the Right to Information Act, 2005 (hereafter *the RTI Act*) seeking information relating to Mr Rameshwar Yadav's disclosed income/assets was rejected by the Central Public Information Officer (CPO). The first and the second appeals preferred by the petitioner were also rejected.

7. Aggrieved by the order dated 15.11.2021 of Central Information Commission (CIC) rejecting the petitioner's second appeal under the RTI Act, the petitioner preferred a petition before this Court [W.P.(C) No.3536/2024 captioned *Prashant Yadav v. Central Information Commission & Ors.*]. The said writ petition was listed before this Court on 07.03.2024 but was withdrawn by the petitioner in view of the judgment of this Court in ***CPIO/Dy. Commissioner of Income Tax HQ Exemption, New Delhi v. Girish Mittal:2024:DHC:453***.

8. The petitioner was granted liberty to approach the concerned ITO under Section 138(1)(b) of the Act. This Court had also requested the concerned officer to consider and dispose of the petitioner's application as and when filed, as expeditiously as possible.

9. Thereafter, the petitioner made an application dated 10.06.2024 for information under Section 138(1)(b) of the Act.

10. Section 138 of the Act is set out below:

> "**138. Disclosure of information respecting assessees.**— [(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—
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> (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 3 [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 [[Principal Chief Commissioner or Chief Commissioner] or [Principal 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 [[Principal Chief Commissioner or Chief Commissioner] or [Principal 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 assessees or except to such authorities as may be specified in the order.]

11. It is apparent from the plain language of Section 138(1)(b) of the Act that the question whether any information is required to be furnished or not is to be considered by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. However, in the present case, the impugned order has been passed by the ITO.

12. In view of the above, the impugned order is set aside and the petitioner's application is remanded for consideration afresh.

13. We request the concerned officer (Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner) to pass an appropriate order on the application dated 10.06.2024 filed by the petitioner as expeditiously as possible.

14. The petition is disposed of with the aforesaid directions. Pending applications are also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

OCTOBER 21, 2024

'gsr' *Click here to check corrigendum, if any*