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

\+ W.P.(C) 11591/2017 & CM APPL. 47210/2017 *(for stay)*

PRINCIPAL DIRECTOR OF INCOME TAX (INV.)-1 .....Petitioner

Through: Mr. Indruj Singh Rai, SSC, Mr. Sanjeev Menon, JSC, Mr. Rahul Singh, JSC Mr. Anmol Jagga, Advocate

versus

ASHWANI KUMAR .....Respondent

Through: None

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

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

% 14.11.2024

1. The Petitioner, Principal Director of Income Tax (Inv.) -1, has filed the instant petition, impugning order dated 22nd May, 2017[1] passed by the Central Information Commission[2] passed in Appeal No. CIC/BS/A/20.15/002Q01-BJ. Through the said order, the CIC has decided the second appeal with respect to the RTI Applications filed by the Respondent.

2. The Respondent first addressed a communication dated 12th February, 2016 to the Prime Minister's Office,[3] bringing into their notice the address of a den allegedly engaged in 'money lending mafia' operations.

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[1] "impugned order"
[2] "CIC"
[3] "PMO"

Subsequently, the Respondent submitted an RTI Application dated 12th March, 2016 to the PMO, seeking the following information:

REG. NO. MGR/AKP/15.342 *SPEED-POST* *DATE:-12-03-2016*

CPIO
PRIME MINISTER'S OFFICE
SOUTH BLOCK
NEW DELHI – 110011

OUR REF:- *MGR/AKP/15.051. DT:-12-02-2016 BY SPEED POST ADDRESSED TO Hon'ble PRIME MINISTER OF INDIA (COPYENCL)*

SUB:- APPLICATION UNDER RIGHT TO INFORMATION ACT 2005

Dear Sir,

I am depositing Rs.10/- as requisite fee vide IPO NO. 32F-121792 "UNDER RIGHT TO INFORMATION AT 2005" TO SEEK, *"THE CERTIFIED COPY OF ACTION TAKEN IF ANY & IT'S OUT COME REPORT VIDE OUR ABOVE SAID PETITION NO. MGR/AKP/15.051. DT:-12-02-2016 BY SPEED-POST ADDRESSED TO H'onble PRIME MINISTER OF INDIA.*"

Incase the said petition has been marked to any other department or ministry then the current application under RTI act 2005 may be transferred to the same department or ministry under section 6 (3) of RTI ACT 2005 under intimation to the undersigned for speedy result by giving reference number & date of our application in question.

Yours faithfully,

(ASHWANI KUMAR)
RTI ACTIVIST
F-178/F-2,
DISHAD COLONY,
DELHI-110095
ENCL. A/A
9313540804

3. The aforenoted application was eventually transferred to CPIO and Under Secretary (Inv.-IV), CBDT for appropriate response. The ITO (OSD) (Inv.-IV), CBDT issued an office memorandum dated 24th June, 2016, stating that the information sought was likely to be available with the CPIO under the Directorate General of Income Tax (Inv.). A copy of the said

office memorandum was shared with the Respondent.

4. Thereafter, the Respondent preferred first appeal before the First Appellate Authority, which was decided by the Deputy Secretary (Inv.-IV), CBDT, through order dated 8th July, 2016 in the following terms:

> *"1. The appellant has filed the present dated 25.06.2015 under section 19 (1) of Right to Information Act, 2005 (hereinafter) referred to as "RTI Act" for brevity). In the appeal, the appellant has contended that no information from the concerned CPIO has been received.*
>
> *2. Aforementioned Section 19(1)of RTI Act reads,*
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> *"19. (1) Any person who, does not received a decision within the time specified in subsection (I) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Office or State Public Information Officer as the case may be, in each public authority:"*
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> *3. Thus, the provision explicitly lays down that S. 19 ibid applies when either there is no decision of the CPIO or appellant is aggrieved by the decision of CPIO. The undersigned has perused the appeal carefully and have also called for the concerned RTI file of the CPIO (Inv IV), CBDT and perused the same.*
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> *4. From the records, it is seen that the appellant, vide RTI application dated 06-05-2016 had sought information with respect to his complaint dated 12.02.2016 which was not received in this office, as per records. However, from the documents appended with the RTI application it was seen that the complaint pertained to jurisdiction of DGIT(Inv.), Delhi vide this office letter identical complaint dated 06-02-2016 was transferred to DGIT(Inv.), Delhi vide this office letter No. 291/05/2013-DIR-(Inv.-IV)/DeL'2983 dated 30.03.2016 for necessary action. Since, the complaint as regards which the appellant has sought information pertained to the jurisdiction of DGIT(Inv.), Delhi. And identical complaint dated 06-02-2016 had already been sent to the O/o DGIT(Inv.) Delhi, therefore, the RTI application dated 06.05.2016 was transferred to u/s 6(3) of the RTI Act to the CPIO, O/o DGIT(Inv.), Delhi vide OM F.No. 290/29/2013-Dir (Inv.IV)/576 dated 24/06/2016 of the CPIO (Inv IV), CBDT, under intimation to the appellant. Thus, it is seen that the present case is not the one where no reply has been given to the appellant. Hence, there is no infirmity in the order of the CPIO ofthis office and the present appeal is dismissed in so far as it related to the CPIO of this office. However,*

since the appellant has contended that he has not received the copy of the reply of the CPIO dated 24-06- 2016, the same is being forwarded to the appellant for ready reference.

5. Since the RTI application dated 06-05-2016, against which the current appeal has been preferred was forwarded to the CPIO O/o DGIT(Inv.), Delhi vide OM F.No.290/29/2013- Dir (Inv. IV)/576 dated 24/06/2016 of the CPIO Gnv IV), CBDT, therefore the current appeal dated 25-06-2016 is also being forwarded to ***the lst Appellated Authority, under RTT Act for the O/o DGIT (Inv.), Delhi,*** *for disposal as per the provisions of the said Act*

6. The appeal is disposed off accordingly. If the appellant is not satisfied with this order, he may prefer an appeal u/s 19(3) of the RTI Act, 2005 before the Central Information Commission, Room No.326, 2nd Floor, 'C' Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi-110066 against this order within 90 days from the date of issue of this order or from the date of the receipt thereof, if he so desires."

5. Dissatisfied with the aforesaid order, the Respondent preferred a second appeal, which has been adjudicated through the impugned order dated 22nd May, 2017, directing the Petitioner/ Principal Director (Inv.)-1 to re-examine the matter and convey the status of the Respondent's complaint dated 12th February, 2016 addressed to the PMO, within a period of 30 days.

6. The Petitioner has assailed the impugned order, contending that the CIC has failed to take into account that the Director General of Income Tax (Inv.) is an organisation, which is exempted under Entry 16 of the Second Schedule read with Section 24 of the Right to Information Act, 2005.[4] Therefore, they urge that since the Director General of Income Tax (Inv.) does not come within the purview of the RTI Act, the application ought not to have been entertained and should have been dismissed at the outset. In support, the Petitioner places reliance on the judgment of the Supreme Court in ***Central Board Of Secondary Education & Anr vs Aditya Bandopadhyay***

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[4] "RTI Act"

& Ors,[5] whereby the Court has discussed the scope and purport of the exceptions of the RTI Act.

7. This Court, at the stage of admission of the instant case, finding a *prima facie* case in favour of the Petitioner, granted a stay of the impugned order, and directed them to file an affidavit unequivocally stating that the complaint in question was a matter of investigation by Director General of Income Tax (Inv.) and not any other office of the Income Tax Authority.

8. In compliance with the aforenoted directions, the Petitioner has filed an affidavit dated 11th July, 2018 to the following effect:

> *"3. That a similar TEP dated 06.02.2016 has been filed by the same person, i.e. Mr. Ashwani Kumar, addressed to Hon'ble Finance Minister of India, against the same group of M/s Dhingra Hotels & Restaurants, which was received in Unit - 6 of Directorate of Income Tax (Investigation).*
> *4. That the Central Board of Direct Taxes on 11.08.2016 issued Instruction F.No.291/23/2013-Dir. (Inv.IV)/898 directing all TEPs pending with the Investigation Directorates as on 31.07.2016 to the jurisdictional Pr. Commissioners of Income tax, with certain exceptions."*

9. Mr. Indruj Singh Rai, counsel for the Petitioner, explains that the matter has been transferred to the Principal Commissioner of Income Tax, Bhatinda, for further necessary action. He submits that subsequent to the transfer, in response to letter dated 13th July, 2018, the proceedings under Section 147 of the Income Tax Act, 1961 have been initiated against the proprietor of M/s Dhingra Hotel & Restaurants, and the assessment proceedings are stated to be in progress.

10. The primary grievance of the Petitioner is that, as on the date of passing of the impugned order, the matter was under investigation by the

[5] (2011) 8 SCC 497.

Director General of Income Tax (Inv.). Therefore, in light of the same being an exempted organisation under the Second Schedule of the RTI Act, the impugned order could not have been passed.

11. The Court has considered the aforesaid submissions. Having regard to the fact that the Petitioner is exempted under Section 24 of the RTI Act, the impugned order directing them to supply the information to the Respondent, is unsustainable, and liable to be set aside. Accordingly, the present petition is allowed and impugned order is set aside.

SANJEEV NARULA, J

NOVEMBER 14, 2024/ab