

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 6773/2011

JOGINDER PAL GULATI Petitioner

Through: Dr. Rakesh Gupta, Ms Rani Kiyala, Mrs Ayushi Pareek and Mr Shubham Rastogi,
Adv.

versus

THE OFFICER ON SPECIAL DUTY (ITA II) CUM CPIO and ANR Respondents

Through: Mr Jatan Singh, CGSC with Mr Soayib Qureshi, Adv. for Resp./UOI. Mr A.S. Singh,
Adv. for R- 3 and 4.

CORAM: HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

02.04.2013

1. This writ petition has been filed to impugn the order of the Central Information Commission dated 12.07.2011. In addition, a writ of mandamus has been sought directing the respondents to supply the copy of the Central Board of Direct Taxes (in short CBDT) circular/ instruction dated 19.06.2009.

2. The petitioner, who is an advocate by profession, and is principally practicing in the field of income tax law, had filed an application dated 05.07.2010, with the CBDT under Section 6 of the Right to Information Act, 2005 (in short the RTI Act) seeking information pertaining to cases excluded from scrutiny, where the disclosure was made during survey. In addition to this, further information was sought qua scrutiny guidelines for the financial year 2009-10. The CPIO of the CBDT vide letter dated 19.07.2010 refused to supply information as sought for by the petitioner.

3. Aggrieved by the same, petitioner filed an appeal with the first appellate authority. In the appeal an additional request was made, for being supplied, the judgment dated 11.02.2008, passed by the CIC, in the case of Shri Kamal Anand. By order dated 03.08.2010 the appeal of the petitioner was dismissed. The petitioner was, however, supplied a copy of the CIC's judgment in the case of Kamal Anand.

4. Aggrieved by the same, petitioner preferred an appeal with the CIC, which was dismissed by the impugned order. Importantly, with the appeal the petitioner had furnished copies of scrutiny guidelines for the financial year 2004-05 and 2007-08, which were in public domain.

5. Learned counsel for the petitioner submits that the impugned order is erroneous in law and on facts for the following reasons:

(i) The information with regard to scrutiny guidelines has all along been in public domain. For this purpose he has referred me to instructions issued by CBDT, from time to time, which have been appended at pages 83 to 99 of the paper book. These guidelines have been issued in the year 1983, 1999, 2003 and 2005.

(ii) The receipt of information qua scrutiny guidelines is necessary as it would enable him to advise his clients as to whether his client has been correctly picked up for random scrutiny. The aspects pertaining exercise of jurisdiction by concerned officer of the Income Tax Department, according to Mr Gupta, would turn on the contents of scrutiny guidelines.

(iii) Information has been denied purportedly under the provisions of Section 8(1)(a) of the RTI Act on a specious ground that furnishing information with regard to scrutiny guidelines would impact the economic interest of the country.

5.1 Mr Gupta has submitted, given the fact that, in the past such information has been supplied, it is difficult to appreciate as to how economic interest of the country would now suddenly get impacted in scrutiny guidelines are put in public realm. This is especially so, in the circumstances that in order to ascertain whether or not an Assessing Officer has correctly exercised his jurisdiction, availability of the scrutiny guidelines in public domain, attains importance.

6. In rebuttal, Mr A.N. Singh and Mr Jatan Singh submitted that, in order to avoid harassment to the general public, and to ensure fairness in the selection of cases, which are taken up for scrutiny, the selection is done through what is known as : Computer Assisted Selection Scheme (CASS).

6.1 It is further submitted that, where there is economic manipulation, the selection of an assessee for scrutiny is carried out manually under the overall guidance of CBDT. In this category of cases, according to the learned counsels for the respondents, are included cases which are taken up for search and survey under Section 132 and 133 of the Income Tax Act, 1961 (in short the I.T. Act). It is submitted, in order to ensure that, there is no unfairness in selection of cases for scrutiny; guidelines are issued to the Assessing Officers in this behalf which, if revealed, would enable the assessees to manipulate their returns.

6.2 It is the contention of learned counsels for the respondents that, scrutiny guidelines are issued in the beginning of each financial year, which not only applies to pending returns, but also those returns which are filed thereafter. Any guideline issued, operates till such time a fresh guidelines is issued. By way of illustration, it is submitted that in respect of financial year 2009-10, the guideline would have been issued in the beginning of the financial year which would apply not only to the returns which were filed prior to the issuance of the guideline, but would also apply to those returns which are filed thereafter. It is the submission of the learned counsel for the respondents that, therefore, the CIC has correctly upheld the stand of the respondents in declining the request of the petitioner for supply of information sought for, in the instant case. This information according to the learned counsels for respondents falls within the realm of Section 8(1)(a) of the RTI Act and thus stands excluded as it would impact the economic interest of the country.

7. I have heard the learned counsel for the parties and perused the record. Undoubtedly, the instructions with regard to procedure for selection of cases for scrutiny have been issued from time to time both qua corporate assesseees as well as non-corporate assesseees. By way of example, one may only refer to instructions no. 1509 dated 13.05.1983, instruction no. 1967 dated 07.06.1999, instruction no. Nil of 2005 reported in (2005) 199 CTR (St.) 1, Instruction No. 11/2003 dated 17.10.2003 and Instruction no. 10/2003 dated 26.09.2003. These instructions give detailed procedure on the basis on which the concerned officers are required to make a random selection of assesseees whose cases are taken up for scrutiny. As would be evident, these instructions were in public domain even prior to the enactment of the RTI Act.

7.1 Another aspect which comes to fore on perusal of the said instructions, is that most of these instructions have been issued in the middle of the financial year and not in the beginning as is sought to be contended before me; which is incidently also the stand taken before the CIC in Kamal Anand case.

7.2 Even if I were to accept the argument that the instructions for scrutiny are issued in the beginning of the financial year, that would make no material difference qua the case at hand as it is the case of the respondents themselves that, they apply the guidelines to pending returns as well. Therefore, the argument, that assesseees would configure their returns in the manner, which would impact the economic interest of the country, cannot be accepted.

7.3 There is no definition of the expression "economic interest" in the RTI Act. As is ordinarily understood, the term economic would mean connected with or related to the economy. Economy would generally relate to aspects of wealth and resources of the country, its production, consumption and distribution. The term wealth, would include, I take it, the financial resources of the country. While the term "interest" in the context of the RTI would mean financial stake. (See Concise Oxford Dictionary 9th Edition Pages 429-430 and Page 710).

7.4 The expression, economic interest, thus takes within its sweep matters which operate at a macro level and not at an individual, i.e., micro level. In my view, by no stretch of imagination can scrutiny guidelines impact economic interest of the country. These guidelines are issued to prevent harassment to assesseees generally. It is not as if, de hors the scrutiny guidelines, the I.T. Department cannot take up a case for scrutiny, if otherwise, invested with jurisdiction, in that behalf. This is an information which has always been in public realm, and therefore, there is no reason, why the respondents should keep it away from the public at large. Thus, in my opinion, provisions of Section 8(1)(a) of the RTI Act would have no applicability in the instant case.

8. In so far as the impugned order is concerned, there is nothing stated in the operative part which would seem to indicate that the CIC has come to the conclusion which it has, is based on the fact that, the economic interest of the country, will get effected. The CIC, in the operative part has merely recorded what has been conveyed to it vis-a-vis the procedure for selection of cases for scrutiny.

9. In view of the above, the impugned order is set aside. The respondents shall supply the relevant scrutiny guidelines to the petitioner for the financial year 2009-10. The respondents shall hereafter upload the guidelines with regard to scrutiny on their website.

10. With the aforesaid observations, the writ petition is disposed of.

RAJIV SHAKDHER, J

APRIL 02, 2013