

CENTRAL INFORMATION COMMISSION  
**Block IV, 5<sup>th</sup> Floor, Old JNU Campus**  
**New Delhi 110067**

Appeal No. CIC/AT/A/2007/00490

dated March 5, 2007

**Name of the Appellant:** Shri G.R. Rawal  
84/2002, G.H.B.  
Meghaninagar  
Ahmedabad.

**Public Authority:** Director General of Income  
Tax (Investigation)  
1<sup>st</sup> Floor. Ayakar Bhawan  
Ashram Road  
Ahmedabad-380 009.

Date of Hearing 19.09.2007

Date of Decision 05.03.2008

**FACTS OF THE CASE:**

1. The appellant vide RTI application dated 11.10.2006 sought the following information under Section 6(1) of the Right to Information Act, 2005:

“Tax payable as per decision of Settlement Commission in the case of Winprolene Plastics and tax paid by said company.”

2. CPIO vide his order dated 30<sup>th</sup> October, 2006 held that the information being personal information, was barred from disclosure under Section 8(1)(j) of the Right to Information Act, 2005 (hereinafter referred to as the “RTI Act”) and hence could not be given. Elaborating further, the CPIO justified the grounds of applying Section (8) (1) (j) to the case of the appellant and said that the payment of tax by a person was his personal matter, disclosure whereof have had no relationship to any public activity or interest. The disclosure would also cause unwarranted invasion of privacy. The CPIO was, therefore, satisfied that no public interest would be served by such disclosure and hence rejected the request of the appellant.

3. The appellant came in first appeal before the Director General of Income Tax (Investment), Ahmedabad on 13.11.2006. In his appeal petition, the appellant submitted as under:

- (i) The authority did not apply his mind to the fact that the appellant has provided the information of a tax evader and relying upon the said information the authority has recovered the tax and the appellant is entitled to the information to know what amount of tax has been recovered from the evader. Therefore, it cannot be said that the appellant has no personal interest in asking that information.
- (ii) Under the CBDT guidelines, the appellant is entitled to a reward of 10% of the total amount recovered from the tax evader. Hence the disclosure of information sought by the appellant is necessary.
- (iii) The information sought is in the appellant's interest if not in larger public interest. Therefore, the authority cannot take shelter under Section 8(1) (j) of the RTI Act.
- (iv) The authority could not have recovered the tax from the said company but for the information provided by the appellant. The authority has not applied their mind to this fact. It also proves that the disclosure of information in the case of the appellant is relevant.
- (v) The appellant should not be discriminated and denied such information as the authority had already provided similar information to the informant.

Appellant also enclosed with his appeal copy of respondent's decision where the respondents had given similar information to an informant. The appellant pleaded for quashing the decision of the CPIO and a direction the CPIO to provide him the information on the grounds aforementioned.

4. The hearing before the 1<sup>st</sup> Appellate Authority, held on 20.11.2006, was attended by appellant's daughter Mrs. Kiran Acharya on behalf of the appellant, wherein the Appellate Authority considered the order of the CPIO as well as the submissions of the appellant. Referring to the contents of the appeal, the Appellate Authority also adverted to the contention of the appellant —

- (i) that Section 8(1) (j) of the RTI Act was not applicable in his case because the privacy of the assessee concerned would not be invaded; and
- (ii) that the appellant being informer for the search conducted in the case of M/s Winprolene Plastics, was entitled to know the quantum of taxes realized from the above assessee so that he could claim proportionate reward as per procedure;
- (iii) The appellant claimed that the CPIO had furnished similar information in an identical case.

The Appellate Authority held that the information sought was covered by the provisions of Section 8(1) (j) of the RTI Act, 2005 and the order of rejection passed by the CPIO being based on clear, logical and legal reasons was in order and correct. The Appellate Authority thus dismissed the appeal by its order dated 24.11.2006 on the following grounds:

- (i) In the case of `Mukesh Kumar Vs. Department of Revenue' the appellant has stated that all information which can be given to Parliament can be given to him but the Chief Information Commissioner observed that the information requested for is in the nature of personal information, the disclosure of which may cause unwarranted invasion on privacy of the individual officer and held that Section 8(1) (j) of the RTI Act has been correctly applied.
- (ii) The information sought by the appellant is also covered under Section 138 of the Income Tax Act. The appellant has also not made a case of bonafide public interest for disclosures of the information but has merely said that he had been the informer for the search action and hence he needed the information to press for his claim of reward but the information sought is expressly disallowed as per Section 8(1) (j) of the RTI Act as is endorsed by the CIC by its decision in the case cited above.
- (iii) The plea of the appellant that identical information had been given to an applicant in another identical case was also considered. As the judicial or quasi judicial authority has to interpret the legal provisions independently and has to take a judicious decision in accordance with law, the findings given in another case by another officer on another petition cannot override the correct interpretation of the legal provisions.

5. The appellant was not satisfied with the decision of the 1<sup>st</sup> appellate authority and filed 2<sup>nd</sup> appeal before the Central Information Commission on 23rd February, 2007 praying for quashing the order of the appellate authority on the following grounds:

- (i) The appellant being informer for the search is entitled to know what amount of tax has been recovered from the tax evader so that he could calculate the amount of reward which is at the rate of 10% under the CBDT guidelines;
- (ii) Appellant has an `interest' and `stake' in the information sought is in the interest of the appellant and, therefore, he authority cannot take shelter under Section 8(1)(j);
- (iii) The respondents have not applied their mind to the fact that without information from the appellant they would not have recovered the tax. In view of this, the information asked by the appellant has relevance with its disclosure by the authority;
- (iv) The appellant should not be discriminated and denied as the respondents have provided such information in a number of identical cases. The respondents as a public authority cannot adopt pick and choose method;
- (v) The respondents are neither paying the final amount of reward nor giving any explanation for non-payment. The appellant has not asked for any personal information. He has only asked what amount of tax had been recovered so as to know what amount of reward he will be entitled to.

6. The 2<sup>nd</sup> appeal of the appellant was listed for hearing on 21.6.2007 at 3.45 PM. Parties who were informed accordingly, were also directed to submit their rejoinder, if any.

7. Both the CPIO and Appellate Authority submitted their respective rejoinders on 28<sup>th</sup> May, 2007. In their reply, they submitted —

- (i) that the information sought by the appellant related to the search and seizure, documents and income tax assessment orders, which contained personal details such as PAN, business details etc. the disclosure of which was not in the public interest and, therefore, the exemption claimed under Section 8(1)(j) of the RTI Act was justified.

- (ii) that the reward money was calculated on the basis of such part of the taxes recovered, which was attributable to the information provided by the informant and not on the income assessed or detected. They also submitted that the appellant had already been paid the reward @ 10% on the taxes collected so far from the assessee.
  
- (iii) That appellant's claim of "discrimination" on the ground that the respondents had given such information in identical cases was factually and legally untenable. In this connection, the respondents submitted that the decision emanated out of the correct interpretation of the law. The law of jurisprudence holds that a wrong decision based on ignorance or incorrect interpretation of law would not be the basis for a claim of parity.

The CPIO and the Appellate Authority both reiterated their decisions and prayed the Commission that the appellant's second appeal, not being based on any valid ground, be rejected.

8. In his reply to the notice of hearing dated 18.5.2007 issued by the Commission, the appellant submitted that he was about 70 years old had lost vision in one eye and was also not able to move independently, therefore, he cannot appear personally before the Commission. He was also not financially sound so as to depute some representative before the Commission. He submitted that his case was very clear and he was entitled to the information about the assessment of tax. He submitted that he had already discussed his case before the lower authorities as well as the CIC and requested the Commission to pass appropriate order in the interest of justice.

9. In the hearing before Information Commissioner Shri AN Tiwari, held on 21.6.2007, it was observed by the Commissioner that since the matter was covered by Section 138 of the Income Tax Act which permitted disclosure in public interest and in view of the fact that the matter also seemed to attract exemption under Section 8(1) (j) of the RTI Act, the issues involved the

applicability of two different statutes for which a harmonious approach under the RTI Act is imperative. He, therefore, recommended that this matter be listed before a larger or Full Bench where representatives not only of Income Tax Department but also of Customs, Excise as well as Ministry of Law might be invited for a thorough consideration of the matter.

10. It was decided that the matter be heard by Full Bench of the Commission on 19.9.2007 at 11.00 AM. Notices were issued to the parties on 3.8.2007. The appellant and the Appellate Authority requested exemption from appearance.

11. In the hearing held on 19.9.2007, the following were present:

**Appellant:**

Exempted as per his option.

**Respondents:**

1. Mukesh Bhanti, CPIO and Director of Income Tax
2. Ms. Renu Jauhri, Director of ITA-II, CBDT
3. Mr. Simmi Jain, Director (Legal), CBEC
4. Mr. S. Jha, CIUT (MC), CBDT
5. Mr. A.P. Agrawal, OSD, Legal Affairs

**12. ISSUES FOR DETERMINATION:**

- I. Whether such information can be provided to the appellant under the RTI Act when Section 138 of the Income Tax Act prohibits disclosure of such information?
- II. Whether in such a situation the overriding provision as contained in Section 22 of the RTI Act comes into play?
- III. Whether Section 8(1) (j) of the RTI Act is applicable to the case of the appellant?

**DECISION AND REASONS:**

13. In the instant case, the respondents have submitted that Section 138(1) (b) of the Income Tax Act, 1961 provides for disclosure of information to respective assesses. Sub-Section (1) (b) of Section 138 of the Income tax Act

deals with a case where a person makes an application seeking information concerning an assessee. The said sub-section empowers the Income Tax Chief Commissioner or the Commissioner to decide as to whether it is in public interest to provide information or not. It also provides that the decision of the Commissioner in this behalf would be final and shall not be called in question in any court of law. The provisions of Section 138(1) (b) are reproduced below:

**Section 138:**

*(1)(b) Where a person makes an application to the Chief 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 Chief 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.*

14. The respondents have also submitted that the provisions of Section 138 of the Income Tax Act have also been given an overriding effect and the Sub-Section (2) of Section 138 reads as under:

*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 assesseees or except to such authorities as may be specified in the order.*

15. Thus, both the Right to Information Act, 2005 and Section 138 of the Income Tax Act, 1961 deal with disclosure of information. While Right to Information Act is a general law concerning the disclosure of information by the public authorities, **Section 138 of the Income Tax Act is a special legislation dealing with disclosure of information concerning the assesses.** This Commission in “Rakesh Kumar Gupta Vs. ITAT, decided on 18<sup>th</sup> September, 2007 decided by a Full Bench, has dealt with the issue of applicability of special law to the exclusion of the general law. The Commission has relied upon the

Hon'ble Apex Court's decision in "Chandra Prakash Tiwari Vs. Shakuntala Shukla – AIR 2002 SC 2322". The following two paragraphs from the said decision of the Commission are pertinent and quoted below:

37. A special enactment or Rule, therefore, cannot be held to be overridden by a later general enactment or simply because the latter opens up with a *nonobstante* clause unless there is clear inconsistency between the two legislations – one which is later in order of time and the other which is a special enactment. This issue came again for consideration before the **Hon'ble Apex Court in Chandra Prakash Tiwari Vs. Shakuntala Shukla – AIR 2002 SC 2322** and the Hon'ble Supreme Court quoted with approval the Broom's Legal Maxim in reference to two Latin Maxims in the following words:

"It is then, an elementary Rule that an earlier Act must give place to a later, if the two cannot be reconciled - ***lex posterior derogate priori - non est novum ut priores leges ad posteriors trahantur*** (Emphasis supplied) - and one Act may repeal another by express words or by implication; for it is enough if there be words which by necessary implication repeal it. But repeal by implication is never to be favoured, and must not be imputed to the legislature without necessity, or strong reason, to be shown by the party imputing it. It is only effected **where the provisions of the later enactment are so inconsistent with, or repugnant to, those of the earlier that the two cannot stand together**<sup>2</sup>; unless the two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time a repeal cannot be implied; and special Acts are not repealed by general Acts unless there be some express reference to the previous legislation, or a necessary inconsistency in the two Acts standing together, which prevents the maxim ***generalia specialibus non derogant*** (Emphasis supplied) from being applied. For where there are general words in a later Act capable of reasonable application without being extended to subjects specially dealt with by earlier legislation, then, in the absence of an indication of a particular intention to that effect, the presumption is that the general words were not intended to repeal the earlier and special legislation, or to take away a particular privilege of a particular class of persons."

38. In the aforesaid case, the Hon'ble Apex Court also cited with approval an earlier decision in **Maharaja Pratap Singh Bahadur v.**

**Thakur Manmohan Dey - MANU/SC/0202/1966**, in which it was indicated that an earlier special law cannot be held to have been abrogated by mere implication. That being so, the argument regarding implied repeal has to be rejected for both the reasons set out above.

16. The denial of information in this case by the CPIO has been mainly on the ground that the disclosure of the information is exempted under Section 8(1) (j) as the appellant is seeking personal information of an assessee, the disclosure of which will cause unwarranted invasion on that assessee's privacy. The appellant's argument on the other hand is that he has a personal interest in seeking the information and as such, the authorities cannot take shelter under section 8(1) (j) of the RTI Act to deny him the information on this ground. To this the respondents have answered that insofar as the stake or claim of the appellant is concerned, the matter has already been sorted out and that the reward money calculated on the basis of such part of the tax recovered which was attributable in the information provided by the informant has already been given and insofar as the other income not attributable to the information provided by the informant on which an assessment has been made, the appellant has no stake or interest thereto and as such the disclosure is exempted under Section 8(1)(j).

17. In this context, it will be pertinent to refer to the provisions of Section 8(1) (j) which reads as under:

**Section 8(1) (j):**

*“Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:*

*Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.”*

18. Section 8(1)(j), therefore, excludes from disclosure an information which relates to personal information the disclosure of which

- (i) has no relationship to any public activity or interest; or
- (ii) would cause unwarranted invasion of the privacy of the individual.

However, in both the cases, the CPIO or the Appellate Authority may order disclosure of such information if they are satisfied that the larger public interest justifies disclosure. This would imply that even a personal information which has some relationship to any public activity or interest may be liable to be disclosed. An invasion of privacy may also be held to be justified if the larger public interest so warrants. It is, therefore, necessary to analyze the ambit and scope of both the expressions “personal information” and “invasion of privacy”.

19. In common parlance, the expression “personal information” is normally used for name, address, occupation, physical and mental status, including medical status, as for instance, whether a person is suffering from disease like diabetes, blood pressure, asthma, TB, Cancer etc. including the financial status of the person, as for instance, his income or assets and liabilities of self and other members of the family. The expression shall also be used with respect to one’s hobbies like painting, music, sports etc. Most of these mentioned above are information personal to one and one may not like to share this with outsider. In this sense of the term, such information may be treated as confidential since one would not like to share it with any other person. However, there are circumstances when it becomes necessary to disclose some of this information if it is in larger public interest. Thus, for example, if there is a doubt about the integrity of any person occupying a public office, it may become necessary to know about one’s financial status and the details of his assets and liabilities not only of the person himself but also of other close members of the family as well. Similarly, if there is an allegation about the appointment of a person to a public office where there are certain rules with regard to qualification and experience of

the person who has already been appointed in competition with others, it may become necessary to make inquiries about the person's qualification and experience and these things may not be kept confidential as such.

20. It may not be possible to lay down exactly the circumstances in which personal information of an individual may be disclosed to others. This will depend on the facts of each case. No hard and fast rule can be laid down for this purpose. A case recently decided on 23.3.2007 by the Bombay High Court where the prisoner had to be admitted to Sir J.J. Hospital, Mumbai on the ground that he was suffering from diabetes and blood pressure may be referred to in this regard. The PIO did not order disclosure of his medical problem to those who thought that his admission into the air-conditioned rooms of the hospital, as against the tough conditions prevailing in the jail, was unjustified, and there was public outcry, including in the media against his admission in an air-conditioned hospital. PIO had refused information u/s 8(1) (j) of the RTI Act and under Regulations of the Medical Council of India. However, the High Court did not accede to this viewpoint. The court ordered that the information relating to the convict patient be given after following procedure under Section 11 of the RTI Act.

21. **The US Restatement of the Law, Second, Torts, § 652** define the intrusion into Privacy in the following manner:

*“One, who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.”*

22. The Law of Privacy although, not defined is, however, well recognized under the Indian legal system and it has all along been treated as a sacred right not to be violated unless there are good and sufficient reasons. Even under RTI, the normal rule should be of “non-disclosure of any information concerning one's

private life” and disclosure should be ordered only when there is overriding public interest and in that case too, the procedure laid down under section 11 of the Act should be followed as held by the Bombay High Court in the above cited case.

23. Because we have no specific law on the subject, in such cases we have been guided by the **UK Data Protection Act 1998** Sec 2 of which titled **Sensitive Personal Data** reads as follows:

*In this Act “sensitive personal data” means personal data consisting of information as to:*

- a) The racial or ethnic origin of the data subject*
- b) His political opinions*
- c) His religious beliefs or other beliefs of a similar nature*
- d) Whether he is a member of a Trade Union*
- e) His physical or mental health or condition*
- f) His sexual life*
- g) The commission or alleged commission by him of any offence*
- h) Any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.*

If we were to construe privacy to mean protection of personal data, this would be a suitable reference point to help define the concept. In this context, as may be seen the information sought by appellant may fall within the definition of personal data as described in g) and h) above.

24. The interpretation of Section 8(1) (j) has been the subject of some dispute. The Section deals with excluding from the purview of the RTI Act (a) information of a personal nature which have had no relationship to a public activity or interest and (b) whose disclosure would lead to unwarranted invasion of the privacy.

25. In so far as (b) is concerned, there is very little doubt that there could be a set of information which may be said to belong to the exclusive private domain

and hence not be liable to be disclosed. This variety of information can also be included as “sensitive and personal” information as in the U.K. Data Protection Act, 1998. Broadly speaking, these may include religious and ideological ideas, personal preferences, tastes, political beliefs, physical and mental health, family details and so on.

26. But when the matter is about personal information unrelated to public activity, laying down absolute normative standards as touchstones will be difficult. This is also so because the personal domain of an individual or a group of individuals is never absolute and can be widely divergent given the circumstances. It is not possible to define “personal information” as a category which could be positively delineated; nevertheless it should be possible to define this category of information negatively by describing all information relating to or originating in a person as “personal” when it has such information has no public interface. That is to say, in case the information relates to a person which in ordinary circumstances would never be disclosed to anyone else; such information may acquire a public face due to circumstances specific to that information and thereby cease to be personal. It is safer that what is personal information should be determined by testing such information against the touchstones of public purpose. All information which is unrelated to a public activity or interest and, under Section 8(1)(j), if that information be related to or originated in person, such information should qualify to be personal information under Section 8(1)(j).

27. In some of its earlier decisions, this Commission has held that information such as income tax returns and, other such details filed by a person with public authorities entrusted with such public tasks as tax determination, qualified to be personal information. The disclosure of this information was barred under the provisions of Section 8(i)(j) on grounds that this information was provided to the public authority in the discharge of the public duty of that public authority and unless the person providing such information, allowed the public authority to disclose the same, the secrecy of the information should be maintained. Unless proved that such information related to a public activity, it would be said to be

“public information”, and being “personal” should attract the bar under Section 8(i)(j). In stating this, Commission had kept in mind the incalculable and irretrievable harm that disclosure of this category of personal information could cause to the person providing the same.

28. In so far as the assessment details are concerned, they are definitely personal information concerning some individual or legal entity. The assessment details if disclosed may result in an undue invasion to the privacy of an individual. Disclosure of such details, therefore, cannot be permitted unless there is an overriding public interest justifying disclosure. But in the instant case, what has been asked for by the appellant in his RTI application is as follows:

“Tax payable as per the decision of the Settlement Commission in the case of Winprolene Plastics and tax paid by said company.”

Mere disclosure of the amount determined to be payable by a quasi judicial authority and the amount of tax paid by an assessee as a result of such decision even if it may be categorized as “ personal information”, cannot be said to be unrelated to a public activity or interest. Public Authority may, therefore, withhold other assessment details but should disclose the amount of tax determined by the Settlement Commission and the amount actually paid by the assessee company.

29. The issue is decided accordingly and the CPIO is directed to provide the information in terms of the decision noted above within a period of two weeks from the date of this order.

Announced on this the 5<sup>th</sup> day of March, 2008. Notice of this decision be given free of cost to the parties.

(Prof. M.M. Ansari)  
Information Commissioner

(A.N. Tiwari)  
Information Commissioner

(Wajahat Habibullah)  
Chief Information Commissioner

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges, prescribed under the Act, to the CPIO of this Commission.

(L.C. Singhi)  
Additional Registrar