

No.CIC/AT/A/2007/00617  
**CENTRAL INFORMATION COMMISSION**  
Block IV, 5<sup>th</sup> Floor, Old JNU Campus  
New Delhi-110 067

Under Section 19 of the Right to Information Act, 2005

**Name of the Appellant:** Shri Kamal Anand  
C/o People for Transparency  
Telephone Exchange Road  
Near Shiva Timber  
Sangrur.

**Public Authority:** Central Board of Direct Taxes (CBDT)  
Ministry of Revenue  
Department of Finance, North Block  
New Delhi.

Date of Hearing : 18.12.2007

Date of Decision : 11.2.2008

**Facts:**

The appellant submitted an application on 6.11.2006 under the RTI, 2005 before the CPIO seeking the following information:

- (1) Copy of Scrutiny Policy for non-corporate assessee during the current Financial Year 2006-07;
- (2) Copies of instructions & directions issued by CBDT on the Scrutiny Policy;
- (3) Copies of clarifications issued by CBDT on the said Scrutiny Policy;
- (4) Name and designations of the officers responsible for implementation of the said policy in letter and spirit as envisaged by CIT Patiala;
- (5) Whether discretion is exercised by the concerned officer to pick or leave cases. With regard to fresh capital exceeding Rs.1 crore for Delhi, Mumbai, Chennai, Kolkata, Pune, Hyderabad, Bangalore and Ahmedabad and Rs.10 lakh for other cities. If so, copy of instructions/directions/clarifications issued in this behalf. Whether there is any instruction/direction/clarification to scrutinize cases

falling in that category, if so, copies thereof along with Minutes of the Meeting in which such decision has been made.

- (6) Whether all cases are taken for scrutiny or there is discretion being exercised in that respect in all new loans cases exceeding Rs.1 crore in Delhi, Mumbai, Chennai, Kolkatta, Pune, Hyderabad, Bangalore and Ahmedabad and Rs.10 lakh for other cities. If so, copies of instructions/directions/clarifications along with reasons, basis, and purpose of such instructions.

Whether the word `Loan' includes both secured & unsecured loans. Copies of any directions/instructions/ clarifications issued by the CBDT along with Minutes of the Meeting in which such decision were made.

2. The RTI application was responded to by the CPIO Ms. Renu Johari vide letter dated 18<sup>th</sup> December, 2006. CPIO clarified that cases are selected for scrutiny based on risk analysis conducted through computer associated program and also manually with reference to broad parameters decided every year for the entire tax payer population, *inter alia*, considering factors like gross income, deductions and exemptions claimed, legal issues involved in litigation, quantum and nature of specific transaction, status of assessee etc. The CPIO, however, denied to furnish copies of the scrutiny policies, instructions, directions and clarifications issued in this regard to the Field Formations as in view of the CPIO, it would prejudicially affect the economic interests of the State. Similarly, information concerning point 5 and 6 was also denied on the ground that it would also adversely affect the economic interests of the State. The Department while denying the information, therefore, claimed exemption under Section 8(1) (a) of the RTI Act.

3. The appellant, however, approached the First Appellate Authority on the ground that the CPIO has failed to appreciate the content of the application filed by the appellant and that he has failed to provide exact information asked for by the appellant. The appellant also stated that whatever information has been provided is incomplete and misleading on many issues.

4. The appellant submitted that the scrutiny policy gives wide discretionary power to the Assessing Officer to pick up some cases for scrutiny and leave some cases from purview of scrutiny.

5. The appellant also cited a particular case where unsecured loans of a large amount have escaped scrutiny and whereas secured loans of smaller amount have been taken up for scrutiny. The appellant, therefore, wanted to know the names and designations of officers who are responsible to see that the scrutiny policy is truly implemented. The appellant submitted that disclosure of scrutiny policy as well as guidelines and instructions issued there under is, therefore, in larger public interest and must be made available to the appellant.

6. The First Appellate Authority analyzed the matter and partly allowing the appeal held as follows:

- (i) Although the CPIO has taken the view that providing the copies of the documents asked for would prejudicially affect the economic interests of the State, she has not given detailed reasons for arriving at such a conclusion. It needs therefore, be examined if the grounds taken by the CPIO to deny the information is correct or not.
- (ii) CBDT lays down guidelines every year which are to be followed by the field officers to select returns of income required to be filed by the tax payers under the provisions of the Income Tax Act. If detailed guidelines are made public, it would defeat the very purpose of such a verification for any unscrupulous tax payer could then adjust his declaration of income in such a manner that his return would never come up for verification by the Income Tax Officers. Therefore, if the scrutiny guidelines are made public it would tantamount to giving a free hand to the tax evaders. It needs hardly to be emphasized that tax evasion is prejudicial to the economic interests of the State. There is no merit in the contention

of the appellant that “CPIO is taking undue advantage of exemption clause under Section 8 and taking the plea that disclosure of information would prejudicially affect the economic interests of the State.”

- (iii) Providing copies of the guidelines would even lead to “incitement of offence” as not having correct particulars of income is clearly the offence punishable under various provisions of the Income Tax law.
- (iv) CPIO has correctly denied copies of the guidelines and documents under the provisions of Section 8(1) (a).

7. The Appellate Authority, however, directed the CPIO to provide the name and designations of the officers even of the outside agencies, if any, as asked for by the applicant in Para 4 of his RTI application.

8. In regard to points 5 and 6 of the RTI application, CPIO was directed to provide information in respect of the queries raised by the appellant.

9. After the order from the Appellate Authority was received, the CPIO in her letter dated 29.3.2007 furnished the particulars of the concerned Chief Commissioner and in regard to points 5 and 6 of the RTI application, CPIO stated that there is no such discretion with the concerned officer and that he is to select the cases in accordance with the prescribed criteria for compulsory scrutiny.

10. The appellant who felt still aggrieved approached this Commission by preferring 2<sup>nd</sup> appeal on 12.5.2007 submitting, *inter-alia*, as follows:

- (i) Information asked for in paras 1 to 3 related to scrutiny policy during the Financial Year 2005-06. Since that period is over, there can be no implications if the said policy is disclosed to the appellant.
- (ii) A copy of the said scrutiny policy is available on internet. If this is true copy of the scrutiny policy,

then the CBDT should find out as to who had leaked the information which is prejudicial to the economic interests of the State.

- (iii) As regards the other paragraphs, the appellant insisted that the information provided for is incomplete and complete information should be made available to him. The appellant justified his demand for disclosure and submitted that larger public interest rather warrants disclosure and transparency and as such the CPIO and the Public Authority be directed to provide the information asked for by him.

11. The appellant reiterated his stated position and pointed out that he represents an association of young people who find the Right to Information law an excellent apparatus for the amelioration of the country as this law will usher in good governance and bring accountability in the working of the Public Authorities. He also submitted that the secrecy in working and uninhibited discretionary powers may not be favorable for good governance and hence through this RTI application, the appellant desires to know about the scrutiny policy of the Income Tax Authorities.

12. The appellant stated that he seeks to obtain the scrutiny policy for the year 2004-2005 which relates to the Assessment Year 2005-2006 and hence it is rarely possible for any taxpayers to adjust his transaction in such a way so as to enable him to escape any clause of the scrutiny policy. He, therefore, disputed the Department's contention that the disclosure of the scrutiny policy would in any way prejudicially affect the economic interests of the State.

13. The appellant also submitted that how information which is otherwise available on internet through unofficial channels can be denied under Section 8(1) (a) of the RTI Act on the ground that it would adversely affect the economic interests of the State.

14. The appeal petition was initially listed to be heard on 1.8.2007. Adjournment was granted to enable the Appellate Authority and the CPIO to

obtain necessary instructions from the concerned Public Authority. However, in their written submissions filed at the time of initial hearing, the respondents stated as follows:

- (i) Broad parameters of the Scrutiny Guidelines were already given to the appellant but copies of instructions etc. were withheld in order to ensure that the same could not be abused by unscrupulous tax payers in evading tax. It was denied under Section 8(1) of the RTI Act;
- (ii) No public interest will be served in making these guidelines public. It would rather adversely affect the economic interest of the State;
- (iii) These guidelines only lay down procedure and are used to check tax evasion and ensure compliance by the tax payers. They are, therefore, exclusively for the Department's internal use.

15. At the time of initial hearing on 1.8.2007, the Single Bench of this Commission has directed the Department of Revenue to have the matter considered by the highest level in the Public Authority and come up to the Commission with Department's viewpoints. At the time of hearing before the Full Bench, the following submissions were made on behalf of the Public Authority:

- (i) Every year the Department of Income Tax receives a large number of returns of Income from the taxpayers. In order to ensure that the taxpayers have declared their full income and not claimed any excessive deduction etc. these returns are required to be checked by the Assessing Officers. However, as the Income Tax Department does not have the wherewithal to verify all the returns, only a small percentage of them are taken up for scrutiny each year. During the financial year 2006-07, about 3.98 lakh returns – approximately 2% of the total number of returns received were selected for scrutiny.
  - a. The Income Tax Department issues guidelines for selection of cases for scrutiny for the use of the

- b. The scrutiny guidelines are issued towards the beginning of the financial year and they are applicable to all the pending returns as well as those filed during remaining part of the financial year. Under the law, a taxpayer can file his return till the last date of the Assessment Year. Thus, a return for the Assessment Year 2007-08 which is required to be filed by 31.07.2007 (by individuals) and 31.10.2007 (by firms and companies etc.) can still be filed by a taxpayer till 31.3.2008 subject to payment of penal interest. Therefore, if the guidelines for selection of cases are made public, these are liable to be misused by some unscrupulous taxpayers to evade tax at will. Once the various parameters are known, the returned income may be adjusted by any unscrupulous taxpayer in a manner, which would allow him to stay out of the scrutiny basket and avoid detailed examination by the Department.
- c. It is felt that no public interest would be served if the scrutiny guidelines are made public. These guidelines are meant for the internal use of the Assessing Officers of the Department. Selective scrutiny of returns is an important mechanism used by the Department to enforce taxpayers' compliance. Disclosure of scrutiny guidelines would, therefore, result in elimination of this deterrent and make it extremely difficult for the Department to counter tax evasion. Making the guidelines public would in fact amount to facilitating the unscrupulous taxpayers in their effort to evade tax. Evasion of tax is a rampant phenomenon that affects adversely the economic interest of the State. Willful evasion of tax is also an

offence under the Income Tax Act that may lead to punishment with fine and even rigorous imprisonment.

- (ii) Under clause (1) of sub-section (1) of Section 8 of the RTI Act, there is no obligation for the CPIO to give to any citizen any information “disclosure of which would prejudicially affect, inter-alia, “economic interests of the State” or which may “lead to incitement of an offence”. The Department is of the view that disclosure of scrutiny guidelines will affect adversely the economic interests of the State and facilitate committing the offence of tax evasion and therefore, these should not be disclosed to the public.
- (iii) Even otherwise, no prejudice would be caused by denying the disclosure of the guidelines as any taxpayers can ask for the reasons for selection of his case for scrutiny from the concerned Assessing Officer. The Department is, therefore, of the view that the guidelines for selection of returns of income for scrutiny should not be made public.

16. It was also submitted on behalf of the Ministry that the above submissions have been duly considered and are being submitted after the Union Finance Minister had seen and approved the same.

17. In view of the issues involved in the matter, it was decided to refer the matter to a Full Bench. The case was finally heard by the Full Bench on 18.12.2007. At the time of hearing, the following were present:

**Appellant:**

- 1. Shri Kamal Anand
- 2. Ms. Divya Jyoti Jaipurkar

**Respondent:**

- 1. Shri Divesh Verma, CIT(ITA)
- 2. Ms. Renu Jauhri, Dir (ITA-II), CBDT

**ISSUES FOR DETERMINATION:**

- I. Whether supply of instructions, directions, clarifications relating to Scrutiny Policy for non-corporate sector could be held to be prejudicial to economic interest of the State and hence could be denied under 8(1)(a) of the Right to Information Act, particularly when broad parameters of the scrutiny guidelines have already been provided to the appellant?

**DECISION AND REASONS:**

18. The Commission has carefully considered the whole issue. It is certainly within the domain of the concerned Public Authority, which is the agency competent to do so having been thus authorised, to decide and determine as to whether disclosure would adversely affect the economic interest of the State or not. The Commission can only look into as to whether the determination by the Department about the probable effect of a particular policy disclosure is based on objective criteria or not or as to whether the Department has arrived at a particular conclusion in a reasoned, or in a mechanical or arbitrary manner. Here is a case where a Public Authority at the highest level has analyzed the whole issue at our behest and has given its considered opinion to this Commission about the possible effect of the disclosure on economic interest of the State. We must conclude that the implications of disclosure have been put to the closest scrutiny.

19. The Commission cannot, therefore, enter into the adequacy or otherwise of the criteria taken into account by the concerned Public Authority. It cannot surpass an objective consideration and place its own subjective consideration thereon. When a denial is covered by an exemption clause under Section 8 of the Right to Information Act, so long as such application of exemption is based on objective criteria and is not arrived at in a mechanical or arbitrary manner, this Commission does not intend to interfere in such issues.

20. The Commission, therefore, decides as much, and holds the denial under Section 8(1) (a) to be justified.

21. The appeal petition accordingly stands dismissed.

Announced on this the 11th day of February, 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