

\$~46

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

*Date of Decision: 12<sup>th</sup> January, 2023*

+ **W.P.(C) 340/2023 & CM APPL.1348/2023**

CENTRAL PUBLIC INFORMATION OFFICER ..... Petitioner

Through: Mr. Zoheb Hossain, Sr Standing  
Counsel for Revenue with Mr. Vipul  
Agarwal and Mr. Parth Semwal,  
Standing Counsel for Revenue.

versus

KAILASH CHANDRA MOONDRA ..... Respondent

Through: None.

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner - Central Public Information Officer, Central Board of Direct Taxes, ITA-1 Division (*hereinafter, "CPIO, CBDT"*) seeking quashing of the impugned order dated 30th November, 2022 passed by the Central Information Commission (CIC).
3. In the present case the RTI Applicant/ Respondent - Kailash Chandra Moondra filed RTI application dated - 16th February, 2021 with the CPIO, CBDT seeking information related to 'Shri Ram Janmabhoomi Teerth Kshetra Trust'. The information sought is as under:

*"(1) Please send the copy of complete application (with all annexures) filed by SHRI RAM JANMABHOOMI TEERTH KSHETRA for getting*

*exemption / deduction u/s 80G(2)(b) for it's donations as information*

*(2) Please send the copy of Trust Deed of SHRI RAM JANMABHOOMI TEERTH KSHETRA which was filed with the application for getting exemption / deduction u/s 80G(2)(b) for it's donations as information.*

*(3) Please send the copies of all the documents, reports, department's internal reports, objects and notes available on the official file of the application for getting exemption / deduction u/s 80G(2)(b) for donations to SHRI RAM JANMABHOOMI TEERTH KSHETRA as information.*

*(4) Please send the copy of Declaration if any filed on behalf of SHRI RAM JANMABHOOMI TEERTH KSHETRA with the application for getting exemption / deduction u/s 80G(2)(b) for it's donations as information."*

4. The CPIO, CBDT denied the aforementioned information under Section 8(1)(j) of the Right to Information Act, 2005 (RTI, Act) vide order dated 5th April, 2021. Thereafter, the RTI applicant/ Respondent approached the Appellate Authority, CBDT by way of an appeal.

5. The Appellate Authority relied on the judgement of the 1d. Division Bench of Kerala High Court in ***Bhanunni v. Commissioner, Hindu Religious and Charitable Endowments (Admn.) Department, (2011) 2 KLT 312*** which held that Hindu religious institutions and endowments are not 'public authority' under the RTI Act. Reliance was also placed on the judgment of the Hon'ble High Court of Andhra Pradesh in ***G. Rajenderanath Goud v. Government of Andhra Pradesh, WP(C). No. 21677/2007*** wherein it was held that religious institutions such as temple, mosques and churches, which are not financed or funded by the government,

do not fall within the purview of the RTI Act. In view thereof, the Appellate Authority, CBDT vide its order dated 9th June, 2021 upheld the order of the CPIO, CBDT and affirmed the finding that the information sought in the RTI application is protected under Section 8(1)(j) of the RTI Act. Further, it was held that the information is also protected under Section 8(1)(e) of the RTI Act as the CBDT is holding the said information in fiduciary capacity. The Appellate Authority, CBDT in the said order also held that public interest in the matter has not been disclosed, which is a mandatory requirement under Section 11 of the RTI Act for disclosure of confidential and personal third party information. Lastly, reliance was placed on Article 21 of the Constitution of India, 1950.

6. The RTI applicant/ Respondent then approached the CIC by way of a second appeal. The CIC proceeded on the basis of its own decision in *Mrs. Begum Pasha Bee v. CPIO/ ITO (Exemptions)* bearing *Appeal No. CIC/BS/A/2016/001091-BJ-Final* and reversed the findings of the CPIO, CBDT and the Appellate Authority, CBDT vide the impugned order dated 30<sup>th</sup> November, 2022. The operative portion of the said order of the CIC is as under:

*“Keeping in view the square applicability of the above decision to the instant matter, the Commission rejects the denial of the information by the CPIO as well as the FAA.*

*Having observed as above, the Commission directs the CPIO to revisit **points 1 & 2 of the instant RTI Application** and provide the available information to the Appellant within 15 days from the date of receipt of this order. A compliance report to this effect shall be duly sent to the Commission by the CPIO immediately thereafter.*

*It may be noted that no action is warranted with respect to points 3 & 4 of the RTI Application as the Appellant has not sought for a specific record as per Section 2(f) of the RTI Act but has raised speculative queries requiring the CPIO to interpret and deduce the relevance of the records, if any available. ”*

7. Thus, the CIC directed that the CPIO would revisit the point nos.1 & 2 and provide information at serial numbers 1 & 2 within 15 days from the receipt of the order. Insofar as the information at serial numbers 3 & 4 are concerned, the same was rejected by the CIC.

8. Mr. Zoheb Hossain, Id. Counsel appearing for the CPIO, CBDT has made the following submissions:

- (i) First, that information in respect of assesseees is governed by Section 138, Income Tax Act, 1961, which provides that the information relating to third parties would have to be sought from the specified authority and the same would be furnished only if it is in public interest. Further, as per Section 138(1)(b) of the Income Tax Act, 1961, there is some finality in the order passed by the Appellate Authority, CBDT and the same is not to be challenged in a court of law. However, he concedes that this Court's jurisdiction under Article 226 of the Constitution of India would be exempted from the same.
- (ii) That the information sought in the RTI application is related to a third party assessee and would be governed by Section 138 Income Tax Act, 1961. Thus, the information would be exempted from being dealt by the RTI Act.
- (iii) That the judgment relied upon by the CIC in its impugned order

dated 30<sup>th</sup> November, 2022 i.e. judgement in ***Begum Pasha Bee (Supra)*** is clearly distinguishable from the present case as in the said case, the third party trust in respect of whom documents were sought, was heard. However, in the present case, the Trust was not heard.

- (iv) That in the order passed by the full bench of the CIC in ***Rakesh Kumar Gupta v. ITAT (2007) SCC Online CIC 3153*** the CIC, in the context of income tax records took a view that if information is being held by a ‘public authority’ in judicial capacity, the provisions of the RTI Act would not prevail. The authorities under the Income Tax Act, as per ld. counsel, act either in judicial or a quasi-judicial capacity.
- (v) That as per the judgment of the Hon’ble Supreme Court in ***Girish Ramchandra Deshpande v. Central Information Commr., (2013) 1 SCC 212*** the information, which relates to income tax returns etc. would stand exempted from disclosure under Section 8(1)(j) of the RTI Act unless a larger interest justified the disclosure. The relevant part of the said judgement is as under:

*“The details disclosed by a person in his income tax returns are “personal information” which stands exempted from disclosure under clause (j) of the Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information.”*

- (vi) That in *W.P.(C) 10193/2022* titled *CPIO/Dy. Commissioner of Income Tax HQ Exemption, New Delhi v. Girish Mittal* having similar circumstances, the Id. Single Judge of this Court vide order 7<sup>th</sup> July, 2022 granted stay on the CIC order under Section 8(1)(j) of the RTI Act.

Thus, the CIC reversed the orders of the CPIO and the appellate authority.

9. The Court has heard the Id. Counsel for CPIO, CBDT and perused the record. The following facts are relevant for consideration of interim relief at this stage:

- (i) The CIC did not issue notice to the Shri Ram Janmabhoomi Teerth Kshetra Trust whose information was sought, which is mandated under Section 19(4) of the RTI Act. The relevant part of the said section is as follows:

***“Section 19. Appeal -***

.....

*(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.”*

- (ii) In the impugned dated 30th November, 2022 the CIC does not consider the fact that the information relating to the income tax records is exempted under Section 138 of the Income Tax Act, 1961 which is a special law.
- (iii) The CIC does not consider the fact that the information which

was being sought in the RTI application related to a third party and was held by the CBDT in fiduciary capacity. Thus, the information would be governed by the exemption under Section 8(1)(e) and 8(1)(j) of the RTI Act.

(iv) The CIC has not given any reasoning whatsoever to reverse the orders of the CPIO, CBDT and Appellate Authority, CBDT.

10. In view of the above, the Petitioner i.e. CPIO, CBDT has made out a *prima facie* case for grant of *interim* relief, the balance of convenience lies in its favour and irreparable injury would be caused to it if the *interim* relief is not granted. Accordingly, impugned order dated 30th November, 2022 which is stated to be received by the CPIO, CBDT on 3rd January, 2023 shall remain stayed till the next date of hearing. No coercive steps shall be taken against the CPIO, CBDT pursuant to the same.

11. Ld. counsel for the CPIO, CBDT shall consider whether the Shri Ram Janmabhoomi Teerth Kshetra Trust, whose information is being sought in the RTI application ought to be impleaded as a Respondent in this matter. If so, he shall take appropriate steps in accordance with law.

12. The Registry shall serve the Respondent on the Email ID given in the memo of parties.

13. List before the Registrar on 10<sup>th</sup> April, 2023.

14. List before the Court on 23<sup>rd</sup> May, 2023.

**PRAITHIBA M. SINGH**  
**JUDGE**

**JANUARY 12, 2023/dk/kt**