

Dated: XXXXXXXXXXXXXXXXXXXX

To

Addl. Commissioner of Income Tax/ FAA,
XXXXXX,
XXXXXXXXX.

Sub:- First Appeal under 19 (1) of RTI Act, 2005

Reference: Order dated DD.MM.YYYY of Sh. XXXXX, Income Tax Officer, Ward – XX, XXXXXXX, (CPIO for the case).

Sir,

1. The appellant is constrained to file a First Appeal u/s 19 (1) of RTI Act to your esteemed self against your Junior Officer Sh. XXXXXXXXXXXX, CPIO, Sonapat.
2. The brief FACTS of this matter are:-
 - a. That the appellant filed Tax Evasion Petition along with Request for Information to Addl. Commissioner of Income Tax on DD.MM.YYYY. Copy of the same is attached as ANNEXURE 1
 - b. That on DD.MM.YYYY the appellant filed RTI to the CPIO. A copy of the same is attached as Annexure 2.
 - c. That on DD.MM.YYYY the appellant received the order dated DD.MM.YYYY of the concerned CPIO, which evaded providing me even an iota of the useful information requested. A copy of the impugned order is attached as ANNEXURE 3.
3. My GROUNDS for the appeal are as follows:-
 - a. BECAUSE, the CPIO has till date failed to provide the appellant the specific information requested and despite the appellant depositing the fees he required to do so.
 - b. BECAUSE, there is no provision in the RTI Act to deny information to an applicant once the further fee computed by the CPIO are actually deposited.

- c. BECAUSE, the order dated DD.MM.YYYY is evasive.
- d. BECAUSE, the order dated DD.MM.YYYY is malafide. In point 3 of the Order the CPIO has mischievously quoted Farida Hossenally case which has no bearing to the present RTI. The same relates to Income Tax Returns only and not with the Tax Evasion Petition. Whereas the Central Information Commission in various decisions has held

Although it has been the decision of the Commission that income tax-related details of assessee should not be disclosed through RTI-proceedings, **the matters related to tax-evasion petitions can, in certain circumstances, be considered for disclosure. In the Commission's view in a majority of cases of the tax-evasion petitions, the petitioner is entitled to receive the status *at any given time* about the processing of that tax-evasion petition.**

The same finds force by the decision of CIC in F.No. CIC/AT/A/2008/0268 decided on 16.07.2008 in Shri Badri Verma Vs Income Tax Department.

Taking a tough stand in Yamaji Sakharam Rathod Vs CIT-Aurangabad in 2007/00009 dated 02.03.07 the CIC had stated

The information was denied under section 8(1)(j) of the RTI Act but the CIC held that tax evasion cannot be said to be a personal matter of the tax evader. **The evasions involve public money and are therefore related to public activity and have a public purpose. The appellant is entitled to a response from the public authority about the status of the action on his petition.**

It may also be noticed that in File No CIC/LS/A/2009/01014 (B.B. Singh Vs DGIT (Inv), Lucknow) decided on 1.1.2010, the commission observed:

Besides, **it is also to be noted that blank ban on disclosure of information regarding the action taken on tax evasion complaints may not always be in the best interest of the state revenues.** In fact, it may disenthuse the information givers as information givers are generally keen to know whether the information provided by them has been of some value to the authorities or not. Feed back in this regard would motivate the information givers to provide further informations to the authorities and thereby

enable them to curb tax evasion and enhance the state revenues.

The same view has been forcefully re-iterated by Hon'ble CIC in CIC/LS/A/2009/000802 (M P Padmanabhan Vs. Income Tax Department, Kannur) on 03.06.2010.

- e. BECAUSE, the order dated DD.MM.YYYY and the information supplied bears no relation to the information requested. The same being irrelevant, incomplete and misleading etc. In reply to para no. 5, 6, & 7 of the order, the CPIO has just noted – **“Proceedings are going on, it will take time.”** And in para no. 8 CPIO has just noted, **“As stated above, the proceedings are going on, hence no misappropriation of fees.”** These all are misleading statements as there is no provision of advance collection of fee in RTI. A fee can not be collected on the basis of a premise that on some future date information of 20 pages would be available. **It must be noted that the said fee was deposited by the appellant full two years back.** Still, no time frame for completion of such proceedings is provided to the appellant. About the non-compliance of the rules, the Delhi High Court in its decision reposted in 142 (2007) DLT 573 has noted:

The bizarre conduct of the respondent in not disclosing this fact at any stage within a span of four years is difficult to fathom. The respondent has not approached the court with clean hands.

.....

The silence on the nature of the proceedings and on part of the respondent is pernicious. It is well known that where secrecy and mystery begins, vice and roguery is not far off.

- f. BECAUSE, the period of 30 days allowed to CPIO to provide me information computed after excluding the time between demand for further fee and actual deposit of the further fee has long expired also rendering the CPIO liable to penalty u/s 20(1). It might here also be noticed that **as per the ratio of judgment laid down by Hon'ble Punjab and Haryana High Court in C.W.P. No. 1924 of 2008 dated 08.02.2008 the said penalty is mandatory and not discretionary.**

(A) Right to Information Act (22 of 2005), S. 20(1), (2) — Delay in furnishing information — Imposition of penalty on Public Information Officer — Plea that penalty could be imposed only in cases where there is repeated failure to furnish information and that too without any rea-sonable

cause — Not tenable — Even in cases of simple: delay Commission is empowered under sub-section (2) of S. 20 to recommend disciplinary action against State/Central Public Information Officer under Service Rules applicable to such 8 officers. (Para 5)

(B) Right to Information Act (22 of 2005), Ss. 20(2), 26 — Delay in furnishing information — **Imposition of penalty § on Public Information Officer under S. 20(1) is mandatory — Public Information Officer cannot avoid the mandatory provisions of sub-section (1) of S. 20 of Act** or seek leniency on excuse that training programme as envisaged by S. 26 has not been organised by Govt. encouraging participation of Public Information Officer in development and organisation of programmes. [Para 6]

- g. BECAUSE, there has been denial of information by the CPIO using exemptions specified vide section 8 of the RTI Act, the same view has been nullified by the various quoted judgements of the Hon'ble Central Information Commissioner.
- h. BECAUSE the reply of CPIO is against the ratio of decision in WP(C) No 3114/2007 dated 03/12/2007 of the Hon'ble High Court of Delhi concerning disclosure of actions on Income Tax Evasion Petitions even during pendency of an enquiry to the petitioner and has not given any reasoning in not applying the ratio of judgement of Delhi High Court, it is a cardinal principal of law that a speaking order has to be given by the judicial or quasi-judicial officer whenever he is not accepting any rule laid down by any Higher Court/ Tribunal/ Authority, which otherwise has either binding or persuasive value.
- i. BECAUSE, the reply of CPIO is vague for in point 10, as against the specific information asked by the appellant. The appellant had specifically asked as to on what dates the evader, Mr. Atam Prakash Nandwani had not attended the proceedings at Income Tax and what reason he had assigned to the same. Instead of giving direct reply to the question, the CPIO mischievously withheld the specific information and replied that the evader was absent on one or two hearings on the basis of ill-health. This could be the most outrageous defiance of the Right to Information Act, 2005, where such replies are given where the meaning of the phrases could be enlarged or shortened as per the whims and fancies of the CPIO.

4. According the appellant is constrained to PRAY for the following reliefs:

- a. That the CPIO be ordered to provide the appellant the requested information forthwith.
- b. That a personal hearing be afforded to the appellant u/s 19(5) of RTI Act and interests of natural justice in the event the CPIO opts to justify and/ or prove the willful denial of information to the appellant.
- c. That a copy of comments/ reply of CPIO, if any, to this First Appeal be provided to the appellant well in advance of the hearing date.
- d. That the records be minutely scrutinized by your esteemed self so as to suppress any mischief as per the allegations leveled on your department by the evader himself.

5. This appeal is filed within time.

Yours Faithfully,

(APPELLANT)

XXXXXXX

s/o Sh. XXXXXXXXXXXXX

R/o XXXXXXXXXXXXX,

Verification:

I, the deponent named herein do verify that the facts as narrated above are true and correct to my best knowledge and belief.

Deponent

ANNEXURES:

- 1. The Tax Evasion Petition sent by the appellant on DD.MM.YYYYY.
- 2. The RTI filed on DD.MM.YYYY
- 3. The Impugned Order of the CPIO dated DD.MM.YYYY.