

CENTRAL INFORMATION COMMISSION

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F.No. CIC/AT/A/2006/00185
Dated, the 18th September, 2006.

Appellant: Shri Rakesh Kumar Gupta, 38 SFS Flats DDA, Mukherjee Nagar, Delhi-110 009.

Respondents: Shri R.V. Easwar, Vice-President, PIO, Income Tax Appellate Tribunal (ITAT), 10th Floor, Lok Nayak Bhawan, Khan Market, New Delhi-110003.

Shri Vimal Gandhi, President, Appellate Authority, Income Tax Appellate Tribunal (ITAT), 10th and 11th Floor, Lok Nayak Bhawan, Khan Market, New Delhi-110 003.

Shri Rakesh Kumar Gupta has come up in an appeal before the Commission against the order dated 31.1.2006 of the Appellate Authority, Shri Vimal Gandhi, President, Income Tax Appellate Tribunal (ITAT) and the orders dated 14.12.2005 of the PIO, Shri R.P. Ishwar in response to the appellant's two RTI requests both dated 20.10.2005 made to the PIO.

The parties were called for hearing on 18.9.2006. The appellant was present in person and the respondents were represented by Shri Vikram Dutt, Asst. Registrar and Shri P.D. Kanunjna, ACIT, ITAT.

First RTI request dated 20.10.2005

The appellant had asked for 12 information from the PIO which are listed below:

- “ 1. What is inspection fee by a party to the case of decided case?
2. What is inspection fee by a party to the case of pending case?
3. What is inspection fee by other than the party to the case of decided case?
4. What are the circumstances, when party other the litigant can inspect the records of other persons?
5. What is inspection fee by other than the party to the case of pending case?
6. As per rule 4 A sub-rule (XI), it is the duty and power of the Registrar (ITAT) to allow inspection of records of the Tribunal.
 - a. Is above statement correct?
 - b. In what circumstances Bench Member / President of ITAT interfere in the inspection process.
7. Is Registrar Office received the inspection request (Letter No.Win/INVESTIGATION OF INCOME /EHIRC /ITAT/ REGISTRAR /7 Date:01 July 2005 written by) from Mr Rakesh Kumar Gupta IN

APPEAL ESCORTS LIMITED A Y 2001-2002 APPEAL ITA NO. 567/DEL/05-BENCH G ?

8. Has Registrar Office allowed the inspection? If not why ?
9. Why Bench Staff did not allow inspection in spite of permission by Registrar Office?
10. Why Bench Member interferes (inspection work) in the working of Registrar office working?
11. Is registrar office received the reason from G Bench for withholding the inspection to Mr Rakesh K Gupta? What is the reason?
12. Is you had communicated the reason of your decision to Mr Rakesh K Gupta? If yes kindly provide the copy. If not, why?"

Information requested at item 1 to 5 above, is in respect of the fees and the entitlement for inspection of records in pending and decided appeals before the Income Tax Appellate Tribunal. It has been pointed out by the PIO that Rules 50(1) and 50(3) of the Appellate Tribunal Rules, 1963 laid down the fee, procedures and entitlement of parties for access to documents/information.

It is not incumbent on the PIO or the public authority to interpret the rules for the appellant. The appellant should feel free to apply for the entitled documents under Rule 50 of the Appellate Tribunal Rules.

As regards item 6 above, the appellant has sought two information, (a) whether the Registrar, ITAT has the power under Rule 4A (XI) to allow inspection of records by authorized parties, and (b) in what circumstances the Bench or the President of the ITAT can interfere in the inspection process.

It is strange that in the presence of a clear-cut and straight-forward Rule, the appellant still wants the public authority to interpret it for him. There is no such responsibility cast on the public authority. The rule itself contains the information requested by the appellant.

As regards item 6(b) above, it needs to be stated that the ITAT is a quasi-judicial body, and the directions of the Bench or the President of the ITAT are in the nature of quasi-judicial orders. It is inappropriate for the PIO to anticipate as to what the ITAT would do in a given circumstance. In fact, the information as sought here by the appellant doesn't even qualify to be 'information' as defined under section 2(f) of the RTI Act. The PIO has given a reply as best as he could. But the plain fact is that this request of the appellant doesn't merit response.

His request for information at item 10 above is also a hypothetical one and merits no response as it is not 'information' as per the Act.

Through items 7, 8 and 9 the appellant has queried the PIO about a certain inspection-request in which the Bench staff allegedly prevented the inspection in spite of

the Registrar allowing it. The PIO has stated in reply that no request for any such inspection is available in the ITAT office. As such, he was not in a position to answer queries 7, 8 and 9.

Items 11 and 12 of the RTI request of the appellant again deal with the actions of ITAT Bench in what the appellant describes as “withholding the inspection to Rakesh K. Gupta?” He also asks, “What is the reason?”

The reply given by the PIO makes it clear that there were orders of the ITAT Bench in this matter, which were implemented by the Registrar Office.

Since this was a decision of a quasi-judicial Tribunal, it could be challenged only in a superior forum. The order of the ITAT Bench itself contains the information and the reasons for that order. Mr. Gupta may obtain copies of this order by following the procedure laid down for the same.

There is no obligation on the PIO to supply this information.

It is noticed that the purpose of Shri Gupta filing this appeal before the Commission is essentially to obtain an interpretation of Appellate Tribunal Rules 50(1) and 50(3) as well as other Rules in order to access information of a third party. The ITAT, through its order had apparently barred that information from disclosure and Shri Gupta was attempting the RTI-route in order to circumvent the Tribunal’s orders.

In any case, Shri Gupta is free to file his RTI request for specific document or information he wishes to have. And if he so does, the PIO will consider that request under the provisions of the RTI Act and examine its validity.

The appeal is rejected.

Second RTI request dated 20.10.2005

The appellant has filed a second RTI request, again largely, focused on the powers and the actions of the ITA Tribunal. The detailed request for information sought by him is as follows:

- “ 1. Is there any reasonable time limit to deliver the decision after the last date of hearing? If yes, what are they?
2. IN APPEAL ESCORTS LIMITED A Y 2001-2002 APPEAL ITA NO.567/DEL/05-BENCH G
 - a. What is the last date of hearing?
 - b. Is Honourable Bench delivered the decision? [sic]
 - c. If yes, when it was delivered?
 - d. If not, what are reasons for the delay?

- e. If there is such long delay, is it effect the quality of decision made by the Honourable Bench?
 - f. If yes, what are the reasons effecting quality of decisions?
3. IN APPEAL ESCORTS LIMITED A Y 2001-2002 APPEAL ITA NO.567/DEL/05-BENCH G. Mr. Rakesh Kumar Gupta vide Letter No.Win/INVESTIGATION OF INCOME / EHIRC/ITAT/member / 5 Dated 3 May 2005 inform Honourable Bench about Escorts (Tax Evader) Consul had lied to Honourable Members over their specific query
 - a. Is Honourable Bench received the above letter? If yes when? [sic]
 - b. If not why?
 - c. Is Honourable Bench taking into consideration above facts while delivering the decision in the case?
 - d. If not why?
 - 4 As per rule 4 A sub-rule (XI), it is the duty and power of the Registrar (ITAT) to allow inspection of records of the Tribunal.
 - a. Is above statement correct ?
 - b. In what circumstances Bench Member / President of the ITAT interfere in the inspection process.
 - 5 What are the circumstances, Honourable Bench interfere (which is the duty of Registrar office) in the inspection request of Mr Rakesh Kumar Gupta IN APPEAL ESCORTS LIMITED A Y 2001-2002 APPEAL ITA NO. 567/DEL/05 – BENCH G?
 - 6 Is Honourable Bench delivered the decision in the inspection request? If yes, What is the decision? Whether it is communicated to applicant? If not, why?"

The PIO has painstakingly responded to the queries and apprised the appellant of the legal position, wherever it was necessary.

The appellant's query at item 1 is about the "reasonable" time-limit for delivery of decisions by the ITAT which the PIO has put down as 60 days from the date of last hearing of the appeal. The replies to item 2 (a) and 2(b) are factual and should be taken as valid. As regards items 2(c), 2(d), 2(e) and 2(f), the PIO is quite right in holding that it was not open to the appellant to assume that there was delay and put words in the mouth of the PIO for an answer. Besides, the ITAT, being a quasi-judicial body, it decides the cases in its own discretion. Reply to item 3(a) is factual and correct. Item 3(b), 3(c) and 3(d) are again about the powers of the Bench of the ITAT. Besides being hypothetical, the information sought doesn't even qualify to be 'information' under the RTI Act.

Item 4 again deals with, as in the preceding RTI request, with the powers of the ITAT. While item 4(a) being factual has been replied to, item 4(b) relates to the discretionary power of a quasi-judicial body, the PIO is not expected to give his version

of how the ITAT would exercise that power. There is no obligation to transmit any such information. As regards item 5, this is again about the power of a quasi-judicial Bench. It is a hypothetical question about the circumstances in which such a body will exercise its powers.

There is no need to respond to this query.

As regards item 6, the reply given by the PIO is factually correct and hence complete.

Before parting with this appeal, it must be pointed out that this is the first time a party has come up to the Commission asking for interpretation of a given law / rules as well as the interpretation of the powers of a quasi-judicial body. As I stated in the first appeal, the proper Forum to test the order of a Tribunal is as laid down under the appropriate Act or as provided in the Constitution. It would be wholly inappropriate to invoke the provisions of the RTI Act for the interpretation of laws and rules. It should be made clear that the laws and rules are themselves 'information' and being in public domain are accessible to all citizens of the country.

The request of the appellant, therefore, needs to be turned-down as the RTI Act cannot be invoked for such purposes.

The appeal is rejected.

Sd/-
(A.N. TIWARI)
INFORMATION COMMISSIONER

Authenticated by –

Sd/-
(L.C. SINGHI)
ADDL. REGISTRAR

Address of parties:

1. Shri Rakesh Kumar Gupta, 38 SFS Flats DDA, Mukherjee Nagar, Delhi-110 009.
2. Shri R.V. Easwar, Vice-President, PIO, Income Tax Appellate Tribunal (ITAT), 10th Floor, Lok Nayak Bhawan, Khan Market, New Delhi-110003.
3. Shri Vimal Gandhi, President, Appellate Authority, Income Tax Appellate Tribunal (ITAT), 10th and 11th Floor, Lok Nayak Bhawan, Khan Market, New Delhi-110 003.
4. In-charge, NIC.
5. Press 'E' Group.