

CENTRAL INFORMATION COMMISSION

**Block IV, 5th Floor, Old JNU Campus
New Delhi 110067**

Appeal No. CIC/AT/A/2006/00586

Dated September 18, 2007

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

Public Authority: Income Tax Appellate Tribunal (ITAT)
10th floor, Lok Nayak Bhawan
NDMC Complex, Khan Market
New Delhi-110003.

Date of Decision 18.09.2007

FACTS:

1. The appellant submitted an application to Shri R.V. Easwar, CPIO & Vice President of the ITAT under the Right to Information Act on 08.06.2006 seeking the following information concerning Appeal No. ITA No.567/DEL/05-Bench-G of Escorts Limited for the Assessment Year 2001-2002 and corresponding appeal of Income Tax Department:

- 1) Copy of daily proceeding of the minutes maintained by Members of the Bench in above mentioned case;
- 2) Copy of ITAT decision in the above Income Tax Appeal No.567;
- 3) Inspection of all the case records.

2. CPIO vide reply dated 27th June, 2006 declined all the requests of the appellant and stated as under:

- 1) Daily minutes maintained by Members of the Bench are part of judicial proceedings and are meant only for the use of the Members;

- 2) Copy of the order in the case of Escorts Limited A.Y. 2001-2002 Appeal ITA No.567/DEL/05-BENCH G can be given only to the concerned parties or their representatives duly authorized to receive such order;
- 3) Inspection can be granted only to the concerned parties or their representatives duly authorized in this behalf.

3. Aggrieved with the decision of the CPIO, the appellant filed his first appeal on 29.6.2006 before the President of ITAT and first Appellate Authority complaining against the CPIO, that he had wrongly refused to provide the information. The appellant also submitted in a follow up letter of 30.8.'06 to President ITAT that the case in respect of which the information is requested is a very old case and that none of the information requested by him is covered under Section 8(1) of the Right to Information Act, 2005 (RTI). The appellant cited judgment of Hon'ble Supreme Court of India in **“Naresh Shridhar Mirajakar & ors. Vs. State of Maharashtra — AIR 1967 SC 1”** wherein the Hon'ble Supreme Court had stated that in-camera proceedings should be done in rarest of cases and that all judicial proceedings should be held in open court in order to curb corruption in administration of justice. The appellant asserted that there is no exemption under the Right to Information Act to any of the information sought by him. He also submitted that he is a party to the TEP Enquiry/Tax Evasion Case, and that all cases decided by ITAT are about tax evasion by the assesseees and everyone knows the level of corruption in tax administration. He also said that the information that he had sought is to be disclosed by the public authority 'under Section 4 (1) (b) (iv) and (v) of the Right to Information Act, 2005'.

4. The appellant in the meantime received a communication from the Registrar, J.S. Chhilar, ITAT dated 30th August, 2006 requesting the appellant to indicate the statutory provisions under which —

- i) Copy of daily proceedings is required to be maintained by the Members of the Bench;
- ii) Third party may apply and obtain copy of ITAT decisions;

- iii) Third party may inspect the ITAT appeal records;
- iv) A person not a party to the proceeding may be permitted to interfere with the appellate proceedings of the Tribunal under the Right to Information Act or which authorizes him to challenge the order of the ITAT.

The Registrar also asked the appellant to indicate whether Income Tax Assessment and proceedings before the ITAT are not confidential in nature and as such, not supposed to be disclosed to any 3rd party (who is not a party to the proceedings).

5. The appellant vide his reply dated 4th September, 2006 stated as under:

- (i) the object of the Right to Information Act is to bring about transparency and accountability in the working of every public authority;
- (ii) Under Section 19(5) of the Right to Information Act, the onus is on the CPIO to justify any denial of request;
- (iii) Under 19(6) of the Right to Information Act, appeal should be decided in 30 days and in special case within 45 days whereas the appellant has filed his appeal on 30.8.2006.
- (iv) He is informer in this case and will be affected by the decision of the ITAT.
- (v) There are specific provisions under the ITAT Rules under which information sought by the appellant can be given and referred to Rule 49(4) providing for fees for the publishers and Rule 33 under which proceedings before the ITAT are open proceedings in cases like this.
- (vi) Rules 49 and 50 of the ITAT Rules under which inspection of ITAT records are free to every one till the case is pending and free for the party for ever. The proceedings before the ITAT are conducted in open hearing and, therefore, they cannot be confidential or private.
- (vii) Under Rule 33 of the ITAT Rules, Income Tax assessments and proceedings before the ITAT are public in nature and open in cases like this;

- (viii) Inspection of records is fundamental right under Article 19 of the Constitution of India as laid down in **AIR 1982 SC 149**;
- (ix) Right to know gives rise to the concept of an open government which is implicitly contained in Article 19(1)(a) of the Constitution of India which guarantees freedom of speech and expression. Disclosure of information regarding functioning of the government, therefore, must be the Rule and secrecy an exception;
- (x) Under Section 138(1)(b) of the Income Tax Act, the Chief Commissioner or Commissioner is bound to furnish the information asked for if he is satisfied that the same is in public interest. However, rejection will have to be supported by reasons to justify that public interest demanded a rejection of the request;
- (xi) Section 22 of the Right to Information Act overrides every other law or any instrument for the time being in force;

6. First Appellate Authority & President of the ITAT, Shri Vimal Gandhi after providing a personal hearing to the appellant and considering subsequent representations of the appellant dated 30th August, 2006 and 4th September, 2006, decided the appellant's first appeal and vide order dated 5th September, 2006, communicated his decision to appellant Shri Gupta. In the course of hearing of the appeal, the appellant agreed that he would be satisfied if he is given the following information:

- (i) Certified true copies of the order in ITA No.567/Del/2005 of the Escorts Limited; and
- (ii) Inspection of all the record mentioned by him in his RTI Memo.

7. The First Appellate Authority held that there are specific provisions under the Income Tax Act to supply certified copy of the order in ITA No.567/Del/2005 as asked for by the appellant and directed the Registry to supply the same to the appellant. As regards the 2nd request of the appellant pertaining to inspection of all the records at (ii) above, the First Appellate Authority said a similar matter relating to the same appellant is under consideration of the CIC and it is settled law that a lower authority being aware of this fact is under an obligation to wait

for the orders of the superior authority and comply with the same. They are, therefore, waiting for the directions of the Central Information Commission and as soon as they receive such direction, they would comply with that direction and pass their orders in line with that direction.

8. In the meantime, this Commission passed its orders on 18th September, 2006 in Appeal No.CIC/AT/A/2006/00185 of the same appellant, wherein the appellant had asked for similar information regarding permission to inspect records of the ITAT. The CIC held that permission to inspect records of the ITAT relates to discretionary power of a quasi-judicial body and 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. CIC further held that 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 Right to Information 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.

9. Against the order of the First Appellate Authority, the appellant preferred 2nd appeal before the Central Commission on 20th December, 2006.

10. The 2nd appeal of the appellant was heard by Information Commissioner, Shri A.N. Tiwari on 15th February, 2007 when the appellant was present in person while the respondents were represented by the APIO, Shri Bikram Dutt, Assistant Registrar of the Income Tax Appellate Tribunal. While hearing the appeal, the Information Commissioner observed that the appellant's request is:

- (i) for the minutes maintained by the members of the ITAT Bench in a particular case;
- (ii) Copy of the ITAT decision in the case of Escorts Limited for the year 2001-2002; and
- (iii) All concerned records.

These requests, therefore, raise a very important question about whether under the Right to Information Act it is permissible to access information held by another public authority which acts in a judicial capacity, especially when the information pertains to its orders in that judicial proceeding and actions related thereto. There may be other similar Tribunals whose orders and records could similarly be sought to be accessed through the Right to Information Act. This matter should, therefore, be considered by the Full Bench of the Commission.

11. The matter was accordingly listed to be heard by the Full Bench on 1st May, 2007. It was, however, adjourned at the request of the CPIO and the next date of hearing was fixed on 19th June, 2007 at 12.00 Noon. Parties were notified of the date of hearing and the Full Bench hearing was held in the Court Room of the Commission on the date so fixed.

12. The hearing by the Full Bench was attended by the following:

Appellant:

Sri Rakesh Kumar Gupta

Respondents:

Mr. R.V. Easwar, CPIO & Vice President, ITAT, New Delhi

Shri Bikram Dutt, Asstt. Registrar, ITAT, New Delhi

Third Party:

Shri V. Verma, Addl. CIT

Shri P. D. Kanunjna, ACIT, CC-3, New Delhi

Shri Satish Kumar Chugh, Inspector CR-2

13. Opening the arguments, appellant Shri Gupta submitted that he had asked for the following information:

- (i) Copies of minutes of proceedings conducted by the Members of the ITAT Bench;

- (ii) Copy of decision passed by the ITAT in the case of Escorts Limited concerning the assessment year 2001-2002 and all connected records.
- (iii) Inspection of records of the Appeal case;

14. Appellant submitted that he has applied for information under Section 4 of the Right to Information Act, which mandates every public authority to disclose information of general public and display all relevant information and, therefore, the same cannot be denied to him. He further said that the following information cannot be denied to the public —

- (i) information which can be given to Parliament;
- (ii) information which are not covered under exemption clauses of Section 8;
- (iii) information in larger public interest;

15. Appellant submitted that the respondents have not pointed out under what exclusion clause they have denied this information to him. He said that all proceedings of the ITAT are open, their judgments and orders are published and, therefore, proceedings which are open cannot be said to be confidential and so denied.

16. As regards the issue of '*locus standi*', the appellant said that he had already submitted that he is an informant and, therefore, he has *locus standi* for seeking this information from the respondents. He said that even a publisher is given copies of proceedings and decisions of the ITAT. He had asked for inspection of documents which are all public documents. Anybody whether he is a party to the proceeding or not can apply for inspection of records, files, proceedings etc. on payment of prescribed fees.

17. Appellant said that public interest in disclosure of this information is overriding. In every judicial proceeding, every thing should be transparent and open in order to curb corruption. Limited disclosure by the ITAT is potential generator of corruption. The more the transparency the less is the corruption.

Appellant said that there has been rampant theft of tax amounting to thousands of crores of rupees and although he had filed more than 20 RTI applications but he had got no information.

18. In reply to the arguments of the appellant, the respondents submitted that they have objected to the very maintainability of the appeal and submitted that it should be rejected on this score alone. However, on the appellant narrowing down his request for information, the Registry was directed to provide certified true copies of order in case Appeal Case No. ITA No.567/Del/2005 pertaining to Escorts Ltd. So far as inspection of all the records mentioned in his RTI request was concerned, it was informed to the appellant that a decision on similar request is pending before the CIC which is a superior authority and they are waiting for the CIC's direction in the matter. Respondents also pointed out that the appellant vide his letter dated 4.9.2006 did not press for his last request relating to examination of minutes maintained by the Members of the ITAT. If in spite of the decision of the ITAT, PIO had supplied the information, he would have committed contempt of the Tribunal.

19. Respondents submitted that even the CIC had passed order that if the appellant wants copy of the order, he can apply to the Tribunal or he can seek other legal remedies. The Tribunal gives copies of its orders and allows inspection of records only to the parties concerned.

20. Respondents said that under section 254(2) of the Income Tax Act, the orders are passed by the Tribunal after hearing both the parties. The Tribunal has framed its own Rules. Rule 34 says that the order of the Bench shall be in writing and signed and dated by the members constituting it. Rule 34A says that application under Section 254(2) should clearly state the mistake apparent on record for which rectification is sought and the same shall be disposed of after giving both the parties a reasonable opportunity of being heard. Rule 35 says that orders should be communicated to the assessee and the Commissioner. Referring to publishers, they said that a publisher is not automatically entitled to

get a copy of orders. The publisher has to apply for that, and the Tribunal after being convinced of his bona-fides gives him a copy of the order. This practice is being followed by the High Court and the Supreme Court also. The publisher has also to pay @ Rs.15/- per page of the orders supplied. The Tribunal gives to the publisher copies of only those orders which are marked "fit for publication" and the Tribunal cannot ignore this Rule. Under Rule 75, copy of the Tribunal's order can be given only to the assessee and the Commissioner. They are statutorily bound by the Rules. Rule 35 does not give any discretion. It is binding on the Tribunal.

21. Respondents said that they have already supplied copies of the orders to the appellant and there is no larger issue before this Commission. 3rd parties have strongly objected to inspection of their records by the appellant as the same contain their Income Tax assessment.

22. ISSUES FOR DETERMINATION:

- I. Whether this Commission, under the Right to Information Act, can order the ITAT to disclose information which that Tribunal has decided not to disclose under the Income Tax Act, 1961 as amended from time to time and rules made thereunder?
- II. Whether the RTI Act applies to a judicial proceeding and, if so, does it override the existing law concerning dissemination of information in respect of a judicial proceeding?
- III. Whether the information, which the respondents say are prohibited under the Income Tax Act can be given under the Right to Information Act?

DECISION AND REASONS:

23. The Right to Information Act was enacted with a view to grant right to a citizen to access information under the control of public authorities in order to promote transparency and accountability. In its preamble, the Act recognized

that an informed citizenry and transparency of information are vital to the functioning of a vibrant democracy as it will contain corruption and hold the Government and their instrumentalities accountable to the governance. The Act also recognizes that revelation of information in actual practice is likely to conflict with other public interest including efficient operations of the Government and optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information. The basic objective of the Act is to harmonize these conflicting interests while preserving paramountcy of democratic ideal. The Preamble of the Act, which outlines the principal objective of the Act makes it clear that the Act intends to bring transparency in functioning of the Government and its instrumentalities.

24. A question may, therefore, arise as to whether the Act is intended to cover a judicial proceeding conducted by a court of law or by a tribunal or an authority exercising statutory powers in a quasi judicial manner. There is no doubt that “State” consists of three important wings, the legislature, the executive and the judiciary. There is no doubt, also, that the right to information Act applies to all including the legislature and the judiciary. This is clear if we take into account the definition of “public authority” under Section 2(h) and of the “competent authority” under Section 2(e) of the Act. A public authority under Section 2(h) means any authority or body or institution of self- government established or constituted—

- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;
- (d) by notification issued or order made by the appropriate Government,

and includes any—

- (i) body owned, controlled or substantially financed;

(ii) non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government;

25. Every court or tribunal or even a commission or authority exercising statutory powers is therefore a “public authority” within the meaning of Section 2(h), and any information held by or under the control of such public authority is legally accessible to a citizen under Section 2 (j) the Right to Information Act unless such information is one which has been exempted under any of the provisions of the Right to Information Act.

26. Section 2(e) of the Act declares the following as competent authority:

- 2(e):** (i) *the Speaker in the case of the House of the People or the Legislative Assembly of a State or a Union territory having such Assembly and the Chairman in the case of the Council of States or Legislative Council of a State;*
- (ii) *the Chief Justice of India in the case of the Supreme Court;*
- (iii) *the Chief Justice of the High Court in the case of a High Court;*
- (iv) *the President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution;*
- (v) *the administrator appointed under article 239 of the Constitution;*

27. In this context, it is pertinent to refer to Section 27 and 28 of the Right to Information Act. While Section 27 empowers the appropriate Government to make Rules to carry out the provisions of the Act, Section 28 similarly empowers a “competent authority” to make Rules to carry out the provisions of the Act. Both the appropriate Government and the competent authority have, therefore, concurrent powers to make Rules to effectively implement the provisions of the Act and the common areas of Rule making powers include the following:

- (a) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4;
- (b) the fee payable under sub-section (1) of section 6;
- (c) the fee payable under sub-sections (1) and (5) of section 7;
and
- (f) any other matter which is required to be, or may be, prescribed.

28. The areas in respect of which the appropriate Government has the Rule making power and the Competent Authority does not have such power are the following:

- (i) the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section (6) of section 13 and sub-section (6) of section 16;
- (ii) the procedure to be adopted by the Central Information Commission or State Information Commission, as the case may be, in deciding the appeals under sub-section (10) of section 19;

29. However, Rules made by the Central Government are to be laid as soon as may be before each House of Parliament. The Section further provides that both Houses of Parliament may agree in making any modification in the Rule or may agree that a particular Rule should not be made. The Rule shall thereafter have effect only in such modified form or to be of no effect, as the case may be. Thus, the Rule making power of the Central Government is temporary and limited in nature as it is subject to an eventual approval by the Parliament. On the other hand, there is no such requirement in the case of Rules formulated by the competent authority. Thus, the Rules made by the Speaker or the Chairman of the Upper House, Chief Justice of India and the Chief Justice of the High Courts need not be laid before Parliament.

30. It, therefore, emerges that the Act intends to make a distinction between the Rule making power by a competent authority and by the Government. The Act does not define 'Government' per-se. As observed by Hon'ble Supreme Court, 'Government' generally connotes three estates, namely, the Legislature, the Executive and the Judiciary while it is true that in a narrow sense it is used to connote the Executive only. The meaning to be assigned to that expression, therefore, depends on the context in which it is used. **(R.S. Raghunath Vs. State of Karnataka and another - AIR1992 SC 81)**. Insofar as the Right to Information Act is concerned, the term 'Government' has been probably used in a very narrow sense as it even intends to exclude the competent authority from the general definition of the Government. It is pertinent to note that the President is the Head of the Union Executive. He is also a part of the Union Parliament. Similarly, the Governor is the Head of the Executive at the State level and at the same time he is a part of the State legislature. Insofar as the Right to Information Act is concerned, the President and the Governor are also the 'competent authority' under the Right to Information Act in respect of "other authorities established or constituted by or under the Constitution". Thus, the President or the Governor as competent authority may formulate separate Rules for other constitutional authorities, which may include tribunals or other judicial and quasi judicial bodies.

31. All courts and tribunals have two sides – judicial and administrative. There is nothing in the "Statement of Objects and Reasons" of the Act to indicate that the Act was intended to apply to judicial functions and powers of the courts and tribunals. It is inconceivable that the legislature, having provided for elaborate redressal machinery by way of appeals, revisions etc. under the various enactments or statutes would have also provided for parallel machinery under the RTI Act.

32. In this context, it is pertinent to refer to Section 4(1)(d), which states that every public authority shall "provide reasons for its administrative or quasi-judicial

decisions¹ to affected persons”. Clause (d), therefore, excludes judicial proceedings as it refers only to administrative decisions of public authorities. It says that a public authority shall provide reasons for its quasi-judicial decisions. Obviously such a mandate is unnecessary to a court or tribunal for it is a fundamental principle of law that even a quasi-judicial tribunal shall pass a reasoned order.

33. In this context, it is pertinent also to refer to provisions of Article 227 of the Constitution of India by virtue of which the High Court has the power to make and issue general Rules and prescribe forms for regulating the practice and proceedings of all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. The High Court can also prescribe forms in which the books of entries and accounts shall be kept by the officers of courts and tribunals. Article 227 of the Constitution is reproduced below:

“Art. 227: Power of superintendence over all courts by the High Court.—

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may—

- (a) call for returns from such courts;*
- (b) make and issue general Rules and prescribe forms for regulating the practice and proceedings of such courts; and*
- (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.*

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any Rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

¹ Underlined by us for emphasis

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

34. The power of the High Court, therefore, extends to making of general Rules for regulating the practice and proceedings of all courts and tribunals. However, Rules so made by the High Court shall not be inconsistent with the provision of any law for the time being in force and shall require the previous approval of the Governor. Accordingly, Rules have been made by all High Courts concerning grant of copies of documents and the fees have also accordingly been prescribed under the Rules so made by the High Court. The Right to Information Act which has been enacted in the year 2005, therefore, is a legislation in *pari materia* and section 22 of the Act declares that it will have an overriding effect over any other provisions which is found to be inconsistent therewith. It will not be out of context to refer the said section which reads as under:

“Sec.22: The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

35. The question may, therefore, arise as to whether section 22 of the Act overrides any other provision concerning dissemination of information or giving certified copies or copies of documents and other records pertaining to a proceeding conducted by a court or a tribunal, deeming this to be inconsistent therewith. In this context, it is worthwhile to note that the Rules made by the High Court in exercise of the powers conferred by Article 227 of the Constitution and the provisions of Right to Information Act overlap each other in certain areas. One view could be that RTI being a later legislation should prevail over an earlier legislation. The other view could be that insofar as the grant of copies of documents or records in a proceeding of a court or tribunal is a matter in respect of which the Right to Information Act has to be treated as a general law and the Rules made by the High Court are to be treated as a special law.

36. It is also noteworthy to take into account that section 22 of the Right to Information Act explicitly mentions the overriding effect of the Right to Information Act in respect of inconsistencies in the Official Secrets Act but, although it refers to any other law or any instrument having effect under any other law (which would include Rules) for the time being in force, it does not make a specific mention of any other legislation. The *non-obstante* clause of the Right to Information Act does not, therefore, mean an implied repeal of the High Court Rules and orders framed under Article 227 of the Constitution of India, but only an override of RTI in case of 'inconsistency'. In this context, the following observations of the Hon'ble Apex Court in R.S. Raghunath Vs. State of Karnataka – AIR 1992 SC 81 are pertinent:

"The general Rule to be followed in case of conflict between the two statutes is that the latter abrogates the earlier one. In other words, a prior special law would yield to a later general law, if either of the two following conditions is satisfied.

- (i) The two are inconsistent with each other.
- (ii) There is some express reference in the later to the earlier enactment.

If either of these two conditions is fulfilled, the later law, even though general, would prevail."

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 *non-obstante* 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 derogat priori - non est novum ut priores leges ad posteriores 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 a 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**²; 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.

39. The differences between the Right to Information Act and the procedure as prescribed by the High Court or by a tribunal for conduct of its own practice and procedure have to be looked into from another angle also as to whether there is a direct inconsistency between the two. In this context, it may be mentioned that **neither provision prohibits or forbids dissemination of information or grant of copies of records**. The difference is only insofar as the practice or payments of fees etc. is concerned. There is, therefore, no inherent inconsistency between the two provisions.

² Emphasis ours

40. Over and above, the High Court Rules and the Rules of the tribunal are particular or special law dealing with a particular phase of the subject covered by the Right to Information Act and, therefore, consistency is possible. It is a sound principle of all jurisprudence that a prior particular law is not easily to be held to be abrogated by a posterior law expressed in general terms. The said principle was accepted by the Hon'ble Supreme Court and expressed by Justice Mudholkar in the following words:

“A general statute applies to all persons and localities within its jurisdiction and scope as distinguished from a special one which in its operation is confined to a particular locality and, therefore, where it is doubtful whether the special statute was intended to be repealed by the general statute the court should try to give effect to both the enactments as far as possible.”

41. In view of this, it may be very well inferred that the RTI Act does not repeal or substitute any pre-existing law including the provisions of the Income Tax Act concerning dissemination of information.

42. In the instant case, the appellant has asked for a copy of the daily proceedings minutes maintained by the members of the Bench tried by the ITAT in appeal case No.ITA 567/Del/05. The CPIO in the instant case has replied that the daily minutes maintained by the members of the Bench are a part of the judicial proceedings and is meant only for the use of the members of the Tribunal. Admittedly, the proceedings before the Tribunal are judicial.

43. Apparently, all judicial proceedings are conducted in open and transparency is the hallmark in case of all such proceedings. There is no element of secrecy whatsoever. But at the same time, it has to be borne in mind that the judiciary is independent and all judicial authorities including all courts and tribunals must work independently and without any interference insofar as their judicial work is concerned. The independence of a judicial authority is all pervasive and any amount of interference is neither desirable nor should ever be encouraged in any manner.

44. The appellant in the instant case wanted the minutes of the proceedings maintained by the learned members of the Tribunal which can only be the notes prepared by them while conducting the hearing or otherwise.

45. The respondents have drawn our attention to the following observations made by Hon'ble Justice Vivian Bose in **Surendra Singh v State of UP (AIR 1954 Supreme Court 194)**:

“Judges may, and often do, discuss the matter among themselves and reach a tentative conclusion. That is not their judgment. They may write and exchange drafts. Those are not the judgments either, however heavily and often they may have been signed. The final operative act is that which is formally declared in open court with the intention of making it the operative decision of the court. That is what constitutes the ‘judgment’...”

46. Those observations, though made in a different context, highlight the status of the proceedings that take place before the actual delivery of the judgment. If according to the Supreme Court even the draft judgments, though heavily and often signed and exchanged, are not to be considered as final judgments but only tentative views liable to change, the jottings and notes made by the judges while hearing a case can never, and by no stretch of imagination, be treated as final views expressed by them on the case. Such noting cannot therefore be held to be part of a record ‘held’ by the public authority.

47. Any intrusion in regard to the judicial work even under the Right to Information Act is unnecessary. We are satisfied that at the level of appellate authority **the appellant agreed not to press for this request.**

48. The position generally being so, in the present case, the question is when the power of disclosure of certain information is vested exclusively in a properly constituted judicial body, such as the ITAT, should the disclosure of the same information be made a subject to be determined under the RTI Act. In our view, it is not so. The independence of the judicial authority flows from the discretion given to that authority to take all decisions in matters properly brought within the purview of that authority. For example, the ITAT, as a judicial body, is also

entrusted with the power to authorize disclosure or non-disclosure of a given set of information such as the information asked for by the appellant in the present appeal. In our understanding, it should not be necessary to separate the function of disclosure of information from the general function of that judicial body. In other words, it would not be appropriate for the Commission or any entity functioning as part of the RTI-regime, to pronounce on the disclosure of a given set of information, if it is found that under another law (such as the Income Tax Act), this disclosure function is exercisable as part of the judicial function by a judicial authority, such as the ITAT.

49. It is our conclusion, therefore, that given that a judicial authority must function with total independence and freedom, should it be found that an action initiated under the RTI Act impinges upon the authority of that judicial body, the Commission will not authorize the use of the RTI Act for any such disclosure requirement. Section 8(1) (b) of the RTI Act is quite clear, which gives a total discretion to the court or the tribunal to decide as to what should be published. **An information seeker should, therefore, approach the concerned court or the tribunal if he intends to have some information concerning a judicial proceeding and it is for the concerned court or the tribunal to take a decision in the matter** as to whether the information requested is concerning judicial proceedings either pending before it or decided by it can be given or not.

50. The appellant through his request under the Right to Information Act has sought a copy of the decision of the tribunal in the said appeal case decided by the tribunal. He has also wanted to inspect the case records. CPIO in his reply stated that copies of the order and the inspection of the records can be given and inspection of the case record can be allowed only to the concerned parties or the representatives duly authorized in this behalf. The first appellate authority on the other hand has directed a copy of the order of the tribunal to be given to the appellant but as regards the inspection, no decision has been passed by the appellate authority. However, at the time of hearing, it has been submitted on behalf of the respondents that Rule 35 of the Income Tax Appellate Tribunal

Rules, 1963 provides that an order of the tribunal after it is signed shall be communicated only to the assessee and the Commissioner of Income Tax and there is no provision to give a copy thereof to any other person. Insofar as the inspection of the records is concerned, it has been placed before the Commission that there is an order by the Bench of the ITAT not to allow inspection to the appellant. However, copy of the order has not been filed before us.

DECISION NOTICE:

51: The Commission decides and directs as under:

- (i) Section 4(1) (d) does not apply to a judicial proceedings conducted by a Court or a Tribunal as it refers only to administrative and quasi-judicial decisions of public authorities.
- (ii) The *non-obstante* clause in Section 22 of the Right to Information Act does not, repeal or substitute any pre-existing law including the provisions of the Income Tax Act concerning dissemination of information.
- (iii) The appellant cannot take recourse to the RTI Act to challenge a judicial decision regarding disclosure of a given set of information, which properly belonged to the jurisdiction of that judicial authority. If the appellant is aggrieved with the decision of the ITAT, the remedy lies elsewhere.
- (iv) It is reiterated and made clear that the RTI Act is not intended to come into conflict with a judicial decision regarding disclosure of information. Section 8(1)(b) of the Right to Information Act, 2005 makes it very clear that the information which has been expressly forbidden to be published by any court of law or tribunal cannot be disclosed as any such disclosure is also within the exemption clause.

(v) In the present case, however, though the respondents have submitted during hearing that the Tribunal has passed an order rejecting the request of the appellant for inspection of the document, but supporting documents have not been submitted before the Commission. Under these circumstances, the matter is, therefore, remanded back to the first Appellate Authority with the following directions:-

- a. He will determine whether there is any judicial order of the Tribunal pronounced under the Income Tax Act as regards disclosure of the information sought by the appellant and if it is so, the remedy available to the appellant shall be under the Income Tax law and not under the RTI Act.
- b. If there is no such judicial order from the Tribunal, in that case, **the first Appellate Authority will consider the appeal under the provisions of the Income Tax Act read with the Right to Information Act and will pass a speaking order within a fortnight from the date of the receipt of this order.**

52. The appeal is accordingly remanded to the First Appellate Authority.

(Wajahat Habibullah) **(A.N. Tiwari)** **(Smt. Padma Balasubramanian)**
Chief Information Commissioner Information Commissioner Information Commissioner

Authenticated true copy.

(L.C. Singhi)
Additional Registrar

Note: Additional copies of orders shall be supplied against application and payment of the charges prescribed under the Act to the CPIO of this Commission.