

Designated Appellate Authority: Addl. Commissioner of Income Tax Range – 7(2)

Postal Address: Room No. 626, Aayakar Bhavan, M.K.Road, Mumbai – 400 020.

Date: 06.05.10

Name and

Address of the appellant : Anil Bairwal,
National Coordinator, Association for Democratic Reforms

Name and address of the CPIO: Amit Kumar Singh
Asst. Commissioner of Income Tax – 7(2)
Mumbai

**Date of submission
of RTI request :** 22.02.10

**Date of payment of
Additional fee (if any) :** None

Particulars of the order appealed against :

The information sought has no relationship to any public activity or interest. Thus it does not qualify under provisions of Section 8(j) of the RTI Act.

Brief facts of the case: Applicant had sought information on the following points:

1. Whether Members of Parliament (MP) have filed their Income Tax returns for the five years 2004 to 2009.
 - 1a. The years for which these MPs have not filed their Income Tax Returns.
 - 1b. The details of Income Tax Returns & Assessment Orders for all the years for which these MPs have filed their returns.

The CPIO refused to disclose any of the above information citing sections **8(1)(j)** of the RTI Act 2005.

About the Appellant:

Anil Bairwal is part of Association for Democratic Reforms (ADR) which works for improving governance, democratic, political and electoral process in the country. Earlier also, ADR had filed a Public Interest Litigations (PIL) in Delhi High Court which resulted in the landmark and historic judgment of Supreme Court (March 13, 2003) making it mandatory for candidates contesting elections of State Assemblies and Parliament to disclose their criminal and financial antecedents, by way of a sworn affidavit to be filed as an essential part of the nomination form.

Also, based on an RTI application filed by it to get Income Tax details of the Political Parties, the Information Commission vide its order number *CIC/AT/A/2007/01029 & 1263-1270*; *Date of Decision: 29.04.2008* directed the public authorities (Income Tax Departments) holding Income Tax returns of the political parties to make them available to the appellant.

Grounds for appeal :

1. Section 8 (1) (j) of the RTI Act is not applicable in this case due to the following reasons:

The section reads as follows:-

“Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information”:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

- a) The information in the Tax Returns & Assessment Orders is not the information the disclosure of which would cause unwarranted invasion of the privacy of the parliamentarians. Most of the information requested is already available from a variety of diverse sources. The information about the Assets and Liabilities is easily available from the affidavits that they submit to Election Commission as part of the election processes. The same information is also available on an annual basis from the Lok Sabha/Rajya Sabha Secretariat under the Declaration of Assets and Liabilities Rules 2004. In view of this, it is unreasonable to claim that disclosure would cause unwarranted invasion of the privacy of the parliamentarians.
- b) Parliamentarians are expected and usually claim to work in public interest. They work wholly in public domain by their own choice. Transparency in their working and financial operation is essential in larger public interest. The disclosure of their Tax Returns to general public would promote such transparency and is in public interest. Therefore the information requested should have been provided to the applicant.

- c) According to recent reports of Association of Democratic Reforms (ADR) and National Election Watch (NEW), the average increase in the assets of MPs and MLAs **based on their self declarations** with Election Commission of India (ECI) has been very high. For the Lok Sabha MPs, the average increase was 289% or Rs. 2.9 crores per MP within 5 years. This report has been attached as annexure-3. For the MLAs in Haryana this increase was 388% or Rs. 4.8 crores per MLA , for MLAs in Maharashtra, it was 339% or Rs. 2.45 crores per MLA and for the MLAs in Jharkhand it 3454% or Rs. 58 lakhs per MLA. The results are similar for other elected representatives from other states. Since our MLAs/MPs do not declare their sources of income anywhere, the income tax returns are the only information that people can use to vet the information regarding the asset increases. These reports have generated huge public interest and a few representative newspaper cuttings are attached as an example in annexure-4. Thus, the information of Income Tax details of our MPs and MLAs will be in great public interest and it should be provided to the applicant.
- d) There is also the issue of “Conflict of Interest”. Parliamentarians are also engaged in policy making covering wide spectrum of issues dealing with large amount of public funds. The disclosure of the information of diverse sources of income, tax exemptions & tax deductions received will help to maintain and enhance public confidence and trust in the integrity of Parliamentarians.
- 2) It is also pertinent to note from the judgement of the Supreme Court dated 13.03.2003, on Writ Petition (Civil) No. 515 of 2002 (Association for Democratic Reforms vs. Union of India and another):-

“A member of Parliament or State Legislature is an elected representative occupying high public office and at the same time, he is a ‘public servant’ within the meaning of Prevention of Corruption Act as ruled by this Court in the case of P.V. Narasimha Rao Vs. State [(1998) 4 SCC 626]. They are the repositories of public trust. They have public duties to perform. It is borne out by experience that by virtue of the office they hold there is a real potential for misuse. The public awareness of financial position of the candidate will go a long way in forming an opinion whether the candidate, after election to the office had amassed wealth either in his own name or in the name of family members viz., spouse and dependent children.”

It went on to say that:

“Incidentally, the disclosure will serve as a check against misuse of power for making quick money--a malady which nobody can deny, has been pervading the political spectrum of our democratic nation.”

“‘Assets and liabilities’ is one of the important aspects to which extensive reference has been made in Association for Democratic Reforms case. “

Hence it is imperative to increase transparency of all financial dealings of Parliamentarians as well as maintain and enhance public confidence in them. Therefore, non disclosure of Tax Returns and Assessment orders of Parliamentarians to the public acts as a hindrance to this process.

- 3) It is also pertinent to note the observations of the Apex Court categorically stating the importance of transparency in Union of India v. Association for Democratic Reforms & another (AIR 2002 SC 2112):-

“To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted.”

Hence disclosure of Tax Returns and Assessment orders of Parliamentarians to the public would help increase transparency thereby maintaining and strengthening accountability of Parliamentarians towards the public.

- 4) It is also pertinent to note the recommendations of The National Commission to Review the Working of the Constitution in its report submitted in March 2002:-

“..the political parties as well as individual candidates be made subject to a proper statutory audit of the amounts they spend. These accounts should be monitored through a system of checking and cross-checking through the income-tax returns filed by the candidates, parties and their well-wishers. At the end of the election each candidate should submit an audited statement of expenses under specific heads.”

The National Commission has further suggested that the Election Commission should devise specific formats for filing such statements so that fudging of accounts becomes difficult.

Hence Parliamentarians cannot be insulated from the demands of transparency.

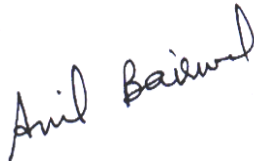
Parliamentarians are being allowed to escape the obligations/norms transparency imposes, and inferentially, escape accountability, even though these Parliamentarians almost always influence and, frequently control, State power. This seems like an unfair proposition— especially in a democracy — as accountability is the underpinning of the actions of all stake-holders who have anything to do with State power.

Thus, the value of assets of Parliamentarians is already in the public domain. Various declarations are made by them to the Election Commission and in the Lok Sabha and Rajya Sabha. However there is no public disclosure of the source of income of Parliamentarians. Moreover an analysis of the asset increase of Members of Parliament (refer to attached report) depicts some figures which seem disproportionate and questionable. There are parliamentarians who have increased their assets more than one thousand times over while in Parliament. Thus there is a need to attain more transparency regarding financial details of parliamentarians. By bringing Tax Returns and Assessment orders of Parliamentarians to the public domain the confidence of the common man in his chosen representatives would increase.

Prayers or relief sought and grounds there of:

Keeping in mind the above grounds for appeal for information related to making public the Income Tax Returns & Assessment orders of Members of Parliament, I appeal to you to kindly direct the PIO/CPIO concerned to provide the requested information to the undersigned at the earliest.

I hereby declare that the aforementioned facts are true to the best of my knowledge.



**Anil Bairwal
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Enclosures:

Annexure 1 - Copy of the original RTI Application

Annexure 2 - Copy of the letter from the concerned CPIO

Annexure 3 - Report on Asset Comparison of Re-elected MPs and MPs who re-contested but lost in Lok Sabha 2009 Elections

Annexure 4 - A sample of news clips showing Asset increases of MLAs/MPs