

**Designated Appellate Authority** : First Appellate Authority  
**Postal Address** : The Additional DIT (Exemptions), Hyderabad  
3<sup>rd</sup> Floor, Annexe Building, Aayakar Bhawan  
Basheerbagh, Hyderabad – 500 004

**Date** : 18/12/2012

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

**Name and address of the PIO** : **Shri Ajit Kumar Laskar**  
Deputy Director of Income Tax (E)-II, Hyderabad

**Date of submission of RTI request** : **11/10/2012**

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

**Particulars of the order appealed against:**

That the information sought by the appellant pertains to confidential information relating to third party which is submitted in fiduciary capacity. Therefore the information cannot be provided to the applicant under sections 8(1)(j) & 8(1)(d) of the RTI Act, 2005. The decision of the CIC in the case of Farida Hoosenally, Mumbai dated 30-3-2006 was relied upon (Annexure-1)

**Brief facts of the case:**

This is with reference to my RTI application No: ADR04/RTI/CR-C/01 dated 11-10-2012 asking for copies of all pages of the IT returns filed by YSR Congress Party for the Assessment years 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13. A copy of the above mentioned RTI application filed on 11/10/2012 is attached herewith. (Annexure-2)

As per the reply from the ITO in letter No: DDIT(E)-II/RTI/2012-13 dated 07/12/2012, I was informed that the said information could not be provided under sections 8(1)(j) & 8(1)(d) of the RTI Act as the information sought by the appellant pertains to third party and is submitted in fiduciary capacity.

**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 a RTI application filed by ADR 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. (Annexure-3)

## Grounds for Appeal:

1. Section 8(1)(j) of the Right to Information Act, 2005 is not applicable here because of the following reasons-

Section 8(1)(j) of the RTI Act, 2005 states:

*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.*

The information sought is in the larger public interest and does not warrant to invasion of the privacy of the individual. In fact, **the Central 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.** It passed the judgement stating that the tax returns of political parties were to be made public and also directed the authorities to furnish copies of the IT returns of the parties to the public.

The Commission in its order said that:

*“In this case, the information asked for is available with the public authority, i.e. Income Tax Department and is asked for by a citizen. The information relates to various political parties and has been provided by them to a Public Authority in obedience to the provisions of law.”*

.....

*“Thus information, which is otherwise exempt, can still be disclosed if the public interest so warrants. That public interest is unmistakably present is evidenced not only in the context of the pronouncements of the Apex Court but also the recommendations of the National Commission for the Review of the Working of the Constitution and of the Law Commission.”*

2. Section 8(1)(d) reads as follows:

*“information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information”*

As the IT Returns of the political parties are not commercial in nature and hence the issue of harming the parties competitive position does not arise, this section is not applicable here.

3. Section 8(1)(e) reads as follows:

*“Information available to a person on his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information”*

A fiduciary relationship implies that a person voluntarily places confidence in another person (in this case, The Income Tax Department), to share rge information with that person. **The information provided by the political party to the Income Tax Department is a statutory requirement and is not done in fiduciary capacity.** It is part of political party's public duty and is done in relation to public and legal activity and not in fuduciary capacity. Hence Section 8(1)(e) is not applicable in this case and the requested information should be given to the applicant.

4. Also, in one of the judgements of CIC (CIC/DS/A/2011/000666 Dated 02/11/2011), in response to the complaint by the appellant (Association for Democratic Reforms), **a show-cause notice was issued to the PIO, Kozhikode for not providing the IT returns of a political party as requested by the appellant.** (Annexure-4)

The Commission in its order said that

*“The Commission expresses surprise at the manner in which the CPIO and the first Appellate Authority while being in the full knowledge of the decision of the Central Information Commission dated 29 April referred to above have chosen to ignore it”*

.....

*“Through this order notice is issued to the CPIO under provisions of Section 20(1) to show cause why penalty should not be imposed upon him for mala-fidely denying the request for information and knowingly obstructing the furnishing of information”*

Since political parties are working in the public domain and using public funds, it hence proves that the RTI and this First Appeal is in the larger public interest. Therefore, as per the directions of the Central Information Commission, the information sought by the appellant is clearly to be made available under the Right to Information Act.

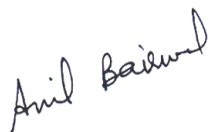
**Prayers or relief sought and grounds thereof:**

Based on the above mentioned judgement of the Central Information Commission, the appellant has already sought information pertaining to Income Tax Returns of various Political Parties from Income Tax Department and has been provided the same for a number of political parties.

Hence keeping in mind the above grounds for appeal and the fact that this information is clearly to be given under RTI as per the order of Central Information Commission, I request 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.

Appellant's signature



Anil Bairwal  
Association for Democratic Reforms  
Table No 4, “Kiwaniis Centre”, 4<sup>th</sup> Floor,  
B-35, Qutub Institutional Area, New Delhi-110016  
Landmark: Near Rockland Hospital  
Phone – 011-65901524

**Enclosures:**

**Annexure 1:** Copy of the letter from the concerned ITO

**Annexure 2:** Copy of the original RTI Application

**Annexure 3:** Copy of the CIC Judgement: *CIC/AT/A/2007/01029 & 1263-1270*

**Annexure 4:** Copy of the CIC Judgement: *CIC/DS/A/2011/000666*

Office of the  
Addl. Director of Income Tax(Exemptions),  
Hyderabad &  
First Appellate Authority  
under RTI Act, 2005.

FNo:Addl.DIT(E)/RTI Appeal/2012-13

Date: 31.12.2012

To  
Sri Anil Bairwal,  
Association for Democratic Reforms,  
Table No.4, "Kiwaniis Centre", 4<sup>th</sup> floor,  
B-35, Qutub Institutional Area,  
New Delhi - 110016  
(Landmark : Near Rockland Hospital)  
Phone - 011-65901524.

Sir,

Sub: Information under RTI Act, 2005 - Information in the case of  
YSR Congress Party for the Asst.Years 2002-03 to 2012-13 -  
Appeal before the First Appellate Authority - Reg.

Ref: Your appeal dated 18.12.2012 against proceedings in  
F.No.DDIT(E)-II/RTI/2012-13 dated 07.12.2012 of DDIT(E)-II,  
Hyderabad & CPIO, received in this office on 26.12.2012.

\* \* \*

Please refer to the above.

2. In connection with your appeal against the proceedings cited above,  
you are required to appear before the undersigned on **10.01.2013 at 3.30 P.M.**  
and produce any documents on which you may rely in support of your request  
for information. Alternatively, you may furnish your written submissions along  
with copies of any documents on which you may rely in support of your appeal,  
to the undersigned on or before the above mentioned date.

3. Please note that in case of non-compliance to the above, no further  
opportunity will be given and your appeal will be decided as per the information  
available on the record and the facts of the case.

Yours faithfully,



(K.E. SUNIL BABU)  
Addl. Director of Income Tax(Exemptions),  
Hyderabad(i/c).