JUDGMENT

1. The CPIO/Dy. Commissioner of Income Tax HQ Exemption, New Delhi has approached this Court challenging the Order dated 27.04.2022, passed by the Central Information Commission (CIC), directing the Petitioner herein to provide the copies of all the documents submitted in the exemption application No. CIT(Exemption), Delhi/2019-20/80G/11528 and copies of the file notings granting the approval relating to PM CARES Fund under the Right to Information (RTI) application filed by the Respondent. The said information was denied to the Respondent by the CPIO and the Appellate Authority on the ground that the information sought is exempted from disclosure under Section 8(1)(j) of the Right to Information Act, 2005.

2. The principle contention amongst others raised in the present Writ Petition is that any information relating to any assessee relating to income

tax can be sought for only in the manner prescribed under Section 138 of the Income Tax Act, 1961 (*hereinafter referred to as "the IT Act"*) and not under the Right to Information Act, 2005 (*hereinafter referred to as "the RTI Act"*). The other argument raised by the Petitioner is that the information sought for by the Respondent is exempted under Section 8(1)(j) of the RTI Act and in any event since the matter relates to PM CARES Fund, it could not have been disclosed without hearing the PM CARES Fund.

3. Notice in the present Writ Petition was issued on 07.07.2022. Pleadings have been completed.

4. Mr. Zoheb Hossain, learned Counsel for the Petitioner, states that under the Income Tax Act, if a person requires any information relating to any assessee received or obtained by the income tax authority in the performance of his functions under the Income Tax Act, then that application has to be made to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner in the prescribed form and the authority to whom the application is filed, has to get satisfied that it is in public interest to furnish the information asked for and only after the authority is satisfied that it is in public interest to reveal information, can that information be supplied to the person making the application. He states that since a specific procedure has been laid down under the Income Tax Act, the CPIO cannot provide the information as it could be contrary to the mandate of Section 138(2) of the Income Tax Act.

5. Learned Counsel for the Petitioner further submits that the information sought for by the Petitioner would be hit by Section 8(1)(j) of the RTI Act as the same relates to disclosure of personal information He

further states that the CIC has not ruled or adjudicated on the question as to what is the public interest involved in the case which would outweigh the protected interest and without adjudicating the said issue, the CIC could not have directed the Petitioner to give the information sought for, more so when the Central Public Information Officer (CPIO), the DCIT (Exemption) and the Appellate Authority have rejected the application of the Respondent on the ground that the information sought is personal in nature. He further states that the CIC has not even gone into the question as to whether the information sought for by the Respondent is personal or not and without deciding the said issue as to whether the information is not personal in nature, thereby the decision of the CPIO and the Appellate Authority is wrong and the CIC ought not to have passed the order which is under challenge in the instant writ petition.

6. Per contra, learned Counsel appearing for the Respondent/Public interest applicant contends that there is an overwhelming public interest in directing the authority to supply the information sought for. He states that the PM CARES Fund has been created to serve the public. He states that the PM CARES Fund is a charitable fund which has been established to provide relief to the public during the Covid-19 Pandemic or any similar emergencies. He contends that the Income Tax Department approved the applications given by the PM CARES Fund for grant of exemption on Income Tax under Section 80G of the IT Act on 27.03.2020. He states that the Respondent wants to know the exact procedure followed by the Income Tax Department in granting such a swift approval and to see whether any rules or procedure were by-passed by the Income Tax Department in granting such approvals. He further states that the information sought for by

the Respondent does not include any personal information. It is also submitted by the learned Counsel for the Respondent that the information sought for by the Respondent can be granted under the RTI Act. He states that there is an inconsistency between the provisions of the RTI Act and the IT Act. He states that Section 22 of the RTI Act provides that the RTI Act will have an over-riding effect over any other statute for the time being in force notwithstanding anything contained in Official Secrets Act. He further states that in any event if there are two methods of getting the same information, one under the Income Tax Act and one under the RTI Act, there is no bar in getting the information by adopting either of the methods. He states that this is not a case where the information sought for by the Respondent cannot be given under the RTI Act and the authorities under the RTI Act are obliged to give the information as sought for by the Respondent under the RTI Act. To substantiate his contention, learned Counsel for the Respondent places reliance on the Judgment passed by the Apex Court in ICSI v. Paras Jain, **(2019) 16 SCC 790,** wherein the person who had approached the authorities under the RTI Act for getting the certified copies of the answer scripts had been denied the said information by the authorities under the RTI on the ground that the Institute of Company Secretaries of India Rules also provide for a procedure for obtaining the answer scripts on payment of fee. The Apex Court, in the said case, rejected the stand of the Institute of Company Secretaries and has held that information can also be given under the RTI Act and it is open for the information seeker to choose either of the available methods to obtain the necessary information by paying the requisite fee prescribed under the procedure under which the information is sought for.

7. Heard the Counsels and perused the material on record.

8. Section 138 of the IT Act reads as under:

> "*138. Disclosure of information respecting assessees.—*
> *(1)*
> *(a) The Board or any other income-tax authority specified by it by a general or special order in this behalf may furnish or cause to be furnished to—*
> *(i) any officer, authority or body performing any functions under any law relating to the imposition of any tax, duty or cess, or to dealings in foreign exchange as defined in 3 [clause (n) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999)]; or*
>
> *(ii) such officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public interest, specify by notification in the Official Gazette in this behalf, any such information 4 [received or obtained by any income-tax authority in the performance of his functions under this Act], as may, in the opinion of the Board or other income-tax authority, be necessary for the purpose of enabling the officer, authority or body to perform his or its functions under that law.*
>
> ***(b) Where a person makes an application to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in the prescribed form for any information relating to any assessee received or obtained by any income-tax authority in the performance of his functions under this Act], the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or***

Commissioner may, if he is satisfied that it is in the public interest so to do, furnish or cause to be furnished the information asked for and his decision in this behalf shall be final and shall not be called in question in any court of law.

(2) Notwithstanding anything contained in sub-section (1) or any other law for the time being in force, the Central Government may, having regard to the practices and usages customary or any other relevant factors, by order notified in the Official Gazette, direct that no information or document shall be furnished or produced by a public servant in respect of such matters relating to such class of assessees or except to such authorities as may be specified in the order. " (emphasis supplied)

9. A perusal of Section 138 (1)(b) of the IT Act indicates that when a person makes an application to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in the prescribed form for any information relating to any assessee received or obtained by any income-tax authority in the performance of his functions under this Act, the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, if he is satisfied that it is in the public interest to do so, furnish or cause to be furnished the information asked for and his decision in this behalf shall be final. Section 138 (2) of the IT Act has a non-obstante clause which states that notwithstanding anything contained in sub-section (1) or any other law for the time being in force, the Central Government may, having regard to the practices and usages customary or any other relevant factors, by order notified in the Official Gazette, direct that no information or document shall be furnished or

produced by a public servant in respect of such matters relating to such class of assessees or except to such authorities as may be specified in the order.

10. The RTI Act also has a non-obstante clause in the form of Section 22, which reads as under:

> "*Section 22. Act to have overriding effect.*
>
> *The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 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."*

11. The Income Tax Act is a special Act governing all the provisions and laws relating to income tax and super-tax in the country. On the other hand, RTI Act is a general Act which deals with the providing of information to citizens to enable them to realize their Right to Information. Information is defined under Section 2(f) of the RTI Act. Under the RTI Act, information is first sought from the public authority and a request for information is given under Section 6 of the RTI Act to the Central Public Information Officer (CPIO) or the State Public Information Officer (SPIO) of the concerned public authority. The RTI application is disposed of in a manner prescribed under Section 7 of the RTI Act. Section 8(1)(j) of the RTI Act provides for exemptions from disclosure of personal information which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the CPIO or the SPIO or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information. Section 11 of the RTI Act provides that where the CPIO or the SPIO intends to disclose

any information or record, or part thereof on a request made under the RTI Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, then the CPIO or the SPIO shall give a notice to the third party to intimate them about the request of information and the fact that the CPIO/SPIO intends to disclose the said information and then take a decision only in the manner prescribed under Section 11 of the RTI Act. Section 11 of the RTI Act reads as under:

> "*Section 11. Third party information.*
>
> ***(1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:***
>
> *Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury*

to the interests of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision." (emphasis supplied)

12. A reading of both the Acts shows that there is an inconsistency between the provisions of the RTI Act and the IT Act. Therefore, the question which arises for consideration is which Act will prevail.

13. Ordinarily, if there are two non-obstante clauses then the latter one prevails over the former. At the same time, the applicability and overriding effect of an Act over other statutes cannot be decided merely by when the concerned Act comes into force and it is for the Courts to discern and interpret as to which Act will prevail over the other. In the present case, in

the opinion of this Court, the IT Act, which is a special Act governing all the provisions and laws relating to income tax and super-tax in the country will prevail over the RTI Act which is in the nature of a General Act.

14. In LIC v. D.J. Bahadur, **(1981) 1 SCC 315,** while dealing with the provisions of LIC and the Industrial Disputes Act on the question relating to the entitlement of bonus, the Apex Court has observed as under:

> "***50***. *The crucial question which demands an answer before we settle the issue is as to whether the LIC Act is a special statute and the ID Act a general statute so that the latter pro tanto repeals or prevails over the earlier one. What do we mean by a special statute and, in the scheme of the two enactments in question, which can we regard as the special Act and which the general? An implied repeal is the last judicial refuge and unless driven to that conclusion, is rarely resorted to. The decisive point is as to whether the ID Act can be displaced or dismissed as a general statute. If it can be and if the LIC Act is a special statute the proposition contended for by the appellant that the settlement depending for its sustenance on the ID Act cannot hold good against Section 11 and Section 49 of the LIC Act, read with Regulation 58 thereunder. This exercise constrains me to study the scheme of the two statutes in the context of the specific controversy I am dealing with.*
>
> ***51***. *There is no doubt that the LIC Act, as its long title suggests, is an Act to provide for the nationalisation of life insurance business in India by transferring all such business to a corporation established for the purpose and to provide for the regulation and control of the business of the Corporation and for matters connected therewith or incidental thereto. Its primary purpose was to nationalise private insurance business and to establish the Life Insurance Corporation of India.*

Inevitably, the enactment spelt out the functions of the Corporation, provided for the transfer of existing life insurance business to the Corporation and set out in detail how the management, finance, accounts and audit of the Corporation should be conducted. Incidentally, there was provision for transfer of service of existing employees of the insurers to the Corporation and, sub-incidentally, their conditions of service also had to be provided for. The power to make regulations covering all matters of management was also vested in appropriate authorities. It is plain and beyond dispute that so far as nationalisation of insurance business is concerned, the LIC Act is a special legislation, but equally indubitably, is the inference, from a bare perusal of the subject, scheme and sections and understanding of the anatomy of the Act, that it has nothing to do with the particular problem of disputes between employer and employees, or investigation and adjudication of such disputes. It does not deal with workmen and disputes between workmen and employers or with industrial disputes. The Corporation has an army of employees who are not workmen at all. For instance, the higher echelons and other types of employees do not fall within the scope of workmen as defined in Section 2(s) of the ID Act. Nor is the Corporation's main business investigation and adjudication of labour disputes any more than a motor manufacturer's chief business is spraying paints!

52. In determining whether a statute is a special or a general one, the focus must be on the principal subject-matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law. In law, we have a cosmos of relativity, not absolutes — so too in life. The ID Act is a special

statute devoted wholly to investigation and settlement of industrial disputes which provides definitionally for the nature of industrial disputes coming within its ambit. It creates an infrastructure for investigation into, solution of and adjudication upon industrial disputes. It also provides the necessary machinery for enforcement of awards and settlements. From alpha to omega the ID Act has one special mission — the resolution of industrial disputes through specialised agencies according to specialised procedures and with special reference to the weaker categories of employees coming within the definition of workmen. Therefore, with reference to industrial disputes between employers and workmen, the ID Act is a special statute, and the LIC Act does not speak at all with specific reference to workmen. On the other hand, its powers relate to the general aspects of nationalisation, of management when private businesses are nationalised and a plurality of problems which, incidentally, involve transfer of service of existing employees of insurers. The workmen qua workmen and industrial disputes between workmen and the employer as such, are beyond the orbit of and have no specific or special place in the scheme of the LIC Act. And whenever there was a dispute between workmen and management the ID Act mechanism was resorted to.

53*. What are we confronted with in the present case, so that I may determine as between the two enactments which is the special? The only subject which has led to this litigation and which is the bone of contention between the parties is an industrial dispute between the Corporation and its workmen qua workmen. If we refuse to be obfuscated by legal abracadabra and see plainly what is so obvious, the conclusion that flows, in the wake of the study I have made, is that vis-a-vis "industrial disputes" at the termination of the*

settlement as between the workmen and the Corporation, the ID Act is a special legislation and the LIC Act a general legislation. Likewise, when compensation on nationalisation is the question, the LIC Act is the special statute. An application of the generalia maxim as expounded by English textbooks and decisions leaves us in no doubt that the ID Act being special law, prevails over the LIC Act which is but general law.

***54**. I am satisfied in this conclusion by citations but I content myself with a recent case where this Court tackling a closely allied question came to the identical conclusion. [U.P. State Electricity Board v. H.S. Jain, (1978) 4 SCC 16 : 1978 SCC (L&S) 481 : (1979) 1 SCR 355] The problem that arose there was as to whether the standing orders under the Industrial Employment (Standing Orders) Act, 1946, prevailed as against Regulations regarding the age of superannuation made by the Electricity Board under the specific power vested by Section 79(c) of the Electricity (Supply) Act, 1948 which was contended to be a special law as against the Industrial Employment (Standing Orders) Act. This Court (a Bench of three Judges) speaking through Chinnappa Reddy, J. observed: [Ibid, pp. SCC p. 27 : SCC (L&S) p 491 : SCR 365-66] [SCC p. 27: SCC (L&S) p. 491, para 8]*

The maxim generalia specialibus non derogant is quite well known. The rule flowing from the maxim has been explained in Mary Seward v. Owner of the 'Vera Cruz' [craies on statute law, 1963 Edn, PP 376-77] as follows:

"Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you

are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so.' "

55*. In J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P. [AIR 1961 SC 1170, 1174 : (1961) 3 SCR 185 : (1961) 1 LLJ 540 : (1960-61) 19 FJR 436] , this Court observed at p. 1174:*

"The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and Judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect.

We have already shown that the Industrial Employment (Standing Orders) Act is a special Act dealing with a specific subject, namely with conditions of service, enumerated in the Schedule, of workmen in industrial establishments. It is impossible to conceive that Parliament sought to abrogate the provisions of the Industrial Employment (Standing Orders) Act embodying as they do hardwon and precious rights of workmen and prescribing as they do an elaborate procedure, including a quasi-judicial determination, by a general, incidental provision like Section 79(c) of the Electricity (Supply) Act. It is obvious that Parliament did not have before it the Standing Orders Act when it passed the Electricity (Supply) Act and Parliament never meant that the Standing Orders Act should stand pro tanto repealed by Section 79(c) of the Electricity Supply Act. We are clearly of the view that the

provisions of the Standing Orders Act must prevail over Section 79(c) of the Electricity Supply Act, in regard to matters to which the Standing Orders Act applies."

I respectfully agree and apply the reasoning and the conclusion to the near-identical situation before me and hold that the ID Act relates specially and specifically to industrial disputes between workmen and employers and the LIC Act, like the Electricity (Supply) Act, 1948, is a general statute which is silent on workmen's disputes, even though it may be a special legislation regulating the take over of private insurance business.

***56**. A plausible submission was made by the appellants, which was repelled by the High Court, that the LIC Act contained provisions regarding conditions of service of employees and they would be redundant if the ID Act was held to prevail. This is doubly fallacious. For one thing, the provisions of Sections 11 and 49 are the usual general provisions giving a statutory corporation (like a municipality or university) power to recruit and prescribe conditions of service of its total staff — not anything special regarding "workmen". This Court in Bangalore Water Supply and Sewerage case (7 Judges' Bench) [(1978) 2 SCC 213, 232 : 1978 SCC (L&S) 215, 234] and long ago in D.N. Banerji v. P.R. Mukherjee (5 Judges' Bench) [(1952) 2 SCC 619 : AIR 1953 SC 58 : 1953 SCR 302 : (1953) 1 LLJ 195] has held that the ID Act applied to workmen employed by those bodies when disputes arose. The general provision would still apply to other echelons and even to workmen if no industrial dispute was raised. Secondly, no case of redundant words arose because the Corporation, like a university, employed not only workmen but others also and to regulate their conditions of service, power was needed.*

Again, in situations where no dispute arose, power in the employer to fix the terms of employment had to be vested. This is a common provision of a general sort, not a particularised provision to canalise an industrial dispute.

57. What is special or general is wholly a creature of the subject and context and may vary with situation, circumstances and angle of vision. Law is no abstraction but realises itself in the living setting of actualities. Which is a special provision and which general, depends on the specific problem, the topic for decision, not the broad rubric nor any rule of thumb. The peaceful coexistence of both legislations is best achieved, if that be feasible, by allowing to each its allotted field for play. Sense and sensibility, not mechanical rigidity gives the flexible solution. *It is difficult for me to think that when the entire industrial field, even covering municipalities, universities, research councils and the like, is regulated in the critical area of industrial disputes by the ID Act, Parliament would have provided an oasis for the Corporation where labour demands can be unilaterally ignored. The general words in Sections 11 and 49 must be read contextually as not covering industrial disputes between the workmen and the Corporation. Lord Haldane had, for instance, in 1915 AC 885 (891) [Watney Combe Reid & Co. v. Berners, 1915 AC 885 : 84 LJ KB 1561 : 113 LT 518] observed that: [Cited in The Political Tradition : The Lord Chancellors, 1912-1940, p. 221]*

"General words may in certain cases properly be interpreted as having a meaning or scope other than the literal or usual meaning. They may be so interpreted where the scheme appearing from the language of the legislature, read in its entirety, points to consistency as requiring modification of what would

be the meaning apart from any context, or apart from the general law."

To avoid absurdity and injustice by judicial servitude to interpretative literality is a function of the court and this leaves me no option but to hold that the ID Act holds where disputes erupt and the LIC Act guides where other matters are concerned. In the field of statutory interpretation there are no inflexible formulae or foolproof mechanisms. The sense and sensibility, the setting and the scheme, the perspective and the purpose — these help the Judge navigate towards the harbour of true intendment and meaning. The legal dynamics of social justice also guide the court in statutes of the type we are interpreting. These plural considerations lead me to the conclusion that the ID Act is a special statute when industrial disputes, awards and settlements are the topic of controversy, as here. There may be other matters where the LIC Act vis-a-vis the other statutes will be a special law. I am not concerned with such hypothetical situations now."

(emphasis supplied)

15. Applying the said ratio to the facts of the present case, Section 138 (1)(b) and Section 138 (2) of the IT Act which lays down a specific procedure relating to disclosure of information relating to a third party under the IT Act would override Section 22 of the RTI Act. The information sought for by the Respondent herein is clearly covered by Section 138(1)(b) of the IT Act. The satisfaction of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is, therefore, necessary before such information can be divulged. That satisfaction cannot be abrogated to any other authority under a general Act for divulging the information sought for.

16. The said judgment has been followed by the Apex Court in Rakesh Kumar Gupta v. Income Tax Appellate Tribunal (ITAT), **2007 SCC OnLine CIC 315.**

17. In Chief Information Commr. v. High Court of Gujarat, **(2020) 4 SCC 702**, when an issue was raised over furnishing of information of certified copies obtained from the High Court of Gujarat by invoking the provisions of the RTI Act, the Apex Court, while resorting to the Gujarat High Court Rules, has observed as under:

> ***"35. The non obstante clause of the RTI Act does not mean an implied repeal of the High Court Rules and orders framed under Article 225 of the Constitution of India; but only has an overriding effect in case of inconsistency. A special enactment or rule cannot be held to be overridden by a later general enactment simply because the latter opens up with a non obstante clause, unless there is clear inconsistency between the two legislations. In this regard, we may usefully refer to the judgment of the Supreme Court in R.S. Raghunath v. State of Karnataka [R.S. Raghunath v. State of Karnataka, (1992) 1 SCC 335 : 1992 SCC (L&S) 286] wherein, the Supreme Court held as under : (SCC pp. 356-57, para 38)***
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> *"38. In Ajoy Kumar Banerjee v. Union of India [Ajoy Kumar Banerjee v. Union of India, (1984) 3 SCC 127 : 1984 SCC (L&S) 355] , Sabyasachi Mukharji, J. (as his Lordship then was) observed thus : (SCC p. 153, para 38)*
>
> *'38. ... As mentioned hereinbefore if the Scheme was held to be valid, then the question what is the general law and what is the special law and which law in case of conflict would prevail would have arisen and that would have necessitated the application of the*

principle "generalia specialibus non derogant". The general rule to be followed in case of conflict between the two statutes is that the later 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.'"

(emphasis supplied)

18. Applying the said analogy to the facts of the present case, Section 138(1)(b) of the IT Act which specifically states that information relating to an assessee can only be supplied subject to the satisfaction of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, would prevail over Section 22 of the RTI Act.

19. The issue raised herein has been settled by a Bench of three Member Bench of the CIC which, in the opinion of this Court, is binding on the Bench which has passed the impugned order. A Bench of three Commissioners of the CIC in G.R. Rawal v. Director General of Income Tax (Investigation), **2008 SCC OnLine CIC 1008**, while considering the very same issue has observed as under:

"***15****. Thus, both the Right to Information Act, 2005 and Section 138 of the Income Tax Act, 1961 deal with disclosure of information. While Right to Information Act is a general law concerning the disclosure of*

information by the public authorities, Section 138 of the Income Tax Act is a special legislation dealing with disclosure of information concerning the assesses. This Commission in "Rakesh Kumar Gupta v. ITAT, decided on 18th September, 2007 decided by a Full Bench, has dealt with the issue of applicability of special law to the exclusion of the general law. The Commission has relied upon the Hon'ble Apex Court's decision in "Chandra Prakash Tiwari v. Shakuntala Shukla — AIR 2002 SC 2322". The following two paragraphs from the said decision of the Commission are pertinent and quoted below:

> *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 nonobstante 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 v. 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 derogate priori - non est novum ut priores leges ad posteriors 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 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 together2; 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."

Propriety demanded that the CIC ought to have followed the opinion of the larger Bench, which is binding on it.

20. The information, as sought for by the Respondent herein, has been sought from the CPIO of Income Tax Department and not from the PM CARES Fund. The Petitioner herein does not treat PM CARES Fund as an authority. Since the information sought for by the Respondent relates to a third party, PM CARES Fund ought to have been heard. Section 11 of the RTI Act prescribes that any information related to a third party can only be divulged after giving notice to the said third party. In view of the above, the CIC ought to have followed the procedure specified under Section 11 of the RTI Act before ordering for grant of information as sought for by the Respondent herein.

21. The reliance placed by the learned Counsel for the Respondent on Paras Jain (supra) would not be applicable to the facts of the present case. In the said case there was no inconsistency between the rules of the Institute therein and the RTI Act. The primary objection in the said case was that the fee prescribed by the Institute was higher and in view of the fact that the same information could have been sought using the forum of RTI, whose fee is slightly lesser, the Apex Court held that it was for the applicant to approach either of the forums. In the present case, the question which arose was whether Section 138(2) of the IT Act which also contains a non-obstante clause would override Section 22 of the RTI Act or not. In view of the fact that Section 138(1)(b) of the IT Act mandates that information relating to an assessee can only be supplied subject to the satisfaction of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, it can be said that Section 138(2) of the IT Act would prevail over Section 22 of the RTI Act.

22. Thus, this Court is of the view, that the CIC does not have the

jurisdiction to direct furnishing of information, provided for in Section 138 of the IT Act. In any case, even if they had the jurisdiction, the failure to give PM CARES, notice of hearing, would in itself have vitiated the impugned.

23. Accordingly, the Writ Petition is allowed and the Order dated 27.04.2022 is set aside. Pending applications, if any, also stand disposed of.

SUBRAMONIUM PRASAD, J

JANUARY 22, 2024
Rahul