

JUDGMENT

1. The petitioner, inter alia, impugns an order dated 14.02.2014 passed by respondent no. 3 – Central Public Information Officer & Administrative Officer, Income Tax Settlement Commission, denying the information, which was earlier directed to be supplied to the petitioner under the provisions of the Right to Information Act, 2005 (hereafter the 'RTI Act').

2. The impugned order indicates that the order dated 26.09.2013 passed by respondent no. 2 pursuant to an application filed by the petitioner under the RTI Act; and the order dated 21.10.2013 passed by respondent no. 4 in an appeal preferred by the petitioner against the order dated 26.09.2013, were set aside as being void ab-initio by respondent no. 1 as an administrative head of the Income Tax Settlement Commission.

3. The principal controversy to be addressed is whether, respondent no.1 could declare by an administrative order, the orders passed by respondent nos. 2 & 4 as being void ab-initio.

4. Briefly stated, the relevant facts necessary for considering the controversy in the present petition are as under:

4.1 The petitioner had filed an RTI application seeking information, inter alia, with respect to disposal and pendency of matters before the Income Tax Settlement Commission. In response to this application, respondent no.2 (CPIO and Joint Commissioner of Income Tax, Income Tax Settlement Commission) passed an order dated 26.09.2013 furnishing certain information to the petitioner. However, by the said order certain other information as sought for was denied. The petitioner preferred an appeal before respondent no 4, who was specified as the First Appellate Authority. The said appeal was partly allowed by an order dated 21.10.2013.

4.2 The petitioner sent a letter dated 23.10.2013 to respondent no.2 seeking compliance of the order dated 21.10.2013, however, received no response thereto. Thereafter, the petitioner sent another reminder dated 09.03.2014 and subsequent thereto received the impugned order on 15.03.2014, which was issued by respondent no. 3 (and not by respondent no. 2 who had passed the earlier order as the CPIO). The impugned order referred to an administrative order passed by the respondent no. 1; the extract of which as quoted in the impugned order reads as under:

"As there has been total non-compliance by the JDIT-II and DIT(Inv) of the provisions of the RTI Act, 2005 and notification by the Chairman, ITSC, New Delhi order No. C26016/1/05/SC-RTI/1178 dated 29/31-07-2013, the orders of even numbers dated 26.09.2013 and 21.10.2013 passed by the JDIT and DIT(Inv) are ab initio void and are annulled. The RTI application will be disposed of in accordance with the provisions of the RTI Act, 2005 and notification by the Chairman, ITSC, New Delhi order No.C-26016/1/05/SCRTI/1178 dated 29/31-07-2013 by the Administrative Officer, (CPIO) ITSC, Principal Bench, New Delhi at the earliest."

5. The learned counsel appearing for the petitioner contends that the orders passed by the CPIO (i.e. respondent no 2) and the First Appellate Authority (i.e. respondent no. 4) could not be denied or declared as void by an administrative order. This is disputed by the learned counsel appearing for the respondents who submits that the Chairman, Income Tax Settlement Commission, being the overall administrative head of the department, would have the inherent power to pass an administrative order in respect of any order passed by the other sub-ordinate officers. He contends that respondent nos.2 and 4 were not the designated authorities under the RTI Act with respect to the information sought by the petitioner since the information pertained to another wing of the department.

6. It is not disputed that the orders dated 26.09.2013 and 21.10.2013 were orders passed under the RTI Act and in that sense were in exercise of statutory powers. I am unable to accept that such orders passed in

exercise of statutory powers could be declared as a nullity or void by an administrative order without recourse to the hierarchy of authorities as specified in the statute – the RTI Act. In the event, the respondent no.1 was of the view that the orders passed by respondent nos.2 & 4 were without authority of law, the proper and the only course would be to file an appeal before the Central Information Commission (hereafter the 'CIC') or any other competent judicial forum. However, the said orders could not be nullified by an administrative order.

7. In *CIT v. Greenworld Corpn.* [2009] 314 ITR 81/181 Taxman 111 (SC), the Supreme Court while considering the role of the superior officers over the income tax authorities exercising power under the Income Tax Act, 1961 held as under:

"55. When a statute provides for different hierarchies providing for forums in relation to passing of an order as also appellate or original order, by no stretch of imagination a higher authority can interfere with the independence which is the basic feature of any statutory scheme involving adjudicatory process."

8. It is well settled that even if an order is a nullity, it would continue to be effective unless set aside by a competent body or Court. In this case respondent no. 1 is not authorised under the RTI Act to interfere with the orders passed under the RTI Act. The Supreme Court in *State of Punjab v. Gurdev Singh* [1991] 4 SCC 1 held as under:

7. ... If an Act is void or ultra vires it is enough for the court to declare it so and it collapses automatically. It need not be set aside. The aggrieved party can simply seek a declaration that it is void and not binding upon him. A declaration merely declares the existing state of affairs and does not 'quash' so as to produce a new state of affairs.

8. But nonetheless the impugned dismissal order has at least a de facto operation unless and until it is declared to be void or nullity by a competent body or court. In *Smith v. East Elloe Rural District Council* [1956 AC 736, 769 : (1956) 1 All ER 855, 871] Lord Radcliffe observed: (All ER p. 871)

"An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity on its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

9. Apropos to this principle, Prof. Wade states [See Wade: Administrative Law, 6th edn., p. 352] : "the principle must be equally true even where the 'brand' of invalidity" is plainly visible; for there also the order can effectively be resisted in law only by obtaining the decision of the court. Prof. Wade sums up these principles: [Ibid.]

"The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another; and that it may be void against one person but valid against another."

10. It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the court within the prescribed period of limitation. If the statutory time limit expires the court cannot give the declaration sought for.'

9. The learned counsel appearing for the respondents further submits that the present writ petition ought not to be entertained as the petitioner would have an alternative remedy to approach the CIC by way of a complaint under Section 18(1) of the RTI Act. The learned counsel has specifically referred to Section 18(1)(f) of the RTI Act which reads as under:

"18. *Powers and functions of Information Commissions.* — (1) Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person, —

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(f) in respect of any other matter relating to requesting or obtaining access to records under this Act."

10. Undoubtedly, the CIC would have the power to enquire into any complaint in respect of matters relating to access of information under the RTI Act. However, it is apparent, in the present, case that respondent no.1 has acted without authority of law in nullifying orders passed under the RTI Act; thus, interference with the impugned order is warranted in these proceedings.

11. The petitioner has specifically pleaded that the website of the Income Tax Settlement Commission had disclosed respondent no.2 as the CPIO. The same has not been disputed by the respondents. It is noted that by virtue of Section 4(1)(b)(xvi) of the RTI Act, the public authority is required to publish the name, designation and particulars of public information officers. Admittedly, the name and designation of respondent no.2 and no other, was published as the CPIO in relation to the Principal Bench of the Income Tax Settlement Commission. In the circumstances, the petitioner has alleged that, in fact, respondent no.2 and respondent no.4 were the respective CPIO and the First Appellate Authority of the concerned public authority. According to the petitioner, the administrative order of respondent no.1 referred to in the impugned order was conjured up only to overreach the order dated 21.10.2013 passed by the First Appellate Authority as the same was found to be inconvenient. The learned counsel for the petitioner has further pointed that the copy of the administrative order has also not been produced by the respondents. In addition, the petitioner has alleged that the impugned order is antedated as although it is dated 14.02.2014, the same was received by the petitioner on 15.03.2014.

12. Although the allegations made by the petitioner may warrant an enquiry, I am not inclined to examine the same in these proceedings and it would be open for the petitioner to approach the CIC under Section 18 of the RTI Act in respect of these allegations. The CIC has the necessary power to initiate an enquiry in respect of such complaints by virtue of Section 18(2) of the RTI Act.

13. In view of the above, the impugned order is set aside. However, it will also be open for the respondents to approach the CIC to assail the orders dated 26.09.2013 and 21.10.2013 passed by respondent no.2 and respondent no.4 respectively. Needless to mention that if an appeal is filed before the CIC by the public authority (the Income Tax Settlement Commission), the same would be considered in accordance with law.