

B. S. K. RAO,
Auditor & Tax Advocate

Tel: 08182-227830 [O]

221273 [R]

BDKRAO, Beside SBI, Tilak Nagar
Shimoga-577201, **KARNATAKA**

November 21, 2011

To,

PRANAB MUKHERJEE,
Finance Minister, Ministry of
Finance, Govt. of India,
North Block, **NEW DELHI.**

Hon'ble Sir,

**Sub: Mandatory provision of certification/reporting under
Income-Tax Act & widening of tax base-Introduced at
your regime only in 1984 by N.K.P.Salve - Reg**

-0-

1. As per **Section 288(2)** of the Indian Income-Tax Act, 1961, **Legal Practitioners, Chartered Accountants & Income-Tax Practitioners** are the three categories of persons authorised to represent the assessee before the Income-Tax authorities. **Cost Accountants and Company Secretaries come under the category of Income-Tax Practitioners.** The process of representation involves preparation & filing of Income-Tax returns for and on behalf of the assessee.

2. In the Finance Act, 1984, section 44AB has been introduced under the Income-Tax Act, 1961 for non-corporate assessee. Under section 44AB, persons having turnover exceeding Rs 40 lakhs (Now 60 Lakhs) per annum, have to submit Tax Audit Report from only **Chartered Accountants compulsorily** along with the return of income. **Tax Audit means verification of facts & figures of the assessee & application of provisions of Income-Tax law to see that allowable claims & deductions are properly made.** Here, application of the provisions of Income-Tax law & disclosure of wrong claims to the assessing authority, in the prescribed report Form No.3CD is the **main criteria** of Tax Audit. (As on date, there is no single instance of utilisation of said Tax Audit Report by the Deptt. for generating extra revenue, because it contains information such as **Nil, NA & Not Possible** only) This mandatory provision of Tax Audit bars Legal Practitioners, Cost Accountants & Company Secretaries to sign such Tax Audit Reports. This amounts to virtual withdrawal of right conferred U/s 288(2) of Income-Tax Act for Legal Practitioners, Cost Accountants & Company Secretaries who are also governed by the professional bodies. **Therefore, this position is comparable to a decree of the Court, which can not be executed.**

3. In Finance Act 1994, Section 44AD, 44AE & 44AF was introduced and applicable to assessee whose gross receipts does not exceed Rs 40 lakhs (Now 60 Lakhs). With effect from Asst. Year 2011-12 Section 44AD has been redefined to include all businesses & omitted Section 44AF. If the assessee claims that profit from such business is less than the minimum prescribed percentage of profit mentioned in these sections, then he is required to maintain books of accounts U/s 44AA & also get them audited U/s 44AB irrespective of monetary limits specified in Section 44AB. Now the situation is so **funny**, assessee **approaching Chartered Accountants can declare less profit & pay less tax** and the assessee approaching Non-CA's have to declare fixed percentage of profit. **This amounts to clear extinction of profession of Legal Practitioners, Cost Accountants & Company Secretaries whose services were already restricted to small business players since introduction of Section 44AB in 1984.**

4. In view of rigid mandatory provision of **certification from only Chartered Accountants in respect of non-corporate assessees**, wherein public money is not involved as capital in their business, Legal Practitioners, Cost Accountants & Company Secretaries find it very difficult to carry on the profession of Income-Tax practice. These circumstances have forced them to confine their work only to Financial & Sales-Tax consultancy services to the assessees and restrained from encouraging the assessees to file Income-Tax returns. In fact, many of the business people is not yet all filing the return even though their turnover exceeds the limits fixed U/s 44AB. **As per my knowledge, only assessees who are seeking financial assistance from banks are filling their return under the Income-Tax Act on date.**

5. The Govt. has totally ignored the genuine fact that **"more persons in the line of Income-Tax practice more revenue"**. We do not understand whether the Govt. wants revenue or dummy assessees base maintaining manipulated books for the purpose of taxation only. **What an Auditor acting in representative capacity can do, if the assessee does not account the transaction itself, in view of restrictions such as section 40A(3) etc.? What the Govt. is going to do with such books of accounts of the assessees written out of selected transactions only for the purpose of taxation?** We the Legal Practitioners, Cost Accountants & Company Secretaries, when we find that profit derived from books maintained by the assessees are found to be falls short of assessees actual investments/ expenditure, we invoke provision of **Section 68/69** & offer the difference for tax, while filing their return of income. This being the case, We do not understand why the Govt. wants such provision of certification from only Chartered Accountants for non-corporates. Now a days, amendment to Indian Income-Tax Act has been made in such a way that **"Indian Assessee"** cannot independently file return of income, as he has to mandatorily furnish **"certificates"** along with the return of income from only Chartered Accountants under various provisions of the Income-Tax Act, if not he will be penalised or restrained from allowing deductions. **Even before the Supreme Court of India, petitioners can independently file their case without the assistance of Legal Practitioner & argue.**

6. In addition to certification from only Chartered Accountants, assessees are also required to sign (DSC for 44AB Cases) an **Affidavit** format called **"Verification"** in the return of income stating that the information given in the return & statements are correct, complete & truly stated (**By this ITO's can invoke section 181 of Indian Penal Code to punish the assessee by way of imprisonment which may extend to 3 years plus fine**). I do not understand who is accountable to the Income-Tax Department, whether **"Assessee"** signing such affidavit in the return or **"Chartered Accountants"** signing such certificates? The fact that Chartered Accountants cannot be made accountable to the Income-Tax Department as they are acting in representative capacity, **appointed and remunerated by interested non-corporate assessee** was well settled in the case of **CIT Vs G.M.Dandekar 22 ITR 235 (Mad.)**. From the above decision of Madras High Court which is still in force, it is clear that Chartered Accountants cannot be made accountable to Income-Tax Deptt. With effect from 1.10.2004 Section 277A has been introduced, which is generally applicable to all class of authorised representatives. Now, both CA's and Non-CA's are made accountable by virtue this section only. **In conclusion only "assessee" are accountable. This being the case why the Income-Tax Department wants such certificates & reports from only CA's? Now the question is:-**

- [a] Is it fair on the part of the **Govt.** to come out with such **mandatory provision**, that too in the "**Revenue**" side ?
- [b] Whether such **mandatory provision** pave the way to **widen tax base** ?
- [c] With these **mandatory provisions** how can the Govt. expect **voluntary compliance U/s 139** of Income-Tax Act ?
- [d] Is it not strange that **Indian Assesseees** should mandatorily approach only Chartered Accountants to pay the **taxes due** to the Government ?

7. The following questions may be put for debate to ascertain the relevancy of Section 44AB of Income-Tax Act for non-corporates:-

- [a] How far it is fair and in the interest of revenue to the Govt. to relay on the "Audit Reports" from Auditors appointed by interested assesseees ?
- [b] Whether the purpose for which Section 44AB was inserted has been achieved with an added benefit of increased revenue collection ?
- [c] Whether the problem of "stop filers" has been solved ?
- [d] In how many cases, the Auditors appointed & remunerated by interested assesseees have issued qualified reports & the same has been found useful to the department ?
- [e] Whether such qualified reports have been utilised by the dept. to increase revenue ? If so, what is the quantum of increased revenue ?

8. In India, Legal Practitioners, Cost Accountants & Company Secretaries outnumber CA's. And it is unfair & against the interest of revenue to confine the profession of Income-Tax practice only to Chartered Accountants through section 44AB & other provisions of Income-Tax Act requiring certification from only Chartered Accountants. As long as the Deptt. indirectly confine Income-Tax Practice only to Chartered Accountants, it is impossible to achieve the motto of widening the genuine tax base with added benefit of increased revenue collection. **In the line of Medical Services, patients have got option to choose either Allopathy, Homeopathy, Ayurvedic or Unani Doctors. Is it not strange, that Indian Income-Tax Deptt. is indirectly inducing the assesseees to approach only Chartered Accountants for the purpose of Income-Tax Law Consultation ?**

9. In every amendment to Indian Income-Tax Act, law has been made more **complicated**, so that it **forces** the assesseees to approach **Tax Professionals** to file their return of income (**Only assessment procedures are simplified**). Certificates to be furnished by Chartered Accountants are also increasing in every amendment. This clearly **indicates** that the **Indian Govt.** is indirectly **inducing** the assesseees to **choose only Chartered Accountants** as their Tax Professionals, even though **Legal Practitioners, Cost Accountants & Company Secretaries** are also authorised to practice Income-Tax Law as provided U/s 288(2) of the Income-Tax Act. As on date total number of certificate to be furnished by Chartered Accountants stands at 25 plus. Now, in view of increased number of Certificates to be furnished by only Chartered Accountants the Non-CA's such as Legal Practitioners, Cost Accountants & Company Secretaries find no place in Income-Tax practice.

10. It is clear from the above circumstances, that the motto of Govt. to **rationalise & simplify Income-Tax Act & citizen charter** are only **GUISE**. Main intention of Indian Govt. is to indirectly allow Institute of Chartered Accountants of India to make use of the Income-Tax Act as platform for generating **employment to members of ICAI** at the cost of revenue & other class of professionals covered under section 288(2) of Income-Tax Act. In India, still Income-Tax has got very good potential to increase its share in the income of the Central Govt. & the rate of tax is also moderate now a days. The time for **takeoff** has come. At this juncture, simplified procedures are required to increase genuine tax base rather than the dummy assessee's base. Further, how far the Govt. can rely on **disinvestment** of its own assets to cover the deficits & what the Govt. is going to do **after extinction** of all such assets. Hence, it is suggested to Indian Govt. not to confine the profession of Income-Tax Law Practice to only one particular class of professionals in the Revenue side, as it amounts to **restriction of growth in "Revenue" also, which is directly proportional to growth in number of such one particular class of professional only.**

11. The Rule 12A of Income-Tax Rules states that any authorised representative coming under section 288 (2) (Viz. CAs, Legal Practitioner, Cost Accountants & Company Secretaries) who has prepared the return of income, has to furnish to the assessing officer certain details including the results of his examination of books of accounts & other documents etc., as mentioned in the said Rules. This Rule was inserted by the Income-Tax Rule 1962 by Notification No. SO 2029 Dt. 13.6.1962. that is to say well before insertion of section 44AB. Here the question arises that, when this Rule is already existing & authorises all the representative (Viz. CAs, Legal Practitioner, Cost Accountants & Company Secretaries) to furnish Audit Report on results of examination of books of accounts & other documents, what was the necessity of inserting section 44AB under the Income-Tax Act.

12. Audit & certification under the provision of Income-Tax Act for non-corporate assessee's is only for limited purpose of Income-Tax. This being the case, why can't the Indian Government authorise Legal Practitioners, Cost Accountants & Company Secretaries governed by professional bodies & standing in profession for certain period (**As in the case of Karnataka Value Added Tax Act**) to sign such Tax Audit Report under section 44AB of Income-Tax Act for limited purpose of Non-Corporate assessee's? This is comparable to appointment of judges in the court of law & such persons are better equipped than raw Chartered Accountants. I personally opine that such restrictions should be put on Chartered Accountants also.

13. In view mandatory provision of certification, only from one class of professional viz., CA's since 1984, still only little over 2% of the Indian population are under the tax net of Income-Tax Department, whereas in developed countries 70% to 80% of population are in the tax net. To overcome with the above problems & to increase genuine tax base of assessee's, the Indian Govt. should make Tax Professionals easily accessible to **"common man"** to match with the slogan of rationalisation & simplification. If only, Non-CA's Tax Professionals are also empowered to issue certificate U/s 44AB of Income-Tax Act at least for non-corporate assessee's by adding below para to Section 44AB, the Govt. can widen the scope of self employment for wide group of persons such as **Legal Practitioners, Cost Accountants & Company Secretaries** with an added & assured benefit of widening tax base & increased revenue collection.


SOLUTION FOR PROBLEM CREATED IN YOUR REGIME IN 1984 SIR

"Provided further that in case of person who is not a body corporate, such person may get his accounts audited by an Legal Practitioner or a Company Secretary or a Cost Accountant standing in profession for not less than 5 (Five) years on the date of such audit, before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such Legal Practitioner or a Cost Accountant or a Company Secretary and setting forth such particulars as may be prescribed" [Further add Legal Practitioner or Cost Accountant or Company Secretary under Notes 3(iii) of Form 3CB]

14. In fact there is no such mandatory provision in any country in the revenue side. Finally, I request Hon'ble Finance Minister to consider the above arguments & make suitable amendment to Income-Tax Act 1961 in the interest of Indian Govt. revenue & Non-CA Tax Professionals of India or else take care of above matter while introducing **DIRECT TAX CODE** in the parliament in future. **Let the problem created in your regime in 1984 come to an end in your regime itself. We the Non-CA Tax Professionals of India who outnumber Chartered Accountants will remember your help for ever Sir.**

With Respects,

Yours Sincerely,



A circular blue ink stamp of B.S.K. Rao, Auditor & Tax Advocate. The stamp contains the following text: "B.S.K. RAO" at the top, "M.No. 443/340/89" in the center, "Tilak Nagar SHIMOGA" below that, and "Auditor & Tax Advocate" around the bottom edge. There are small stars on either side of the name.