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March 13, 2012

To,

Smt.Pratibha Devisingh Patil,
President of India, **New Delhi.**

Hon'ble Madam,

Sub: Widening Tax Base under Income-Tax Act, Hurdles in Entry Door of Section 139 & 144 of Direct Taxes Code - Reg

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1. In Chapter No.7, Manual of Office Procedure Volume-II published by Directorate of Income-Tax, lot about **Widening of Tax Base** has been discussed, **but nowhere discussed about hurdles for compliance in the Entry Door of Section 139.** First of all, Deptt. should admit the fact that compliance U/s 139 in respect of business class comes through Tax Professionals only, which is not so in Indirect Taxes. **Hence, more persons in the line of Income-Tax practice more revenue.** Following genuine points should be considered before taking action for **Widening of Genuine Tax Base** of assessees under Income-Tax Act.

(1) Firstly, Govt. should decide whether it wants **Certificates or Revenue.**

(2) Whether Widening of Tax Base has **direct relation to growth in number of persons engaged in Income-Tax practice** ? If so, who are the persons authorised to practice Income-Tax Law U/s 288(2), assisting for **propagating & compliance** U/s 139. Whether they are increasing/decreasing every year, because of **support/cornering** in the Income-Tax Law or is there any **constraint** in their practice. Even holding CA's are increasing, whether they stick to practice with out seeking employment ?

(3) **Hurdles in the Entry Door Section 139,** analysing the types of hurdles that relates to **Assessees or Tax Professionals.**

(4) Extent of **application & coverage** of Income-Tax Act as compared to Indirect Taxes and **quantum of Tax Professionals required for the same.** Whether, persons on whom full power of **certification and representation** granted in Income-Tax on date, are **evenly spread** through out India to **cover all assessees** ?

(5) **Stop Filers tracking mechanism,** whether Tax Professionals can handle such event better by sending notice on regular basis to their clients, if they are encouraged without bias.

2. Since 1984, amendment to Income-Tax Act made in such a way that **Indian Assessee** can not file return of income with out the assistance of CA's, as he is required to furnish **certificates/reports** along with the return of income from **only Chartered Accountants.** If not he will be penalised or restrained from allowing deductions. In additions to such **certificates/reports,** assessees are also required to sign an **affidavit** called **verification** in the return of income stating that the information given in the returns are correct, complete & truly stated. By this, Assessing Officers can invoke **Section 181 of IPC** to punish the assessee by way of **imprisonment** which may extend to 3 years **(Also See S.277 of IT Act).** Even holding such certificates/reports are required, it should find **utility** in the process of scrutiny. Assessing officers **who are not CA's should not again verify such matters in the process of Scrutiny,** because Government reposed confidence only on Chartered Accountants and the assessees spend in **Thousands/Lakhs** for such **certificates/reports.**

3. ***As per latest data of CBDT published on 16.11.2011 only 59,472 Chartered Accountants*** *are assisting for collection of revenue under Income-Tax with full power of handling 44AB cases & big corporate assessees* ***(See Exhibit-1 Enclosed)****. If the Deptt. indirectly confine Income-Tax practice to one particular class of professionals at the point of collection of tax, it amounts to restriction of growth in revenue also, which is directly proportional to growth in such one particular class of professionals only* ***(Because, compliance U/s 139 caused by Tax Professionals)****. ICAI is not worried about negative impact of certificates/reports for Non-Corporates to Section 139 of Income-Tax Act. If, ICAI is really interested in certificates/reports of Corporates* ***(Must because public money involved)****, why it is strongly objecting for the rotation of auditors in Company Law ? Main intention of ICAI is it to provide* ***full employment*** *to its members at any cost.* ***Here crux of the matter is ICAI is both the regulatory & examination conducting authority****. Hence, it maintains output of members for more market demand and fix* ***Audit Ceiling*** *for each CA to achieve its* ***motto of full employment****. Each CA can undertake* ***45 Tax Audit Assignment*** *irrespective of Corporates or Non-Corporates. In Corporate cases, CA's get fees in the range of* ***Lakhs****, but for Non-Corporate cases they get fees in the range of* ***Thousands*** *only. Hence, CA's make best combination to yield high revenue to* ***Sign Tax Audit Report****. Those Non-Corporate assessees rejected by CA's, approach Non-CA Tax Professionals covered U/s 288(2) for giving compliance U/s 139. Non-CA's have to* ***roam around*** *for CA Signature in search of unused limits of CA's at the time of due date for filing Tax Audit returns.* ***This situation is typical one, prevailing only in India to pay taxes due to Government.***

4. *Due to indirect confinement of Income-Tax law practice only to such one particular class of professionals, Income-Tax law could not be propagated well since 1984. It is evident from the fact, that many business class people still does not have the knowledge of Income-Tax law, declaration of income, assets & what is white money to attract voluntary compliance U/s 139. Non-CA Tax Professionals who are also authorised to practice Income-Tax Law U/s 288(2) are totally cornered by* ***vesting all powers only on Chartered Accountants****. W.e.f. 1-4-2011, S.44AD of Income-Tax Act has been redefined, so as to include all business class having the turnover of Rs. 60 Lakhs & below per annum, within the ambit of Tax Audit U/s 44AB. Now, the assessees approaching CA's can declare less income and pay less tax, just by attaching Tax Audit Report, if they approach Non-CA's, they have to declare fixed percentage of income and pay more tax, because of no authority to attach such Tax Audit Report. Hence, nobody will approach Non-CA Tax Professionals & the authority granted to them U/s 288(2) is* ***redundant. This position is comparable to decree of court, which can not be executed. Let the Govt. collect tax only through such 59,472 CA's and delete Non-CA Tax Professionals from S.288(2) of Income-Tax Act, so that we will drop out from Income-Tax Practice.***

5. *Indian Constitution says that Govt.is* ***for the people & by the people****. In every amendment made to Indian Income-Tax Act since 1984, number of* ***certificates*** *to be furnished by* ***Chartered Accountants*** *are increasing & now stands at* ***43 plus****, even knowing the fact other than CA's are also authorised to practice Income-Tax Law U/s 288(2). Hence, it is clear that Govt. is* ***for the bureaucrats but by the people****. That is why highly qualified* ***scholars and scientists*** *move abroad & settle there to get-rid off from prevailing bureaucracy in India.*

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6. I am a Non-CA Tax Professional, practicing Income-Tax Law since 1981. In the online tax payment pass sheet of my SBI SB A/c sent to Chairman CBDT on 23.02.2012, I have paid Income-Tax on behalf of my clients in the range of Rs 93,55,627/- (This excludes direct payment made by my clients). ***If one such Non-CA can collect so much of tax with the constraint of handling Section 44AB cases, why can't the Govt. think that more persons in the line of Income-Tax Practice more revenue that too knowing the fact that compliance U/s 139 from business class comes through Tax Professionals only.***

7. You may ask me one question, why agitation is not coming from business community, simple answer is, you take the case of ***Ant,*** *if it finds obstruction, it will take deviation. Similarly, assessees will not protest, but they will not come forward for voluntary compliance U/s 139. One more Ex:- there is restriction for cash purchase U/s 40A(3). In case of textile dealers, they have to visit out side state to make bulk purchase. As they are un-known buyers, sellers insist for cash payment & allow huge discount to encourage cash payment. In such case, assessees are forced to exclude both such purchases & sales for the purpose of tax & restrained to record only purchases & sales seen reflected in bank A/c only. Here, what certification from only CA's will do ?* ***It is also evident from the fact, that Govt. is indirectly encouraging assessees to generate black money.***

8. In fact, there is no such mandatory provision of certification & reporting in any country in **Revenue Side,** *which stands at* **43 plus** *in Indian Income-Tax Act. In India little over 2% of population are under the tax net of Income-Tax Deptt., whereas in developed countries 70% to 80% of population are in the tax net. Now, Non-CA's will gradually eliminate from Income-Tax Practice, which will have serious impact on Govt. Revenue in due course.*

I request ***Hon'ble President of India*** *to endorse all my above arguments to the* ***Hon'ble Finance Minister,*** *Govt. of India to take necessary steps to amend Indian Income-Tax Law to* ***Widen Genuine Tax Base of Assessees.*** *(Save India from the Handcuff of ICAI).*

With Respects,

Yours faithfully,

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Encl:-

Exhibit-1 *Number of CA's in Practice Dt.16.11.2011*

Exhibit-1

CA Club

A portal for sharing updates on Taxation, Accounting, Auditing, Co

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NOV 16, 2011

TAX AUDIT DATA PROVIDED BY CBDT : ICAI TO REVIEW ??

Recently, the ICAI had represented before Central Board of Direct Taxes (CBDT) seeking tax audit data based on returns e-filed during the year 2010-11. Reportedly, in response to the representation made to CBDT, the ICAI has been provided with the data relating to number of tax audits conducted by the members along with the membership numbers of the tax auditors.

As per the data provided, the total number of tax audit returns filed in respect of the financial year 2010-11 was 16,16,096 which were conducted by 59,472 auditors. The data so provided is being further processed with regard to fake membership numbers, membership numbers which exceeded the specified number (ceiling) of tax audit assignments, etc. In order to prevent misuse of membership numbers of tax auditors, ICAI is planning that from next year onwards the uploading of tax audit report along with digital signatures should be made mandatory.

Reportedly, the ICAI has also suggested that on the basis of data of practising Chartered Accountants provided by ICAI, a user id and a password may be made available to all practising members so that they can view all the tax audit reports uploaded in their name, which in turn would further curb the malpractice of misusing the details of member by the assessee. A tax audit not done by the member may be then reported by him to the Income-tax Department for the action at its end.

The said suggestion found favor with the Department which has assured that the idea would be taken forward for further consideration.

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