

29-CA/Law/NDM-1134

27th November, 2015

To,

The Principal Chief Commissioner
Income Tax,
Chandigarh

Sub: Only enrolled Advocates are licensed to practice Law in India- Not to allow Chartered Accountants/ Non- Advocates for practice of law in the course of proceedings before revenue authorities falling under the jurisdiction of Principal Commissioner of Income Tax and Commission of Income Tax, Amritsar, Jammu etc.

Dear Sir,

Recently, it has come to our knowledge that a proposal not allowing Chartered Accountants/ Non- Advocates for practice of law in the course of proceedings before revenue authorities falling in your jurisdiction is under consideration.

In this regard, although, comments have not been called for from the Institute of Chartered Accountants of India New Delhi, yet being the statutory body and regulator as well, we wish to bring the following facts for your consideration.

The Institute of Chartered Accountants of India, is a statutory body established by an Act of Parliament namely 'The Chartered Accountants Act, 1949' for regulating the profession of Chartered Accountants. We further, wish to inform you that a significant majority of our membership is in the practice with a good deal of specialisation in the traditional areas of direct/ indirect taxes and in emergent specialism *inter alia*, in financial services, information technology, insurance sector, joint ventures, mutual funds, exchange risk management, risk and assurance services, environment / energy/quality audits, investment counselling, corporate structuring and foreign collaborations etc.

The Institute of Chartered Accountants of India is also engaged in the Nation building by contributing to Central and various State Governments and other regulators viz, the Ministry of Corporate Affairs, Trade Policy division of the Ministry of Commerce and Industry, Central Board of Direct Taxes, Reserve Bank of India, Insurance Regulatory and Development Authority, Comptroller and Auditor General of India, Securities Exchange Board of India etc. to name a few, on

the relevant matter of importance to the profession and having bearing to the public interest.

The education and training programme of the Institute to the qualification of Chartered Accountancy is adequately designed to ensure that our members have in depth knowledge/ experience of accounting, taxation, financing and audit etc. The Institute spares no efforts in keeping pace with the current accounting and auditing practices prevalent throughout the world. An individual who qualifies as a Chartered Accountant has to mandatorily undergo rigorous practical training and has to keep his knowledge updated in the matter relating to accountancy, audit, taxation and corporate laws etc. The area of training covers accountancy, auditing, taxation, company law and other laws. The level of knowledge prescribed in the various subjects covered by the syllabus of the Chartered Accountancy course is 'expert knowledge'.

That Taxation including Indirect Taxes is one of the core-competence areas of Chartered Accountants. In India, Chartered Accountants have expertise in accounting, auditing and taxation, since these subjects are dealt with in great depth in the CA curriculum. Further, Taxation constitutes a significant area of practice of CAs. It is due to this reason the Institute has three separate dedicated committees on taxation, namely, Direct Taxes Committee, Indirect Taxes Committee and Committee on International Taxation. These committees are amongst the most important committees of the Institute and they act as a liaison between the Revenue and the tax payers. The Committees comprise of chartered accountant members of the Central Council, as well as other co-opted members, who are experts in the field of Taxation from across the country. Therefore, it is clear that a chartered accountant, on passing his final examination and completing his articulated training, is an expert in taxation, accountancy, auditing, company law and other laws etc., and he is accordingly fully qualified to practice in these fields. Chartered Accountants are thus well trained in various laws which are applied while conducting cases before various tribunals and other similar authorities.

The provisions of Income tax Act involve computation and analysis of profit and loss account which directly relates to accounting procedure or the recording, presentation or certification of financial facts or data. Chartered Accountants being an expert in understanding and analyzing the financial statements are thus the right person for explaining the related facts in case of dispute.

For application of tax legislations, the prima facie documents are financial statements thus the government has given the task relating to financial statements appropriately to Chartered Accountants.

The matters before the Tax Authorities involve issues and questions mainly relating to accountancy and require knowledge and expertise in accounting matters. This is why many of the leading and most successful tax advocates are also qualified Chartered Accountants. The appearance of Chartered Accountants before tax authorities and tribunals has always been considered to be an integral part of the practice of a Chartered Accountancy ever since 1940s, when the Income

Tax Appellate Tribunal was first set up and when Chartered Accountants began appearing before it.

It is necessary to note that the members of the Institute are thus well trained in the fields of various laws which are applied while conducting the cases before the various tax/revenue authorities. It is in recognition of that crucial fact the various applicable statutes specifically permit Chartered Accountants to appear before authorities and Tribunals constituted under those statutes. A few of such statutes are listed below:-

- (a) *Section 288 of the Income Tax Act, 1961 read with Rule 50 of the Income Tax Rules, 1962*
- (b) *Section 35-Q of the Central Excise Act, 1944*
- (c) *Section 146-A of the Customs Act, 1962 read with Rule 9(a) of the Customs (Appeals) Rules, 1982*
- (d) *Section 15-V of the Securities and Exchange Board of India Act, 1992*
- (e) *Section 22(C) of the Securities Contracts (Regulation) Act, 1956*
- (f) *Section 17 of the Telecom Regulatory Authority of India Act, 1991*
- (g) *Section 432 of the Companies Act, 2013*
- (h) *Regulation 19 of the Company Law Board Regulations, 1991*
- (i) *Section 35 and Section 53 S of the Competition (Amendment) Act, 2007*
- (j) *Rule 61 of the Special Economic Zone Rules, 2006*
- (k) *Before the Central Electricity Regulatory Commission vide Notification No.8/(1)/99/CERC dated 27.8.1999*
- (l) *Airport Economic Regulatory Authority of India Act; in terms of section 30, CA can appear before Appellate Tribunal*
- (m) *The Foreign Exchange Management Act, 1999 — in terms of Sections 16 and 32*

Needless to mention that the Institute, since its inception in the year of 1949, has always remained at the forefront in serving the nation by establishing sound financial prudence within the country.

Further, the Institute has a stringent code of conduct/Ethics which are required to be followed by its members. It is also pertinent to mention that the Chartered Accountants Act, 1949 provides the disciplinary mechanism for making investigation and taking disciplinary action in respect of any complaint/information of professional/other misconduct in respect of a member and/or levy of penalty of permanent removal of name from the register of members and/or levy of penalty up to Rupees Five Lakhs as well depending on the gravity of offence(s). Therefore, the Chartered Accountants are governed by the Chartered Accountants Act, 1949 and the Chartered Accountants Regulations 1988 framed there under and are subject to strict provisions of professional ethics and professional conduct and any deviation there from would make them liable for disciplinary action under the said Act. The ICAI has established a Peer Review Board to ensure compliance with technical standards, acceptance and adherence to quality control policies and procedures by Chartered Accountants firm in the services being rendered by them. Such reviews certainly boost the confidence of society at large in the quality of work of Chartered Accountants in India.

The term 'practice of profession of law' has not been defined under the Advocates Act, 1961. The appearance before the Authorities established under the Income-Tax Act does not amount to 'practice of profession of law'. The Hon'ble Supreme Court in the case of **C. Venkatachalam vs. Ajitkumar C. Shah & Ors. [(2011) 9 SCC 707]**, while considering the provisions of the Consumer Protection Act, 1986, upheld the judgment of the Division Bench of the Bombay High Court, whereby the Hon'ble High Court held that a party before the District Consumer Forum/State Commission cannot be compelled to engage the service of an advocate. The Hon'ble Supreme Court also observed that the High Court was fully justified in observing that the authorized agents do not practice law when they are permitted to appear before the District Forum and the State Commission. Further, the Hon'ble Supreme Court also approved the view taken by the High Court that many statutes, such as, Value Added Tax, Income Tax and Competition Act also permit non-advocates to represent the parties before the authorities and those non-advocates cannot be said to be practicing law.

A perusal of Section 33 of the Advocates Act, 1961 shows that it specifically contemplates and provides that the other statute in question may specifically permit persons other than Advocates to appear before Courts and Tribunals functioning under that statute. Such provisions are to be found in all Central as well as State Acts dealing with various direct and indirect taxes such as Income Tax, Excise Duty, Value Added tax, etc. The Hon'ble Supreme Court in **R.D. Nagpal v. Vijay Dutt [(2011) 12 SCC 498]** considered the provisions of the Consumer Protection Act, 1986. Rule 14(3) of the Consumer Protection Rules, 1987 allowed the parties or their agents to appear before the National Commission, and the expression 'agent' as defined in Section 2(b) of the said Act means a person duly authorised by a party to present any complaint, appeal or reply on its behalf before

the National Commission. The Supreme Court held that given the wide definition of the expression 'agent', there was no reason, if the Commission were otherwise satisfied that a person was authorised on behalf of the appellant, to refuse to allow him to represent it and to cross examine the complainant. The provisions of Section 33 of the Advocates Act of 1961 came up for consideration and it was held as follows:-

6. *The learned counsel appearing on behalf of the respondents has relied upon Section 33 of the Advocates Act, 1961. Section 33 makes it clear that advocates alone will be entitled to practice before any court or before any authority, etc. "except as otherwise provided in this Act or in any other law for the time being in force". The Consumer Protection Act read with the Rules would be "a law for the time being in force".*

Recently, the Lucknow Bench of the Hon'ble High Court of Judicature at Allahabad, in case No. 7116 of 2014, Tax Lawyers Association, Lucknow Thru General Secy. & Anr. vs. State of U.P. Thru Prin. Secy. Tax & Registration, has passed an Order dated 06.08.2014 directing, inter alia, that any person, who is not a registered Advocate, shall not be permitted to appear before the Authority under the U.P. VAT Act. Further, the Hon'ble Bench of the Chief Justice of Lucknow Bench of the Allahabad High Court, after hearing the arguments in detail on 20th August, 2014, modified the above Order dated 6th August, 2014 vacating the stay and consequently, Chartered Accountants continue to be permitted to appear before the authorities under the VAT Act in the State of U.P. The Division Bench of the Hon'ble Chief Justice's Court, in its Order dated 20.08.2014, observed that Section 29 of the Advocates Act, 1961 speaks of there being only one class of persons entitled to practice the profession of law, namely, advocates. Section 33 of the said Act contemplates that only a person who is enrolled as an advocate under the Act will be entitled to practice in any court or before any authority or person. The entitlement to practice under Section 33 of the Advocates Act, 1961 is obviously an entitlement to practice the profession of law but what is more important is that Section 33 recognises that any other provision of law and for that matter, the Act itself may authorize a person who is not enrolled as an advocate under it to practice in any court or before any authority or person. Consequently, there is no question of the ultra vires doctrine being attracted for the simple reason that Section 33 of the Act of 1961 contemplates that any other law may authorize a person who is not enrolled as an advocate under the Act to practice before any court, authority or person.

It is stated that the above matter is pending before the Lucknow Bench of the Hon'ble High Court of Judicature at Allahabad for final hearing.

The Statute only confers on lawyers the exclusive right to practice law. With the passage of time there are a lot of functions which are overlapping with the practice of law and such overlapping functions cannot confer the right on lawyers under the Advocates Act. Any such interpretation will stultify the growth and evolution of society and the rules of effective and expeditious dispute resolution. It

is, therefore, of vital importance to note that Section 33 of the Advocates Act, 1961 itself specifically contemplates and provides that the other statute in question may specifically permit persons other than Advocates to appear before Courts and Tribunals functioning under that statute. Such provisions are to be found in all Central as well as State Acts dealing with various direct and indirect taxes such as Income tax, Excise duty, value added tax etc. Thus, the Income Tax Appellate Tribunal is constituted under the provisions of The Income Tax Act, 1961. Section 288 of the Income Tax Act, 1961 provides for appearance by 'authorised representatives' before any Income-tax Authority or the Income-tax Appellate Tribunal.

Moreover, the matters before the various tax/revenue authorities involving mainly issues and questions relating to Accountancy and require knowledge and expertise in accounting matters. Indeed, even if an advocate appears in such matters, he cannot present his case in the most effective manner without a good knowledge of accountancy. This is why many of the leading and most successful tax advocates are also qualified Chartered Accountants. The appearance of Chartered Accountants before tax authorities and tribunals has always been considered to be an integral part of the practice of a Chartered Accountancy ever since 1940s. As stated above, the Institute spares no efforts in keeping pace with the accounting practices prevalent and those evolving throughout the World. A person who qualifies as a Chartered Accountant is to undergo rigorous practical training spanning three years and has to keep his knowledge updated in the matters relating to accountancy and the applicable laws. In any event, it is entirely for the framers of the various enactments viz. Income Tax Act, 1961, the Companies Act, 2013 etc. to lay down who should be eligible to appear before the Tribunals and authorities constituted under each of these respective enactments. The Income Tax Act and the provisions contained therein as to who can appear in proceedings under those enactments are special provisions of law which would necessarily prevail over the general provisions contained in the Advocates Act.

Each legislation enacted by Parliament or by a State Legislature is an independent code by itself. Parliament and the State Legislature duly take into consideration the various issues involved and incorporate the requirements into the respective legislations. Therefore, to re-write such provisions so as to provide that the appearance by other professionals is for a limited purpose only is totally unwarranted.

That law is a dynamic subject and the growth of trade and commerce and the requirements of revenues of Governments have resulted in the emergence of specialized legislations like the Income-tax Act, the Central Excise Act, 1944 and the Customs Act, 1956 and other various State-Level VAT Legislations. The Constitution of India itself has recognized the importance of the specialized fields of such legislations and has expressly provided for the creation of specialized tribunals which take care of such specialized fields of law. Parliament in its wisdom, while enacting aforesaid legislations have considered all the relevant issues before incorporating the provisions relating to authorized representatives. These legislations specifically allowed professionals other than advocates to be

authorized representatives. This clearly amplifies the point that the legislature is fully conscious of the requirements of the particular specialized legislation. The purpose of establishing various Tribunals is to decide issue on a particular subject by experts in that field and in that direction, specialized Tribunals have been created by the various statutes. If the Chartered Accountants, who for reasons of rigorous practical training and examinations, have acquired expertise in accounting and taxation laws, were not to be allowed to appear before such specialized authorities/Tribunals, the very purpose of establishment of such Tribunals would get defeated. Besides, such restrictions will limit the choice afforded to the affected persons by the statutes to choose their representative.

In the matter of ***Rajkot Engineering Association and Ors. And Tax Advocates Association and Ors.v. Union of India MANU/GJ/0019/1986*** the Gujarat High Court held as follows:

“There is no restriction on the right of the assesseees to select as their own authorised representatives whomever they like whether the same chartered accountants who have carried out the tax audit or other chartered accountants or other Income Tax practitioners....

In the present state of Income Tax law, the interpretation and development of which has become very intricate and complex, it is not difficult to anticipate that a situation has arisen where more and more assesseees would like to be assisted both by the chartered accountants as well Income Tax consultants and practitioners who may be non-chartered accountants in arranging their financial affairs and in the maintenance of their accounts, records and documents for preparation of the returns and in the course of assessment before tax authorities.”

In the above backdrop we are of the view that it would not be appropriate to consider any such proposal which restrains the Chartered Accountants from appearing before the revenue authorities in India particularly when various Central/State legislations including the Income Tax Act, 1961 expressly provide and authorise the Chartered Accountants to appear and represent the cases before the authorities under the Income Tax Act, 1961. Further, we may request you to consider our submissions as above and afford us an opportunity to present our case in person before taking any final decision in this regard. In case your good office needs any further clarifications, we may please be advised.

Thanking you,

Yours faithfully,

(V. Sagar)