No.148/55/2012-SO(TPL) Dt.16.08.2012

**Second Appeal U/s 19(3) of Right to Information Act, 2005**
**before**
**Central Information Commission**
*2nd Floor, B-Wing, August Kranti Bhavan*
*Bhikaji Cama Place, New Delhi-110066*

**Appellant** **November 30, 2012**

**B.S.K.RAO,**
*Auditor & Tax Advocate,*
*BDKRAO, Beside SBI,*
*Tilak Nagar, Shimoga,*
**KARNATAKA-577201.**

*Enclosed Second Appeal U/s. 19(3) of RTI Act against the clubbed order of the First Appellate Authority bearing No.148/60/2012-SO(TPL) dated 08.10.2012.*

**INDEX TO SECOND APPEAL**

**1.** *Index to Appeal* — *No.'s 1*

**2.** *Original Second Appeal with following Exhibits* — *No.'s 2*
- *Exhibit-1 My grievance petition dated 26th February 2012*
- *Exhibit-2 Letter of Law Ministry*
- *Exhibit-3 My RTI Application*
- *Exhibit-4 CPIO Reply to my RTI Application*
- *Exhibit-5 Copy of 1st Appeal filed*
- *Exhibit-6 Copy of 1st Appeal Order*
- *Exhibit-7 CPIO reply to 1st Appeal Order*
- *Exhibit-8 Letter Issued by BCI*
- *Exhibit-9 Proof for No. of CA's in Practice*

**Copy With Respects to:-**

**>Shri.J.Saravanan,**
*US(TPL-III)-Cum-CPIO,*
*CBDT, North Block,*
**New Delhi-110001.**

**>Shri.Rajesh Kumar Bhoot,**
*Director(TPL-III)-Cum-FAA,*
*CBDT, North Block,*
**New Delhi-110001.**

B.S.K.RAO
M.No.
443/340/89
Tilak Nagar
SHIMOGA
Auditor & Tax Advocate

**APPELLANT**

**Place:** *Shimoga*
**Dated:** *30.11.2012*

# Second Appeal

*(U/s 19(3) of Right to Information Act, 2005)*

**Before Central Information Commission, New Delhi**

| | |
|---|---|
| **1. Appellant Details** | : **B.S.K.RAO,**<br>*Auditor & Tax Advocate,*<br>*BDKRAO, Beside SBI,*<br>*Tilak Nagar, Shimoga,*<br>**KARNATAKA-577201.** |
| **2. CPIO & FAA Details** | : **Shri.J.Saravanan,**<br>*US(TPL-III)-Cum-***CPIO,**<br>*CBDT, North Block,*<br>**New Delhi-110001.** |
| | : **Shri.Rajesh Kumar Bhoot,**<br>*Director(TPL-III)-Cum-***FAA,**<br>*CBDT, North Block,*<br>**New Delhi-110001.** |
| **3. Appeal Against** | : *FAA clubbed 4 1st Appeals to common order bearing F.No. 148/60/2012-SO(TPL)Dt.08.10.2012 CPIO issued clubbed reply to the above order bearing F.No. 148/55/2012-SO(TPL)Dt.22.10.2012* |
| **4. Communication Date of FAA** | : *11.10.2012* |
| **5. Reasons for Appeal** | : *Not Satisfied by CPIO Reply* |
| **6. This Appeal Particulars** | : *1st Appeal bearing F.No. 148/55/2012-SO(TPL)Dt.16.08.2012* |
| *RTI Application* | : *Date 24.06.2012 Receipt 17.07.2012* |
| *CPIO Order* | : *Date 16.08.2012 Receipt 01.09.2012* |
| *First Appeal* | : *Date 03.09.2012 Receipt 12.09.2012* |
| *FAA Order (Clubbed)* | : *Date 08.10.2012 Receipt 11.10.2012* |
| *CPIO Reply to FAO (Clubbed)* | : *Date 22.10.2012 Receipt 03.11.2012* |
| **7. Brief facts Leading to Appeal** | : *See Annexure-1* |
| **8. Grounds & Relief Sought** | : *See Annexure-2* |
| **9. Presence for Hearing** | : *Video Conference at NIC, Shimoga* |

## V E R I F I C A T I O N

*I,* **B.S.K.RAO,** *the appellant do hereby declare that what is stated above is true to the best of my knowledge & belief.*

**Place:** *Shimoga*
**Dated:** *30.11.2012*

**Signature of Appellant**

B.S.K.RAO
M.No. 443/340/89
Tilak Nagar
SHIMOGA
Auditor & Tax Advocate

**Annexure to Second Appeal**

**Annexure-1 [Brief Facts Leading to Appeal]**

*1. RTI Application filed to know action taken progress report against my* ***grievance petition*** *addressed to Dr.Manmohan Singh, Hon'ble Minister for Public Grievance & forwarded to CBDT by Law Ministry vide letter No.A-60011/3/2012 Admn.1[LA] Dt.29.03.2012. Copies enclosed as following Exhibits & Marked in Blue Ink.*

*Exhibit-1 My grievance petition dated 26th February 2012*
*Exhibit-2 Letter of Law Ministry*
*Exhibit-3 My RTI Application*
*Exhibit-4 CPIO Reply to my RTI Application*
*Exhibit-5 Copy of 1st Appeal filed*
*Exhibit-6 Copy of 1st Appeal Order*
*Exhibit-7 CPIO reply to 1st Appeal Order*

*2. In RTI Application, I have sought four information. The details of the same is furnished below:-*

*[a]* ***Name & designation*** *of person in CBDT with whom my grievance in question is laying on date.*

*[b] Whether my* ***grievance*** *in the interest of Govt. revenue has been examined in detail, if so, result of examination, If not, reasons recorded for the same.*

*[c] Any of my* ***arguments/averments*** *in my grievance furnished in Para No.1 to 8 convinced for revenue to* ***open its eye*** *for taking necessary steps in the matter, at least in future.*

*[d]* ***Final result*** *of decision & action taken progress report.*

*Reply issued by CPIO against Para No.2 [a] to [d] both before after 1st Appeal* ***does not absolutely revel*** *information sought & hence not satisfied.*

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**Annexure-2 [Grounds & Relief Sought]**

*1. In Para No.2[a] of my RTI Application,* ***I have sought name & designation of person in CBDT with whom my grievance petition is laying on date.***

*In reply to 1st Appeal, CPIO stated that it is* ***not pending on date.*** *Ie, presumed as disposed off. If that is so, CPIO should have furnished proof for disposal on discussing the issues raised in Para No. 1 to 8 of my grievance petition.*

*2. In Para No.2[b] of my RTI Application,* ***I have sought whether my grievance in the interest of Govt. revenue has been examined in detail, if so result of examination, if not reasons recorded for the same.***

*In reply to 1st Appeal, CPIO stated that As regards to result of examination, it may be noted that during budgetary exercises a number of suggestions are received from various stake holders and all the suggestions are discussed and examined in the Finance Ministry. Based on the importance of the suggestion and feasibility of implementation, the Finance Bill containing proposals for amending Income-Tax Act, 1961 & Wealth Tax Act, 1957 is placed before Parliament. No formal record for the discussion & examination in respect of each & every suggestion received is kept. In your case, it was examined by the Finance Ministry and* ***"no merit was found"*** *in it and no record of the same has been kept.*

*In my grievance petition, how indirect confinement of Income-Tax law practice only to Chartered Accountants by way of mandatory CA certification in Income-Tax Act causing* ***strict hurdle for voluntary compliance U/s 139*** *is the* ***main issue*** *in my grievance petition. In fact there is no such certification in taxation law of any country throughout the world. Letter issued by Bar Council of India in this matter enclosed* ***(See Exhibit-8)****.*

***Here below furnished brief facts to show how the main issue of mandatory CA certification in Income-Tax Act is causing strict hurdle for voluntary compliance in Income-Tax Act as well as other Central & State Govt. taxation laws:-***

***[a] U/s 288(2) of Income-Tax Act, Cost Accountants, Company Secretaries, Legal Practitioners & Chartered Accountants*** *are the four class of Tax Professionals authorised to practice Income-Tax law. U/s 139 of Income-Tax Act, compliance of return filing from business class in particular, comes through Tax Professionals only. In the statue book of Income-Tax, certification from only Chartered Accountants commenced in 1984 with introduction of Section 44AB & stands at* ***43 PLUS in numbers on date. Certificate U/s 44AB is retained in statute book since two decades without evaluating its utility/hurdle.*** *These certificates have to be furnished in the course of Income-Tax practice on interpreting Income-Tax law. Here,* ***crux of the matter*** *is Chartered Accountants are fully authorised furnish all* ***43 PLUS certificates & represent assessees*** *before Income-Tax authorities, but Non-CA's who are also covered U/s 288(2) not authorised issue* ***43 PLUS certificates*** *but can only represent assessees. Therefore, this position is comparable to* ***decree of the court which can not be executed.*** *Ie, authority granted U/s 288(2) of Income-Tax Act to Non-CA's* ***infructuous & meaningless.*** *On date, Income-Tax Practice has become domain of only Chartered Accountants & new Non-CA's are not entering Tax Profession to support compliance.*

..3

*[b] As per latest data of CBDT, only 59,472 CA's are practicing Income-Tax laws throughout India* ***(See Exhibit-9)****. Further, there is restriction for issue of S.44AB certificates by each CA at 45 numbers.* ***CBDT has not taken steps to confirm whether present CA's are evenly spread throughout India to cover all cases.*** *In Finance Act, 2012 negative list introduced in Service Tax requiring the assistance of more Tax Professionals, but number of such Tax Professionals have not increased & are stand still. This is how CA certification in Income-Tax Act causing strict hurdle for compliance in other Central and State Govt. taxation laws also.* ***Therefore, in India only little over 2% of population are under the tax net of Income-Tax Deptt., whereas in developed countries 70% to 80% of population are under the tax net.***

*3. In Para No.2[c] of my RTI Application,* ***I have sought that any of my arguments/averments in my grievance furnished in Para No.1 to 8 convinced to revenue to open its eye for taking necessary steps in the matter, at least in future.***

*In reply to 1st Appeal, CPIO stated that* ***information is not available since the query is based on the future event.*** *My query relates both for present & future events, CPIO should have replied to* ***present event part*** *of the query.*

*4. In Para No.2[d] of my RTI Application,* ***I have sought Final result of decision & action taken progress report.***

*In reply to 1st Appeal, CPIO stated* ***"same as reply given to Para No.2[b] of my RTI Application"****. My argument to this appeal is also same as given in Para No.2 above.*

***5. Prayer & Relief Sought***

*Kindly make* ***discussion*** *on the grounds raised in Annexure-2(1) & (2) above to* ***promote transparency & accountability in framing policy, rules & procedure under Income-Tax Act*** *and also:-*

*[a] Direct CPIO to furnish correct, relevant & true information requested in my RTI Application,* ***correlating*** *the same to all issues raised in* ***Para No.1 to 8 of my grievance petition.***

*[b] Direct CPIO to provide information about final results of decision & action taken progress report along with detailed discussion on eight issues raised in my grievance petition, to know* ***how Finance Ministry felt no merit was found in my grievance petition.***

==================================================================

***November 30, 2012*** ***APPELLANT***

B.S.K.RAO
M.No. 443/340/89
Tilak Nagar
SHIMOGA
Auditor & Tax Advocate

F.No.148/55/2012-SO(TPL) Dt.16.08.2012

Exhibit-1

**B.S.K.RAO, B.Com, LL.B,**
Auditor & Tax Advocate

**Tel:** 08182-227830 [O]
BDKRAO, Beside SBI, Tilak Nagar
Shimoga-577201, **KARNATAKA**

**To,**

**Copy to:-**

**February 26, 2012**

**Shri.Manmohan Singh,**
Prime Minister, **New Delhi.**

**Shri.Ashutosh Dikshit,**
Jt. Secretary (TPL-I), **New Delhi.**

**Hon'ble Sir,**

**Sub: Widening Tax Base under Income-Tax Act, hurdles in Entry Door of Section 139 - Complaint on ICAI - Reg**

-0-

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.**

..2

*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 Annexure-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.*

..3

*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 hope that my above arguments will help the concerned Deptt. in CBDT to take necessary steps to amend Indian Income-Tax law to* ***Widen Genuine Tax Base of Assessees.***

***With Respects,***

***Yours faithfully,***

B.S.K.RAO M.No. 443/340/89 Tilak Nagar SHIMOGA Auditor & Tax Advocate

***Encl:-***
*Annexure-1 Number of CA's in Practice Dt.16.11.2011*

***Copy to:-***
>Shri.Pranab Mukherjee, Finance Minister,
>Shri.Salman Khurshid, Law Minister,
>Shri.R.S.Gujral, Revenue Secretary,
>Shri.Mukesh Chand Joshi, Chairman CBDT,
>Shri.Montek Singh Ahluwalia, Planning Commission,
>Shri.Annasaheb Hazare, Indian National Activist,
>Bar Council of India, New Delhi,
>The Institute of Chartered Accountants of India,
>The Institute of Company Secretaries of India,
>The Institute of Cost & Works Accountants of India,
>Shimoga Dist. Chartered Accountants Association,
>Shimoga Dist. Tax Bar Association.

Exhibit-2 17

No. A-60011/ 3 /2012-Admn. I (LA)
Government of India
Ministry of Law and Justice
Department of Legal Affairs

Dated... 29.3.12

To,

Deputy Secretary, Directors Hqrs.
Central Board of Direct Taxes.(IncomeTax)
D/o Revenue, M/o Finance, North Block
New Delhi

Subject: Public Grievance Petition.

Sir,

I am directed to forward herewith the petition (in original alongwith enclosures) dated 26.2.2012..............received from Shri...B.S.K. Rao...................through......................................
vide their ..........................................................................................
on the subject mentioned above.

2. Since, the .M/o.finance.............. is concerned with the subject matter of the above Petition, it is requested that a suitable reply may be sent to the petitioner, under intimation to us.

Yours Faithfully

(Asha Sota)
Under Secretary to the Govt. of India

Copy to:

Sh. B.S.K. Rao
BDKRAO, Beside SBI, Tilak Nagar
Shimoga - 577201
Karnataka

(He is requested to make further correspondence in this regards with the above said authority as the matter does not come under the administrative ambit of this department.)

(Asha Sota)
Under Secretary to the Govt. of India

26/5/12

F.No.148/55/2012-SO(TPL) Dt.16.08.2012

Exhibit-3

**B.S.K.RAO**, B.Com, LL.B,
Auditor & Tax Advocate

**Tel:** 08182-227830 [O]
221273 [R]
BDKRAO, Beside SBI, Tilak Nagar
Shimoga-577201, **KARNATAKA**

**June 24, 2012**

**To,**

**The Public Information Officer,**
Central Board of Direct Taxes,
Deptt. of Revenue,
North Block, **New Delhi-110001.**

**Hon'ble Sir,**

**Sub: Ministry of Law & Justice Letter No.A-60011/3/2012 Admn.1[LA] Dt. 29.03.2012 against my letter dated 26.02.2012 forwarded to your office for suitable reply-Application U/s 6(1) of RTI Act, 2005-Reg**

-0-

**1.** Enclosed copy of above mentioned letter forwarded by Ministry of Law & Justice to your good office along with my **grievance** letter dated 26.02.2012 for your kind perusal.

**2. Kindly provide below information that relates to my grievance letter dated 26.02.2012, forwarded by Ministry of Law & Justice:-**

[a] **Name & designation** of person in CBDT with whom my grievance in question is laying on date.

[b] Whether my **grievance** in the interest of Govt. revenue has been examined in detail, if so, result of examination, If not, reasons recorded for the same.

[c] Any of my **arguments/averments** in my grievance furnished in Para No.1 to 8 convinced for revenue to **open its eye** for taking necessary steps in the matter, at least in future.

[d] **Final result** of decision & action taken progress report.

**3.** I hereby state that the information sought does not fall within the restrictions contained in **Section 8 & 9 of the Act** and to the best of my knowledge it pertains to your good office. I also state that I am the **citizen of India and I am eligible** to seek information under The Right to Information Act, 2005.

**4.** Enclosed Rs 10/- Postal Order bearing No.05F 760371 Dt.14.06.2012 as fees towards my request. I hope that your good office will provide the information requested in **Para No.2 above** at an early date.

**With Respects,**

**Yours faithfully,**

B.S.K.RAO
M.No.
443/340/89
Tilak Nagar
SHIMOGA
Auditor & Tax Advocate

**Encl:-**
>Copy of letter forwarded by Ministry of Law & Justice
>Copy of my grievance dated 26.02.2012

Exhibit-4

F.No.148/55/2012-SO(TPL)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, the 16th August, 2012.

To

Sh B.S.K Rao
Auditor & Tax Advocate, BDKRAO, Beside SBI,
Tilak Nagar, Shimoga,
Karnataka-577201

Subject: Application for seeking information under RTI Act.

Kindly refer to your RTI application dated 24th June, 2012 addressed to the Public Information Officer, Central Board of Direct Taxes, Department of Revenue, North Block, New Delhi-110001, received by this office on 17/07/2012.

2. 2. "As a matter of practice, all suggestions received for amendment to Direct Taxes Laws are examined during the pre-budget and post-budget exercise. The suggestions received from you were also examined during the pre-budget and post-budget examination. The outcome of such examination was reflected in the Finance Bill, 2012 presented before the Parliament."

3. If you are not satisfied with the reply and wish to file an Appeal under the RTI Act, 2005, the Appellate Authority is the Director (TPL-III), R.No. 147-G, Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, North Block, New Delhi-110001.

Yours Faithfully

(J.Saravanan)
Under Secretary (TPL-III)-cum-CPIO

F.No.148/55/2012-SO(TPL) Dt.16.08.2012

Exhibit-5

# First Appeal

(U/s 19(1) of Right to Information Act, 2005)

**Before The Director (TPL-III), CBDT, North Block, New Delhi**

| | | |
|---|---|---|
| **1. Name & address of the appellant** | : | **B.S.K.RAO,**<br>Auditor & Tax Advocate,<br>BDKRAO, Beside SBI,<br>Tilak Nagar, Shimoga<br>**KARNATAKA-577201.** |
| **2. Officer passing the order appealed** | : | **Shri.J.Saravanan,**<br>US(TPL-III)-Cum-CPIO,<br>CBDT, North Block,<br>**New Delhi-110001.** |
| **3. Order against which appeal made** | : | F.No.148/55/2012-SO(TPL)<br>Dated 16.08.2012 |
| **4. Date of communication of order** | : | **01.09.2012** |
| **5. Section under which appeal made** | : | U/s 19(1) of RTI Act |
| **6. Particulars of information sought** | : | See **Annexure-1** Enclosed |
| **7. Grounds of appeal & relief sought** | : | See **Annexure-2** Enclosed |

## V E R I F I C A T I O N

I, **B.S.K.RAO**, the appellant do hereby declare that what is stated above is true to the best of my knowledge & belief.

B.S.K.RAO
M.No. 443/340/89
Tilak Nagar
SHIMOGA
Auditor & Tax Advocate

**Place:** Shimoga
**Dated:** 03.09.2012

**Signature of Appellant**

# *Annexure-1*

## ***Particulars of Information Sought U/s 6(1)***

1. My grievance about widening of Tax Base under Income-Tax Act, hurdles in Entry Door of Section 139 - Complaint on ICAI, addressed to Shri Manmohan Singh, Prime Minister of India, forwarded to CBDT by Ministry of Law & Justice vide **Letter No.A-60011/3/2012 Admn.1[LA] Dt. 29.03.2012** for necessary action **(See Exhibit-A)**

2. I have filed RTI Application Dt.24.06.2012 on the above grievance & sought the following information **(See Exhibit-C)**:-

[a] **Name & designation** of person in CBDT with whom my grievance in question is laying on date.

[b] Whether my **grievance** in the interest of Govt. revenue has been examined in detail, if so, result of examination, If not, reasons recorded for the same.

[c] Any of my **arguments/averments** in my grievance furnished in Para No.1 to 8 convinced for revenue to **open its eye** for taking necessary steps in the matter, at least in future.

[d] **Final result** of decision & action taken progress report.

---

**September 3, 2012**

**APPELLANT**

B.S.K.RAO M.No. 443/340/89 Tilak Nagar SHIMOGA Auditor & Tax Advocate

# *Annexure-2*

## *Grounds of Appeal & Relief Sought*

*1. The information furnished by learned CPIO in RTI order bearing F.No.148/55/2012-SO(TPL) Dt.16.08.2012* ***(See Exhibit-B)****, does not revel information sought by me in* ***Para No.2(a) to (d)*** *of my RTI Application* ***(See Exhibit-C)****.*

*2. It is prayed to direct CPIO to furnish full & exact information covering each point in* ***Para No.2(a) to (d)*** *of my RTI Application. In Finance Bill 2012, following issues in my grievances not touched:-*

- *(a) Hurdles for compliance relating to Non-CA Tax Professionals authorised U/s 288(2) not touched in Finance Bill 2012.*
- *(b) Number of Certificates to be issued by CA's still stands at 43 Plus in Income-Tax Act. There is no such Certificates in any country for tax compliance* ***(Hurdle for compliance)****.*
- *(c) In para No.3 of RTI Order F.No.225/63/2012-ITA.II dated 10th April 2012, revenue admitted the fact that information of wrong claims reported U/s 44AB not collected, but still Section 44AB is retained in statute book since two decades* ***without evaluating its utility****, not touched.* ***(See Exhibit-D)***
- *(d) Scope of assessing officers to once again verify the matter required to be reported by CA's U/s 44AB, in the process of scrutiny assessment, on overtaking S.142(2A)-duplication, not touched.*
- *(e) Scope of CA's making best combination of tax audit assignment to yield high revenue due to tax audit ceiling, affecting non-corporate assessees, not solved.*
- *(f) Because of redefining S.44AD w.e.f.1-4-2011, Non-CA Tax Professionals are totally blocked from Income-Tax practice.* ***This is comparable to decree of the court, which can not be executed.*** *Here, clause should have been de-linked from S.44AB by restricting it to maintenance of books only* ***(See Exhibit-E for reasoning)****.*
- *(g) Govt. is indirectly encouraging assessees to generate black money by retaining S.40A(3) in Income-Tax Act, not touched.*

*It is also prayed to direct CPIO to pin point the out come of examination reflected in Finance Bill 2012 about the issue in question of this RTI Appeal in particular.*

*3. Three institutes, ICAI, ICWAI & ICSI will not provide requisite output of members to meet the requirement gap of Tax Professionals in Indian Economy. It is right time, that Central Govt. should come out with* ***Tax Agent Service Act*** *to generate Tax Professionals by establishing Tax Practitioners Board in lines of Australian Tax Practitioners Board, to seek service under Central & State Govt. tax laws to encourage voluntary compliance.* ***(See Exhibit-F)***

*4. I request you Sir to kindly direct learned CPIO to provide full & exact information sought in RTI Application to* ***promote transparency, accountability in framing laws, rules & policies.***

B.S.K.RAO
M.No. 443/340/89
Tilak Nagar
SHIMOGA
Auditor & Tax Advocate

***September 3, 2012*** ***APPELLANT***

'Exhibit - D'

**BY SPEED POST**

F.No.225/63/2012-ITA.II
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, the 10th April, 2012

| | | |
|---|---|---|
| Name of the Appellant | : | Shri B.S.K. Rao, |
| CPIO | : | Under Secretary (ITA.II)cum CPIO |
| Date of CPIO's Order | : | 15.3.2012 |
| Date of Decision | : | 10.4.2012 |

The appellant filed the present appeal dated 29.3.2012 against the CPIO'S letter dated 15.3.2012. An RTI application was filed by the applicant in the office of CPIO on 6.3.2012 seeking certain information, which was responded by him vide the aforesaid letter, holding that the information sought by the applicant is not available with him.

2. The information in the aforesaid RTI application sought by the appellant is regarding tax audit reports filed by non-corporate tax payers in India. Section 44 AB of Income Tax Act, 1961 casts an obligation on specified categories of taxpayers to obtain and file specified tax audit reports. The appellant desires to obtain the information regarding wrong claims or deductions quantified in such tax audit reports in respect of all non-corporate taxpayers throughout the territory of India. The appellant further desires to know the extent of its utility made by the Income Tax Department for levying tax on the same.

3. CPIO has rejected the application on the ground that such information is not collected by his office and, therefore, cannot be provided. In the present appeal, in the grounds of appeal, the appellant has contended that the Board exercises control over the Assessing Officers and thus should have collected such data. It has further been mentioned that Board should have taken pains to address all Chief Commissioners for such information. I have carefully examined the application, the response and the appeal and find that the matter can be decided on the material available on record. #

4. In the RTI Act, an applicant can seek material information which is available on the records of public authority and is identifiable. It is beyond the scope of Section 2 (f) of RTI Act to collect an information cut and suitably customized as desired by the applicant under the Act. In the present case, CPIO would not be in a position to know the cases where statutory tax audit report has reported wrong claims in each and every case being assessed all over the country. It is also not possible for CPIO to ascertain the public authorities which would hold such information because all the assessing officers would also not be in a position to hold a separate information as is desired by the applicant. In this regard, it is imperative to refer to judgment dated August 9, 2011 delivered by Hon'ble Supreme Court of India in the case of Central Board of Secondary

# Clear evidence for framing policies without evaluating its utility.

Education & Anr. Vs. Aditya Bandopadhyay & Ors. wherein the Hon'ble Supreme Court has found necessary to clear some misconceptions about the RTI Act by making the following observations:

> *"The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act.* ***But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant.*** *A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act."*

5. In view of the above, the decision taken by the CPIO is upheld and appeal of the appellant herein is rejected. In case the appellant is not satisfied with the reply, he may file an appeal with the second appellate authority, Central Information Commission, 'B' Wing, August Kranti Bhavan, Bhikaji Cama Place, New Delhi.

19/4/12

(Ajay Goyal)
Director (ITA.II) & Appellate Authority

Copy to:

1. The Appellant.
2. Under Secretary (ITA.II)-cum-CPIO, Department of Revenue, Central Board of Direct Taxes, New Delhi – to comply as directed in para No. 2 of the order above.

19/4/12

(Ajay Goyal)
Director (ITA.II) & Appellate Authority

Exhibit-6

No.148/60/2012-SO (TPL)
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Direct Taxes)

New Delhi, dated 8th October, 2012

Appellant: Sh. B.S.K. Rao,
BDKRAO, Beside SBI,
Tilak Nagar, Shimoga,
Karnataka - 577201.

CPIO: Shri J. Saravanan,
Under Secretary, US (TPL-III)
Central Board of Direct Taxes

**Appeal order under section 19 of the Right to Information Act, 2005**

Shri B.S.K. Rao ('the appellant') has filed 4 appeals against the orders of Shri J. Saravanan, Under Secretary, US (TPL-III) & CPIO, ('the CPIO') passed on 16.08.2012. As similar grounds have been raised in these appeals, all the four appeals are, therefore, disposed off by this single appellate order.

2. The dates of receiving the appeals in this office and the details of order of CPIO are as under:

| Sl. No. | Date of receiving appeal in this office | No. and date of CPIO's Order |
|---|---|---|
| 1. | 12.09.2012 | F. No.148/55/2012-SO(TPL) dated 16.08.2012 ✓ |
| 2. | 12.09.2012 | F. No.148/56/2012-SO(TPL) dated 16.08.2012 |
| 3. | 12.09.2012 | F. No.148/57/2012-SO(TPL) dated 16.08.2012 |
| 4. | 12.09.2012 | F. No.148/58/2012-SO(TPL) dated 16.08.2012 |

3. The detail of information requested by the appellant and the information provided by the CPIO in the appeals mentioned in table at para 2 above are as under:

Relating to this Appeal →

I. In the appeal against the order of CPIO No. F. No.148/55/2012-SO(TPL) dated 16.08.2012, mentioned at Sl. No.1 in the table at para 2 above, the appellant has requested for following information in the application dated 24.06.2012 filed before the CPIO:-

"(a) *Name & Designation of person in CBDT with whom my grievance in question is laying on date.*

(b) *Whether my grievance in the interest of Govt. revenue has been examined in detail, if so, result of examination, If not, reasons recorded for the same.*

(c) *Any of my arguments/averments in my grievance furnished in Para No.1 to 8 convinced for Revenue to open its eye for taking necessary steps in the matter, at least in future.*

(d) *Final result of decision & action taken progress report."*

In response, the CPIO has provided following information in his order No.148/55/2012-SO(TPL) dated 16.08.2012:

*"As a matter of practice, all suggestions received for amendment to Direct Taxes Laws are examined during the pre-budget and post-budget exercise. The suggestions received from you were also examined during the pre-budget and post-budget examination. The outcome of such examination was reflected in the Finance Bill, 2012 presented before the Parliament."*

II. In the appeal against the order of CPIO No. F. No.148/56/2012-SO(TPL) dated 16.08.2012, mentioned at Sl. No.2 in the table at para 2 above, the appellant has requested for following information in the application dated 22.06.2012 filed before the CPIO:-

"(a) *Name & designation of person in CBDT with whom my grievance in question is laying on date.*

(b) *Whether my grievance in the interest of Govt. revenue has been examined in detail (Para wise) with the intention of legislature in statute book of Income-Tax Act, if so, result of examination, If not, reasons recorded for the same.*

(c) *Current status of letter bearing F. No.225/168/2000/ITA.II/16.10.2000 issued by US (ITA.II) enclosed as Exhibit-1 to my letter dated 22.2.2012 forwarded by Ministry of Law & Justice.*

(d) *Final result of decision & action taken progress report."*

In response, the CPIO has provided following information in his order No.148/56/2012-SO(TPL) dated 16.08.2012:

*"As a matter of practice, all suggestions received for amendment to Direct Taxes Laws are examined during the pre-budget and post-budget exercise. The suggestions received from you were also examined during the pre-budget and post-budget examination. The outcome of such examination was reflected in the Finance Bill, 2012 presented before the Parliament."*

III. In the appeal against the order of CPIO No. F. No.148/57/2012-SO(TPL) dated 16.08.2012, mentioned at Sl. No.3 in the table at para 2 above, the appellant has requested for following information in the application dated 23.06.2012 filed before the CPIO:-

"(a) *Name & designation of person in CBDT with whom my grievance in question is laying on date.*

(b) *Whether my grievance/suggestions in the interest of Govt. revenue has been examined in detail, if so, result of examination, If not, reasons recorded for the same.*

(c) *Final result of decision & action taken progress report."*

In response, the CPIO has provided following information in his order No.148/57/2012-SO(TPL) dated 16.08.2012:

*"As a matter of practice, all suggestions received for amendment to Direct Taxes Laws are examined during the pre-budget and post-budget exercise. The suggestions received from you were also examined during the pre-budget and post-budget examination. The outcome of such examination was reflected in the Finance Bill, 2012 presented before the Parliament."*

IV. In the appeal against the order of CPIO No. F. No.148/58/2012-SO(TPL) dated 16.08.2012, mentioned at Sl. No.4 in the table at para 2 above, the appellant has requested for following information in the application dated 04.07.2012 (mentioned as 17.06.2012 in the CPIO's order) filed before the CPIO:-

"(a) *Name & designation of person in CBDT with whom my grievance in question laying on date.*

(b) *Whether my arguments/averments furnished in my letter dated 21.11.2011 addressed to Finance Minister in Para No.1 to 14 has been examined in detail. If so, result of examination, if not reasons recorded for the same.*

(c) *Any of my arguments/averments furnished in Para No.1 to 14 of my letter mentioned in 2[b] above convinced to revenue to open its eye for taking necessary steps in the matter, at least in future under Direct Taxes Code, 2010.*

(d) *Reply sent to Prime Minister, who is in-charge of Public Grievances against PMO ID No.7/3/2011-PMP 4/34284 dated 12.12.2011. If not reasons recorded. (See Exhbit-2)*

(e) *Final result of decision & action taken progress report against para-wise arguments/averments furnished in Para No.1 to 14 of my letter mentioned in 2[b] above."*

In response, the CPIO has provided following information in his order No.148/58/2012-SO(TPL) dated 16.08.2012:

*"As a matter of practice, all suggestions received for amendment to Direct Taxes Laws are examined during the pre-budget and post-budget exercise. The suggestions received from you were also examined during the pre-budget and post-budget examination. The outcome of such examination was reflected in the Finance Bill, 2012 presented before the Parliament."*

4. The common grievance of the appellant in his all the four appeals mentioned above is that the information furnished by the CPIO does not fully reveal the information sought by him in the applications filed by him. The appellant, therefore, requested that the CPIO may be directed to furnish information covering each point of his applications.

5. A perusal of the information furnished by the CPIO indicates that the CPIO has not furnished point-wise information to the appellant covering each point of the appellant's applications mentioned above. The CPIO is, therefore, directed to furnish point wise information, which is available with him, in respect of appellant's applications [mentioned at para 3(I), 3(II), 3(III) and 3(IV) above] within 15 days from the date of receipt of this order.

(Rajesh Kumar Bhoot)
Appellate Authority under the RTI Act &
Director (TPL-III)

Copy to:

1. Sh. B.S.K. Rao, appellant.
2. Under Secretary (TPL-III)-cum-CPIO with respect to para No. 5 above.

Exhibit - 7

**RTI MATTER**
**SPEED POST**

F.No.148/55/2012-SO(TPL)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
***

New Delhi, dated 22nd October, 2012

To

Shri.B.S.K.Rao,
Auditor & Tax Advocate, BDK Rao, Beside SBI,
Tilak Nagar, Shimoga,
Karnataka – 577201.

Sir,

Sub: Appeal Order under section 19 of the Right to Information Act, 2005
Ref: Appellate Authority order vide F.No. 148/60/2012-SO(TPL) dated 8th October, 2012.

Kindly refer to the above.

2.In para 5 of the above mentioned order, the appellate authority has directed to furnish point wise information, which is available in this office in respect of appellant queries mentioned at para 3(I), 3(II), 3(III) and 3(IV) of the appellate order.

3. The point wise information available in this office in respect of para 3(I) mentioned in the above mentioned order are as follows:

Relating to this Appeal

(a) Not pending on date.
(b) As regards to result of examination, it may be noted that during budgetary exercises a number of suggestions are received from various stake holders and all the suggestions are discussed and examined in the Finance Ministry. Based on the importance of the suggestion and feasibility of implementation, the Finance Bill containing proposals for amending Income-tax Act, 1961 and the Wealth-tax Act, 1957 is placed before the Parliament. No formal record for the discussion and examination in respect of each and every suggestion received is kept. In your case, it was examined by the Finance Ministry and no merit was found in it and no record of the same has been kept.
(c) The information is not available since the query is based on the future event.

(d) Same as para (b).

4. The point wise information available in this office in respect of para 3(II) mentioned in the above mentioned order are as follows:

(a) Not pending.
(b) Same as para 3(b)
(c) The current status of letter bearing F.No.225/168/2000/ITA.II dated 16th day of October, 2000 issued by US(ITA.II) has been forwarded vide F.No.148/23/2012-SO(TPL) dated 9th July, 2012 for taking necessary action.
(d) Same as (b)

5.The point wise information available in this office in respect of para 3(III) mentioned in the above mentioned order are as follows:

(a) Not pending.
(b) Same as para 3(b)
(c) Same as (b)

6. The point wise information available in this office in respect of para 3(IV) mentioned in the above mentioned order are as follows:

(a) Not pending.
(b) Same as para 3(b)
(c) Same as 3(c)
(d) Your grievance has been taken as a suggestion and examined as mentioned in para 3(b) and the individual reply has not been sent every suggestions.
(e) Same as (b).

Yours faithfully,

(J.Saravanan)
Under Secretary(TPL-III)-cum-CPIO

Copy to

The Director(TPL-III)-cum-Appellate Authority under the RTI Act.

Sd/-
(J.Saravanan)
Under Secretary(TPL-III)-cum-CPIO

भारतीय विधिज्ञ परिषद् Exhibit - 8

# BAR COUNCIL OF INDIA

(Statutory Body Constituted under the Advocates Act, 1961)

जे. आर. शर्मा
सचिव

J. R. SHARMA
MA, B.Ed., LL.B., LL.M., MBA
Secretary

21, राउज़ ऐवन्यू इन्सटीटूशनल एरिया
नई दिल्ली - 110 002

21, Rouse Avenue Institutional Area
New Delhi - 110 002

**Date: 19.10.2012**

**BCI:D: 4974 /2012**

**To,**

1. **Central Board of Direct Taxes**
   **North Block,**
   **Delhi – 110001.**

2. **Ministry of Law and Justice,**
   **Government of India**
   **Shastri Bhavan, New Delhi**

**Sub.: Forwarding of representation received from Mr. Srikrishan, Advocate & Tax Practitioner.**

**Ref.: CIC Order in Case No.CIC/SS/C/2012/000647 dated 18.09.2012 in the matter of Mr. Srikrishan Vs. Bar Council of India.**

Sir,

I am forwarding herewith a representation dated 08.02.2012 received from Mr. Srikrishna, Advocate & Tax Practitioner, Vasudeva Nilaya, 5th Cross, Basavanagudi, Shimoga, Karnataka – 577201. Letter received from Mr. Srikrishna is self-explanatory. It has been correctly stated by the petitioner the introduction of Section 44AB has been introduced by vested interest with intent to block Non-CA's practicing Income Tax Law at original side.

In view of the above, Central Board of Direct Taxes, Department of Revenue, Ministry of Law and Justice should authorized to sign and furnish the Tax Audit Report under Section 44 AB of Income Tax to Legal Practitioner also.

Thanking you,

**Yours sincerely,**

**(J. R. Sharma)**
**Secretary**

**Encl.: As above**

**Copy to: -**

**Mr. Srikrishna,**
**Advocate & Tax Practitioner,**
**Vasudeva Nilaya, 5th Cross,**
**Basavanagudi, Shimoga,**
**Karnataka – 577201.**

Exhibit-9

# CA Club

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



**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.



> CBDT, ICAI, News

## 0 Comments: