



**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**  
(Set up by an Act of Parliament)

**ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT 1949 READ WITH RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATION OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.**

**File No. : PR/167/15/DD/154/15/DC/754/2018**

**In the matter of :**

**Shri Rajendra Patnaik  
I/C, D.I.G. of Police  
EOW/STF, CID, CB, Odisha  
Qr. No. D-127  
BJB Nagar, Museum Area  
Near Kalpana Square  
BHUBANESHWAR-751 003**

**.....Complainant**

**Versus**

**CA. Deba Prasad Misra, (M. No.062771)  
Plot No. 85, Sector 5,  
Niladri Vihar,  
BHUBANESHWAR- 751021**

**.....Respondent**

**Members Present:**

**CA. Prafulla Preamsukh Chhajed, President  
Smt. Anita Kapur, Member (Govt. Nominee)  
Shri Ajay Mittal, IAS (Retd.), Member (Govt. Nominee)  
CA. Debashis Mitra, Member**

**Date of Final Order: 16<sup>th</sup> July 2019**

**Place of Final Order: Kolkata**

1. Vide report dated 11.01.2019 (copy enclosed), the Disciplinary Committee was of the opinion that CA. Deba Prasad Misra (M. No.062771) is **GUILTY** of professional and/or "other misconduct" falling within the meaning of Clause (10) of Part I of the Second Schedule and Clause (2) of Part-IV of First Schedule to the Chartered Accountants Act, 1949 with respect to the allegations relating to misappropriation of Rs 40,00,000/- which was given to him by M/s Vista Group of Companies (hereinafter referred to as "**the Companies**") for depositing with Income Tax Department towards TDS for the FY 2010-2011 & 2011-2012.



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2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 28<sup>th</sup> June 2019 was addressed to him thereby granting him an opportunity of being heard in person and/or to make a written representation before the Committee on 16<sup>th</sup> July 2019 at Kolkata.

3. The Respondent did not appear before the Committee but gave his written representations vide e-mail dated 15<sup>th</sup> July 2019. The Respondent in his representation, inter alia, refuted the allegation that he had never deposited the said amount with Income Tax department and misappropriated the entire amount. In this regard, he submitted that affidavit dated 12.03.2013 before the notary and Indemnity Bond was relied upon but according to the Complainant an amount of Rs. 68,029,385/- was advanced to the Respondent during Financial Year 2010-11 to 2012-13 for which the Company took , an Indemnity Bond for Rs. 40,00,000/-. However the basis for accepting the Indemnity Bond for Rs. 40,00,000/- by the Company instead of the whole alleged amount could not be understood. He further explained the allegedly compelling circumstances which then prevailed due to which the TDS amount could not be deposited within the prescribed time stating that unless the full particulars of payees like name, address, PAN, date of payment/Date of credit were provided by the Company, TDS deposit or TDS return could not be filed in the age of E-filing as the primary and absolute responsibility of providing all the relevant particulars of TDS Payee along with advance to the consultant/auditor rest on the management before expecting proper compliance. Further as regard non-maintainability of the client's money in a separate bank account, he stated that the same was not much practicable for him as he was a very small practitioner and all the small payments for tax and ROC payments were made online and majority of his clients were small enterprises who did not have online banking facility for which they requested him to make payments on their behalf. He further stated that it was not possible to open a separate bank account for each client when the amount required for opening each bank account was Rs. 5000/- to Rs. 10,000/- and thus the violation was required to be judged from the point of view of a small low level practitioner having a number of small clients. Therefore, non-maintainability of the client's money in a separate bank account was a mere technical breach of law or failure. He further admitted his mistake that he should not have signed the legal documents without reading them thoroughly and understanding their legal implication.

4. The Committee had considered the written submissions made by the Respondent and noted that the Respondent acted as the auditor, the tax consultant and was also responsible for depositing taxes and other dues to various regulations on behalf of the Companies for the F.Y. 2009-10 to 2012-13. It was stated that as auditor he was supposed to receive Rs 88,858/- as evident from



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audited accounts. The Complainant had informed that the Respondent had received Rs. 68,29,385/- through cheque/RTGS in his Axis Bank account and investigation of the Complainant department revealed that such amount was not deposited with Income Tax Department. He had taken from the Company Rs. 40,00,000/- on various occasions for deposit of Tax deducted at Source (TDS) which he misappropriated. The same was admitted by the Respondent in an affidavit sworn by him on 12.03.2013 before the notary Jitendra Dash, Bhubaneswar and the Respondent also gave an Indemnity Bond under his signature wherein he stated that he had not deposited the TDS amount and assured to return the said amount of Rs. 40,00,000/- (forty lakhs) which he had misappropriated.

5. As regards the charge of misappropriation of the said amount, the Committee during hearing in the matter asked the Respondent to explain in detail with evidence that amount of Rs.40 lakhs was received by him over a period of time as claimed by him and that the efforts made by him to repay the said amount to the Company to which he had not given any substantiated reply. He only reiterated his earlier defence that the said amount of Rs. 40 Lacs was not credited to his account on a single occasion and the said amount was transferred over a period from 03rd Nov, 2010 to 11th Sep, 2012 against various statutory deposits with ROCs, tax payment of Group Companies/their directors. The Respondent also stated that numerous withdrawal entries in Axis Bank Current Account under the heading of Internet tax payment would establish that he had paid taxes online on behalf of the Company/its directors from his current account. However he did not furnish any specific evidence to prove the same. The Committee further noted that the Respondent had furnished copies of challan for tax payments amounting to Rs. 6,56,157/- in favor of various government authorities on behalf of the Company and its directors and as per the Complainant, the Respondent had made a deposit of only Rs. 24,03,080/- though he had received Rs. 68 lakhs for such payments. It was thus viewed that even if such payments of Rs. 6,56,157/- against tax challan were considered to have been done apart from Rs 24 lakhs, still the amount claimed to have been paid by the Respondent was less than the alleged amount of Rs. 40 lacs. The Respondent also submitted that he had incurred certain amounts and made payments to professionals like Company Secretary for ROC work, accountant of the Company, other agencies for E-Filing of TDS returns etc. However, it was noted that no specific details viz the bills, payment details, evidences thereof, were provided by the Respondent.

6. The Committee also noted the submissions of the Respondent wherein he had stated that the group Company had collected about 40 Crores from public and without returning the money to the depositors, the directors of the Company had absconded, offices were shut and the Respondent



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was arrested by EOW/CID/Crime Branch, Odisha. The Court granted bail to the Respondent on taking a cash security deposit in form of special term deposit in nationalized bank to the tune of Rs. 40 lacs in name of any of the family members but pledged in favor of 1st Additional District Judge cum Designated Court, Cuttack till final disposal of the case. Accordingly, he submitted that he had deposited the said amount in the name of Ms. Gayatri Mishra, (Respondent's wife) duly pledged in the name of 1st Additional District Judge cum Designated Court, Cuttack and letter issued by the bank was submitted as documentary evidence. The Respondent thus stated that he had deposited the said amount of Rs. 40 lacs in favor of the Court, as Vista Group of Companies had closed its operations as well as their bank accounts by that time. The Committee in this regard was of the view that any such amount deposited to seek bail cannot be considered as repayment of amount, which the Respondent had allegedly misappropriated.

7. The Committee noted that as regard the charge of non-maintainability of the client's money in a separate bank account, the Respondent had submitted that the said irregularity was a mere technical breach of law or failure and considering his situation that he was small low level practitioner having a number of small clients, the same was not possible as for opening a bank account an amount of Rs. 5000/- to Rs. 10,000/- was required. In this regard the Committee was of the view that since the amount involved in the extant matter was material, the Respondent was required to keep this money in separate Bank account in compliance with the provisions of Clause (10) of Part-I of Second Schedule to the Chartered Accountants Act, 1949.

8. Thus upon overall consideration and looking in to the facts of the case, the Committee noted that the plea of the Respondent that the company collected Rs. 40 crore from the public and its director absconded or that the Company did not provide him details of payees like name, address, PAN, date of payment due to which he failed to deposits TDS with the Income Tax Department was not acceptable. It was viewed that had the Respondent discharged his duties diligently, he would have deposited the said amount in separate account and such condition would have not arisen. In the absence of due diligence on part of the Respondent and also his failure to explain with evidence that amount of Rs.40 lakhs was received by him over a period of time as claimed by him and that the efforts were made by him to repay the said amount to the Company, it was viewed that the Respondent had misappropriated the amount which did not belong to him. Further he had also failed to keep the money received from the Company in separate Bank account as per the provisions of Clause (10) of Part-I of Second Schedule to the Chartered Accountants Act, 1949.



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9. The Committee was thus of the opinion that the misconduct on the part of the Respondent had been established within the meaning of Clause (10) of Part I of the Second Schedule and Clause (2) of Part-IV of First Schedule to the Chartered Accountants Act, 1949 and keeping in view the facts and circumstances of the case as aforesaid, ordered the removal of name of Respondent CA. Deba Prasad Misra, (M. No.062771) from Register of Members for a period of 10 years along with imposition of penalty of Rs. 1 (one) Lakh and in event of non-payment of said penalty, removal of name be further increased for a period of 6 (six) months.

**Sd/-**

**CA. Prafulla Premsukh Chhajed,  
Presiding Officer**

**Sd/-**

**Smt. Anita Kapur  
Member, (Govt. Nominee)**

**Sd/-**

**Shri Ajay Mittal  
Member (Govt. Nominee)**

**Sd/-**

**CA. Debashis Mitra  
Member**

**Date: 16<sup>th</sup> July 2019**

**Place: Kolkata**



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**CONFIDENTIAL**

**DISCIPLINARY COMMITTEE [BENCH-III (2018-19)]**

**[Constituted under section 21B of the Chartered Accountants Act,  
1949]**

**Findings under Rule 18(17) of the Chartered Accountants  
(Procedure of Investigations of Professional and Other Misconduct  
and Conduct of Cases) Rules, 2007**

**File No. : PR/167/15/DD/154/15/DC/754/2018**

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Plot No. 85,Sector 5,  
Niladri Vihar,  
BHUBANESHWAR- 751021**

**.....Respondent**

**Members Present:**

**CA Naveen N.D Gupta, Presiding Officer  
Smt. Anita Kapur, IRS (Retd.), Member (Govt. Nominee)  
CA. Shyam Lal Agarwal, Member**

**Date of Final Hearing : 30<sup>th</sup> November, 2018**

**Place of Final Hearing : Kolkata**

**Parties Present**

**(i) CA. Deba Prasad Misra – Respondent**

**Allegations of the Complainant:**



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2. In the present case, the Complainant has alleged that the Respondent has misappropriated Rs 40,00,000 which was given to him by M/s Vista Group of Companies (hereinafter referred to as “**the Companies**”) for depositing with Income Tax Department towards TDS for the FY 2010-2011 & 2011-2012. The Complainant has also brought on record affidavit (**C-3 to C-4**) and Indemnity Bond (**C-5 to C-7**) dated 12.03.2013 given by the Respondent regarding his misappropriation and his promise to repay Rs 40,00,000/- in two instalments. According to the Complainant, the said promise was not adhered to by the Respondent.

**3. Proceedings:**

2.1 The Committee noted that the representative on behalf of the Complainant and the Respondent were present along with their Counsel during the hearing. Being the first hearing, the Respondent was put on oath. Thereafter, the Committee asked the Respondent whether he wished the charges to be read out or these could be taken as read. The Respondent stated before the Committee that he was aware of the allegations raised against him and the same may be taken as read. On being asked, as to whether he pleaded guilty, he replied that he did not plead guilty and would opt to defend his case.

Thereafter, the Complainant explained the charges alleged against the Respondent and submitted a brief prepared by him on the allegations against the Respondent. Then the Counsel for the Respondent made his submissions on the allegations. The Respondent was examined by the Committee on the submissions made by him. The Committee, thereafter, directed the Respondent to submit the following documents/information within 15 days:

- a. To explain in detail with evidence that amount of Rs.40 lakhs was received over a period of time as claimed by him and that efforts were made by him to repay the said amount to the Company.
- b. To provide further Written Submission, if any, on which he wished to rely



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2.2 At the time of last hearing on 30<sup>th</sup> November, 2018, the Committee noted that the Respondent was present. However, the Complainant department vide its letter dated 26<sup>th</sup> November 2018 had informed the Committee that on account of pre-engagement of its investigating officer in other important matters, it would not be possible to depute him for personal appearance. The Committee noted that at the last hearing held on 27<sup>th</sup> July 2018, the Complainant had elaborately explained the charges alleged against the Respondent and submitted a brief prepared on the allegations as well.

Since the documents as sought from the Respondent were on record, the Committee decided to proceed ahead in the matter and thereafter, based on the documents available on record, the oral and written submissions made by the Respondent, concluded the hearing in the matter.

**Findings of the Committee :**

4. The Complainant had stated that M/s-Vista Management Services Ltd. and its sister concern had engaged the Respondent as the auditor of their company during the period 2009 to 2012. The Respondent had submitted return on behalf of M/s-Vista Group of Companies for the FY 2010-11, 2011-12. As an auditor he was supposed to receive an amount of Rs. 88,858 as evident from audited account of M/s-Vista Management Services Pvt. Ltd. and M/s-Vista Infra Home. Against the said amount, he had received a sum of Rs. 68,09,385/- through cheque/ RTGS/ NEFT and the said amount had been debited from different accounts of Vista Group of Companies maintained at IDBI Bank, Bhubaneswar, and SBI Janpath Branch, Bhubaneswar with corresponding credit to Axis bank A/c No.- 024010200042608 standing in the name of Deba Prasad Mishra.

5. The Complainant further stated that investigation revealed that the Respondent had received such amount with a view to make deposit with Income Tax Department as the said amount had been deducted towards TDS. But he never deposited the said amount with Income Tax Department and misappropriated which he admitted in an affidavit on 12.03.2013 before the notary Jitendra Dash, Bhubaneswar and gave an Indemnity Bond under his signature wherein he stated that he had not deposited the TDS amount and, assured to return an amount of Rs. 40,00,000/- (forty lakhs) which he had misappropriated. Besides, scrutiny of accounts of the Respondent, maintained at Axis





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Bank (Erstwhile UTI) Bhubaneswar revealed that he had made cash deposits of Rs. 24,03,080/- on various dates which were under investigation.

6. The Committee noted that the Respondent in his written statement, submitted at the PFO stage, had admitted receipt of Rs. 40,00,000/- from Vista group of Companies from time to time for deposit of taxes for the period of 2010-11 and 2011-12. The Respondent also submitted in his Written Statement that due to non-collection/ non-submission of relevant particulars of the deductees required for e-filing by the Companies and their staff, the amount could not be deposited. It was further submitted by the Respondent that to win the trust and confidence of the management and as per the mutual discussion with the management at their request, the Respondent had sworn affidavit and executed indemnity bond to refund the amount of the Companies.

7. The Committee noted that at the time of hearing the Respondent was asked to explain in detail with evidence that amount of Rs.40 lakhs was received by him over a period of time as claimed and that the efforts were made by him to repay the said amount to the Company. In this regard, it was noted that the Respondent had not given any substantiated reply. He only reiterated his earlier defence that the said amount of Rs. 40 Lacs was not credited to his account on a single occasion and the said amount was transferred over a period from 03<sup>rd</sup> Nov, 2010 to 11<sup>th</sup> Sep, 2012 against various statutory deposits with ROCs, tax payment of Group Companies/their directors. He also stated that the details of the payment of amount given by the Complainant during different date from 2.11.10 to 14.9.2013 was not fully correct in view of certain mismatches which he had found on cross checking. He further stated that he had received Rs. 63,46,806/- as against the alleged amount of Rs 68,09,385/- given at Page no.C-9. However, the specific information as sought by the Committee in context of the efforts made by him to repay said amount to the Company was not provided by him. The Respondent also stated that numerous withdrawal entries in Axis Bank Current Account under the heading of Internet tax payment go to establish that he had paid taxes online on behalf of the Company/its directors from his current account. However he did not furnish any specific evidence to prove the same. It was noted that the Respondent had furnished copies of challan for tax payments amounting to Rs. 6,56,157/- made in favor of various government authorities on behalf of the Company and its directors. It is viewed that the Complainant has stated that Respondent had



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made a deposit of only Rs. 24,03,080/- though he had received against receipt of Rs. 68 lakhs for such payments. It was viewed that even if such payments of Rs. 656,157/- against tax challan were considered to have been done apart from Rs 24 lakhs, still the amount is less than the alleged amount of Rs. 40 lacs. The Respondent also submitted that he had incurred certain amounts and made payments to professionals like Company Secretary for ROC work, accountant of the Company, other agencies for E-Filing of TDS returns etc. However, it was noted that no specific details viz the bills, payment details, evidences thereof, were provided by the Respondent regarding the amounts, if any, paid by him in this regard.

8. However the Respondent in his further Written Statement submitted that the group Company had collected about 40 Crores from public and without returning the money to the depositors, the directors of the Company had absconded, offices were shut and he was arrested by EOW/CID/Crime Branch, Odisha and the Court granted him bail on taking a cash security deposit in shape of special term deposit in nationalized bank to the tune of Rs. 40 lacs in name of any of the family members but pledged in favor of 1<sup>st</sup> Additional District Judge cum Designated Court, Cuttack till final disposal of the case. Accordingly, he had deposited the said amount in the name of Ms. Gayatri Mishra, (Respondent's wife) duly pledged in the name of 1<sup>st</sup> Additional District Judge cum Designated Court, Cuttack and letter issued by the bank was submitted as documentary evidence. The Respondent thus submitted that he had deposited the said amount of Rs. 40 lacs in favor of the Court, as Vista Group of Companies had closed its operations as well as their bank accounts by that time. The Committee is of view that any such amount deposited to seek bail cannot be considered as repayment of amount, which the Respondent had allegedly by misappropriated.

9. The Committee noted that the Respondent has for the first time, during the proceedings before it, retracted from the said affidavit and indemnity bond signed by him (referred to in para 4 above) by stating that the same were signed by him under undue influence and coercion and without going through their contents just with an intention of not to have any animosity with his clients and gain their trust and confidence. However, despite the aforementioned retraction, the Respondent has admitted his mistake that he should not have signed the said legal documents without reading them thoroughly and understanding the implications.. Regarding non



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maintainability of the client's money in a separate bank account, the Respondent took the position that the said irregularity was a mere technical breach of law or failure.

10. Upon perusal of the documents on record, namely, the Complaint, Written Statement and Prima Facie Opinion and further written/oral submissions made by both the Complainant and the Respondent, the Committee noted that in point no. 3 of the Affidavit sworn by the Respondent on 12.03.2013 (**C-3 to C-4**), it was admitted by the Respondent that he never deposited the money received from the group and had given false challans to the Company on various occasions. Further in the indemnity bond dated 12.03.2013 (**C-5 to C-7**) the Respondent in para 2 had accepted of not depositing money received and giving false challans. Although the Respondent, as mentioned above, in his further Written Statement has submitted copies of challan in respect of Tax/fees deposited in respect of Different Companies, Directors and their relatives, however the same could not be accepted as a piece of evidence in his defence in view of the same not tallying with the alleged amount of Rs. 40 Lacs and apparent admission by the Respondent.

11. The Committee further noted that the Complainant had given details of payment of amount given to the Respondent (**C-9**) during different dates from 02.11.2010 to 14.09.2013. On perusal of the detail, it has been observed that amount was paid to the account of the Respondent mostly through NEFT/ RTGS mode. The Complainant had also brought on record copy of bank statement of account no. 024010200042608 of the Respondent (**C-11 to C-24**) evidencing the credit of the amount to the account of the Respondent. It was further noted from the written statement of the Respondent that he claimed to include refunded amount of Rs. 20.00 Lacs. The Respondent had also brought on record copy of letter from the Management of the Companies (**W-5**). On perusal of the said letter, the Committee noted that the Management had accepted of having received two cheques of Axis Bank bearing Nos. 022204 and 022205 dated 07.04.2013 and 05.05.2013 of 10 lacs each from the Respondent subject to clearance of cheque along with cash of Rs. 20 Lacs.

12. However, the Complainant has in rejoinder produced on record copy of Axis bank statement of the Respondent (**R-6**) evidencing that no such entry of payment was shown to be made. Further, the said Bank had also given letter to the Complainant



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department on 28.09.2015 **(R-5)** stating that no transaction of payment was made in accounts no. 02410200042583 and 024010200042608 of the Respondent **(R-5)**. Thus, from above it was noted that claim of the Respondent that he had refunded Rs. 20 Lakh cannot be accepted. Moreover, since the amount was material, as per Clause (10) of Part-I of Second Schedule to the Chartered Accountants Act, 1949, the Respondent was required to keep this money in separate Bank account. In view of the above, the Committee is of the view that the Respondent is guilty of professional and/or “other misconduct” falling within the meaning of Clause (2) of Part-IV of First Schedule and Clause (10) of Part-I of Second Schedule to the Chartered Accountants Act, 1949.

**Conclusion**

13. Thus in conclusion, in the opinion of the Committee, the Respondent is **GUILTY** of professional and/or “other misconduct” falling within the meaning of Clause (10) of Part I of the Second Schedule and Clause (2) of Part-IV of First Schedule to the Chartered Accountants Act, 1949.

**Sd/-**  
**(CA Naveen N D Gupta)**  
**(Presiding Officer)**

**Sd/-**  
**(Smt. Anita Kapur)**  
**Member (Govt. Nominee)**

**Sd/-**  
**(CA. Shyam Lal Agarwal)**  
**Member**

**Place: New Delhi**

**Date: 11<sup>th</sup> January, 2019**