



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 THE RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF
INVESTIGATION OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF
CASES) RULES, 2007.**

File No.: PR 78/2013-DD/82/2013-DC/410/2014

In the matter of:

Shri T.P. Krishnakumar,
Director of Income Tax (Investigation),
3rd Floor, Arya Bhangy Pinnacle Building,
Sahodaran Ayyappan Road,
Elamkulam
KOCHI – 682 020
.....Complainant

Versus

CA. P.A. Zachariah (M.No.006654),
Partner Kuryan and Suseelan,
Chartered Accountants
P.B. No. 181,
Pukadiyil Buildings,
Shastri Road,
KOTTAYAM – 686 001

..... Respondent

Members Present:

CA. Prafulla Premasukh Chhajed, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
Shri Ajay Mittal, IAS (Retd.), Member (Govt. Nominee)

Date of Final Hearing: 29th July, 2019

Place of Final Hearing: Chennai

1. Vide report dated 07.11.2017 (**copy enclosed**), the Disciplinary Committee was of the opinion that **CA. P.A. Zachariah (M.No.006654)** was **GUILTY** of Professional Misconduct falling within the meaning of Clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 with respect to non-reporting in tax audit report u/s 44AB of the Income Tax Act, 1961 regarding violations of the provisions of Section 40A(3) involving expenditure exceeding Rs.20,000 otherwise than by crossed cheque. The said tax audit was conducted by the Respondent of M/s Josco Fashion Jewellers, Kottayam, proprietary concern of Shri P.A. Jose and M/s The Josco Fashion Jewellers, Proprietary concern of Smt. P.P. Alphonsa for



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Financial Year 2010-11 relevant to Assessment Year 2011-12 and instances of such violation were reported to be aggregating to Rs.35,61,02,760/- in the case of M/s. Josco Fashion and Rs. 34,78,59,001/- in the case of M/s. The Josco Fashion Jewellers.

2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 18th July, 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 29th July, 2019 at Chennai.

3. The Respondent did not appear before the Committee on 29th July, 2019 at Chennai but made his written representation dated 5th March 2018 wherein he had inter-alia stated that the Complainant relied on recorded statements of certain witnesses as evidence against him in respect of each firm to establish on a sampling basis that the firms had indeed made payments in cash in violation of 40A(3) of the Income Tax Act 1961 which pertain to F.Y. 2011-12 relevant to A.Y. 12-13 which was not the year for which the Respondent had conducted the audit. Further, on comparing the amount with the total purchase of gold in respect of both the firms, it amounted to only 0.013% for The Josco Fashion Jewellers and 0.015% for The Josco Fashion Jewellers. He further stated that the Disciplinary Committee completely missed out the observations of the settlement commission about the data collation done by the department and how they failed to verify the veracity of their statements before the settlement commission despite several opportunities being given to them. He further stated that as an auditor he had taken reasonable professional care and on the basis of test checks as suggested in the Guidance Note on Tax Audit, nothing came to his attention to warrant a reporting of violation of Section 40A(3) of the Income Tax Act 1961.

4. The Committee considered the written submissions made by the Respondent and noted that the Respondent has certified that no such instances in violation of 40A(3) of the Income Tax Act 1961 which pertain to F.Y. 2010-11 relevant to A.Y. 11-12 **(C-23)** were pointed out whereas such instances aggregate to a large quantum of Rs.35,61,02,760/- in the case of Josco Fashion Jewellers and Rs.34,78,59,001/- in the case of The Josco Fashion Jewellers, Rajiv Gandhi Shopping Complex, Kottayam, Proprietary concern of Smt. P.P. Alphonsa for Financial Year



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2010-11 relevant to Assessment Year 2011-12. The Committee also noted that in the Order of Income Tax Settlement Commission additional bench Chennai dated 08/08/2013, the assessee entities had voluntarily accepted said violations and paid the taxes on additions made by the Department on account of this charge.

5. The contention of the Respondent that the test checks conducted by him did not reveal the aforesaid violation was not tenable as in Form 3CD, a statement of particulars had to be furnished for which cash payment if made in violation of Section 40A(3) was required to be reported as amount inadmissible. It is viewed that considering the nature of business of the assessee the onus was on the Respondent to verify for the same before reporting in Form 3CD. Stating the fact that no such transaction was identified during test check is not acceptable because such payments can be identified independent of bank transaction provided the Respondent had extended the verification to cover the same. Mere reliance on certificate issued by the management is not acceptable.

6. It is further noted that the Complainant Department has argued to have gathered such data from the billing software and the Respondent has argued that the department had failed to note the existence of other electronic records maintained by the client viz IndSoft Jewels, Ihits Software, Advance Soft, Josco Bank Transaction Recorder and Corporate Accounts. However, the Respondent failed to bring on record any of his working papers in relation to such softwares to corroborate his argument that on collation of information generated from said software, the allegation of the Complainant Department was not correct.

7. Thus, upon overall consideration and looking in to the facts of the case, the Committee noted that the Respondent in the tax audit u/s 44AB of the Income Tax Act, 1961 had failed to report the said violations. It was viewed that the statement of particulars given in Form No. 3CD as annexure to the audit report contained the said clause and the Respondent being a tax auditor was required to report whether the information in relation to compliance with Sec 40A(3) was true and correct. The Respondent in extant case although raised objection in context of findings of the Complainant Department but failed to support his contentions with his working papers. Thus, in view of the Committee, the Respondent had failed to exercise due diligence in conduct of his professional duties and also he failed to gather sufficient appropriate evidence to form an opinion in the matter.



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8. The Committee was thus of the opinion that the misconduct on the part of the Respondent had been established within the meaning of Clauses (7) and (8) of Part I of the Second 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. P.A. Zachariah (M. No. 006654)** from Register of Members for a period of 2 (two) years.

Sd/-
[CA. Prafulla P. Chhajed]
Presiding Officer

Sd/-
[Smt. Anita Kapur]
Member, Govt. Nominee

Sd/-
[Shri Ajay Mittal]
Member, Govt. Nominee

Date: 29th July, 2019
Place: Chennai



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CONFIDENTIAL

REPORT OF THE DISCIPLINARY COMMITTEE BENCH - II

**[Constituted under Section 21B of the Chartered Accountants
(Amendment) Act, 2006]**

Shri T.P. Krishnakumar,
Director of Income Tax (Investigation), Kochi

-vs-

CA. P.A. Zachariah (M.No.006654), Kottayam

[PR-78/13-DD/82/2013/DC/410/14]

MEMBERS PRESENT:

CA. Naveen N.D. Gupta, Presiding Officer
Shri Amit Chatterjee, Government Nominee
CA. Sanjay Kumar Agarwal, Member
CA. Manu Agarwal, Member

In the matter of:

Shri T.P. Krishnakumar,
Director of Income Tax (Investigation),
3rd Floor, Arya Bhangy Pinnacle Building,
Sahodaran Ayyappan Road,
Elamkulam
KOCHI – 682 020

..... Complainant

Versus

CA. P.A. Zachariah
Partner Kuryan and Suseelan,
Chartered Accountants
P.B. No. 181,
Pukadiyil Buildings,
Shastri Road,
KOTTAYAM – 686 001

.....(M.No.006654),

..... Respondent

1. **Shri T.P. Krishnakumar, Director of Income Tax (Investigation), Kochi, Kerala** (hereinafter referred to as the “**Complainant**”) has filed complaint in Form ‘I’ dated 21st March, 2013 against **CA. P.A. Zachariah (M.No.006654),**



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Kottayam, Kerala (hereinafter referred to as the “Respondent”). The Complainant in his Complaint has alleged as under:-

- 1.1 The Respondent was required to certify in a tax audit u/s 44AB of the Income Tax Act, 1961, the existence or otherwise of the violations of the provisions of Section 40A(3) thereof involving expenditure to a person in a day exceeding Rs.20,000/- otherwise than by crossed cheque etc. Violating the requirements in the statute as above and also the requirement as per Second Schedule, Part-I, entries 5 to 9 of the Chartered Accountants Act, he has certified that no such instances are there, though such instances aggregate to a large quantum of Rs.35,61,02,760/- in the case of Josco Fashion Jewellers, Rajiv Gandhi Shopping Complex, Kottayam, proprietary concern of Shri P.A. Jose and Rs.34,78,59,001/- in the case of The Josco Fashion Jewellers, Rajiv Gandhi Shopping Complex, Kottayam, Proprietary concern of Smt. P.P. Alphonsa for Financial Year 2010-11 relevant to Assessment Year 2011-12.
- 1.2 A search was conducted u/s 132 of the Income Tax Act in the case of Josco Group Kottayam, a leading gold jewellery retail chain, on 21.03.2012. As part of the post search enquiries, data from the billing software (Indsoft Jewels) was analyzed. On analysis of this data, it was found that the concerns in this group were involved in violation of section 40A(3) of the Income Tax Act in a major way in the purchase of old gold, the details of violation by the two proprietary concerns in this group for two years is as under:-

Josco Fashion Jewellers (Prop. Concern of Shri. P.A. Jose)			
Sl.No.	Name of Showroom	FY 2010-11	FY 2011-12
1	R.G. Building, Kottayam	20,43,21,595	33,03,40,292
2	G.B. Road, Palakkad	15,17,81,165	29,67,32,835
3	Pattom, Trivandrum		22,91,13,188
	Total	35,61,02,760	85,61,86,315

- 1.3. These concerns are audited u/s 44AB of the Income Tax Act. The audit report has a specific entry concerning compliance of Section 40A(3). However, it was noticed that these entries were not properly filled up and the auditor failed to highlight the extensive violation of Section 40A(3).



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- 1.4. The tax audit of the above concern is done by the Respondent for FY 2010-11, relevant to AY 2011-12, the audit has been completed. For FY 2011-12, audit appears not to have been completed. The comments offered by the auditor in the tax audit for the above years are quoted below:-

Concern: P.A. Jose, Name of the Auditor CA.P.A. Zachariah M.No. 006654	
2011-12	AY 2012-13
17(h)(A) Whether a Certificate has been obtained from the assessee regarding payments relating to any expenditure covered u/s 40A(3) that the payments were made by account payee cheque drawn on a bank or account payee bank draft as the case may be [yes/no]: NIL (B) Amount inadmissible under section 40A(3), read with rule 6DD[with break up of inadmissible amount] : NIL	Return of Income/Tax Audit Report not seen filed.

Concern: Smt. P.P. Alphonsa, Name of the Auditor CA.P.A. Zachariah M.No. 006654	
2011-12	AY 2012-13
17(h)(A) Whether a Certificate has been obtained from the assessee regarding payments relating to any expenditure covered u/s 40A(3) that the payments were made by account payee cheque drawn on a bank or account payee bank draft as the case may be [yes/no]: NIL (B) Amount inadmissible under section 40A(3), read with rule 6DD[with break up of inadmissible amount] : NIL	Return of Income/Tax Audit Report not seen filed.

- 1.5. This issue was taken up with the assessee following search. The statement of Shri P.A. Jose, Proprietor and Shri Sabu, General Manager are on record. They disputed the findings of the Search and took the plea that (1), there was a standing instruction to make payments in excess of Rs.20,000/- only by way of account payee cheque or draft; (2) that the amounts appearing in the accounts as payments in cash for the purchase



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of old gold were not paid but were to be adjusted against future purchase of gold.

In order to verify the findings culled from digital data, some of the customers whose whereabouts were available from computer records were contacted and their statements were recorded under oath. The findings of the enquiry are summarised below:-

Rajiv Gandhi Complex, Kottayam Proprietor: P.A. Jose				
Name	Address	Shop	Concern	Finding
Baby Mathew	Vallikappil House, Mavady Theekoy, Kottayam	Rajiv Gandhi Complex, Kottayam	Prop: P.A. Jose	Admitted under oath on 13.02.2013 that he had sold old gold worth Rs.6,60,000. He purchased new gold worth Rs.5,80,000 in exchange. The balance Rs.80,000/- was received in cash.
Baby Mathew	Elappungal House, Vattappilly Chenganaserry	Rajiv Gandhi Complex, Kottayam	Prop: P.A. Jose	He admitted under oath on 14.02.2013 that he had sold (on 06.03.2012) old gold worth Rs.9,60,452/-. This amount was received in cash. It was also stated that there was no purchase of gold in exchange for the old gold.
Sajan P. Kurian	Plackal House, Puthupally House, Thottakkal, P.O. Kottayam	Rajiv Gandhi Complex, Kottayam	Prop: P.A. Jose	He admitted under oath on 14.02.2013 that he had sold old gold worth Rs. 4,44,028/- This amount was received in



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				cash. It was also stated that there was no purchase of gold in exchange for the old gold.
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I.G. Road Branch of Josco Ernakulam, Proprietor: Smt. P.P. Alphonsa

Name	Address	Shop	Concern	Finding
K.P. Jayaraj	"Prasanthi" Poonthotham Road Thiruvankulam, Ernakulam Distt.	M.G. Road, Branch, Ernakulam	Prop. Smt. P.P. Alphonsa	He admitted under oath on 14.02.2013 that he had sold old gold worth Rs. 3,00,000. This amount was received in cash. It was also stated that there was no purchase of gold in exchange for the old gold.

M.G. Road Branch of Josco Ernakulam, Proprietor: Smt. P.P. Alphonsa

Name	Address	Shop	Concern	Finding
Saneesh P.R.	Revathy, Perandoor Road, Elamkkara, Ernakulam	M.G. Road, Branch, Ernakulam	Prop. Smt. P.P. Alphonsa	He admitted under oath on 14.02.2013 that he had sold old gold worth Rs.4,11,329/- on 02.09.2011. This amount was received in cash. It was also stated that there was no purchase of gold in



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				exchange for the old gold.
K.M. Saleem	"Akshiyana" 44/2525A	M.G. Road, Branch, Ernakulam	Prop. Smt. P.P. Alphonsa	He admitted under oath on 13.02.2013 that he had sold old gold worth of Rs.3,12,035/-on 8.11.2011. This amount was received in cash. It was also stated that there was no purchase of gold in exchange for the old gold.

1.6 What emerges from the enquiries is that 'Josco Fashion Jewellers' and The Josco Fashion Jewellers" purchase of old gold and that payments for these purchases, even if these exceed Rs.20,000/- are made in cash. The digital evidence in the possession of the Department is reliable. The customers who were approached denied that there was any gold deposit scheme by which old gold sold is to be adjusted against future purchase of new gold. So the arguments put forth by the assessee have been effectively disproved.

1.7 Given the scale of violation of Section 40A(3), the failure of the auditor to highlight the issue is surprising and unexplainable. It may be noted that the ICAI has issued "**Guidance Note on Tax Audit under Section 44AB of the Income Tax Act, 1961**". The relevant parts of this text relating to entry 17(h)(A & B) is reproduced below:

35.1 Section 40A(3) provides that where the assessee incurs any expenditure in respect of which payment is made in a sum exceeding Rs.20,000/- otherwise than by a crossed cheque or a crossed Bank Draft 20% of such expenditure shall not be allowed as deduction except in certain cases and circumstances. The cases and circumstances in which payment of a sum exceeding Rs.20,000/- in cash or otherwise than by



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crossed cheque or draft is allowable are specified in Rule 6DD. The details regarding the payments made in cash or otherwise than by crossed cheque or bank draft are to be stated under this clause.

35.2 The particulars may be furnished in the following form:-

Sl. No.	Nature and particulars of expenditure	Date of Payment	Amount paid otherwise than by account payee cheque/draft	20% of such expenditure	Remarks

35.3 There may be practical difficulties in verifying of payments made through crossed cheques or bank drafts. If no proper evidence for verification of the payment by crossed cheque or draft is available, such a fact could be brought out by appropriate comments in the following manner:-

“It is not possible for me / us to verify whether the payments in excess of Rs.20,000/- have been made otherwise than by crossed cheque or bank draft, as the necessary evidence is not in the possession of the assessee”.

35.4 For the purpose of furnishing the above particulars, the tax auditor should obtain a list of all cash payments in respect of expenditure exceeding Rs.20,000/- made by the assessee during the relevant year which should include the list of payments exempted in terms of Rule 6DD with reasons. This list should be verified by the tax auditor with the books of accounts in order to ascertain whether the conditions for specific exemption granted under Clauses (a) to (1) of Rule 6DD are satisfied. Details of payments, which do not satisfy the above conditions, should be stated under this clause”

1.8 The CBDT has issued Circular No. 387, dated 06.07.1984, which clarifies the purpose of Tax audit. The relevant parts of the circular are reproduced here:-

“A proper audit is for tax purposes would ensure that the books of accounts and other records are properly maintained, that they faithfully



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reflect the income of the tax payer and he correctly makes claims for deduction. Such audit would also help in preventing fraudulent practices. It can also facilitate the administration of tax laws by a proper presentation of the accounts before the tax authorities and considerably saving the time of the assessing officers in carrying out routine verifications like checking correctness of totals and verifying whether purchases and sales are properly vouched or not? The time of the assessing officers thus saved could be utilised for attending to more investigational aspects of the case”.

- 1.9 It may be seen that the Respondent did not even obtain the certificate from the assessee regarding non application of the provision of Section 40A(3). Further, given the massive scale of violation of Section 40A (3), it is clear that the Respondent did not exercise reasonable diligence before offering the remarks. The audit in these cases was not carried out as per the Guidelines of the ICAI. Also the spirit of the Circular No. 387 has also not been respected.
- 1.10 A show cause notice incorporating the above details was issued to the Respondent vide letter dated 28.03.2013 by the Deputy Director of Income Tax (Investigation)-I, of this office. The Respondent is seen to have had atleast 5 clear working days to reply. But he merely sought extension of time without giving any reasons for the deficiency pointed out other than to point out that the time allowed for reply was too short.
2. The aforesaid charges, if proved, rendered the Respondent guilty within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 [as amended by the Chartered Accountants (Amendment) Act, 2006].
3. The prima facie opinion formed by the Director (Discipline) (enclosed without its enclosures as Annexure ‘A’) on the Complaint, written statement and Rejoinder were considered by the Disciplinary Committee at its meeting held on 14th September, 2014 at New Delhi.



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3.1 The Committee on consideration of the same concurred with the reasons given against the charge (s) and thus, agreed with the prima facie opinion of the Director that the Respondent is **GUILTY** of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 [as amended by the Chartered Accountants (Amendment) Act, 2006] and accordingly, decided to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The Committee also directed the Directorate that in terms of the provisions of sub-rule (2) of Rule 18 the prima facie opinion formed by the Director be sent to the Respondent and the Complainant including particulars or documents relied upon by the Director, if any, during the course of formation of prima facie opinion and the Respondent be asked to submit his Written Statement as per the time that shall be specified in the notice.

4. The Respondent has submitted his Written Statement dated 28th December, 2015 and 27th January, 2017 (enclosed without its enclosures as **Annexure 'B'**) as per the requirement of Rule 18 (4) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

5. The detail(s) of the hearing fixed and adjourned/held in the said matter are given as under:-

Sl. No.	Date(s) if any	Status
1	27 th December, 2014	Adjourned at the request of the Respondent
2	04 th October, 2015	Adjourned at the request of the Respondent
3	05 th January, 2016	Adjourned at the request of the Respondent
4	07 th September, 2016	Adjourned at the request of the Respondent
5	21 st October, 2016	Adjourned at the request of the Respondent
6	20 th January, 2017	Part heard and adjourned



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7	07 th April, 2017	Heard and Concluded
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PROCEEDINGS :

6. At the hearing held on 20th January, 2017 at Chennai, the Committee noted that Counsel for the Respondent CA. R. G. Rajan with his assistant CA. Bhanusekar was present. The Complainant was not present, however, there was a letter/fax dated 06/09/2016 from the Complainant Department (in respect of earlier hearing) in which it had been stated that the Department has submitted all the required documents of captioned case and the Committee may go ahead on merits of the case. In the absence of the Complainant, the Office explained the charges. On being asked as to whether the Respondent pleads guilty, the Counsel for the Respondent on behalf of the Respondent responded in negative. The Counsel for Respondent made his detailed submissions. Thereafter, the Counsel for the Respondent was also posed certain questions by the Committee. After recording the submissions of the Counsel for the Respondent, the Committee directed the Counsel to submit: (i) Basis of sampling done by the Respondent while deciding the quantum of test check at the time of his tax audit in respect of both the entities. (ii) Why the tribunal decision which was relied upon by the Respondent at the time of tax audit not mentioned/referred in Form 3CD of the entities. With these directions, the hearing in captioned matter was adjourned.

7. Thereafter, the hearing took place on 07th April, 2017 at Chennai, whereat, Counsel for Respondent CA. R.G. Rajan was present. The office appraised that the Complainant Department vide its letter/fax dated 06/09/2016 had stated that they have submitted all the material related to this matter and case may be decided on the merit.

On being asked whether the Counsel for the Respondent wanted to have de-novo hearing or continued from stage it was left earlier as composition of the Committee has been changed. The Counsel wish to continue the hearing from stage it was left.

8. The Counsel for the Respondent submitted that on last hearing held on 20th January, 2017, the Respondent was asked to produce working papers on what basis he did sampling while deciding the quantum of test check at the time of his



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tax audit in respect of both the entities. The required documents have been submitted as per the requirement of the Committee.

9. The Committee enquired from the Counsel the process of sampling/business process followed by the entities. In this respect the Counsel stated that the entities allows the customer to sell old gold jewellery either for immediate payment or in exchange. If it is exchanged the gold, the entities allows the customers to exchange old gold jewellery to a new gold jewellery either immediately or over a certain period of time (i.e. deferred basis). In case of immediate exchange the difference value is settled then and there. In case of deferred exchange, the gold purchased value debited to purchase and the value is credited to the customers advance account. As and when the customer demands a new jewellery, it is adjusted against new sales.

10 On being enquired by the Committee that in settlement commission's order addition has been made which has been accepted by the Company, the Counsel submitted that the entities/assessee voluntarily accepted before the settlement commission that cash transactions did take place. But as an auditor, the Respondent has done sampling and in his sampling he did not come across any payment which warrants disclosure in Form 3CD. The Counsel for the Respondent made his detailed submissions and after recording the submissions of the Counsel for the Respondent, the hearing was concluded.

FINDINGS :

11. On perusal of the documents on record, namely, the Complaint, Written Statement, Rejoinder and Prima Facie Opinion and further written/oral submissions of the Counsel for the Respondent/Respondent, the Committee gives its findings as under:-

12. The Committee noted that in nut shell the charge against the Respondent is that he was required to point out in tax audit u/s 44AB of the Income Tax Act, 1961, the violations of the provisions of Section 40A(3) thereof involving expenditure to a person in a day exceeding Rs.20,000/- otherwise than by crossed cheque etc, however, the Respondent has certified that no such instances are there, though such instances aggregate to a large quantum of



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Rs.35,61,02,760/- in the case of Josco Fashion Jewellers, Rajiv Gandhi Shopping Complex, Kottayam, proprietary concern of Shri P.A. Jose and Rs.34,78,59,001/- in the case of The Josco Fashion Jewellers, Rajiv Gandhi Shopping Complex, Kottayam, Proprietary concern of Smt. P.P. Alphonsa for Financial Year 2010-11 relevant to Assessment Year 2011-12.

13. During the hearing, the Counsel for the Respondent submitted that there was no instance where the cash payments have been made for a sum beyond Rs. 20,000/-. In the business process, if the amount is credited to advance, the customer has no option but to buy gold in future.

14. After hearing the submissions of the Counsel for the Respondent and on perusal of the documents on record, the Committee noted that the Respondent was the tax auditor of the proprietary concerns, M/s. The Josco Fashion Jewellers (Prop. Smt. P. P. Alphonsa) and M/s. Josco Fashion Jewellers (Prop. Shri P. A. Jose) for the A.Y. 2011-12. It is further noted that at point 17(h)(a) and (b) of Part B of Form 3CD attached to the aforesaid tax audit reports certified by the Respondent against the question: Whether a Certificate has been obtained from the assessee regarding payments relating to any expenditure covered u/s 40A(3) that the payments were made by account payee cheque drawn on a bank or account payee bank draft as the case may be [yes/no]:

(B) Amount inadmissible under Section 40A(3), read with Rule 6DD [with break up of inadmissible amount. The Respondent has replied NIL.

15. The Committee perused the defense made by the Respondent in his written statement, which is as under:-

15.1 Even in the event of violation of Section 40A (3), non disclosure of details regarding the same would not render the Financial Statements as misleading. Provisions of Section No. 40A(3) talk about the method of payment of cash transactions above Rs.20,000/- and this has no connection with the correctness of the Financial Statements. Financial Statements are said to be misstated when there is inaccuracy in the expenses charged or the revenue reported. A non disclosure of mode of payments above Rs.20,000/- cannot be considered as a misstatement in Financial Statements.



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15.2 Without prejudice to the facts mentioned above, violation of Section 40A(3), is merely a tax provision. Tax provisions are estimates. Estimate is different from the material misstatements. It cannot be claimed as misstatements in Financial Statements.

16. Further, the Respondent in his defence also submitted that he was given the oral representation (which was subsequently put to writing and duly authenticated) that the net payment in cash to any person in a day did not exceed Rs.20,000/-. The Committee noted that the Respondent has brought on record the copy of the Management representation letter dated 26th September, 2011 in respect of both the proprietary entities/concerns.

17. The Respondent also added that the test check performed by his staff did not reveal any violation u/s 40A (3) or anything contradictory to the statement. He also submitted that standing instructions were given by the management of the entities/concerns to the employees to make payments above Rs.20,000/- only through account payee cheques and/or bank drafts. Representations of these instructions were verified by the Respondent to his satisfaction.

18. The Committee noted that the Complainant Department has brought on record data contained in CD in separate excel sheets for each showroom of the two proprietary concerns for the F.Y. 2010-11 showing the details of each transaction including the sale and the exchange amount and thus the resultant difference between the exchange of old gold and sale of gold resulting in outgo of cash from the business. All the figures in excess of Rs.20,000/- represent payments made in cash in violation of Section 40A (3) of the Income Tax Act, 1961 which in total amount to Rs. Rs.35,61,02,760/- in the case of Josco Fashion Jewellers and Rs.34,78,59,001/- in the case of The Josco Fashion Jewellers.

19. The Committee is of the view that the contention of the Respondent that the test checks conducted by him did not reveal the aforesaid violation is not tenable as in Form 3CD, a statement of particulars has to be furnished for which 100 % check of the cash payment, sale register, purchase and bank register is required.



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Further, the contention of the Respondent that the non disclosure of mode of payments above Rs.20,000/- cannot be considered as a misstatement in Financial Statements is also not tenable as particulars in Form 3CD are to be certified by a Chartered Accountant which in the present case has been done by the Respondent in which 100 % accuracy of the facts has to be reported .

20. Moreover, the Committee also observed that the copy of Order of Income Tax Settlement Commission additional bench Chennai dated 08/08/2013 has been brought on record by the Complainant Department wherein the assessee entities have voluntarily accepted and paid the taxes on additions made by the Department on account of this charge..

CONCLUSION :

21. Thus, in the considered opinion of the Committee, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Sd/-
(CA. NAVEEN ND GUPTA)
PRESIDING OFFICER

Sd/-
(AMIT CHATTERJEE)
GOVERNMENT NOMINEE

Sd/-
(CA. SANJAY KUMAR AGARWAL)
MEMBER

Sd/-
(CA. MANU AGARWAL)
MEMBER

DATE :07.11.2017
PLACE : MUMBAI