

**CONFIDENTIAL**

**DISCIPLINARY COMMITTEE [BENCH – I (2019-2020)]**

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

**Findings cum Order under Rule 18(17) and Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.**

**[Ref. No.PPR/P/303/17/DD/287/TAMC/INF/17/DC/929/18]**

**In the matter of Information treated against:**

**CA. Dulal Sarkar .....(M.No. 053149),**

10, Parmar Road,

DT Hooghly,

**Bhadrakali – 712 232**

**.....Respondent**

**MEMBERS PRESENT:**

**Shri Jugal Kishore Mohapatra, I.A.S.(Retd.), Government Nominee & Presiding Officer**

**Ms. Rashmi Verma, I.A.S. (Retd.), Government Nominee,**

**CA. Babu Abraham Kallivayalil, Member**

**CA. Dayaniwas Sharma, Member**

**DATE OF FINAL HEARING : 08.11.2019**

**PLACE OF FINAL HEARING : ICAI, Kolkata**

**PARTIES PRESENT:**

**Respondent : CA. Dulal Sarkar**

**BRIEF OF THE DISCIPLINARY PROCEEDINGS:-**

1. The Committee noted that on the day of hearing i.e. 8<sup>th</sup> November, 2019, the Respondent was present. He was put on oath. On being enquired from the Respondent as to whether he is aware of the charges leveled against him, the Respondent replied in affirmative and pleaded not guilty. With the consent of the Respondent, the Committee decided to proceed further in the matter. Thereafter, the Respondent made his submissions on the charges. The Respondent stated that he had issued only 40 tax audit reports and rest of audit reports were forged in his name. He stated that he has already filed police complaint for the same. After hearing the final submissions of the Respondent, the Committee decided to conclude the hearing.

**CHARGES IN BRIEF AND FINDINGS OF THE COMMITTEE:-**

2. The allegation against the Respondent was that he accepted and conducted Tax Audit under Section 44AB of the Income Tax Act, 1961 in excess of the limits prescribed by Council General Guidelines, 2008 under Chapter VI, "Tax Audit assignments under Section 44 AB of the Income –tax Act, 1961". In respect of allegation, it is observed that as per letter dated August, 2014 (**A3**) forwarded by Tax Audit Monitoring Cell, the tax audits done by the Respondent during the financial year 2010-11 and 2011-12 are as under:

Audits conducted during the Financial Year	No. of Audits
2010-11	290
2011-12	242

3. The Respondent in his defence stated that he has conducted 30 and 40 Tax Audit under Section 44AB of the Income Tax Act, 1961 for the financial years 2010-11 and 2011-12 respectively. He stated that Tax Audit Reports were compulsorily to be uploaded online from the financial year 2012-13 and prior to that, there was no requirement of submissions of the Tax Audit Report with the Income Tax Department. Hence, for reaching a conclusion as to how many tax audits were carried out by a member, the same information can be obtained only from the Income Tax Return filed by the Assessee where the Auditors' information is filed. If the signature of a Chartered Accountant is misused by other persons, it was not possible for

a Chartered Accountant to know the same as no mechanism of trace the same was there at that time.

3.1 The Respondent pointed out an instance where his name was misused on the audit reports and financial statements filed with the United Bank of India and the United Bank of India made a complaint against him with the ICAI. He stated that during the enquiry in that matter, he had filed a copy of police complaint (General Diary Number 992/14) filed with Uttarpara Police Station on 15.10.2014 for misusing his name and signatures by the third party. He mentioned in the general diary that a person in the name of Mr. Suman Ghosh had forged 10 tax audit reports in his name for the financial year 2010-11. The Respondent provided a copy of diary, letter of vigilance Department, copy of letter to AGM vigilance of United Bank of India. He further stated that after investigation, the Institute vide letter dated 4<sup>th</sup> March, 2016 held him not guilty and closed the complaint filed against him.

3.2 The Respondent also pointed out another instances of misuse of his signature in case of the Company, Damodar Developers Pvt. Ltd. where the main directors forwarded two Balance Sheets of 31.03.2009. The Respondent stated that as per company record, no appointment was made to the Respondent firm to conduct audit. In response to letter of AGM, SBI, vigilance dated 17.10.2014, he vide his letter dated 20.10.2014 disowned the signatures and he also made a police complaint (Police diary no.2418) dated 27.10.2014 for misusing his name and signature by Mr. Amit Majumdar. He further stated that SBI vigilance department on the spot told him with very confidence that his signature was genuinely forged and they will not make any complaint to the Institute.

3.3 The Respondent while concluding his defence stated that his signatures on tax audit reports have been forged by someone and he can never sign such number of audit reports as mentioned by CBDT against his membership number.

4. It is noted that it is a case where the Respondent signed the tax audit report in excess of limits prescribed by Council General Guidelines, 2008. The main defence of the Respondent was that he had only signed 40 tax audit reports and rest of the tax audit reports were forged in his name. In support of his contentions that his name were misused a number of times in the past, he brought on record copy of correspondence made with United Bank of India, State

Bank of India and CBI regarding his signatures being misused by someone. He also brought on record copy of police complaint filed by him regarding misusing his signatures.

4.1 The Committee went through the documents on record and on perusal of Assessment order u/s 143(3) of the Income Tax Act, 1961 in case of Assesse, M/s. Bharati Poultry (P) Ltd., it has been observed that during the course of Assessment proceedings, enquiry was made by the Assessing Officer from the Respondent in respect of tax audit report signed by him of the said entity for the financial year 2010-11. In response to the enquiry, the Respondent categorically refused to have signed the tax audit report and the Assessing Officer while accepting the submissions of the Respondent, rejected the Tax Audit report and treated the books of accounts as unaudited. It is relevant to mention here that while reaching to the conclusion that the Respondent had not signed alleged tax audit report, the Assessing Officer also noted that no payment was evidenced by the Assessee to the Respondent for conducting tax audit of the said entity.

4.2 It is also noted that the Respondent brought on record a copy of declaration filed by Mr. Suman Ghosh stating therein that without taking any knowledge and prior permission of the Respondent, he signed 10 tax audit reports on behalf of the Respondent. In this regard, the Respondent provided copy of police complaint wherein he had complained about the forgery being done in his name by Mr. Suman Ghosh.

4.3 After taking into consideration of all the documents and submissions on record, the Committee noted that the Respondent brought on record certain evidence of forgery done in his name by some other person without his knowledge and permissions. The Respondent also brought on record copy of suitable action taken by him against misusing his name and signature. Hence, in view of available documents, the Committee is of the view that the name and signature of the Respondent firm was misused and forged in filing tax audit reports in his name. Thus, it has decided to extend benefit to the Respondent in the present matter and accordingly, hold the Respondent not guilty of professional misconduct falling within the meaning of Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

**Conclusion:-**

5. Thus in the considered opinion, the Respondent is held **NOT GUILTY** of Professional Misconduct falling within the meaning of Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

6. Accordingly, in terms of Rule 19 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passes Order for closure of this case against the Respondent.

**Sd/-**  
**(SHRI JUGAL KISHORE MOHAPATRA, I.A.S.(RETD.))**  
**GOVERNMENT NOMINEE & PRESIDING OFFICER**

**Sd/-**  
**(CA. BABU ABRAHAM KALLIVAYALIL)**  
**MEMBER**

**Sd/-**  
**(MS. RASHMI VERMA, I.A.S. (RETD.))**  
**GOVERNMENT NOMINEE**

**Sd/-**  
**(CA. DAYANIWAS SHARMA)**  
**MEMBER**

**DATE : 03<sup>rd</sup> February, 2020**  
**PLACE : New Delhi**