

CONFIDENTIAL

DISCIPLINARY COMMITTEE BENCH – III (2020-2021)

[Constituted under Section 21B of the Chartered Accountants (Amendment) 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. : PPR/P/65/17-DD/53/TAMC/INF/17-DC/1061/2019

In the matter of:

**CA. M.V. Prasanna (M. No. 206032),
5-6-708, Saraswathi Nagar,
Nizamabad
Nirmal (A.P.)**

..... Respondent

Members Present :

**CA. Atul Kumar Gupta, Presiding Officer
Smt. Anita Kapur, Member (Government Nominee)
CA. Chandrasekhar Vasant Chitale, Member
CA. Manu Agrawal, Member**

**Date of Final Hearing : 5th October, 2020
Place of Final Hearing : New Delhi (Through Video Conferencing)**

Parties Present :

Shri K. Ravi – Counsel for Respondent (appeared from his personal location at Chennai)

Charges in Brief:

1. The allegation against the Respondent is that he had conducted Tax Audit u/s 44AB of the Income Tax Act, 1961 beyond the limit prescribed by the Institute during the financial year 2013-14. It is observed that as per letter no. Tax Audit/C&AG/2014-15/159 dated 1st June, 2015 (A-3) forwarded by Tax Audit Monitoring Cell, the tax audits done by the Respondent during the aforesaid financial year were as under:

| Audits conducted during the Financial Year | No. of Audits |
|---|----------------------|
| 2013-14 | 245 |

(W)

2. The Committee noted that as per the Prima-Facie Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent is guilty under Clause (1) of Part II of the Second Schedule to the Chartered Accountant Act 1949. The aforesaid Clause (1) of Part-II of the Second Schedule states as under:-

“Professional misconduct in relation to members of the Institute generally:

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he –

(1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council”

x

x

x”

Brief facts of the Proceedings:

3. At the time of hearing on 5th October 2020, the Committee noted that the Counsel for the Respondent appeared before the Committee through video-conferencing from his personal location. He, thereafter, gave a declaration that there was nobody present except him in the room from where he was appearing before it and that he would neither record nor store the proceedings of the Committee in any form. Thereafter, the Committee asked the Counsel for the Respondent whether he wished the charges to be read out or it could be taken as read. The Counsel for the Respondent stated he was aware of the charge made against the Respondent and the same might be taken as read. On being asked, as to whether the Respondent pleaded guilty, the Counsel submitted that the Respondent pleaded not guilty and thereafter the Counsel for the Respondent made his submissions in the matter.

Based on the documents and information available on record and after considering the oral and written submissions made by the Respondent, the Committee concluded hearing in the matter

Submissions made by the Respondent:

3A The Committee noted the submission made by the Respondent that his firm M/s M. Anandam & Co has had 11 partners which enabled them to sign 495 tax audit reports in the said financial year. The Respondent further submitted that there were 138 tax audits u/s

44AD/44AE of the Income Tax Act, 1961 and three audits were included in the list of two partners whereas 2 audits have been included in the list but no audits were conducted with respect to such clients. The Respondent further added that that 9 audits reports included in the list were signed after the end of financial year 2013-14, since the limit is taken for financial year 2013-14 these audits have to be excluded in computing the total number of audits conducted .

It was, thus, noted that the statistics of number of Tax Audit done by the Respondent firm during the financial year 2013-14 were as under:

| Particulars | Number |
|--|--------|
| Total number of Tax Audit conducted during FY 2013-14 | 622 |
| Less: Added erroneously against the following partner ,however signed by another partner and included against his list | 3 |
| Less: Added in Partners list but tax audit not conducted | 2 |
| Less; Added in Form 3CA and Form 3CB(counted twice for same audit) | 1 |
| Less: Added in Partners List but Tax Audit signed after 31.03.2014 | 9 |
| Total Number of tax audits conducted during 2013-2014 | 607 |

The Respondent further submitted that out of total number of 607 ,the number of audits u/s 44AD/AE were 138 .So total number of Tax Audits conducted by the firm u/s 44AB were 469 which was justified when the number of partners were 11.

Findings of the Committee:

4. The Committee noted that the Council General Guidelines, No.1-CA(7)/02/2008, dated 8th August,2008, wherein under Chapter VI "Tax Audit assignments under Section 44AB of the Income-tax Act, 1961 ", in Explanation given in Para 6.1, in sub-para(a) & (b) it states that :

"the specified number of tax audit assignments" means –

- (a) in the case of a Chartered Accountant in practice or a proprietary firm of Chartered Accountants, 45 tax audit assignments , in a financial year, whether in case of corporate or non-corporate assesses.

(b) in the case of firm of Chartered Accountants in practice, 45 tax audit assignments per partner in the firm, in a financial year, whether in respect of corporate or non-corporate assesses.

It is noted from ICAI Firm Card, as available in the records, that during the financial year 2013-14, there were 11 partners in the firm. It was noted that as per FAQ on Tax Audit Assignments, issued by the Institute, it has been clarified that:-

"Therefore, if there are 10 partners in a firm of Chartered Accountants in practice, then all the partners of the firm can collectively sign 450 tax audit reports. This maximum limit of 450 tax audit assignments may be distributed between the partners in any manner whatsoever. For instance, 1 partner can individually sign 450 tax audit reports in case remaining 9 partners are not signing any tax audit report".

In view of the above and considering the details of Tax Audit done by the Respondent, it was viewed that the tax audits conducted were within the limit prescribed by ICAI. In the absence of any evidence to the contrary, it is viewed that there is no merit in case as apparently there is no violation of ICAI Council General Guidelines.

Conclusion :

7. In view of above noted facts and discussion, in the considered opinion of the Committee, the Respondent is held **NOT GUILTY** in under Clause (1) of Part II of the Second Schedule to the Chartered Accountant Act, 1949.

Sd/-
[CA. Atul Kumar Gupta]
Presiding Officer

Sd/-
[Smt. Anita Kapur]
Member, (Govt. Nominee)
(approved & confirmed through e-mail)

Sd/-
[CA. Chandrashekhar Vasant Chitale]
Member
(approved & confirmed through e-mail)

Sd/-
[CA. Manu Agrawal]
Member
(approved & confirmed through e-mail)

Date: 16th December, 2020

(passed through VC)

(w)

Certified to be true copy
Mohita Khanna
CA. Mohita Khanna
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032