

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – III (2020-21)]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]

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

File No. : PPR/P/199/17/DD/183/TAMC/INF/2017/DC/1179/2019

In the matter of:

CA. G. Sahadev (M.No.025154)
No. 3/3, 1st Floor, Mandira Apartments,
Basappa Road, K.H. Road Cross,
(Opp. To Ramanand Kinder Garten),
Shanthi Nagar,
BENGALURU – 560 027

----- Respondent

MEMBERS PRESENT:

Smt. Anita Kapur, Member (Govt. Nominee) & Presiding Officer
Shri Ajay Mittal, Member (Govt. Nominee)
CA. Chandrashekhar Vasant Chitale, Member
CA. Manu Agrawal, Member

Date of Final Hearing: 3rd December, 2020 (Decided on 22nd January, 2021)

Place of Final Hearing: New Delhi (through Video Conferencing)

PARTIES PRESENT:

- (i) **CA. G. Sahadev – the Respondent (appeared from his personal location)**

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. It is further observed that as per letters no. Tax Audit/ 2014-15/85 dated August, 2014 (sic) **(A-3)**, followed by reminder letter on 5th February, 2015 **(A-4)** and Tax Audit/C&AG/2014-15/195 dated 1st June, 2015 **(A-5)** issued by Tax Audit Monitoring

Cell, the tax audits done by the Respondent during the financial years 2010-2011 and 2011-12 and 2013-14 are as under :

| Audits conducted during the Financial Year | No. of Audits |
|---|----------------------|
| 2010-2011 | 392 |
| 2011-2012 | 371 |
| 2013-2014 | 357 |

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 3rd December, 2020, the Committee noted that the Respondent appeared before it 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. Being first hearing, the Respondent was put on oath. Thereafter, the Committee asked the Respondent whether he wished the charges to be read out or it could be taken as read. The Respondent stated he was aware of the charge against the Respondent and the same might be taken as read. On being asked, as to whether the Respondent pleaded guilty, he pleaded not guilty and thereafter 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. However, it decided to reserve its judgement in the matter and

asked the Office to ascertain the information with respect to constitution of firm during the alleged periods.

On 22nd January, 2021, the Committee noted the information as submitted by the Office. Based on the documents available on record as well as the oral and written submissions made by the Respondent, the Committee decided on the matter.

Submissions made by the Respondent:

3A. The Committee noted the submission made by the Respondent wherein he submitted that the numbers of audits conducted by him were as follows providing their details thereof:

| Financial Year | Total number of audits conducted | Total number of audits conducted under section 44AD/44AE | Number of audit allowed as per guidelines | Excess audits conducted |
|----------------|----------------------------------|--|---|-------------------------|
| 2010-2011 | 86 | - | 45 | 41 |
| 2011-2012 | 88 | - | 45 | 43 |
| 2013-2014 | 264 | 13 | 45 | 206 |

He further stated that his firm M/s Sahadev & Associates has had 2 partners during 2010-11 and 2011-12 and 6 partners which enabled him to sign the given number of tax audit reports in the respective financial year. The Respondent further submitted that he had conducted only 13 tax audits u/s 44AD/44AE of the Income Tax Act, 1961 during 2013-14. The Respondent further added that these audits have to be excluded in computing the total number of audits conducted for financial year 2013-14. The Respondent, accordingly, submitted that there was no violation on his part.

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 2010-11, 2011-12 & 2013-14, there were 2, 2 and 6 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/-
[Smt. Anita Kapur]
Member, (Govt. Nominee)

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

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

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

DATE: 3rd February, 2021

PLACE: New Delhi