



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

PPR/P/64/2014-DD/51/INF/2014/BOD/304/2017

ORDER UNDER SECTION 21 A (3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 15(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

In the matter of:-

**CA. Radhey Shyam Bansal (M.No.091903), Delhi in Re:
[PPR/P/64/2014-DD/51/INF/2014/BOD/304/2017]**

MEMBERS PRESENT:

**CA. Prasanna Kumar D, Presiding Officer
Mrs. Rani Nair, (IRS, Retd.), Government Nominee
CA. Durgesh Kumar Kabra, Member**

Date of final hearing: 9th March 2020

1. The Board of Discipline vide Report dated 30th January, 2020 was of the opinion that **CA. Radhey Shyam Bansal** is guilty of Professional and "Other Misconduct" falling within the meaning of Clause (2) of Part III and Clause (2) of Part-IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Radhey Shyam Bansal** and communication dated 26th February, 2020 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 9th March, 2020.
3. **CA. Radhey Shyam Bansal** appeared personally before the Board on 9th March 2020 and was put on oath since it was the first time that he appeared before it and made his oral as well as written representation before the Board. He also requested to take a lenient view in his case for award of punishment.
4. **CA. Radhey Shyam Bansal** in his written representation dated 8th March, 2020, inter-alia, stated as hereunder:-

CA. Radhey Shyam Bansal (M.No.091903), Delhi in Re:



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(a) the Hon'ble Board of Discipline overlooked /did not consider the legal view of the matter, which should have been considered by the Hon'ble Board of Discipline, as stated hereunder:-

- A. The DIG, CBI did not even file the complaint in the prescribed Form "I" as prescribed under Rule 3 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, but only provided the transcription of the recorded calls, which cannot be considered as an evidence and relied upon in the absence of call records.
- B. On the basis of "self contained note" alone, the matter was treated as "Information" within the meaning of Rule 7 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The letter/note did not fulfil the criterion laid down u/s 21 of the Chartered Accountants Act, 1949, and as such the said note has no legal sanctity.
- C. No copy of the investigation report or a copy of charge sheet has been filed by the Informant before the Director(Discipline). In absence of the copy of investigation report and Charge Sheet, the DIG in order to cover their short-comings, submitted copies of some documents (having no evidentiary value) which clearly was an afterthought to wrongly implicate the Respondent which is in violation of Rule 7(2) of "The Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007".
- D. Without copy of any investigation or any Charge Sheet, the Respondent had been implicated on mere suspicion and surmises. Informant has failed to furnish any evidence/proof substantiating such allegations; there is not even a single witness produced by the Informant to verify the veracity of such purported allegations.
- E. The Show Cause Notice (SCN) dated 17.12.2014 was issued by the Ld DD, in reference to the letter dated 04.04.14 submitted by the Informant, the said SCN is itself, bad and erroneous in law. There is violation of Rule 8(1) r/w rule 11, since it is obligatory upon the Director(Discipline) to communicate the Respondent about the complaint/information within the prescribed time period of 60 days from the date of receipt of letter/note. The Director(Discipline) issued the SCN only on 17.12.2014 to the Respondent whilst the "Self Contained Note" was received by the DD from the Informant on 04.04.14, i.e. issuance of SCN after a long delay of more than 8 months. Even in the delayed SCN issued on 17.12.2014, the "Self-contained note" was not made available to the Respondent which was subsequently provided by the Director(Discipline) only after a reply was submitted by the Respondent dated 12.01.2015.



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- F. In PFO dated 10.03.2017 the Respondent has also been charged under clause (2) of Part III of First Schedule, in addition to being charged under clause (2) of Part IV of First Schedule, however, w.r.t. Clause (2) of Part III no SCN was issued to the Respondent and as such the Respondent has not been given the sacrosanct opportunity of being heard and right of representation.
- G. The set of documents, namely C-2 to C-54, are non-est documents carrying no evidentiary value and are illegal, for the fact, that they have been submitted after the enquiry in the case was complete, and the case had been closed. The referred calls are more than 11 years old as on date and also no original tapes have made been available to the Respondent. The Respondent denies the summary interpretation of the calls as reported by the Informant since the same are incomplete, haphazard, vague and thus fabricated.
- H. The Hon'ble Board of Discipline overlooked/did not consider that the Director(Discipline) without verification of facts and taking legal view stated in its PFO *"It is important to note excerpts of this very conversations that the Director(Discipline) has quoted in the para 8.1 to 8.3 of his PFO and expressed his view that the conduct of the Respondent is far from the highest ethical standards expected of CA and hence considered him guilty."*
- I. The reproduction of only an excerpt from the entire conversation is greatly prone to the risk of misplacing the context in which certain words or statements were being made. Only if the whole transcript of the alleged call is read comprehensively, can it be clear that such conversation is happening in the context of events that had been happening around the Respondent in the various cases of search and seizure. the Respondent and his associate are found to be discussing the various act of conduct/ misconduct that are taking place in the society around them and are seen expressing their discomfort around it. But at no point in the conversation, has the Respondent suggested any action taken or any intention of any such action which could tantamount to professional misconduct.
- (b) The PFO fails to establish the fact that the Respondent is prima facie *"guilty"* of Professional Misconduct falling within the meaning of the clause (2) of Part III of First Schedule to the Chartered Accountants Act 1949. For charge under Clause (2) of Part III of the First Schedule, the Respondent has adequately supplied the information called for, by the Director(Discipline), by way of Respondent's written submissions and replies. In fact, the Respondent has submitted five replies to the office of the Director(Discipline) – dated 8 May 2015, 3 Nov 2017 and 20 Nov 2017, 01st January, 2020 and 07th January, 2020. In response to the notice of Director(Discipline) dated 17 Dec 2014, the Respondent duly submitted his reply dated 8 May 2015 wherein it



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was clearly stated by the Respondent in no part of the forensic examination report, the name of Respondent has been mentioned or identified in reference to any of the calls/conversations that have been mentioned.

The above reply dated 8 May 2015 was submitted by the Respondent even in absence of any Charge-Sheet and investigation report, which is clear from the fact that the Director(Discipline) demanded copy of Charge-Sheet from the Complainant only on 15.06.2016, which Charge-Sheet, investigation report has not been provided till date and in absence of which, the Respondent furnished his written-submissions. Further, in response to Respondent letter dated 03rd November,2017 the Director(Discipline) vide letter dated 7 November 2017 allowed the Respondent, additional time to furnish the written statement by 20 November 2017, which were duly submitted by the Respondent on 21st November 2017. Thus, the Director(Discipline) cannot now retract from his statements containing evidentiary value namely letter dated 7 Nov 2017 of granting additional time to the Respondent to file his written submissions, which submissions were duly filed and now hold afresh the Respondent guilty vide the PFO in altogether a new clause i.e. Clause (2) of Part III of First Schedule, under which clause the Respondent was never charged/implicated as per the SCN dated 17.12.2014.

- (c) The Respondent reiterated his objections raised on non-fulfillment of requirement as stipulated in clause 2 of part IV of First schedule of code of ethics of ICAI.
- (d) The Hon'ble Board of Discipline failed to appreciate the fact that the Complainant has annexed sham documents with his complaint.

5. The Board has carefully gone through the facts of the case and also the oral and written representation of CA. **Radhey Shyam Bansal**. Considering the above submissions, the Board was of the view that the said contentions were raised by the Respondent at the time of hearing also and had been duly countered in the findings of the Board.

6. Thus, the Board was of the view that as per the findings of the Board as contained in its report there are sufficient evidences such as self-contained note of the CBI, forensic examination report, calls transcript, etc. to suggest that the conduct of the Respondent in allegedly being involved in providing accommodation entries, fake bills, etc. is unbecoming of a Chartered Accountant and not befitting of the highest ethical standards expected of him. Thus, it has already been conclusively

CA. Radhey Shyam Bansal (M.No.091903), Delhi in Re:



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proved that the Respondent is Guilty of Professional and Other Misconduct falling within the meaning of Clause (2) of Part III and Clause (2) of Part IV of the First Schedule of the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

7. Upon consideration of the facts of the case, the consequent misconduct of Radhey Shyam Bansal and keeping in view his written and oral representation before it, the Board decided to remove the name of CA. Radhey Shyam Bansal (M.No.091903) from the Register of Members for a period of Forty Five (45) days and also imposed a fine of Rs. 75,000/- (Rupees Seventy Five thousand only) upon him payable within a period of 60 days from the date of receipt of the Order.

Sd/-
CA. PRASANNA KUMAR D.
(PRESIDING OFFICER)

Certified to be true copy

R.S. Srivastava
Assistant Secretary,
Disciplinary Directorate

The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

BOARD OF DISCIPLINE (BENCH I)

Constituted under Section 21A of the Chartered Accountants Act 1949

Findings under Rule 14(9) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

File No. : PPR/P/64/14-DD/51/INF/2014/BOD/304/2017

CORAM:

**CA. Sushil Kumar Goyal, Presiding Officer
Mrs. Rani Nair (IRS, Retd.), Government Nominee
CA. Durgesh Kumar Kabra, Member**

In the matter of:

**CA. Radhey Shyam Bansal (M.No.091903) in Re:
E-371, Nirman Vihar,
Delhi – 110092**

.....Respondent

DATE OF FINAL HEARING : 06th January, 2020

PLACE OF HEARING : New Delhi

PARTIES PRESENT:

Counsel for the Respondent : CA. Sandeep Manaktala

Findings:

Brief Background of the case:

1.1 In pursuance of Order dated 29.08.2013 of Hon'ble Supreme Court of India, the contents of conversation of Ms. Niira Radia and her associates intercepted by the Income Tax Department were enquired into and a report was submitted before the Hon'ble Supreme Court of India on 01.10.2013. Further on

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17.10.2013, while passing further Orders, Hon'ble Apex Court directed CBI to enquire into the issues highlighted in the report dated 01.10.2013.

- 1.2 Accordingly, Preliminary Enquiry (PE) No. PEBD12013E0005/CBI/BS&FC/DLI was registered on 22.10.2013 to enquire into the conversations pertaining to accommodation entries provided by Shri Anil Bansal and the Respondent.
- 1.3 Enquiry also revealed that the Respondent, the younger brother of Shri Anil Kumar Bansal was the user of landline and mobile no. 011-20095082 and 9811019657 during the relevant period i.e., August 2008 to December 2008. Enquiry revealed that the Respondent was also actively involved in providing accommodation entries, fake bills and sale/ purchase / takeover of companies.
- 1.4 Enquiry further revealed that various Chartered Accountants, Company Secretaries and other persons were also associates of Shri Anil Bansal and the Respondent for providing / facilitating accommodation entries, bogus sale / purchase bills by charging commission through shell companies.

Charge alleged:

2. Against the aforesaid background, the Board noted that CBI, being the Informant alleged against the Respondent that he along with his brother Shri Anil Kumar Bansal was involved in providing accommodation entries, fake bills and sale & purchase / takeover of companies. In this regard, the informant has submitted the brief of the conversations of Shri Anil Kumar Bansal and the Respondent.

Brief of proceedings:

3. The Board noted that at the time of hearing held on 06th January, 2020, the Respondent was not present. However, his Counsel was present who made his detailed submissions before the Board. Since the written statement of the

Respondent was also available on record, considering the oral and written submissions / documents on record, the Board concluded the hearing in the case.

Brief of Respondent's submissions:

4. The Board on perusal of the written statements dated 20.11.2017, 01.01.2020 and 07.01.2020 submitted by the Respondent, noted that it, interalia, provided as hereunder:

(i) Complete details regarding the matter were not provided to him enabling him to file his written statement; instead a prima facie opinion declaring the Respondent guilty was passed.

(ii) The Respondent had requested for the copies of the taped conversations as recorded by the Informant to the Directorate but instead of the taped conversations, the verbatim of certain selected calls were supplied whose source could not be ascertained by the Respondent.

(iii) The Respondent has reasons to believe that the calls transcripts may be forged as he is not being provided the original copies of the recorded tape, and moreover, his belief further stands substantiated by the fact that the CBI itself vide its letter dated 13th July 2016 has informed that the enquiry in the case, based on which such recordings were provided to ICAI, has been complete and since the allegations could not be substantiated, the case has been closed.

(iv) The letter dated 21.05.2014 which was sent in continuation of letter dated 04.04.2014, categorically stated – *“the enquiry of the case is complete and since the allegations could not be substantiated, the case has been closed”*. In spite of such a revelation, it is shocking and absurd that a “Self Contained Note” containing the allegations is prepared by the Ld. DIG which does not have any legal sanctity and relevance in contemplation of law.

(v) The CBI did not file a formal complaint and on the basis of “self-contained note” alone, the matter was treated as “Information” within the meaning of Rule 7 of the Chartered Accountants(Procedure of Investigation of Professional and Other Misconduct and Conduct of cases) Rules, 2007. The CBI did not even file the

complaint in the prescribed Form "I", but only provided the transcription of the recorded calls which nowhere establish any nexus to violation of professional ethics by the Respondent.

(vi) The CBI have not submitted / filed the enquiry report with the Director(Discipline), which they have filed before the Hon'ble Supreme Court in Writ Petition (Civil) No. 398 of 2010. Merely information that too in a self-contained report has been prepared by the DIG and no copy of the investigation report or a copy of charge sheet has been filed before the Director(Discipline).

(vii) Instead of providing a copy of investigation report and charge sheet, the Complainant DIG submitted some more copies of self-created, arbitrary documents which clearly was an afterthought and was additionally created to falsely implicate the Respondent, in absence of cogent and tangible material at hand initially in the Self-contained note dated 20.04.2014. The Respondent has never been provided any opportunity to confront such purported allegations and these frivolous allegations have only been fabricated to harass and defame the Respondent. Therefore, on the basis of principle of natural justice alone, the Prima Facie Opinion may be declared to be illegal and dismissed.

(viii) Further, vide letter dated 07th November, 2017, the Director(Discipline) allowed the Respondent, additional time to furnish the written statement by 20th November, 2017, which was duly submitted by the Respondent on 21st November, 2017. Thus, the Director(Discipline) cannot now retract from his statement containing evidentiary value namely letter dated 7th November, 2017 of granting additional time to the Respondent to file his written submissions, which submissions were duly filed and now hold afresh the Respondent guilty vide the Prima Facie Opinion in altogether a new clause i.e. Clause (2) of Part III of First Schedule, under which clause the Respondent was never charged/implicated as per the SCN dated 17.12.2014.

(ix) The telephonic records of the Respondent with professionals are general professional communications. By tapping such personal, privileged communications of the Respondent with his fellow colleagues, professional and clients, the Complainant has also violated the salutary fundamental rights enshrined under

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"Article 19 - Protection of certain rights regarding freedom of speech" and "Article 21 - Protection of life and personal liberty" of the Constitution of India.

(x) On close perusal of the forensic examination report, it can be stated that the name of the Respondent has not been mentioned or identified in reference to any calls / conversations that have been referred, and therefore, the observations of the Director (Discipline) are grossly incorrect, baseless, unjust and bad-in-law. General day to day conversation and talks of purported acts of another professional which are happening in the society cannot tantamount to an act of professional misconduct among the conversing professionals. During the entire conversation, the Respondent is nowhere suggesting any advice or any actions undertaken by him which may be treated as an act of professional misconduct and he is just absorbing an unsubstantiated account of third party events being explained by a third party caller.

(xi) As regards, Annexures A-6 to A-23 annexed to the Self Contained Note dated 04.04.2014, the Respondent submitted as under:

The referred calls are more than 11 years old as on date and also no original tapes have been made available to the Respondent to assist and confront the context of the conversation and consequently a clarification statement is submitted in respect of such calls.

The Respondent recognizes his contact number and the conversations with several professionals, but in view of factual deficiencies in the information supplied to the Respondent, the Respondent denies the summary interpretation of the calls as reported by the Informant since the same are incomplete, haphazard, vague and thus fabricated.

(xii) As regards, Annexures C-3 to C-54 annexed to the Self Contained Note dated 13.07.2016, the Respondent submitted as under:

These set of documents are non-est carrying no evidentiary value and are illegal, for the fact, that they have been submitted after the enquiry in the case was complete, and the case had been closed.

In Annexure A on page No C-9, only the call transcripts referred to in pts i, ii, iv, v, viii, xi, xii, xiii, xiv, xv, xvii and xviii pertain to the conversations on the Respondents mobile number and the Respondent has no relation with any of the

other reported conversations. In the eleven calls referred above the Respondent had conversed with, there is no mention about the person with whom the Respondent conversed.

General day to day conversation and talks of purported acts of another professional which are happening in the society cannot tantamount to an act of professional misconduct among the conversing professionals.

(xiii) The Informant has failed to furnish any evidence/proof substantiating such allegations and there is not even a single witness produced by the Informant to verify the veracity of such purported allegations.

Observations of the Board:

5. As regards the claim of the Respondent that details regarding the matter were not provided to the Respondent, the Board noted that he was provided with all the documents provided by the Informant vide Directorate's letter dated 16.02.2015 sending therewith copies of the documents on the basis of which the matter had been treated as 'Information'.

6. As regards the Respondent's contention that he has never been provided any opportunity to confront purported and frivolous allegation, the Board was of the view that the same is not tenable as letter dated 17.12.2014 followed by reminder letters dated 16.02.2015 and 10.04.2015 were issued to him to file his written statement before the formation of the prima facie opinion which were duly acknowledged but the Respondent did not submit his written statement.

7. As regards the objection of the Respondent regarding non-fulfillment of the requirement stipulated in Clause (2) of part IV of the First Schedule, the Board referred to Para 15 of the Order dated 13th May, 2017 passed by the Honourable Appellate Authority in the matters of Gyan Prakash Agarwal (Appeal No. 08/ICAI/2014), Rajiv Maheshwari (Appeal No. 05/ICAI/2014) and Sameer Kumar Singh Vs. ICAI (Appeal No. 07/ICAI/2014), and noted as hereunder:

15. Based on the above and by taking note of the written submissions made on behalf of the Institute of Company Secretaries of India, the Institute of Cost Accountants of India and the Institute of Chartered Accountants of India containing the detailed analysis of the issue in question, we are of the considered view that the proper and correct interpretation which can be given to Clause (2) of Part-IV of the First Schedule to the respective Acts, in the light of the principles laid down and having regard to the case laws of various courts and further considering the basic objects, reasons and purpose of the amendment brought in the statutes as quoted above is that, 'Prima facie Opinion (PFO)' formed by the Director (Discipline) in all such complaints / information cases serves the purpose for proceeding further for taking disciplinary action against the errant members as in terms of the amended mechanism for conduct of cases, it is the Director (Discipline) who has to form the first Prima Facie Opinion for the disciplinary proceedings to be initiated. Therefore, the opinion of council as is mentioned in the clause (2) of Part-IV of the First Schedule to the Act has to be given a purposive meaning and has to be read in consonance with the letter and scheme of the enactment."

Hence, since the issue had already been decided by the Hon'ble Appellate Authority, The Board was of the view that there is no merit in the argument of the Respondent in this regard.

8. The Board on perusal of the brief of the conversation of the Respondent with others, as brought on record by the CBI, observed the following points:-

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2. Conversation of Call ID No.11-188819-0-22-20081121-172018 held between Shri R. S. Bansal and Shri S.K. Jain (advocate). In this conversation Shri R.S. Bansal is asking to Shri S.K. Jain for collecting Rs. 8.5 Lakhs from his office.

3. Conversations of Call ID No. 11-188819-0-23-20081110-111226 and ID No. 11-188819-0-23-20081114-122057 held between Shri R.S. Bansal And Shri Parvesh Gupta. In these conversation Shri Parvesh Gupta was suggesting the name of M/s

MHA Impex Pvt. Ltd., for doing some entry transaction of Rs. 31 lacs through the account M/s MAH Impex Pvt. Ltd.

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7. Conversation of Call ID No. 00013050-11-188819-0-20-20080826-130339 held between Shri R.S. Bansal and Shri Anil Aggarwal. In this conversation Shri Rs. R.S. Bansal is asking for providing the bills showing sale/purchase with VAT and Shri Anil Aggarwal is telling that he can arranged the same after some days. Shri R.S. Bansal is also requiring the bills of Computer Hardware in this response Shri Anil Aggarwal is telling that he can arrange the bill from two Companies namely M/s Sri Sidi Sales Corporation and M/s Hari Ram Gopal Kishan with VAT Nos. took place or not.

8. Conversation of call ID no .00013194-11-188819-0-05-20080826-174214 held between Shri R.S. Bansal and Shri Rakesh Jain. In this conversation Shri Rakesh jain is telling to Shri R.S. Bansal that he can provide the bill of advertisement from Rajasthan Patrika at a costing of 4 percent and 20 percent for actually publishing the advertisement.

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11. Conversation of Call ID No. 00014828-11-18819-0-09-20080830-174745 held between Shri R. S. Bansal and Shri S. K. Jain. In this conversation Shri S.K. Jain is enquiring about his requirement of bills showing purchase of steel.

12. Conversation of Call ID No. 00015097-11-188819-0-04-20080901-133147 held between Shri R.S. Bansal and Shri Sunil Jain. In this conversation Shri Sunil Jain is enquiring about some NBFC company M/s Junoon Capital Services for doing entry transaction. Shri Sunil Jain is further discussing about some commission entry of builders.

.....
45. Conversation of Call ID No. 00053143-11-188819-0-21-20081031-144436 held between Shri R.S. Bansal and unknown person. Shri R.S. Bansal is unable to indentify the person involved in this conversation. In this conversation the person enquiring about the work being done by Shri R.S. Bansal and Shri R.S. Bansal is telling that he can do the following work:-

a. Can arrange one time entry to needy party

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- b. Can give commission income from M/s DLF showing consultancy in Property about Rs. 7-8 crores.
- c. Can give commission income in the field of Cloth, Plastics and Medical instruments
- d. Can provide of bills showing sale/purchase of Computer hardware
- e. Can provide bill of printing from M/s Printo Pack
- f. Can provide the bill of Transport.

.....”

8.1 From the above, it is seen that the Respondent was regularly discussing with various people regarding providing some entry transactions, bills showing sale / purchase and transport, etc.

9. The Board further noted that as per Forensic Voice Examination Report no. CFSL--2013/P-1744 dated 30.01.2014, the result of examination was as follows:-

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8. Result of Examination

Regarding Query (i)

- i. The auditory examination of questioned voice marked exhibit Q-1(1) (R) and specimen voice of Shri Radhey Shyam Bansal marked exhibit A(R) reveal that questioned voice marked exhibit Q-1(1)(R) is similar to the specimen voice marked exhibit A(R) in respect of their linguistic and phonetic features.
- (ii) The voice spectrographic examination of questioned voice samples marked exhibits Q-1(1)(r1) to Q-1(1) (r12) and specimen voice samples marked exhibits A(r1) to A(r12) reveal that the questioned voice samples marked exhibits Q-1(1)(r1) to Q-1(1)(r12) are similar to specimen voice samples marked exhibits A(r1) to A(r12) in respect of their formant frequencies distribution, intonation pattern, no. of formants and other general visual features in spectrograms.

Hence, the voice marked exhibit Q-1(1)(R) is the probable voice of the person (Shri Radhey Shyam Bansal) whose specimen voice is marked exhibit A(R).

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10. With respect to claim of the Respondent regarding violation of Article 19 of the Constitution of India by the Complainant, the Board noted the contents of Self Contained Note in Case PE 2172013A0007 which provided as follows:-

"1. Case PE 2172013A0007 was registered on 22-10-2013 against unknown public servants and private persons on the basis of order dated 17-10-2013 passed by Hon'ble Supreme Court of India in Writ Petition (Civil) No. 398 of 2010 vide para No. 16 relating to Issue No. 1 on the basis of analysis of recorded call numbers 21441-11-188819-0-15-20080922-183031, 12084-11-188819-0-14-20080822-184040, 12514-11-188819-0-15-20080823-200949, 13066-11-188819-0-31-20080826-135049, 46801-11-188819-0-28-20081025-134325, 11-188819-0-26-20081112-135212, 71116-11-188819-0-01-20081119-85032, 72337-11-188819-0-30-20081120-095236, 80909-11-188819-0-1220081206-202838 and 81247-11-188819-0-24-20081208-102632 with mobile numbers 9811056225 and 9811019657 of Shri Anil Bansal and Shri Radhey Shyam Bansal, both CAs disclosed demand of illegal gratification by Income Tax Officials from the concerned Chartered Accountants, their representatives etc., to pass favourable order in respect of pending income-tax-matters. The conversation further indicates that such payments have been made to Income Tax Officers namely Shri Meena and Shri Negi by the concerned parties.

2. Enquiry has disclosed that on reference of Ministry of Finance, Government of India, Central Board of Direct Taxes (CBDT) conducted a discreet enquiry on an information M/s Nira Radia and M/s Vaishnavi Consultants were indulging in Money Laundering. Thereafter, Director General of Income Tax (DGIT) (Investigation) initiated discreet enquiry and put on surveillance the mobile phones/telephone in the name of Ms Nira Radia, her associates and employees **after taking permission from the Competent Authority**. In this process, the Mobile No. 9811056225 in the name of Shri Anil Bansal, CA and Mobile No. 981109657 in the name of Shri Radhey Shyam Bansal, CA were also put on surveillance. Scrutiny of the intercepted calls disclosed their involvement in payment of illegal gratification to some Income Tax Officials."

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10.1 In this regard, the Board considered the view of the Hon'ble Supreme Court of India in the matter of **Anuradha Bhasin Vs UOI & Ors. [WP(Civil) no. 1031 of 2019 dated 10th January, 2020]** which while dealing with the issue of phone tapping relied upon the decision in **PUCL Vs UOI [(1997) 1 SCC 301]** and observed as under:

“the scope of “public emergency” relates to the situations contemplated under the subsection pertaining to “sovereignty and integrity of India, the security of the State, friendly relations with foreign states or public order or for preventing incitement to the commission of an offence”. Further, “The word ‘emergency’ has various connotations. Everyday emergency, needs to be distinguished from the type of emergency wherein events which involve, or might involve, serious and sometimes widespread risk of injury or harm to members of the public or the destruction of, or serious damage to, property. Article 4 of the International Covenant on Civil and Political Rights, notes that ‘[I]n time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed...”

Further, The Hon'ble Supreme Court in the judgment of **Anuradha Bhasin (Supra)** while dealing with the requirement under Section 5(2) of Telegraph Act, 1885 has relied upon the matter of **Hukam Chand Shyam Lal Vs Union of India [(1976) 2 SCC 128]** and observed as under:

“The second requirement of Section 5(2) of the Telegraph Act is for the authority to be satisfied that it is necessary or expedient to pass the orders in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states or public order or for preventing incitement to the commission of an offence, and must record reasons thereupon. The term ‘necessity’ and ‘expediency’ brings along the stages an emergency is going to pass through usually. A public emergency usually would involve different stages and the authorities are required to have regards to the stage, before the power can be utilized under the aforesaid rules. The appropriate balancing of the factors differs, when considering the stages of emergency and accordingly, the authorities are required to triangulate the necessity of imposition of such restriction after satisfying the proportionality requirement.”

10.2 Considering the above, it is seen that the telephonic calls of the Respondent had been tapped after taking due permission from the Competent Authority, and thus, the contention of the Respondent in this regard is not tenable.

11. The Board further took perusal of the Self Contained Note in Case PE 2172013A0006 wherein the following points were noted:-

"1. Case PE 2172013A0006 was registered on 22.10.2013 against Shri Rajiv Gupta and others on the basis of order dated 17.10.2013 passed by Hon'ble Supreme Court of India in Writ Petition (Civil) No. 398 of 2010 vide para No. 16 relating to Issue No. 1 on the basis of analysis of recorded call numbers 00012567-11-188819-0-09-20080824-11508, 00012719-11-188819-0-14-20080825-130903 and 00012980-11-188819-0-15-20080826-103731 pertaining to mobile number 9811019657 of Shri Radhey Shyam Bansal, CA which revealed that in the month of August, 2008 surveys/raids were conducted by the officers of Income Tax Department, Delhi in the office premises of four Chartered Accountants namely S/Shri Shyam Shanker Gupta (S.S. Gupta), Rajeev Gupta, Nirbhay Shanker Gupta and Madan Gopal Gupta located in the Laxmi Nagar area of Delhi. It appears that in these surveys, the income tax officials had not carried out the survey proceedings in impartial, fair and professional manner with malafide intention.

2. Further the following additional calls relating to Shri Radhey Shyam Bansal (Mobile No. 9811019657) and Shri Anil Bansal (Mobile No. 9811056225) were also analysed:-

Calls relating to Shri Radhey Shyam Bansal

- 1. 00012752-11-188819-0-07-20080825-141635*
- 2. 00012765-11-188819-0-21-20080825-145332*
- 3. 00012894-11-188819-0-06-20080825-192117*
- 4. 00013358-11-188819-0-17-20080827-145319*

Calls relating to Shri Anil Bansal

- 1. 00012582-11-188819-0-17-20080824-130912*

2. 00013090-11-188819-0-14-20080826-141048
3. 11-188819-0-28-20080828-100905
4. 00013604-11-188819-0-21-20080828-114636

.....

However, the intercepted conversations of Shri Anil Bansal, Shri Radhey Shyam Bansal and Shri Shyam Shankar Gupta, all Chartered Accountants has revealed a disturbing malaise unravelling the unethical conduct and as to how they try to manipulate the system to influence the outcome of proceedings of the Income Tax Department. The defence taken by them that if a survey is conducted by the IT authorities at the premises of a CA, it badly affects his reputation and to salvage the situation they often give an impression to others as if they have got the matter settled with the IT authorities and further that this also creates an impression of their resourcefulness of getting the matter settled to not let their clients leave them is apparently unethical and interestingly taken by all the CAs involved in this matter."

11.1 The Board taking in view the above Self Contained Notes PE 2172013A0007 and PE 2172013A0006 noted that and the enquiry was initiated against the public servants which also revealed the involvement of the Respondent and his associate. The said case was later on closed against the said government officials by the CBI and referred the case of both the Chartered Accountants i.e. the Respondent and one CA. Anil Bansal, regarding violation of professional ethics to the Disciplinary Directorate vide its letter dated 13.07.2016. Thus, the contention of the Respondent that the case has been closed against him is not maintainable and it seems that he is misleading this forum.

12. The Board viewed that the Respondent has recognized his contact number in his submissions and has not denied that the calls record does not belong to him. Further, he has accepted the discussion he had with some people on the phone call. The Board also noted that although the Respondent stated that the CBI had filed a false report before the Board of Discipline, however, he did not consider taking any action against the allegedly false report of CBI.

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13. The Board deliberated on the facts of the case along with the submissions made by the Respondent. The Board was of the opinion that there are sufficient evidences such as self-contained note of the CBI, forensic examination report, calls transcript, etc. to suggest that the conduct of the Respondent is unbecoming of a Chartered Accountant. Further, the Respondent has also not produced any tangible evidences to substantiate that he was not involved in the matter. The Board was of the view that the Respondent was allegedly involved in providing accommodation entries, fake bills, etc. and the said alleged act on the part of the Respondent is not befitting of the highest ethical standards expected of him.

14. Hence, keeping in view the above, the Board decided to hold the Respondent Guilty of the charge alleged against him.

15. The Board further observed the provisions of Clause (2) of Part III of the First Schedule to the Chartered Accountants Act, 1949 which states that if a member of the Institute, whether in practice or not, does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority, then he shall be deemed to be guilty of professional misconduct. In this regard, it is seen that in the instant case, the Respondent did not file his written statement at the prima facie stage despite being reminded vide letters dated 16.02.2015 and 10.04.2015 which were duly acknowledged. This clearly implies violation of the provision of Clause (2) of Part III of First Schedule to the Chartered Accountants Act, 1949. Further, the written statement referred to by the Respondent which has been received on 21st November 2017 is the further written statement submitted by the Respondent on the Prima Facie Opinion of the Director (Discipline). Thus, the Respondent is held guilty in respect of this charge also.

CONCLUSION:

16. Thus, in conclusion, in the considered opinion of the Board, the Respondent is held **GUILTY** of Professional and Other Misconduct falling within the meaning of

Clause (2) of Part III and Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

Sd/-
CA. SUSHIL KUMAR GOYAL
(PRESIDING OFFICER)

Sd/-
MRS. RANI NAIR (IRS, Retd.)
(GOVERNMENT NOMINEE)

Sd/-
CA. DURGESH KUMAR KABRA
(MEMBER)

DATE: 30TH JANUARY, 2020

PLACE: NEW DELHI

Certified Copy
[Signature]
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002