



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

DISCIPLINARY COMMITTEE [BENCH-I (2020-2021)]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]

ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949
READ WITH RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF
INVESTIGATION OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT
OF CASES) RULES, 2007.

In the matter of :-

CA. Vishnu Kant Gupta (M. No.405904), Lucknow in Re:
[PPR/P/42/15-DD/133/INF/15-DC/685/2017]

MEMBERS PRESENT (Through Video Conferencing):-

CA. Nihar Niranjana Jambusaria, Presiding Officer
Shri Jugal Kishore Mohapatra, I.A.S. (Retd.) (Government Nominee)
Ms. Rashmi Verma, I.A.S. (Retd.) (Government Nominee)
CA. G. Sekar, Member
CA. Pramod Jain, Member

1. That vide findings dated 29th January, 2019 under Rule 18 (17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Disciplinary Committee was inter-alia of the opinion that **CA. Vishnu Kant Gupta (M.No.405904)** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule & Clause (1) of Part II of Second Schedule to the Chartered Accountant Act, 1949.

2. That pursuant to the said findings, an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and communications dated 4th March, 2020 and 21st August, 2020 were addressed to him thereby granting an opportunity of being heard in person and/or to make a written representation before the Committee on 17th March, 2020 and 2nd September, 2020 respectively.

3. The Committee noted that on 2nd September, 2020, the Respondent was present through Video Conferencing mode and made his verbal representation on the said findings.

4. The Committee observed that the representations as made by the Respondent before the Disciplinary Committee can be summarized as under:-

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CA. Vishnu Kant Gupta (M.No. 405904)
[PPR/P/42/15-DD/133/INF/15-DC/685/2017]



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i). The Respondent stated that he had a telephonic conversation with the previous auditor M/s Rakesh S. Chand & Associates for the purpose of obtaining his consent for conducting audit for FY 2011-12, and thus, consent was obtained orally.

ii) The Respondent had admitted during the hearing that he was less experienced when he took up the audit of the Company and, thus, he omitted to mention his membership number in its audit report and issued Notes to Accounts of the Company on his letter head. The Respondent stated that he will take due precaution while handling his professional assignment now onwards and requested to take a lenient view in his case.

5. The Committee has considered the reasoning as contained in findings dated 29th January, 2019 holding the Respondent Guilty of professional misconduct vis-à-vis representations of the Respondent on the findings of the Disciplinary Committee.

6. Keeping in view the facts and circumstances of the case, material on record and representations of the Respondent made before it, the Committee is of the view that the professional misconduct on the part of the Respondent is established as backdating the audit report and financial statement appears to be deliberated act on the part of the Respondent. In addition to this, the Respondent accepted his mistake before the Committee. Accordingly, ends of justice can be met if reasonable punishment is given to him. Accordingly, the Committee ordered that **the name of the Respondent i.e. CA. Vishnu Kant Gupta (M.No.405904) be removed from the register of members for a period of 07 (Seven) days and also a fine of Rs.15,000/- (Rupees Fifteen Thousand Only) be imposed on the Respondent to be payable within 30 days from receipt of the Order.**

sd/-

(CA. NIHAR NIRANJAN JAMBUSARIA)
PRESIDING OFFICER

(approved and confirmed through e-mail)

(SHRI JUGAL KISHORE MOHAPATRA, I.A.S. (RETD.))
GOVERNMENT NOMINEE

sd/-

(MS. RASHMI VERMA, I.A.S. (RETD.))
GOVERNMENT NOMINEE

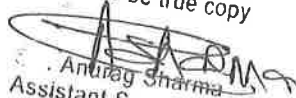
(approved and signed)

(CA. G. SEKAR)
MEMBER

sd/-

(CA. PRAMOD JAIN)
MEMBER

Certified to be true copy


Anirag Sharma

Assistant Secretary,
Disciplinary Directorate

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

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH-III (2018-19)]

**[Constituted under section 21B of the Chartered Accountants 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/42/15/DD/133/INF/15/DC/685/2017

In the matter of :

CA. Vishnu kant Gupta (M.No.405904)

22/181, Indira Nagar,

LUCKNOW-226015

..... Respondent

Members Present:

**CA Naveen N.D. Gupta, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
CA Shyam Lal Agarwal, Member
CA Sanjay Kumar Agarwal**

Date of Final Hearing : 4th December 2018

Place of Final Hearing : New Delhi

Parties Present

(i) CA C. V. Sajan - Counsel for Respondent





Allegations of the Informant, Dr. Mukesh Jain, Deputy Commissioner of Income Tax-9(1)(1), Mumbai:

The Respondent was the statutory auditor of M/s Edex Production and Broadcasting Pvt Ltd (hereinafter referred to as the "Company"). During the course of assessment proceedings for the Assessment Year 2012-13, it was observed by the Informant Department that the Company had filed one original return and thereafter one revised return. The Company thus filed two Returns declaring different incomes as given below:

The details of two different audit reports (one of which was signed by the Respondent), are given below:-

Date of Return	Returned Income	Date of Auditors Report	Audited by
30 th September, 2012	(-)63,56,049/-	27 th August, 2012	Amar Tandon (Proprietor) c/o Amar Tandon & Co., LG-1, Pink Apartments, 93N, Dalibagh, Lucknow
16 th December, 2013	(-)63,56,034/-	27 th August, 2012	Vishnu Kant (Proprietor) c/o Vishnu Kant & Associates, 22/181, (i.e. the Respondent) Indiranagar, Lucknow-226016

When an explanation was sought for the basis for revision, it was stated that the return was revised in view of auditor's report. In view of the above background, the following allegations had been leveled by the Informant against the Respondent:-

- I. Backdating the audit report and Financial Statement while signing. Beside this, the Informant had also raised the issue that even though the Company was located at Mumbai, audit was done by an auditor having office in Lucknow.
- II. Not mentioning of membership number on the Audit Report.



- III. Notes to accounts were on the letter head of the Respondent rather than on the letterhead of the Company.

Proceedings:

3. At the time of hearing on 20th July 2018, the Committee noted that the Respondent along with his Counsel, was present before the Committee. Being the first hearing, the Respondent was put on oath. On being asked, as to whether the charges may be taken as read, the Respondent stated that he was aware of the allegations and the charges may be taken as read. On being asked, as to whether he pleaded guilty, he replied that he did not plead guilty and would opt to defend his case. Thereafter, the Counsel for the Respondent made his submissions in the matter before the Committee. The Respondent was examined by the Committee on the submissions made by him. Based on the documents available on record and after considering the oral and written submissions made by the Respondent before it, the Committee directed the Respondent to submit the following documents/clarification/ written submissions within 15 days from the date of the hearing:
- a) Details of the registered office of the company
 - b) As per the Companies Act, 1956 as to where the Share Capital records were required to be kept and where the Respondent had conducted audit.
 - c) Whether the Respondent was the first auditor of the Company; if not, then name of the previous auditor.
 - d) Whether the Respondent had communicated with the previous auditor and obtained a No Objection Certificate from the previous auditor.
 - e) When did the Respondent receive the audit fees. Details thereof. Mode in which the audit fees was received viz cheque nos., account statement etc.
 - f) Whether any expenditure on any trip to Mumbai was incurred during the course of audit
 - g) A brief on the audit procedures adopted by him for verification of share capital of the Company.
 - h) Working Papers with respect of (g) above.



Accordingly the matter was part heard and adjourned.

4. At the time of last hearing on 4th December 2018, the Committee noted that the Counsel for Respondent was present. The Committee noted that the documents/information as sought from the Respondent had been received on record. The Committee thereafter informed the Counsel for the Respondent that the composition of the Committee had undergone a change, therefore an option of de-novo hearing in the matter was available to him. The Counsel stated that since substantial defence both in writing and orally had been submitted by him at the previous hearing, therefore the hearing in the matter might be proceeded from the stage where it was left. The Committee agreed to the same and thereafter, based on the documents available on record, the oral and written submissions made by the Respondent, the Committee concluded the hearing in the matter.

Findings of the Committee:

5. The Committee noted that the first allegation against the Respondent was regarding backdating the audit report and financial statement for the Financial Year 2011-12. In this regard, the Respondent had submitted that another set of Balance Sheet for the financial year concerned which was signed by another Chartered Accountant, CA Amar Tandon, was different only in respect of share capital along with corresponding changes in Reserves & Surplus of the Company and remaining portion of the two Balance Sheets were similar in all respect. In response to a query raised by the Committee, the Respondent, while submitting a copy of Form 2 filed by the Company in respect of share allotment along with list of allottees and extract of minutes of meeting in which shares were allotted on the basis of private placement, stated that the share capital stated in the balance sheet attested by him was as per the filing with ROC. The Respondent submitted that it was the other auditor who had connived with the Management of the Company and had signed another set of financials for the same year for which the Respondent had signed. The Respondent further submitted that he had a telephonic conversation with the previous auditor M/s Rakesh S. Chand & Associates for the purpose of obtaining his consent for conducting audit for FY 2011-12, and thus, consent was obtained orally. △



6. The Committee, in this regard, noted that the Company had issued appointment letters to two auditors i.e. one to the Respondent and another to CA Amar Tandon on the same date, i.e 12th July, 2012 (C-7 to C-8). On independent examination of documents from ROC website, it was noted that Form 23B, i.e. intimation by the Auditor to ROC, was filed only for FY 10-11 by M/s Rakesh S. Chand & Associates. Further from perusal of Form 23AC filed in respect of FY 11-12, it was noted that Financial Statements filed with ROC were the one signed by the Respondent. However, the Respondent was neither able to produce on record any communication done by him with the Company with regard to conduct of audit for the FY 11-12 nor was able to produce on record copy of NOC obtained from the previous auditor. Moreover, the Respondent, in the extant case, in response to the queries raised by the Committee during hearing proceedings could not produce on record any proof regarding his visit to Mumbai for the purpose of conducting audit. The Committee noted that it appeared that the Management of the Company for whatsoever reason had played some mischief as evident from its act of appointing two auditors for same financial year. However, the Respondent was neither able to produce the NOC from the previous auditor nor any evidence to show that he had conducted any real time audit and had not back dated the report in form of any travel details/or expenses incurred for his visit to Mumbai for conducting the audit of the Company. The Committee, accordingly, was of the considered opinion that with regard to backdating of the financial statements, the respondent was guilty of professional misconduct within the meaning of Clause (1) of part II of Second schedule of the Chartered Accountants Act, 1949. The Respondent had not produced satisfactory evidence to have conducted any real time audit. In the absence of any evidence, the Respondent was held guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

7. In respect of the second allegation, it was alleged that the Respondent had not mentioned his membership number on the Audit Report. The Respondent in this regard had admitted during the hearing that he was less experienced when he took up the audit of the Company and, thus, he omitted to mention his membership number in its audit report. The Respondent further submitted that in the Form 23AC, the

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membership number of the Respondent was correctly mentioned. The Committee viewed that non-mentioning of membership number on the Audit Report for the year 2011-12, was a violation of para 28 of SA 700, "THE AUDITOR'S REPORT ON FINANCIAL STATEMENTS" and thus the Respondent was guilty of Professional Misconduct within the meaning of Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949. It also viewed that although such non-compliance had no bearing on the true and fair view of the financial position of the Company, but the same was suggestive of the casual approach adopted by the Respondent while discharging his professional duties.

8. In respect to the third allegation against the Respondent that the Notes to accounts were on the letter head of the Respondent rather than on the letterhead of the Company whose financials were being prepared, it was noted that the Respondent, in this regard had not submitted any defense in his Written Statement. Further the Respondent, during the hearing proceedings had admitted to have committed the alleged mistake by printing notes to accounts of the Company on his letter head and had begged pardon stating that he was then inexperienced. The Committee noted that such practice was in violation of the Guidelines of Ethical Standard Board of ICAI given at its 126th Meeting held on 10th January, 2014 wherein approval was granted for issuing of Auditor's Report on Letter Head of the Firm, but, no such approval was given for issuing notes to accounts on the Letterhead of the Auditor. In view of the above, the Committee noted that the Respondent had adopted a casual approach in carrying out his professional assignments. The Committee accordingly, was of the considered opinion that as regard this charge, the Respondent was 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

9. Thus in conclusion, in the opinion of the Committee, the Respondent was **GUILTY** of Professional Misconduct falling within the meaning of Clause (7) of Part I of the Second



Schedule & Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

Sd/-
CA. Naveen N. D. Gupta
(Presiding Officer)

Sd/-
Smt. Anita Kapur,
Member (Govt. Nominee)

Sd/-
(CA. Shyam Lal Agarwal)
Member

Sd/-
(CA. Sanjay Kumar Agarwal)
Member

Date : 29th January, 2019

Place : New Delhi

Certified True Copy

Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002