

**CONFIDENTIAL**

**DISCIPLINARY COMMITTEE BENCH – I (2021-2022)**

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

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

**File No.: PPR/P/014/17/DD/11/TAMC/INF/17-DC/1121/2019**

**In the matter of:**

**CA. Loharam Ray (M. No. 013713), Berhampore, West Bengal in Re:  
154/3, R.N. Tagore Road,  
(Distt. Murshidabad)  
Berhampore – 742 101  
West Bengal**

**.... Respondent**

**Members Present:**

**CA. Nihar N Jambusaria, Presiding Officer  
Shri Jugal Kishore Mohapatra, I.A.S. (Retd.) (Government Nominee)  
Ms. Rashmi Verma, I.A.S. (Retd.) (Government Nominee)  
CA. Anuj Goyal, Member  
CA. Durgesh Kabra, Member**

**Date of Final Hearing : 24<sup>th</sup> June 2021**

**Place of Final Hearing : Through Video Conferencing**

**Parties Present:**

**Respondent : CA. Loharam Ray  
Counsel for the Respondent : CA. A.P. Singh**

**CHARGES IN BRIEF :**

1. The charge against the Respondent is that during the financial years 2013-14, he conducted Tax Audit u/s 44AB of the Income Tax Act, 1961 beyond the limit prescribed by the Institute vide Council Guidelines No.1-CA(7)/02/2008. It was alleged that the Respondent has conducted the following numbers of tax audit u/s 44AB of the Income Tax Act, 1961 during the financial year 2013-14 : -

Audits conducted during the Financial Year	No. of Audits
2013-14	262

- 1.1 It may be noted that in Council Guidelines, 2008, vide Guidelines No.1-CA(7)/02/2008, dated 8<sup>th</sup> August, 2008, 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 has been mentioned as:-

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

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. On the day of hearing held on 24th June 2021, the Respondent along with his Counsel was present. The Respondent was administered oath. Since the matter was heard on 27.10.2020, the Committee continued the hearing from the stage as it was left in last hearing held on 27.10.2020. The Counsel for the Respondent did not raise any objection to the same and made his submissions on the charges. The Committee posed questions to the Respondent. The Counsel for the Respondent stated that he has already submitted copy of affidavit of partners of the firm and list of audit done by the Respondent along with details of PAN and turnover. After hearing the submissions, the Committee decided to conclude the hearing in the above matter.

- 3.1 In respect of previous hearing held in the matter on 27<sup>th</sup> October, 2020, the Committee noted that the Respondent along with his Counsel was present through video conferencing. The Respondent was administered oath. On being enquired from the Respondent as to whether he is aware of the charges, the Respondent replied in affirmative and pleaded not guilty to the charges levelled against him. Thereafter, the Counsel for the Respondent made his submissions on the charges. After hearing the submissions, the then Committee directed the Respondent to submit details of audit conducted under Section 44AD/AE/AF and copy of audit reports along with copy of Profit & Loss Accounts of the Auditee. The then Committee also directed Respondent to submit Affidavit from other partners of the firm with regard to the fact that the number of tax audit assignment, they have conducted during the financial year 2013-14 in their capacity as partner of the firm and/or partner / proprietor of the other firm(s) in aggregate year does not exceed the "specified number of tax audit assignment" (i.e.45).

#### **FINDINGS OF THE COMMITTEE:**

4. Before giving findings in the matter, the Committee noted the following background about the facts which are given here-in-below:

4.1 Section 44AB of the Income-tax Act, 1961 came into force w.e.f. 01.04.1985. The Government of India, Ministry of Finance, Department of Revenue (CBDT), New Delhi, examined the tax audit reports submitted by Chartered Accountants in a large number of cases, pursuant to introduction of Section 44AB, in the next two years or so. It was noticed by the Government that some of the auditors were completing around fifty (50) audits in a month, which resulted in deterioration of the quality of audit. It was therefore suggested to the Government by the Tax Authorities in the field, that the Government may fix the maximum number of audits, which an auditor may be allowed to undertake under the provisions of Section 44AB of the Income-tax Act, 1961, on the same lines, as Section 224 of the Companies Act, 1956, whereby the number of company audits which a Chartered Accountant could do had been restricted to twenty (20).

4.2 In light of the aforesaid facts, the Government of India, Ministry of Finance, Department of Revenue (CBDT), New Delhi wrote a letter dated 19<sup>th</sup> January 1988 to the then Secretary of the Institute, seeking his comments, regarding the suggestion of restricting the number of tax audits which a Chartered Accountant might be permitted to complete in a year, under section 44AB of the Income Tax Act, 1961.

4.3 The aforesaid letter dated 19<sup>th</sup> January, 1988 was considered firstly by the Professional Development Committee (PDC) of the Institute, and thereafter by the Council of the Institute, in its 133<sup>rd</sup> meeting held on 28<sup>th</sup>/30<sup>th</sup> April, 1988. After detailed deliberations, the then Council of the Institute in its said meeting decided to put a ceiling of thirty (30) tax audit assignments w.e.f. 1<sup>st</sup> April, 1989.

4.4 Pursuant to the above, and in exercise of the powers conferred by Clause (ii) of Part II of the Second Schedule to the Act (as it then stood), the Council of the Institute issued a notification bearing No. 1-CA(7)/3/88 dated 13<sup>th</sup> January,

1989 specifying that a member of the Institute in practice shall be deemed to be guilty of professional misconduct, if he accepted in a financial year, more than specified number of tax audit assignments under Section 44AB of the Income-tax Act, 1961. The then specified number being 30 in a financial year, whether in respect of corporate or non-corporate assessees. Subsequent to the above, the matter was considered number of times by Council with regard to revision of ceiling on the number of tax audits and the same was increased from 30 to 45 in the year 2007, which has been further increased to 60 in the year 2014 by the Council of the Institute. Considering that the turnover of the limit of tax audit has been increased from Rs. 40 Lakhs to Rs. 1 Crore in recent years, the Council decided, that no change is required in the existing tax audit limit prescribed by the ICAI by way of Guidelines.

- 4.5 It may be noted that Section 15 of the Act enumerates the functions to be performed by the Council apart from the general functions to carry out the objects of the Act. Under Section 15(2)(j), it is one of the functions of the Council **"to regulate and maintain the status and standard of professional qualifications of members of the Institute"**. Accordingly, each of these Notifications had been issued by the Council of the Institute after considering the report of the PDC; and the **whole object thereof was to ensure efficiency, improve the quality of service, ensure maintenance of high standards of performance in the field of tax audit assignments, ensure timely completion of audits and filing of tax returns by the assessees.** In other words, there was a definite public purpose involving the very object of preventing evasion of taxes, plugging loopholes, enabling tax avoidance, and also facilitate tax administration to ensure that the economic system does not result in concentration of wealth to the common detriment, with which the Parliament enacted section 44AB of the Income-tax Act, 1961, as already discussed hereinabove; which object was also noticed and recorded by the Wanchoo Committee, while recommending compulsory audit of accounts, as early as December, 1971 (**emphasis provided**).
- 4.6 The Chartered Accountants Act, 1949 was amended by the Parliament by the Chartered Accountants (Amendment) Act, 2006, which came into force on 17<sup>th</sup> November, 2006. After, the amendments in the Chartered Accountants Act, 1949 in 2006, the notifications were superseded by the guidelines.
- 4.7 After the Amendment Act of 2006, the erstwhile Notifications were superseded by Guidelines bearing No.1-CA (7)/02/2008 dated 8<sup>th</sup> August, 2008.
- Para 1.2 of the said Guidelines, 'Applicability of the Guidelines', states that it shall be applicable to all the Members of the Institute, whether in practice or not, wherever the context so requires.
  - Chapter VI of the said Guidelines deal with "Tax Audit Assignments under section 44AB of Income Tax Act, 1961", It is submitted that the said Chapter VI of the Guidelines is the subject matter of various Writ Petitions filed before different High Courts and it is for

transfer of these Writ Petitions from various High Courts to the Supreme Court of India.

- It may also be noted that Chapter VIII of the said Guidelines supersedes the said earlier Notification dated 08.05.2001; and Chapter IX supersedes the said earlier Notification dated 8<sup>th</sup> March, 2002.

- 4.8 It is pertinent to note that the said restriction confines only to the audit assignments under Section 44AB of the Income Tax Act, 1961. There is no restriction as far as the other audit works. Further, Tax audit assignment is a time-bound assignment in the case of those coming under Section 44AB of the Income-tax Act and unlike other professional fields, the work of audit requires precision. The certificate of audit issued by a Chartered Accountant has statutory force for the purpose of Income Tax whereas a Chartered Accountant in practice is free to accept audits under Sections 44AD, and 44AE of the Income-tax Act, 1961 without any limit. Taking note of all these relevant factors, it cannot be said that ceiling of tax audit limit is in any way unreasonable or discriminatory. Therefore, there is no basis for the contention that there is violation of Article 14 or Article 19(1)(g) of the Constitution of India.
- 4.9 Such restriction on audit assignment is similar to that as imposed under Section sub-section (1B) of section 224 of the Companies Act, 1956 read with Explanations 1 & 2 there under or that imposed under Section 141(3)(g) of the Companies Act, 2013 wherein a Chartered Accountant is not permitted to audit more than 20 companies in a financial year. The said limit earlier excluded private limited companies. However, later Act excludes one person companies, dormant companies, small companies and private companies having paid-up share capital less than Rs. 100 crores.
- 4.10 In view of above, the Council, which is duty-bound to regulate the professionals, i.e. the Chartered Accountants, has considered it fit to put such restrictions in the interest of the profession. It is regulatory in nature and such regulation is permissible under the Chartered Accountants Act, 1949. The Guidelines do not in any way affect the rights of the Chartered Accountant under the Constitution of India being only a reasonable restriction.
- 4.11 In the process of regulating and maintaining the status of chartered accountant, the measures taken to put a cap on tax audit assignments are intended to maintain and improve the quality of work and cannot in any way be stated to be an unreasonable restriction. Such restrictions are necessary for maintaining the status of Chartered Accountants and also for ensuring quality of work by Chartered Accountants.
- 4.12 This Act seeks to regulate the profession and hence the guidelines is made to ensure maintenance of quality and standards in the work done by the Chartered Accountants which is indisputably in furtherance of the statutory duty cast upon the ICAI to regulate the profession of Chartered Accountants.

- 4.13 In view of the above, the Council after consideration of all relevant material and facts as also the nature of tax audits, had found such a ceiling to be necessary in the larger interest of the profession and the guidelines on the tax audit assignment under Section 44AB of the Income Tax Act, 1961.
- 4.14 The Committee also noted the similar restrictions are upheld in number of other activities in the interest of society at large. In the case of Virginia Tobacco Growers Association Vs .Respondent: Union of India and Ors. (MANU/AP/0745/2000), there was charges for discrimination under Section 8 of Tobacco Board Act and Article 19 (1) (g) of Constitution of India to check whether Tobacco Board had authority to declare crop holiday for FCV virginia tobacco in State of Andhra Pradesh and whether it was a reasonable restriction on tobacco trade as under Section 19 (1) (g) by declaring crop holiday to save exploitation wherein it has held by Hon' ble High Court that Board is justified in treating State of Andhra Pradesh as different and distinct area for declaration of crop holiday.
- 4.15 The Committee also noted that the Respondent mentioned that the ICAI cannot impose restriction. In view of that the Committee noted the observations of the Supreme Court in Jyoti Prasad's case stating as follows:

*"Where the legislature fulfills its purpose and enacts laws, which in its wisdom, to considered necessary for the solution of what after all is a very human problem the tests of "reasonableness" have to be viewed in the context of the issues which faced the legislature. In the constitution of such laws and particularly in judging of their validity the Courts have necessarily to approach it from the point of view of furthering the social interest which it is the purpose of the legislation to promote, for the Courts, are not in these matters, functioning as it were in vacuum, but as parts of a society which is trying by enacted law to solve its problems and achieve a social concord and peaceful adjustment and thus furthering the moral and material progress of the community as a whole".*

- 4.16 The Committee noted in the case of State of Uttar Pradesh v. Kaushailya MANU/SC/0091/1963: [1964]4SCR1002 (a decision of 5 Judges Bench), it was held:

*The reasonableness of a restriction depends upon the values of life in a society, the circumstances obtaining at a particular point of time when the restriction is imposed, the degree and the urgency of the evil sought to be controlled and similar others. If in a particular locality the vice of prostitution is endemic degrading those he live by prostitution and demoralising others who come into contact with them the Legislature may have to impose severe restrictions on the right of the prostitute to move about and to live in a house of her choice. If the evil is rampant, it may also be necessary to provide for deporting the worst of. them from the area of their operation. The magnitude of the evil and the urgency of the reform may require such drastic remedies. It cannot be gainsaid that the vice of prostitution is rampant in various parts of the country. There cannot be two views on the question of its control and regulation. One of the objects of the Act is to control the growing evil of*

*prostitution in public places. Under Section 20 of the Act the freedom of movement and residence are regulated, but, as we have stated earlier, an effective and safe judicial machinery is provided to carry out the objects of the Act. The said restrictions placed upon them are certainly in the interests of the general public and, as the imposition of the restrictions is done through a judicial process on the basis of a clearly disclosed policy, the said restrictions are clearly reasonable” .*

5. The Committee noted that it was alleged that the Respondent has conducted 262 Tax Audits during the financial year 2013-14 which is apparently in violation of 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.*
6. It may further be noted that vide Announcement dated 11.02.2014, hosted on Institute's website, the said limit was increased to 60 in place of 45 for the Financial year 2014-15 and onwards. However, the same is not applicable in the instant matter as the charge in the instant matter pertains to the audit done during the financial year 2013-14. The Respondent stated that the Respondent is aged around 80 years and has been a member of the Institute for 48 years. The Counsel for the Respondent stated that the Respondent has done only 49 tax audit and that too were done on behalf of the firm, M/s. Sen & Ray. He further stated that the firm was having 5 partners and accordingly, it was entitled to sign 225 tax audit reports under Section 44AB of the Income Tax Act, 1961 whereas all the partners had signed only 181 tax Audit Reports in the capacity of partners of the firm.
- 6.1 During the course of hearing, the Counsel for the Respondent stated that other partners have submitted affidavit in respect of tax audit done by them during the financial year 2013-14. The Respondent also submitted a list of clients along with details of turnover and Permanent Account number. The Respondent stated that though the number of the tax audit done by the Respondent was exceeding marginally yet the total number of tax audit done by all the partners including respondent were within the total number of tax audit which could be done by the firm as whole in terms of the requirement of guidelines issued by the Institute. The Committee perused the documents on record and after perusal of the affidavit of partners, list of audit done u/s 44AB and 44AD/AE/AF and keeping in view the limit of number of tax audit of all partners in aggregate as a firm, the Committee is of the view that since number of tax audit done by the partners on behalf of the firm was within the

tax audit limit of the firm (i.e. 225), benefit could be extended to the Respondent. Therefore, the Respondent is 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:**

7. In view of above noted facts and discussion, in the considered opinion of the Committee, the Respondent is **NOT GUILTY** of professional misconduct falling within the meaning of Clause (1) of Part II of the Second Schedule to the Chartered Accountant Act, 1949.
8. **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 closing the case against the Respondent.**

Sd/-  
**CA. Nihar N Jambusaria**  
(Presiding Officer)

[approved and confirmed through e-mail]  
**Shri Jugal Kishore Mohapatra, I.A.S.**  
(Retd.), (Govt. Nominee), Member

[approved and confirmed through e-mail]  
**Ms. Rashmi Verma, I.A.S.**  
(Retd.), (Govt. Nominee), Member

[approved and confirmed through e-mail]  
**CA. Anuj Goyal**  
Member

[approved and confirmed through e-mail]  
**CA. Durgesh Kabra**  
Member

✓  
**DATE: 11.09.2021**

*Jyotika*  
प्रमाणित सत्य प्रतिलिपि / Certified true copy

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