



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

PR-34/12-DD/53/2012/BOD/177/2014

**ORDER UNDER SECTION 21A(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:-**

**Shri V. K. Pandey**  
**Director of Income Tax (Inv.)-II, Mumbai**

**...Complainant**

**-Vs.-**

**CA. Parag V. Mehta (M. No. 036867), Mumbai**

**...Respondent**

**[PR-34/12-DD/53/2012/BOD/177/2014]**

**MEMBERS PRESENT: (Through video conferencing)**

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

**Date of Final Hearing: 21<sup>st</sup> October, 2021**

1. In the aforesaid case, the erstwhile Board of Discipline vide report dated 6th November, 2015 held the Respondent guilty of 'Other Misconduct' falling within the meaning of Clause (2) of Part-IV of the First Schedule to the Chartered Accountants Act, 1949. Thereafter, the erstwhile Board vide its Order dated 10th December, 2016, awarded the Respondent punishment of removal of his name from the Register of Members for a period of three months and also imposed a fine of Rs. 1,00,000/- (Rupees One Lakh Only) upon him, payable within a period of 60 days from the date of receipt of the Order. The Respondent, aggrieved by the aforesaid Order, filed an appeal before the Hon'ble Appellate Authority and the Hon'ble Appellate Authority, vide its Order dated 3rd February, 2018, set aside the impugned Order dated 10th December, 2016 and remanded back the case to the Board of Discipline for taking afresh decision thereon within a period of six months from the date of receipt of this Order which was further extended by the Hon'ble Appellate Authority vide its Orders dated 16th December, 2020 and 30th July, 2021 on the request of the Institute. Thereafter, to comply with the Order of the Hon'ble Appellate Authority, the case was listed for hearing before the Board on 18<sup>th</sup> January 2021, 24<sup>th</sup> March 2021, 5<sup>th</sup> July 2021, 23<sup>rd</sup> July 2021 and 16th August 2021 wherein the authorised representative of the Complainant Department, the Respondent alongwith his Counsel and the witness (on the



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relevant date of hearing) was also present. Upon consideration of the documents and submissions of the Complainant Department and the Respondent on record including the deposition of the witness, the Board concluded the proceedings in the case and vide Report dated **5<sup>th</sup> October, 2021** was of the opinion that **CA. Parag V. Mehta (M. No. 036867)** is guilty of "Other Misconduct" falling within the meaning of Item (2) of Part-IV of the First Schedule of 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. Parag V. Mehta** and communication dated 11<sup>th</sup> October, 2021 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 21<sup>st</sup> October, 2021. Thereafter, he submitted his written representation dated 18<sup>th</sup> October, 2021 on the findings of the Board.

3. **CA. Parag V. Mehta** appeared before the Board on 21<sup>st</sup> October, 2021 through video conferencing and also made his oral representation thereat.

4. **CA. Parag V. Mehta** in his oral and written representation dated 18<sup>th</sup> October, 2021 inter-alia submitted as under:-

- a. The Respondent Firm has more than 50 years standing in the profession and the Respondent has trained more than 400 to 500 article trainees till date. The Respondent Firm has a wide range of clientele from pharma, plastic, steel, entertainment, financial services, NRI etc. whom they had served ably for the last 40 to 50 years.
- b. The Respondent met Mr. Sanjay Sonawani in 1998 at the time of the public issue of his Company, M/s. Washington Software Limited. The Respondent's wife Mrs. Sangeeta Mehta is a Chartered Accountant and research analyst/ investment advisor. At the time of public issue of M/s. Washington Software Limited, the Company was developing engineering technology software and it had a tie up with M/s. Parametric Technologies Limited, reputed software and engineering technology company. The said prospective looked a very exciting and promising investment and hence the Respondent's wife invested in the public issue of shares of M/s. Washington Software Limited in her personal name through her Company, M/s. Stalk Securities Pvt. Ltd. The said investment is still there today and the total investment in both the names is 260430 shares which constitute around 2.63% of the share capital of the company.



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- c. Mr. Sanjay Sonawani seemed to be a genuine promoter and he became a good friend over time. Somewhere in 2004 Mr. Sanjay Sonawani requested to keep his cheque book and slip book in Respondent's office for ease of operations as he had some clients in Mumbai at that time. The Respondent allowed it as he was under the genuine impression that Mr. Sanjay Sonawani was doing genuine software business.
- d. The Respondent as a firm or otherwise had never been involved in any sort of dubious activities in the past, present or future. The Respondent had just given a drawer to keep Mr. Sanjay Sonawani's cheque books and slip books which is at best an error of judgement but is in no way an offence or an act amounting to Professional Misconduct.
- e. The Original allegation of the complainant was that the Respondent was "master mind" in respect of bogus billing business by M/s. Washington Softwares Ltd. However, the finding now recorded against him is on the basis of his association with Mr. Sanjay Sonawani of the said Company, inter alia including allowing use of office infrastructure by him intentionally or unintentionally. Thus, he is being held guilty due to association and not the actual act of bogus billing. He will take extra care in future in choosing his acquiesces. The gravity of charge confirmed in the report is negligible compared to the original allegation of being "master mind". Further, punishment of removal of the name of the Respondent from the Register of Members or penalty would be excessive and harsh.
- f. The Respondent further requested for minimum punishment and a lenient view in his case.
5. The Board has carefully gone through the facts of the case and also the oral and written representation of **CA. Parag V. Mehta**.
6. The Board while arriving at its findings as contained in its report, from the examination of circumstantial evidences duly corroborated by the deposition of the witness and the Respondent before it as well as the Income Tax Department, held that it is clearly evident as under:
- (i) Sh. Sanjay Sonawani, Chairman, M/s. Washington Softwares Ltd. accepted that the company was in the business of providing accommodation entries.
  - (ii) The Respondent provided free table space to Mr. Sonawani for a period of around 8 years.
  - (iii) The cheque books and slip books were kept with Mr. Ramsunder (peon) who was an employee of the Respondent and thus, the staff of the Respondent was working for Mr. Sonawani.



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- (iv) Signed blank cheques and RTGS Forms were found in the office of the Respondent.
- (v) The client list of M/s. Washington Softwares Ltd. was emailed by the Respondent to Sh. Sanjay Sonawani which he furnished to the Complainant Department.
- (vi) The accounts, invoices and other correspondences of M/s Washington Softwares Ltd. were also found in the computers of Respondent and thus, computers of the Respondent were also used by Sh. Sanjay Sonawani.
- (vii) The Respondent and Sh. Sanjay Sonawani were in constant touch with each other and the duration of telephonic communication between them increased after the date of search.
- (viii) Sh. Sanjay Sonawani, the then Chairman, M/s. Washington Softwares Ltd. accepted commission at 1 % of the turnover as addition of income from Assessment Year: 2004-05 to 2011-12.
- (ix) The Respondent used to occasionally advice on investment matters to Sh. Sanjay Sonawani.
- (x) Respondent's family member and the company registered at his address in which his family member was a director held shares in M/s. Washington Softwares Ltd.
- (xi) The Respondent provided office / table space to the Company without any agreement or rent which a person of even ordinary prudence would not allow.

7. Further, the Board was of the view that it is an accepted fact that the company was in the business of providing accommodation entries. The Respondent allowed Mr. Sanjay Sonawani, the then Chairman of M/s. Washington Software Limited to use his office infrastructure for about 8 years. The relations between the Respondent and Mr. Sanjay Sonawani were not merely limited to providing a table space but was much beyond that and the Respondent was very well aware about the accommodation entry business being carried out by the Company and Mr. Sanjay Sonawani from his office premises. The Board after due examination of circumstantial evidences duly corroborated by the deposition of the witness and the Respondent before it as well as the Income Tax Department arrived at its findings that the conduct of the Respondent while allowing Sh. Sanjay Sonawani, the then Chairman of M/s. Washington Softwares Ltd. to use his office infrastructure whether intentionally or unintentionally without charging any rent for the period 2004 to 2012 which became a machinery for the issue of accommodation entries by the company has clearly brought disrepute to the profession. The Respondent clearly did not exercise due professional skepticism in the explained circumstances and his defence that he was oblivious to the happenings in his office premises for a period of around 8 years is clearly unacceptable. The Respondent also had an indirect relationship with the Company having pecuniary benefits i.e. shares in the name of his wife Mrs. Sangeeta Parag Mehta and M/s. Stalk Securities Private Limited., i.e. the company registered at his address in which his wife was a director held shares in the company M/s. Washington Softwares Limited. Further, the



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said relationship of Respondent's wife with M/s. Washington Software Limited was also confirmed by the Respondent in his written representation on the findings of the Board. Thus, during the proceedings before the Board, it was unearthed that there are enough circumstantial/ corroborative evidences which points at the involvement of the Respondent in the entire episode and consequential misconduct on his part.

8. The Board was also conscious of the fact that in the current disciplinary proceedings, the issue that has been examined is whether the conduct of the Respondent arising out of the circumstances clearly explained in its findings has brought disrepute to the profession and thus amounting to 'Other Misconduct' as defined under the Chartered Accountants Act 1949. The aforesaid act of the Respondent as spelt out in its findings is clearly unbecoming of a Chartered Accountant and has also brought disrepute to the profession and the Institute. Thus, it has already been conclusively proved that **CA. Parag V. Mehta** is Guilty of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule of the Chartered Accountants Act, 1949 read with Section 22 of the said Act. Accordingly, the plea of the Respondent that the gravity of the charge confirmed in the report is negligible as compared to the original allegation of being 'master mind' and thus, requesting for minimum punishment is not accepted by the Board. Further, on a consideration of the oral as well as written representation of the Respondent on the findings of the Board, the Board was of the view that the Respondent has not brought on record any documentary evidence/substantive submission to mitigate the misconduct on his part.

9. Thus, upon consideration of the facts of the case, the consequent misconduct of **CA. Parag V. Mehta** and keeping in view his oral and written representation before it, the Board decided to remove the name of **CA. Parag V. Mehta (M. No. 036867)** from the Register of Members for a period of 3 (three) months and also imposed a fine of **Rs. 1,00,000/- (Rupees One Lakh only)** upon him payable within a period of 60 days from the date of receipt of the Order.

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

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

**BOARD OF DISCIPLINE**

**CONFIDENTIAL**

**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. : [PR-34/12-DD/53/2012/BOD/177/2014]**

**CORAM:** (Through Video Conferencing)

**CA. Prasanna Kumar D., Presiding Officer**

**Mrs. Rani Nair (IRS, Retd.), Government Nominee**

**CA. Satish Kumar Gupta, Member**

**In the matter of:**

**Shri V. K. Pandey**

**Director of Income Tax (Inv.)-II, Mumbai,  
Room No. 307, 3<sup>rd</sup> Floor,  
Scindia House,  
Ballard Pier,  
Mumbai-400 038**

**...Complainant**

**Versus**

**CA. Parag V. Mehta (M. No. 036867)**

**No. 114, Jolly Bhawan No-1,  
10, Marine Lines,  
Mumbai-400 020**

**...Respondent**

**DATE OF FINAL HEARING : 16<sup>th</sup> August, 2021**

**PLACE OF HEARING : New Delhi/ through video conferencing**

**PARTIES PRESENT**(through Video Conferencing):

**Authorised Representative of the Complainant Department : Ms. Alankrutha Attaluri, DDIT (Inv), Unit-7(4), Mumbai**

**Respondent : CA. Parag Mehta**

**Counsel for Respondent** : **Adv. S. G. Gokhale**  
**Witness** : **Shri Sanjay Sonawani, the then  
Chairman, M/s. Washington  
Softwares Ltd.**

**FINDINGS:**

**Charge alleged:-**

1. Shri V. K. Pandey, Director of Income Tax (Inv.)-II, Mumbai (hereinafter referred to as the "Complainant" and the "Complainant Department" respectively) filed complaint in Form 'I' dated 10<sup>th</sup> February, 2012 against CA. Parag V. Mehta (M. No. 036867) (hereinafter referred to as the "Respondent"). The Complainant in his complaint alleged as under:-
  - a. The Investigation Unit, Mumbai conducted Search and Seizure action u/s 132 of the Income Tax Act, 1961 at the office and residential premises of the Respondent. During the course of investigation, it was detected that Respondent was the master mind in the racket of issuing bogus bills to interested parties in Mumbai and outside. Such bills were being issued in the name of M/s. Washington Softwares Ltd., whose Chairman was Shri Sanjay Sonawani at the relevant time. Shri Sanjay Sonawani has categorically stated in his statement u/s 131 of the Income Tax Act 1961, recorded under oath on 16/03/2011, before the DDIT (Inv.), Unit-1(1), Pune, that he was giving such bogus bills to the tune of Rs. 52 crores through his non-existing company at the behest of the Respondent. He has stated in his statement u/s 131 of the Income Tax Act 1961, recorded on 16<sup>th</sup> March, 2011, inter-alia, as follows:-

*"During that period the Respondent who is a Chartered Accountant having his office at 115, Jolly Bhawan, 10, Marine Lines approached Shri Sanjay Sonawani and made him an offer of providing accommodation entries in the form of bogus sales as stated above for a consideration of 1% commission. He had asked Shri Sanjay Sonawani to open an account at ICICI Bank, Nariman Point..... The cheque book of this account was kept in the Respondent's personal custody and accordingly he used to transact with this".*
  - b. During the course of search proceedings on the Respondent, he has admitted before the DDIT(Inv.), Unit-VII(4), Mumbai that he has been providing 'table space' to Shri Sonawani, at his office located at Jolly Bhawan, 10, Marine Lines, Mumbai. Also several blank cheque books of M/s. Washington Softwares Ltd., some of them duly signed by Shri Sonawani, were seized from the above office of the Respondent on the day of the search.

- c. Later on, however, Shri Sonawani has retracted from the earlier statement, obviously under tutoring of the Respondent that he did provide the table space but did not mastermind the transactions.
- d. On the basis of the information gathered by the Mumbai Directorate, a survey action on M/s. Apeejay Education Society and Rajeshwari Sangeet Academy Trust, Jalandhar was carried out by the Director of Income Tax (Inv.) – II, New Delhi which further established the fact of such accommodation bills issued by M/s. Washington Softwares Ltd.
- e. From the above, it is clear that the Respondent has deliberately and consciously indulged in the malpractice of issuing bogus bills.

**Brief of the proceedings:**

- 2. A brief of the proceedings of the case is as under:-
  - a. In the aforesaid case, the erstwhile Board of Discipline vide report dated 6<sup>th</sup> November, 2015 held the Respondent guilty of 'Other Misconduct' falling within the meaning of Clause (2) of Part-IV of the First Schedule to the Chartered Accountants Act, 1949. Thereafter, the Board vide its Order dated 10<sup>th</sup> December, 2016, awarded the Respondent punishment of removal of his name from the Register of Members for a period of three months and also imposed a fine of Rs. 1,00,000/- (Rupees One Lakh Only) upon him, payable within a period of 60 days from the date of receipt of the Order.
  - b. The Respondent, aggrieved by the aforesaid Order, filed an appeal before the Hon'ble Appellate Authority and the Hon'ble Appellate Authority, vide its Order dated 3<sup>rd</sup> February, 2018, set aside the impugned Order dated 10<sup>th</sup> December, 2016 and remanded back the case to the Board of Discipline for taking afresh decision thereon within a period of six months from the date of receipt of this Order which was further extended by the Hon'ble Appellate Authority vide its Orders dated 16<sup>th</sup> December, 2020 and 30<sup>th</sup> July, 2021 on the request of the Institute. The relevant portion of the said Order is reproduced hereunder:-

*"13.2 Further, we have observed that while relying on the statement of said Mr. Sanjay Sonawani, the BOD has not given any opportunity to the Appellant to cross examine him. Needless to mention that it is a fundamental rule of law that if any party of litigation wants to rely on any evidence, the other party should be given an adequate and fair opportunity to cross examine and rebut the same. On the other hand the Authority also noted that the Appellant himself has also relied on the subsequent statement of said Mr. Sanjay Sonawani and has conveniently decided not to produce him. Additionally, we have also further observed that the Order of Hon'ble ITAT in the case of Appellant was delivered on a subsequent date i.e., on 26<sup>th</sup> August, 2016 as against the date of the Report of the BOD i.e. 6<sup>th</sup> November, 2015. Hence, it is obvious that the same was not available with and resultantly could not be examined by the BOD of ICAI."*



14. Be that as it may, in the aforesaid circumstances, we are of the considered view that the ends of justice will be met out if the matter is set aside and remanded back to the BOD of the Institute of Chartered Accountants of India for its reconsideration and examination of all the relevant evidences and examining the relevant persons / witnesses, in the light of the observations made by us as above, for taking afresh decision thereon within a period of six months from the date of receipt of this Order(emphasis provided). However, it is clarified that whosoever wants to rely upon the statement of any person, he shall be responsible to produce him on his own cost and shall provide an adequate opportunity to the other party to cross examine him before the BOD.

15. Needless to say anything to be done by the Institute will be subject to giving an opportunity of being heard and participation of the Appellant herein. Further, in case the Appellant needs to lead any evidence in his defense or wants to cross examine any persons/ witnesses, the same shall be allowed to him by the Institute."

- c. During the proceedings held on 18<sup>th</sup> January 2021, the Board noted that the Respondent alongwith his Counsel and representative of the Complainant Department were present before it through video conferencing and they made their respective submissions before the Board. The Respondent was examined by the Board.

On consideration of the documents and submissions on record and also to comply with the directions of the Honorable Appellate Authority, the Board decided to call Shri Sanjay Sonawani, Director of M/s Washington Softwares Limited as a witness to depose before it, gave time to the Complainant Department to submit corroborative evidences to substantiate the charges alleged against the Respondent and also directed the office to forward the submissions/documents which shall be so received from the Complainant Department to the Respondent for submission of his comments thereon. Accordingly, the hearing in the case was adjourned.

- d. Thereafter, during the proceedings held on 24<sup>th</sup> March 2021, the Board noted that the Respondent alongwith his Counsel were present before it through video conferencing. Since there was a change in the composition of the Board since the last hearing, the Board gave an option to the Respondent whether he would like to have a de-Novo enquiry or continue from the last proceedings to which he stated that he would like to continue from the last proceedings. Thereafter, the counsel for the Respondent made his submissions before the Board. Since the summon issued to Sh.Sanjay Sonawani, the then Chairman of M/s Washington Softwares Ltd. to appear as a witness before the Board could not be served as he was not available at the address available in the case records, the Board also asked the Respondent to make efforts to ascertain and inform the contact details

of Sh. Sanjay Sonawani, the then Chairman of M/s Washington Softwares Ltd. so that he can appear/depose before the Board as a witness. Accordingly, the hearing in the case was adjourned.

- e. Subsequently, during the proceedings held on 5<sup>th</sup> July 2021, the Board noted that the Respondent alongwith his Counsel and representative of the Complainant Department were present before it through video conferencing. The Board noted that the Respondent, vide email dated 25/06/2021, expressed difficulty in getting the contact detail of Sh. Sanjay Sonawani since he was a very old acquaintance and he had not been in touch with him since some time. The Respondent further stated that he had not been able to contact him but will try again. The Representative of the Complainant Department expressed her inability to provide further corroborative evidences due to non-availability of the records both at the centralised as well as the decentralised level. The Board considered various aspects of the case including efforts made by the parties with respect to arranging presence of the witness before it.

Thereafter, the Board adjourned the hearing with the following direction:

Direction to the Complainant Department:-

1. To put efforts to trace Mr. Sanjay Sonawani so that he can be summoned as a witness.
2. To put further efforts to seek corroborative evidences to substantiate the charges alleged against the Respondent.

Direction to Respondent:-

1. To arrange to produce Mr. Sanjay Sonawani for leading defence in the matter.
2. To provide a copy of the Order of ITAT/ High Court to the Complainant Department for furnishing their comments thereon, if any.

In compliance of the above directions, the Respondent through email dated 13<sup>th</sup> July, 2021 submitted the contact details of Sh. Sanjay Sonawani (Witness) i.e. mobile and email ID of witness and further stated that he had spoken with witness and the witness has agreed to remain present in the next BOD meeting.

The representative of the Complainant Department through email dated 07<sup>th</sup> July, 2021 also submitted the contact address of witness and sought clarification regarding examination of the witness.

- f. During the proceedings held on 23<sup>rd</sup> July 2021, the Board noted that the Respondent alongwith his Counsel were present before it through video conferencing. The Board further noted that Sh. Sanjay Sonawani, the then Chairman of M/s Washington Softwares Ltd. (hereinafter referred to as the 'witness') appeared before the Board as a witness and he confirmed that he has read and understood the

contents of the modalities and protocols of e-hearing and will follow them. The Board also noted that an e-mail had been received from the Complainant Department on 22<sup>nd</sup> July, 2021 intimating that they will not be able to attend the meeting scheduled on 23.07.2021 due to prior and urgent official commitment. However, to comply with the directions given in the Order passed by the Honorable Appellate Authority in the instant case within prescribed time, after preliminary questioning of the witness by the Board and verification of his identity, the Respondent was given the right to cross examine the witness which was exercised by him. The Board also questioned the witness on issues pertinent to the case which were answered by him. Thereafter, the Board adjourned the hearing with the direction to the office to communicate the Complainant Department about the appearance and examination of the witness and grant them one more opportunity to appear before the Board to substantiate the case. A copy of the Notes of Hearing held on the day was provided to the Complainant Department as well as the Respondent.

g. During the final hearing held on 16<sup>th</sup> August 2021, the representative of the Complainant Department also examined the witness Sh. Sanjay Sonawani, the then Chairman of M/s Washington Softwares Ltd. who had earlier deposed before the Board on 23<sup>rd</sup> July, 2021 and was also cross examined by the Respondent. Subsequently, the witness was discharged with the consent of the parties to the case. Thereafter, the Complainant and the Counsel for the Respondent made their respective oral submissions before the Board.

Upon consideration of the documents and submissions on record, the Board decided to conclude the proceedings in the case and the decision on the conduct of the Respondent was kept reserved.

h. Thereafter, the Board at its meeting held on 31<sup>st</sup> August, 2021, upon consideration of the documents and submissions on record, decided on the conduct of the Respondent.

**Brief of the submissions of the parties:**

**(a) Submissions of the Respondent:**

3.1 The Respondent referred to the following decisions of the Hon'ble ITAT, Mumbai Bench and Hon'ble High Court of Punjab and Haryana to prove his innocence in the extant case:-

- a. The Hon'ble Income Tax Appellate Tribunal, Mumbai 'J' Bench, Mumbai in case titled "Shri Parag V. Mehta Vs. The Deputy Commissioner of Income Tax" [ITA Nos. 1643 to 1649/Mum/2015], (Assessment Year: 2005-06 to 2011-12) decided vide Order dated 26/08/2016.

- b. The Hon'ble Punjab and Haryana High Court in case titled "The Commissioner of Income Tax-II, Jalandhar Vs. M/s. Apeejay Education Society, Jalandhar" [ITA No. 402 of 2014 (O & M)], [ITA No. 403 of 2014] decided on 10/03/2015.

**(b) Submissions of the Complainant Department:**

**3.2 The Complainant Department, inter-alia submitted as under:**

- a. The involvement of the Respondent, in the activities of the Sh. Sanjay Sonawani, is evident from the facts narrated in the statement recorded on 12th May, 2011 itself. In the said statement, Sh. Sanjay Sonawani was specifically asked to clarify as to why he was in constant touch with the Respondent in mobile phone. The factual position with regard to constant contact with the Respondent has not been rebutted by Sh. Sanjay Sonawani. It was his contention that the said calls were made to seek and discuss future investments plans. However, no plans or advices given by the Respondent on the mobile phone were mentioned. In earlier statement Sh. Sanjay Sonawani stated that his companies were financially non-viable. Under these circumstances, it is not known as to which investment plans were discussed by the Respondent with Sh. Sanjay Sonawani. Rather it could be believed that these calls were part of monitoring process of Sh. Sanjay Sonawani's bogus billing activities by the Respondent.
- b. In the question number 28 of the statement recorded on 12th May, 2011, Sh. Sanjay Sonawani was specifically asked to give names and addresses of the parties through whom the business of bill discounting was carried out. In reply, Sh. Sanjay Sonawani categorically stated that he did not know names of the discounting parties. This conclusively proves that Sh. Sanjay Sonawani had little knowledge of the bogus billing activities as the same was effectively carried out by the Respondent.
- c. It is obligatory on the part of Sh. Sanjay Sonawani to bring all material fact on record to indicate that the statement made earlier suffers from certain factual inaccuracies. In the present case, Sh. Sanjay Sonawani was given two opportunities to put forth all appropriate evidence in support of deviation from the contents of the original statement. Mr. Sanjay Sonawani failed to substantiate as to how statement made by him about involvement of the Respondent was wrong.
- d. In the statement recorded on 16th March 2011, Shri Sanjay Sonawani stated that M/s Washington Softwares Limited, had received commission of Rs. 32 lacs from CA. Parag V. Mehta, which was not recorded in the books of accounts. Sh. Sanjay Sonawani further stated that total turnover of his company with Respondent was to the tune of Rs. 52 crores and his company was due to receive commission at 1% of the turnover, i.e. Rs. 52 lacs. However, his company was duped by CA. Parag V. Mehta for a sum of Rs. 20 lacs. Sh. Sanjay Sonawani offered the said amount of Rs. 32 lacs as undisclosed income from various

assessment years. Sh. Sanjay Sonawani had not subsequently retracted or declined his transactions / turnover with CA. Parag V. Mehta and income accrued thereon.

e. Sh. Sanjay Sonawani had not controverted the contents of the answer given to question no. 7 wherein he had narrated in details his association with CA. Parag V. Mehta. These factual positions have merely been summarily disowned by Sh. Sanjay Sonawani without placing appropriate evidences to show that his statement recorded on 16th March, 2011 was erroneous.

f. In the statement recorded on 12th April 2011, Sh. Sanjay Sonawani undertook to file revise return and pay tax liabilities on sum of Rs.32 lacs being commission on bogus billing committed by Sh. Sanjay Sonawani under instruction from CA. Parag V. Mehta. This admission of the income was based on the finding made during the course of search. This admission on the part of Sh. Sanjay Sonawani confirms his association with CA. Parag V. Mehta.

g. The details and evidences found in the premises of CA. Parag V. Mehta undoubtedly prove his role in the activities noticed and detected during the course of search action.

**Observations and Findings of the Board of Discipline:**

4.1 At the outset, the Board observed that role of Sh. Sanjay Sonawani, the then Chairman of M/s Washington Softwares Ltd. was pivot in the examination of the charges alleged against the Respondent. Accordingly, the Board took into view his deposition dated 23/07/2021 when he was examined by the Board and cross examined by the Respondent and 16/08/2021 when he was further examined by the Authorised Representative of the Complainant Department and upon perusal of the same, the Board observed that Sh. Sanjay Sonawani admitted as under:-

- a. Sh. Sanjay Sonawani accepted before the Board that the Respondent was neither the master mind nor was connected with bogus billing of said Company. However, the witness accepted that the Respondent had provided table space to him for the operations of the Company.
- b. Sh. Sanjay Sonawani was the Shareholder and Director of M/s Washington Softwares Ltd. at the time of Income Tax Search and Seizure proceedings held on 16/03/2011 and also had cheque signing authority of the Company at that point of time.
- c. He signed the last 3 years' audited accounts of the Company prior to the search proceedings held on 16/03/2011.
- d. The witness admitted that on the date of search i.e. 16<sup>th</sup> March, 2011 and during his subsequent statements dated 12<sup>th</sup> April, 2011 and 12<sup>th</sup> May, 2011 M/s.

Washington Softwares Ltd. was involved in the business of giving accommodation entries to various parties.

- e. He further admitted that the last two statements recorded by the Complainant Department during the proceedings before it i.e. statement dated 12<sup>th</sup> April, 2011 and 12<sup>th</sup> May, 2011 were given by him voluntarily.
- f. Mr. Rohidas Kumbarkar was responsible for getting the parties for accommodation entries who is no more.

4.2 The Authorised Representative of the Complainant Department while examining the witness specifically drew attention of the Board to the following:-

- a. The witness accepted before the Board that he stood by his Statements recorded before the Income Tax Department on 12/04/2011 and 12/05/2011. The Authorised Representative of the Complainant Department drew attention of the Board on the answer to question no. 3 in the Statement dated 12/04/2011 and subsequent affirmation to the said answer vide his statement dated 12/05/2011, with regard to name of employee of Respondent who used to keep cheque books and slip books of the Company and the witness specifically named Mr. Ramsunder (peon) who is the employee of Respondent. The Authorised Representative of the Complainant Department thus contended that not only the witness knew that these particular cheque books and slip books were kept in Respondent's office but also exactly with which employee of the Respondent these particular cheque books and slip books were kept.
- b. The Authorised Representative of the Complainant Department also drew attention of the Board to the answer to question no. 4 of the statement of witness recorded before the Income Tax Department on 12/05/2011, wherein it was specifically asked from the witness about the frequency of visits to Respondent's office in order to transact the business and on the same, the witness answered that upto 2007, the business was handled by Mr. Rohidas Kumbarkar and after his death, the business was drastically reduced and only one major party was there i.e. Apeejay Group. To take care of routine matters, the witness himself used to visit Respondent's Office once in 3 to 4 months. The attention was also drawn to the reply to question no. 8 of statement recorded before the Income Tax Department on 12/05/2011, wherein it was asked by the Investigating Officer of the Complainant Department, that who brought the clients or interested parties to the witness and the witness answered that after 2007, only one party was there i.e. Apeejay Group which was handled by the witness himself. Attention was also drawn to the deposition of the witness before the Board dated 23/07/2021 wherein the witness deposed that he was never stationed permanently in Respondent's office and denied the said frequency of visits of 3-4 months and instead changed

his stand that he used to visit to meet his son and other publication related people and that was the only purpose.

- c. In the statement recorded before the Income Tax Department on 12/05/2011, the witness stated that he used to consult the Respondent for his investments purpose and this is the reason why he made repeated calls to Respondent. However, the witness in his deposition dated 23/07/2021 before the Board, stated that the subject of his discussions was Jain Literature.
- d. In the statements recorded before the Income Tax Department on 12/04/2011 and 12/05/2011, the witness never said that he was not involved in the business of the Company, witness has himself stated that the business of the Company was drastically reduced, having the business been drastically reduced there was only one company, the witness used to take care of that company, the witness used to take care of regular office visits, the witness used to keep the cheque books with Respondent and also remembered the name of the peon of the Respondent with whom they were kept. The witness deposed before the Board that he stood by his statements recorded before the Income Tax Department on 12/04/2011 and 12/05/2011.

- 4.3 The Board also took into view relevant part of statements of Sh. Sanjay D Sonawani dated 16/03/2011, 12/04/2011 and 12/05/2011 recorded before the Investigating Officers of the Complainant Department under Section 131 of the Income Tax Act, 1961 and the same are reproduced hereunder:-

**16<sup>th</sup> of March, 2011 statement of Sh. Sanjay D. Sonawani**

*"Q.7) As replied by you in the preceding question, please explain the actual modus operandi in respect of providing such accommodation entries to these corporate entities.*

*Ans.) My company was in deep financial crisis in year 2003 due to legal and other personal problems. During that period Shri Parag Mehta who is a Chartered Accountant having his office at 115, Jolly Bhavan, 10 marine lines, Churchgate Mumbai-20, approached me and made an offer of providing accommodation entries in the form of bogus sales as stated above for a consideration of 1% commission on such bills. He had asked me to open a current account at ICICI Bank, Narimon Point, Mumbai. I had only signed the documents in this regard and rest of the formalities were done by him. The cheque book of this account in which all the cheques were signed by me, was kept in his personal custody and accordingly he used to transact with this. Mr. Parag Mehta used to send me the soft copies/ hard copies of such bogus sales bills, which I after signing used to send to Mr. Parag Mehta. I would like to confirm that I did not know to whom or to which parties these cheques were given or issued by Mr. Parag Mehta. In 2005 this account was closed and a new account was opened at Axis Bank, Kothrud Branch, Pune and in this case*

also the cheque book of this account in which all the cheques were signed by me, was kept in personal custody of Shri Parag Mehta and accordingly he used to transact with this. However during the period of 2004-05 I was in prison for some time, the bills and invoices issued in this period are not in my knowledge and nor the company has received any money for that.

Q.11) What is the total amount of Commission M/s. Washington Software Limited has received from Mr. Parag Mehta during this period i.e. FY 2003-04 to current financial year? Also explain the mode of receipt of such amount.

Ans.) The company has so far received commission of Rs. 32 Lakhs during the above mentioned period from time to time in cash from Shri Parag Mehta. Over the turnover of Rs. 52 Crores Company was due for getting a commission of Rs. 52 Lakhs but Shri Mehta duped for Rs. 20 Lakhs and the company so far has got only Rs. 32 Lakhs. This commission of Rs. 32 lakhs has not been recorded in M/s. Washington Software Limited regular books of account and therefore I on behalf of M/s. Washington Software Limited regular books of account and therefore I on behalf of M/s. Washington Software Limited voluntarily disclose unaccounted income of Rs. 32 Lakhs for various assessment years, the year wise breakup of this will be submitted to your honour shortly."

**12<sup>th</sup> of April, 2011 statement of Sh. Sanjay D. Sonawani**

"...In respect of Q.No.11, I would like to state that it is true that the company has earned commission in cash from bogus billing of Rs. 32 lakhs from various parties but we have not received anything from Mr. Parag Mehta. Because of some internal dispute with Mr. Anil Roy and other directors I was mis-informed that Mr. Parag Mehta was involved. In fact Mr. Parag Mehta was not involved in any of the bogus billing transactions of the company. Since he was not involved, the question of his duping us does not arise..."

**12<sup>th</sup> of May, 2011 statement of Sh. Sanjay D. Sonawani**

"Q3: Kindly refer to answer no. 3 given by you on 12.04.2011 under oath before me, wherein you have said that the cheque books and slip books were kept with his (Shri Parag Mehta's) employees. Please tell me with whom did you keep the cheque book/ slips?

Ans. The cheque books and slip books were kept with Mr. Ramsunder (peon) who is the employee of Mr. Parag Mehta.

Q4: How often did you come and sit in the office of Mr. Parag V Mehta in order to transact the business?

Ans. Upto 2007, the business was handled by Mr. Rohidas Kumbarkar and after his death the business was drastically reduced and only one major party



was there i.e. Apeejay Group. However, to take care of routine matters, I use to come and sit in Mr. Parag Mehta's office once in 3 to 4 months.

Q21: You have stated in your statement before DDIT (Inv.) Pune on 16.03.2011 that Parag V. Mehta has master minded the entire projects and that you simply signed on cheque books. Please state the truth. Also I see from Mobile call data records that you have been constantly in touch with Shri Mehta on phone almost every day. Why so? Please tell me what did you discuss with him so frequently?

Ans. I again state that Mr. Parag Mehta has not master minded the entire project. He was not involved in any of the billing transactions of the Company....I used to discuss my investments and future plans on mobile."

- 4.4 The Board further observed that it is a settled proposition of law as observed by various High Courts and Hon'ble Apex Court that the fact that witnesses have been declared hostile does not result in automatic rejection of their evidence. Even the evidence of a hostile witness if it finds corroboration from the facts of the case may be taken into account while judging the guilt of an accused. Evidence of such witnesses can very well be relied upon to the extent it supports the prosecution.
- 4.5 The Board further observed that during the examination of the Respondent by the Board, the Respondent stated that it was not a table space but only a drawer that had been provided by him for which what rent would he charge. The Board also observed that the Respondent failed to provide any satisfactory reply/ response to the question as to why he had provided table/drawer space to Shri Sanjay Sonawani without any rent/ written agreement in this behalf. Further the Respondent also failed to provide any plausible reason for custody of signed cheque leaves, bills and other documents of M/s. Washington Softwares Ltd. The Board further viewed that the Respondent has not provided any acceptable clarification regarding how the said signed cheque leaves were found in his office during search and seizure proceedings conducted by the Complainant Department, how he came in contact with Sh. Sanjay Sonawani, the purpose for regular visits of Shri Sanjay Sonawani to his office.
5. The Board further noted that the Respondent approached the Hon'ble ITAT, Mumbai 'J' Bench, Mumbai in case titled "Shri Parag V. Mehta Vs. The Deputy Commissioner of Income Tax" [ITA Nos. 1643 to 1649/Mum/2015], (Assessment Year: 2005-06 to 2011-12) on the following grounds:
- "1. (a) The Learned CIT (A) erred in holding that the appellant was the main person organizing bogus bills for Washington Software Ltd. and consequently erred in estimating commission deemed to have been received at 3% of bogus bills less 1% having been parted, thus directing 2% of bogus bills issued to be the income of the year.

(b) The Learned CIT (A) erred in confirming the above addition on presumptive basis despite holding in the Order that there was no material or evidence to substantiate the same.

(c) The Learned CIT (A) erred in relying upon the statement of Sanjay Sonawani dated 16/03/2011 ITA Nos.1643 to 1649 & 2507 to 2513/Mum/15 A.Ys. 05-06 to 11-12 (Shri Parag V. Mehta) Page 3 and disregarding the subsequent statements, submissions, attendances made by him before AO which confirm that the statement dated 16/03/2011 was retracted upon. The Learned CIT (A) erred in holding that retraction, if any, should be done in a day or two and the subsequent statement made after 25 days and also other subsequent ones should not be given credence to.

2. The Learned CIT (A) erred in not deleting addition of Rs. 9,53,250/- being 2% i.e. Rs. 3,81,300/- on substantive basis and 3% being Rs. 5,71,950/- on protective basis, though the same was deleted by him in the case of Sanjay Sonawani and also not giving a finding on the same for deletion or confirmation though Ground No. 3 questioning the above was raised before him."

- 5.1 The Board further took into view Order dated 26<sup>th</sup> August, 2016 passed by the Hon'ble ITAT in the matter of the Respondent wherein while dealing with the issue of addition of income in the hands of the Respondent, the ITAT observed as under:-

"4.

7.3.....In the assessment Order the A.O mentioned that the phone call records were called for by the Investigation Wing and on careful examination of call duration report, for the period prior to 22.03.2011, Shri Parag Mehta was in touch with Shri Sanjay Sonwani for one or two minutes in a day whereas after search period i.e. more specifically from 22.3.2011 the call duration between them increased upto 15 minutes each call. The A.O. inferred that the calling of Shri Sanjay Sonwani by Shri Parag Mehta shows that Shri Sanjay Sonwani was under constant influence of Shri Parag Mehta. In this regard, I am of the opinion that though the actual call records only could prove the nature of dialogue between the parties, however, the sudden spurt in the duration of the calls for 15 minutes or so indicate that there was a serious discussion between the parties which must have had influence on Shri Sanjay Sonwani in the statements recorded from him on 12.04.2011 and on 12.05.2011....

7.4 It is also mentioned in the assessment Order that Shri Sanjay Sonwani in the subsequent statements put the blame on Shri Rohidas Kumbarkar, who is deceased and is not available for cross verification. The A.O stated that this is a well thought out move to extricate himself or to save Shri Parag Mehta from a difficult situation. It is also mentioned in the assessment Order that Shri Sanjay Sonwani in the statement recorded in December 2011 while requesting him to give a client list he furnished the same only after receiving it from Shri Parag Mehta by an e-mail. It is also relevant to bring on record that the blank signed cheques and RTGS Forms were found and seized from the office premises of Shri Parag Mehta. The accounts and the invoices and other correspondences of M/s

**Washington Softwares Ltd. were also found in the computers of Shri Parag Mehta(emphasis provided).**

5. After going through rival submissions and material on record, we find **that** assessee is an individual and a practicing Chartered Accountant. There was a search action on Mr. Sanjay Sonawani at Pune 16.03.2011 inter alia stated **that** he was a Director of Washington Software Ltd. ( in short 'WSL') and **the** business of company was merely accommodation entries and used to receive 1% commission for making such entries. He further stated that Shri Parag Mehta, assessee had assisted him in obtaining such entries. He further stated that he did not receive the entire sum of 1% which is approximately Rs. 52 Lakhs. The statement dated 16.03.2011 was modified by him in his statement dated 12.4.2011, & 16.5.2011 which has been placed in paper book at page nos. 51 to 64. No other corroborative evidence was found to substantiate **the** stament made by Sanjay Sonawani. However, WSL accepted the 1% addition made in its hands. On the subsequent statements and letters written to Assessing Officer & CIT(A) by Sanjay Sonawani, he stated that Parag Mehta had no say or hand in the issuance of bills for accommodation. He further stated that he knew the parties very well to whom alleged accommodation entries were issued.

5.1 In view of statement of 16.03.2011 of Sanjay Sonawani, a search action took place on Parag Mehta on 22.03.2011 wherein he was confronted with **the** statement of Sanjay Sonawani. Copy of statement is placed on Page no. 17 of paper book. Assessee submitted that he had no control over the business activities of Sanjay Sonawani and he had in fact helped him by providing table space in his office and hence cheque books and other papers were found from his office. No other material, evidence, cash, paper, document etc. was found to establish the fact that Parag Mehta was involved or had control over issuing accommodation entries for and on behalf of Sanjay Sonawani or WSL.....

6.....In case of M/s. Apeejay, the biggest party to whom alleged bogus sales bills have been claimed to be issued by WSL, the Hon'ble Punjab and Haryana High Court have held that there is no truth in statement of Sanjay Sonawani of having issued bogus bills when all the material as stated in the bills were not found in the premises of M/s. Apeejay and it being a reputed well known school could not have dealt in obtaining bogus bills.....**From the facts narrated above, we find that assessee simply provided table space for running his business to Sanjay Sonawani being Director of WSL.** Without prejudice to the finding of genuine transaction between WSL and M/s. Apeejay, there is nothing on record to suggest that assessee was involved in the said transaction in any manner whether bogus or genuine. In facts and circumstances, **no addition is warranted in case of assessee. Same is directed to be deleted. This take cares of issues raised in cross appeals of assessee and Revenue."**

5.2 Considering the above Order of Hon'ble ITAT, the Board noted as under:-

- a. The Respondent provided table space to Sh. Sanjay Sonawani for running his business.

- b. The Respondent and Sh. Sanjay Sonawani were in constant touch with each other and the duration of telephonic communication between them increased after the date of search.
- c. The culpability of offence of bogus transactions was tactfully handled by the parties by naming Shri Rohidas Kumbarkar (deceased person) and thereby tried to rule out any possibility of corroboration of statement of witness.
- d. The seizure of blank signed cheques, RTGS Forms of Washington Softwares Limited from the office premises of Respondent. Further, the accounts, invoices and other correspondences of M/s Washington Softwares Ltd. were also found in the computers of Respondent. Thus, Sh. Sanjay Sonawani used not only the table space but the other infrastructure of the Respondent's office including the computers installed in his office.
- e. The list of clients of M/s. Washington Softwares Limited was submitted by Sh. Sanjay Sonawani only after receiving it from the Respondent via e-mail.

5.3 The aforesaid Order dated 26/08/2016 passed by the Hon'ble ITAT, Mumbai 'J' Bench, Mumbai in case titled "Shri Parag V. Mehta Vs. The Deputy Commissioner of Income Tax" was brought before the Board by the Respondent. The Board noted that there are various parties involved in the case M/s Washington Softwares Ltd., Apeejay Education Society, Infracore Technologies Ltd. and other entities/ educational institutions and in order to examine the overall issues and to arrive at a logical conclusion, the Board further took into view the Order dated 10/12/2015 passed by Hon'ble ITAT "G" Bench, Mumbai in the case titled "Asstt. Commissioner of Income Tax -vs- M/s. Washington Softwares Ltd." [I.T.A. No.932/Mum/2014, ITAs No.5306 to 5308/Mum/2014 and ITAs No. 5310 to 5312/Mum/2014] (Assessment Year: 2004-05, 2005-06 to 2007-08 and 2009-10 to 2011-12) wherein the Hon'ble ITAT while considering the quantum of income estimated by the Assessing Officer observed as under:-

*"2...The assessee company is engaged in the business of software development. The revenue carried out search and seizure operations in the hands of a person named Shri Parag Mehta on 22.3.2011 and during the course of search several transactions pertaining to the assessee were found out. From the said documents it was noticed that the assessee herein was indulging in issuing bogus bills. It was noticed that the assessee has not filed return of income for AY 2004-05 and hence the assessment of the said year was reopened by issuing notice u/s 148 of the Act. Other years assessments were reopened u/s 153C of the Act. The assessee filed returns of income of all the years declaring NIL income. During the course of assessment proceedings, the assessee did not furnish the details that were called for by the assessing officer. The AO noticed that the DDIT (Inv.) has recorded a statement from the Chairman of the assessee company named Shri Sanjay D Sonawani u/s 131 of the Act on 12.04.2011, wherein he had admitted that the bills relating to non-genuine sales were issued by charging a*

commission @ 1% of the bill value. The AO prima facie agreed that *the assessee has issued bills on receipt of commission, but he did not accept that the commission was charged @ 1%. The assessing officer, however, observed that the market enquiries made by him revealed that the rate of commission involved in such kind of transactions is not less than 5%. The AO also took the view that the assessee has helped the other persons to save tax @ 33% and hence the rate of commission could not be 1%. Accordingly he proceeded to compute the income by estimating the rate of commission @ 5% of the turnover and accordingly determined the total income of the assessee for all the years under consideration. The Ld.CIT(A), however, took the view that the assessing officer had estimated the rate of commission @ 5% on the basis of suspicion, surmises and conjectures, without bringing any material on record. He further noted that the assessee has admitted commission income @ 1% only and accordingly directed the Assessing Officer to compute the income by adopting the rate of commission @ 1%. Aggrieved by the decision of Ld CIT(A), the revenue has filed these appeals before us.*

4. ....we are of the view that the Orders passed by Ld CIT(A) do not call for any interference. Though the Assessing Officer has stated that the market enquiries revealed that the rate of commission was 5%, we notice that *the same was bald statement unsupported by any material. Further, the Assessing Officer has drawn inference by presuming that the assessee has helped others to save tax @ 33%, which is also not supported by any material. As submitted by Ld A.R, the basis of the assessments of all the years is the basis of sworn statement given by the director of the assessee company, wherein he had admitted that the rate of commission was 1% only, since the fact that the assessee is issuing accommodation bills is accepted by the AO. Hence, we are of the view that the Assessing Officer should have brought on record some credible material to show that the rate of commission stated by the director was not correct. Hence, we are of the view that there is no reason to suspect the statement of the director that the rate of commission was 1% of the turnover. Under these set of facts, we do not find any reason to interfere with the Orders of Ld CIT(A) on this issue.*"

Considering the said Order, the Board observed that the bills relating to non-genuine sales were issued by the company during the Assessment Year 2004-05 to 2011-12 by charging a commission @ 1% on the bill value and the said fact was admitted before the Ld. CIT(A) and accepted by the Hon'ble ITAT while dismissing the appeal filed by the Ld. Asstt. Commissioner of Income Tax. The said issue of charge of 1% commission for issue of bogus bills/ accommodation entries as admitted fact before the Hon'ble ITAT strengthens the fact that the company was in the business of providing accommodation entries and that too for a period of around 7-8 years.

- 5.4 The Board also took into view the Order dated 10/03/2015 passed by the Hon'ble Punjab and Haryana High Court in case titled "The Commissioner of Income Tax-II, Jalandhar Vs. M/s. Apeejay Education Society, Jalandhar" Income Tax Appeal[ITA

No. 402 of 2014 (O & M)] [ITA No. 403 of 2014] brought on record by the Respondent and noted as under:

Question of law before the Hon'ble Appellate Court:-

*"(i) Whether on the facts and circumstances of case, the Hon'ble Tribunal was right in law in allowing registration rejected by CIT u/s 12AA(3) of the Income Tax Act, 1961 in view of the activities of the society found **non-genuine during the years involved as the funds of the assessee society were being siphoned off by debiting bogus purchase of software?**"*

*"(ii) Whether on the facts and circumstances of case, the Hon'ble Tribunal was right in law in ignoring the fact that the **assessee society has taken accommodation entries from M/s. Washington Software Ltd., in the form of bogus bills of computer software and thus the activities of the assessee are not genuine and in accordance with the objects of the society?**"*

*"(iii) Whether on the facts and circumstances of the case, the Hon'ble Tribunal was right in law in holding that since the assessee institute is imparting education, it is **eligible for registration u/s 12AA of I.T. Act** ignoring the fact that while granting registration, the CIT should satisfy himself not only about the objects and main activity of imparting education but also about the genuineness of all the activities of the institution?"*

The Hon'ble Court observed as under:-

- *"The allegation is regarding the alleged supply of the installation of the software and whether the same was done by M/s. WSL or not. Merely because Sh. Sanjay D. Sonawani had given a statement, the Commissioner as such is not justified in cancelling the registration granted on 13.05.1999 w.e.f. the assessment year 2004-05. The assessee had placed various materials before the Tribunal to show that software modules purchased were installed between 2004 to 2011 and the assessee had incurred as much as 91.71% of the receipts for the assessment year 2004-05."*

Considering the legal precedents in the matter, both the appeals were dismissed by the Hon'ble Court and it was observed that Commissioner of Income Tax was not justified in passing the impugned Order for withdrawing the exemption as admittedly, the respondent-assessee is carrying out educational activities by running a large number of educational institutions all over the country and, therefore, the questions of law sought to be raised do not arise.

- 5.5 The Board was of the view that the defence of the Respondent that he has been exonerated by both the Hon'ble ITAT and Hon'ble Punjab and Haryana High Court is not tenable as in the extant disciplinary proceedings the conduct of the Respondent was being examined as to whether his alleged acts have brought disrepute to the profession whereas the issue to be examined before the Hon'ble ITAT and Hon'ble Punjab and Haryana High Court was different i.e. addition of income in the hands of

the Respondent and cancellation of registration u/s 12AA of Income Tax Act 1961 granted to M/s Apeejay Society. Thus, the testimony of the witness Sh. Sanjay Sonawani has been dealt with by the Hon'ble ITAT and Hon'ble Punjab and Haryana High Court and the Board keeping in view the issue to be examined before them.

- 5.6 The Board further noted that as per MCA records Sh. Sanjay Devidas Sonawani (DIN No. 02593631) was designated as the Managing Director of M/s. Washington Softwares Limited during the period 03/01/1995 to 06/09/2018. Sh. Sanjay Sonawani also held directorships of M/s. Suryoday Allo-Metal Powders Limited (28/10/1993 to 05/09/2018) and M/s. Suryoday Engineering Limited (02/04/1997 till strike off of Company). It was further observed that Mrs. Sangeeta Parag Mehta having address 114, Jolly Bhavan No.1, 10, New Marine Lines, Mumbai 400020 which is exactly the same address as of the Respondent's firm in the member records of ICAI, was also shareholder in M/s. Washington Softwares Ltd. holding 54,000 equity shares of Rs. 10 each i.e. about 0.49% of the total share capital of the Company as per list of shareholders available on the MCA website during Sept 2004 to Sept 2011. The Board further observed that M/s Stalk Securities Private Limited (Strike Off as on date) having address 114, Jolly Bhavan No.1, 10, New Marine Lines, Mumbai 400020 which is exactly the same address as of the Respondent's firm in the member records of ICAI, was also shareholder in M/s. Washington Softwares Ltd. holding 236430 equity shares of Rs. 10 each i.e. about 2.14 % of the total share capital of the Company as per list of shareholders available on the MCA website during Sept 2005 to Sept 2011. Incidentally, Mrs. Sangeeta Parag Mehta was also a director in the said company.

The Board also observed that the Registered Address of the below stated companies was the same as the professional address of the Respondent as per member records of ICAI. The Respondent also held directorship in Dr Faerber And Schwarz Acoustics Private limited (Strike Off-for efilng as per MCA records) since 2007:

S No.	Name of the Company	CIN/ LLPIN	Date of Incorporation	Regd. Address
1.	Stalk Securities Private Limited (Strike Off)  (236430 Equity Shares of Rs. 10/- each of Washington Softwares Ltd.	U67120MH1994PTC079625	14/07/1994	114A Jolly Bhavan No 110 New Marine Lines, Mumbai MH 400020 IN.



	As on 08.09.2005, 16.09.2006, 26.09.2007, 06.09.2008, 30.09.2009, 28.08.2010 & 28.09.2011)			
2.	Dr Faerber And Schwarz Acoustics Privatelimited (Strike Off – For Efilling)	U74999MH2007PTC176266	28/11/2007	114, Jolly Bhavan No. 1, 10, New Marinelines, Mumbai Mumbai City MH 400020 IN
3.	Summer Holding Pvt Ltd (Active)	U67120MH1983PTC029946	10/05/1983	114, Floor-1 Plot-10, 1, Jolly Bhavan, Vitthal Das Thackersey Marg, New Marine Lines, Churchgate, MUMBAI Mumbai City MH 400020 IN.

The Board also noted that the Respondent during the proceedings clearly held that he had no professional association with the company. The fact of his family member and the company registered at his address in which his family member was a director held shares in the company was never brought before the Board either by the Respondent or the witness Sh. Sanjay Sonawani. Thus, the Board was of the view that there existed an indirect relationship between the witness and the Respondent having pecuniary benefits.

- 5.7 The Board also took into view judgment of the Hon'ble High Court of Delhi in case titled Subramani Gopalakrishnan –vs- Institute of Chartered Accountants of India (30 May, 2011) wherein while dealing with the issue of applicability of strict standard of proof on Quasi-Judicial Proceedings, the Hon'ble Court observed as under:-

*"26. In NOIDA Entrepreneur Association v. NOIDA & Ors.; JT 2007 (2) SC 620, the Apex Court has expressed thus:*

*12. The purpose of departmental enquiry and of prosecution is two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be*



considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act 1872 (in short the „Evidence Act“). Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the department enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances.”

Further while dealing with the issue of nature of proof, it has further observed that:-

“27. In LPA No.730/2010 (National Insurance Company Ltd. v. Shri Sunil Kumar & Ors.) decided on 29th March, 2011, this Court, after referring to the aforesaid authorities, has stated as follows:

15. From the aforesaid enunciation of law, it can be stated with certitude that the scope, effect and consequence of a criminal trial and a departmental proceedings are distinct and different. Once the employer has reasonable basis regard being had to the sanctity, stability and the propriety of the administration and to avoid any kind of anarchy or chaos, it may be under an obligation to initiate departmental proceeding and simultaneously a criminal prosecution may be launched against the same delinquent employee. The circumstances should be such that there would be a warrant for directing stay of the disciplinary proceedings. It needs no special emphasis to state, the onus is on the delinquent employee that serious prejudice would be caused, if the parallel proceedings are allowed to continue. It is well settled in law that the burden of proof in a criminal trial is quite stringent, as an accused is entitled to benefit of doubt and the consequent acquittal, but the test of preponderance of possibilities in departmental proceedings is different. But regard being had to the nature of proof required in the departmental proceedings enquiry, a charged employee may not be entitled to exoneration. Regard must be given to the fact that in the departmental proceeding, the standard of proof is totally different. The cannons of service jurisprudence require that the departmental proceedings are put to an end as expeditiously as possible. The exception carved out is that the delinquent employee should be exposed to grave prejudice and the charges leveled against him should be so grave and involve complex questions of law and fact, so that it is undesirable and apposite to invite an interdiction in exercise of inherent jurisdiction by the Court. As has been stated by their Lordships, there cannot be any hard and fast rule or a straight jacket formulae and it depends upon many a factor and facts of each case.”

Thus, the Board viewed that there is no strict rule of evidence applicable on quasi-judicial proceedings for examination of conduct of the professionals and the facts and circumstances of each case together with the existence of corroborative and circumstantial evidences is used to determine the graveness of misconduct and consequent punishment thereon.

5.8 The Board held that from the examination of circumstantial evidences duly corroborated by the deposition of the witness and the Respondent before it as well as the Income Tax Department, it is evident as under:

(i) Sh. Sanjay Sonawani, Chairman, M/s. Washington Softwares Ltd. accepted that the company was in the business of providing accommodation entries as pointed out in para 4.1(d) above.

(ii) The Respondent provided free table space to Mr. Sonawani for a period of around 8 years as pointed out in para 5.2(a) above.

(iii) The cheque books and slip books were kept with Mr. Ramsunder (peon) who was an employee of the Respondent as coming out in para 4.2(a) and para 4.3 above and thus, the staff of the Respondent was working for Mr. Sonawani.

(iv) Signed blank cheques and RTGS Forms were found in the office of the Respondent as pointed out in para 5.2(c) above.

(v) The client list of M/s. Washington Softwares Ltd. was emailed by the Respondent to Sh. Sanjay Sonawani as pointed out in para 5.2(d) above.

(v) The accounts, invoices and other correspondences of M/s Washington Softwares Ltd. were also found in the computers of Respondent as pointed out in para 5.2(c) above and thus, computers of the Respondent were also used by Sh. Sanjay Sonawani.

(vi) The Respondent and Sh. Sanjay Sonawani were in constant touch with each other and the duration of telephonic communication between them increased after the date of search as pointed out in para 5.2(b) above.

(vii) Sh. Sanjay Sonawani, the then Chairman, M/s. Washington Softwares Ltd. accepted commission at 1 % of the turnover as addition of income from Assessment Year: 2004-05 to 2011-12 as pointed out in para 5.3 above.

(viii) The Respondent used to occasionally advice on investment matters to Sh. Sanjay Sonawani as pointed out in para 4.1(e) read with para 4.3 above.

(ix) Respondent's family member and the company registered at his address in which his family member was a director held shares in M/s. Washington Softwares Ltd. as pointed out in para 5.6 above.

(x) The Respondent provided office / table space to the Company without any agreement or rent which a person of even ordinary prudence would not allow.

In view of such circumstantial and corroborative evidences, the Board was of the view that ignorance pleaded by the Respondent with respect to use of his office infrastructure by the company for a period of around 8 years for providing

accommodation entries cannot be accepted as a mere coincidence and is nothing but merely an afterthought to save himself from the instant disciplinary proceedings. The Board was also of the view that looking to the circumstantial evidences as discussed earlier, it is amply clear that the relations between the Respondent and witness were not merely limited to providing a table space but was much beyond as has been tried to be contended by the Respondent and Respondent was very well aware about the accommodation entry business being carried out by the Company and the witness from his office premises. Thus, the Respondent was instrumental in allowing usage of his office premises and rather was hands in gloves with the Company and witness in furtherance of their illicit motive. The Respondent also had an indirect relationship with the company having pecuniary benefits. Infact, the Respondent accepted before the Board during the proceedings that it was his mistake that he allowed Sanjay Sonawani to keep his cheque books and signed cheques in the drawer of the peon of his office.

6. The Board was also conscious of the fact that in the current disciplinary proceedings, they are establishing whether the Respondent has committed an act of 'Other Misconduct' as defined under the Chartered Accountants Act 1949 which, if proved would result in civil consequences in the form of punishment under the Chartered Accountants Act 1949. The Chartered Accountants, as professionals, are expected to act in a manner which is befitting the profession at large. It does not behove of a responsible Chartered Accountant to indulge in activities which tarnish the image of the profession.
7. Thus, keeping in view the facts of the case, documents on record, submissions of the parties to the case and the deposition of the witness examined as per the direction of the Honorable Appellate Authority, the Board observed that it is an accepted fact that the company was in the business of providing accommodation entries and the conduct of the Respondent while allowing Sh. Sanjay Sonawani, the then Chairman of M/s. Washington Softwares Ltd. to use his office infrastructure whether intentionally or unintentionally without charging any rent for the period 2004 to 2012 which became a machinery for the issue of accommodation entries by the company has clearly brought disrepute to the profession. The Respondent clearly did not exercise due professional skepticism in the explained circumstances and his defence that he was oblivious to the happenings in his office premises for a period of around 8 years is clearly unacceptable. Accordingly, the Board is of the considered view that the Respondent is guilty of "Other Misconduct" falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act 1949 read with Section 22 of the said Act.

**CONCLUSION:**

8. The Board of Discipline, in view of the above, is of the considered opinion that the Respondent is **Guilty** of "Other Misconduct" falling within the meaning of Item (2) of Part IV of First Schedule to the Chartered Accountants Act 1949 read with Section 22 of the said Act.

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

DATE: 5<sup>th</sup> October, 2021

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