THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

DISCIPLINARY COMMITTEE [BENCH-I (2021-2022)]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]

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

In the matter of:

CA. Mustafa Ahmed (M. No.062010), Tamluk (W.B.) in Re:
[PPR/P/49/17/DD/38/TAMC/INF/17-DC/1114/2019]

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)

1. That vide findings under Rule 18 (17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Disciplinary Committee was inter-alia of the opinion that **CA. Mustafa Ahmed (M. No.062010)** (hereinafter referred to as the **Respondent**") was **GUILTY** of professional misconduct falling within the meaning of Clause (1) of Part II of the Second Schedule to the Chartered Accountant Act 1949. The Committee observed that final hearing was held on 15th January, 2021 through video conferencing.

2. That pursuant to the said findings, an action under Section 21B(3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and communication was addressed to him thereby granting an opportunity of being heard in person and/or to make a written representation before the Committee on 27th October, 2021.

3. The Committee noted that on 27th October, 2021, the Respondent was not present and there was no prior intimation from him for not attending the hearing.

4. The Committee has considered the reasoning as contained in findings holding the Respondent Guilty of professional misconduct.

5. The Committee noted that the Council General Guidelines, No.1-CA(7)/02/2008, dated 8th August,2008 under Chapter VI "Tax Audit assignments under Section 44AB of the Income-tax Act, 1961 ", provide that a member of the Institute in practice shall not accept, in a financial year, more

than the "the specified number of tax audit assignments" under Section 44AB of the Income-tax Act 1961. Further, in Explanation given in Para 6.1, in sub-para(a) & (b) 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 and

(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.

5.1 The Committee further noted that the tax audit assignment under Section 44AB of the Income-Tax Act 1961 is a time-bound assignment unlike other professional fields, and the work of audit requires precision. The certificate of audit issued by a Chartered Accountant under Section 44AB of Income Tax Act 1961 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. Thus, considering all these relevant factors, the Committee viewed that it cannot be said that ceiling of tax audit limit is in any way unreasonable or discriminatory. Accordingly, there is no basis for the contention that there is violation of Article 14 or Article 19(1)(g) of the Constitution of India.

5.2 The Committee further noted that the Guidelines do not in any way affect the rights of the Chartered Accountant under the Constitution of India being only a reasonable restriction as 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 restrictions. The Committee also noted the observations of the Supreme Court in Jyoti Prasad's case stating as follows:

> *"Where the legislatures fulfil 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".*

5.3 The Committee, accordingly, after consideration of all relevant facts and material on record 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.

5.4 The Committee observed that the Respondent failed to provide any documentary evidence on record to show that the Respondent has conducted audit under Sec. 44 AD/AE/AF, hence the benefit of the same cannot be extended to him. Thus, the Committee viewed that the Respondent has conducted following excess tax audits as given hereunder in column (3):

Audits conducted during the Financial Year	No. of Audits alleged to be conducted (2)	Excess No. of Audits (3)
2010-11	621	576
2011-12	966	921
2013-14	300	255
	Total Excess Audit	**1752**

6. The Committee thus viewed that the misconduct on the part of the Respondent has been established within the meaning of Clause (1) of Part II of Second Schedule and keeping in view the facts and circumstances of the case, ordered **removal of the name from register of members for a period of 03(Three) month** along with a fine of **Rs 5,00,000/- (Rupees Five lakhs Only)** that shall be paid within a period of 01 month from the date of receipt of this Order and **in case he fails to pay the same as stipulated,** the name of the Respondent, **CA. Mustafa Ahmed (M. No.062010),** be removed for a period of **06(Six) month in place of 03 (Three) month** from the Register of members.

Sd/-
(CA. NIHAR N JAMBUSARIA)
PRESIDING OFFICER

(approved and confirmed through e-mail)
(SHRI JUGAL KISHORE MOHAPATRA, I.A.S. (RETD.))
GOVERNMENT NOMINEE

(approved and confirmed through e-mail)
(MS. RASHMI VERMA, I.A.S. (RETD.))
GOVERNMENT NOMINEE

DATE : 05.02.2022

सही प्रतिलिपि होने के लिए प्रमाणित/
Certified to be true copy
विश्व नाथ तिवारी/Bishwa Nath Tiwari
कार्यकारी अधिकारी/Executive Officer
अनुशासनात्मक निदेशालय/Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंटस ऑफ इंडिया
The Institute of Chartered Accountants of India
[illegible] विहार नगर, शाहदरा, दिल्ली–110032
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CONFIDENTIAL

DISCIPLINARY COMMITTEE BENCH – I (2020-2021)

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

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

File No.: [PPR/P/49/17/DD/38/TAMC/INF/17-DC/1114/2019]

In the matter of:
CA. Mustafa Ahmed (M. No.062010), Tamluk (W.B.) in Re:
Palace Apartment,
Vill- Padumbasan Bus Stop,
Dist Purba Medinipur,
Tamluk– 721 636 **.... Respondent**

Members Present:
1. **CA. Nihar N Jambusaria, Presiding Officer**
2. **Ms. Rashmi Verma, I.A.S. (Retd.) (Government Nominee), Presiding Officer**
3. **CA. Pramod Jain, Member**

Date of Final Hearing : **15th January 2021**

Place of Final Hearing : **New Delhi (Through Video Conferencing)**

Parties Present:

Respondent : **Not Present**

Charges in Brief :

1. The charge against the Respondent is that for the financial years 2010-11, 2011-12 and 2013-14, he has 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 2010-11, 2011-12 and 2013-14: -

Audits conducted during the Financial Year	No. of Audits
2010-11	621

2011-12	966
2013-14	300

1.1 It may be noted that in Council Guidelines, 2008, vide Guidelines No.1-CA(7)/02/2008, dated 8th 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 or non-corporate assesse.

(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 assesse."

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 i.e. 15th January 2021, the Committee noted that the Respondent was not present before it. The Committee noted that notice was duly served to the Respondent and there was no prior intimation for not attending the meeting. In view of facts and material on record, the Committee decided to conclude the hearing in the instant matter ex-parte with the documents available before it.

Findings of the Committee:

4. Before taking decision 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 19th 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 19th January, 1988 was considered firstly by the Professional Development Committee (PDC) of the Institute, and thereafter by the Council of the Institute, in its 133rd meeting held on 28th/30th 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. 1st 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 13th 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 require 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, for better and equitable distribution of work amongst Chartered Accountants, as also to avoid monopolization of professional work in a few hands. 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; as also for better and equitable distribution of work amongst Chartered Accountants, 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 17th 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 8th 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 8th 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 permittted 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 44ABof 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 about the ICAI can't 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 fulfil 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 the Respondent has conducted 621, 966 and 300 Tax Audits during the year 2010-11,2011-2012 and 2013-14 respectively. Further the Respondent in his written submission dated 2 July 2015 stated that he has provided some details for the year 2013-14 (which is subject to submission of complete details and evidence) but failed to provide details for other two years 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 same pertains to the financial year 2010-2011, 2011-12 and 2013-14. Further, the Respondent has failed to provide a clear written statement in his defence by stating that due to change in his staff to whom records were available and due to shifting of his office. The Committee noted that he was not present before the Committee at the time of hearing nor bring on record any necessary documents to negate the allegation. The Committee is of the view that being a member of the Institute, the Respondent was expected to adopt the highest standard of ethical behavior and professional compliance of the Council General Guidelines, but he failed to do so.

Conclusion:

7. In view of above noted facts and discussion, in the considered opinion of the Committee, the Respondent is held **GUILTY** in under Clause (1) of Part II of the Second Schedule to the Chartered Accountant Act, 1949.

sd/-
CA. Nihar Niranjan Jambusaria
(Presiding Officer)

approved & confirmed through email
Ms. Rashmi Verma, I.A.S. Retd
Member, (Govt. Nominee)

sd/-
CA. Pramod Jain
Member

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