



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. Shoban Mukhopadhyay (M. No. 064212), Ranagaht (West Bengal) in Re:
[PPR/P/266/17/DD/250/TAMC/INF/17-DC/1106/2019]

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. Shoban Mukhopadhyay (M. No. 064212)** (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 30th December, 2020 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 present physically at ICAI Kolkata Office and made his verbal representations before the Disciplinary Committee on the said findings and admitted that he had conducted tax audits in excess of the prescribed limit.
4. The Committee has considered the reasoning as contained in findings holding the Respondent Guilty of professional misconduct vis-à-vis verbal representations of the Respondent on the findings of the Disciplinary Committee.



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5. The Committee considered the verbal as well as the written submissions made by the Respondent and 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



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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 noted that the Respondent could not provide documentary evidence in support of his claim of audit having done u/s 44 AD/AE and AF. Hence, benefit of the same cannot be given to him. Thus, the Committee viewed that considering two partners in the firm 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	149	59
2011-12	217	127
	Total Excess Audit	186

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 that a fine of **Rs 1,75,000/- (Rupees One lakh Seventy five thousand 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. Shoban Mukhopadhyay (M. No. 064212)** be removed for a period of **01(One) 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


बिष्व नाथ तिवारी / Bishwa Nath Thewari
कार्यकारी अधिकारी / Executive Officer
अनुशासनालय निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्व नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032

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/266/17/DD/250/TAMC/INF/17-DC/1106/2019]

In the matter of :

CA. Shoban Mukhopadhyay (M. No. 064212),

Ranagaht (W.B.) in Re:

..... Respondent

Members Present :

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

Date of Final Hearing : 30th December 2020

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

Parties Present:

Respondent : CA. Shoban Mukhopadhyay

Charges in Brief :

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

Audits conducted during the Financial Year	No. of Audits
2010-11	149
2011-12	217

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 assessee.

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

2. The Committee noted that as per the Prima-Facie Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent is guilty under Clause (1) of Part II of the Second Schedule to the Chartered Accountant Act 1949. The aforesaid Clause (1) of Part-II of the Second Schedule states as under: -

“Professional misconduct in relation to members of the Institute generally:

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he –

(1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council”

x

x

x”

Brief facts of the Proceedings:

3. On the day of hearing i.e. 30th December 2020, the Committee noted that the Respondent was present before it. The Respondent was put on oath. The Committee asked the Respondent that whether he was aware of the charges, the Respondent stated that he was aware of the charges and thus, the charge levelled against the Respondent could be treated as read. On being asked as to whether the Respondent pleaded guilty or not, the Respondent pleaded guilty but at the same time mentioned that he is relying upon the submission made by him earlier during the Prima Facie Opinion Stage that the Number of Tax Audit Conducted by him beyond the eligibility were 31 and 46 for the alleged year 2010-11 and 2011-12 respectively. The Respondent accepted his default and submitted that due to low fee and mufassil town he was bound to do such number of audits and such contravention was unintentional on his part. After hearing the submissions of the Respondent, the Committee decided to conclude the hearing in the instant matter.

Findings of the Committee:

4. The Committee noted that the Respondent has accepted to have contravened the said Guidelines and accepted the list provided him at PFO stage. It was viewed that being a member of the Institute, the Respondent is expected to adopt highest standard of ethical behaviour and professional compliance of

the Council General Guidelines. Further looking into acceptance of guilt by the Respondent, the Committee under provisions of Rule 18(8) recorded his plea and accordingly hold him Guilty.

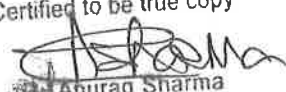
Conclusion:

5. 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 Niranjn Jambusaria
(Presiding Officer)

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

Sd/-
CA. Pramod Jain
Member

Certified to be true copy

Anurag Sharma
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India.
ICAI Bhawan, Vishwas Nagar, Shandra, Delhi-110032