



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

PR-373/17/DD/08/2018/BOD/547/2020

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 Amit M. Panchal, Ahmedabad

...Complainant

-Vs.-

CA. Tehmul B. Sethna (M.No.035476),
M/s.Apaji Amin & Co., LLP,
Chartered Accountants, Ahmedabad

...Respondent

[PR-373/17/DD/08/2018/BOD/547/2020]

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: 5th October, 2021

1. The Board of Discipline vide Report dated 11th February, 2021 held that **CA. Tehmul B. Sethna (M.No.035476)** 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.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Tehmul B. Sethna** and communication dated 16th September, 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 5th October, 2021. Thereafter, he submitted his written representation dated 28th September, 2021 on the Findings of the Board.
3. **CA. Tehmul B. Sethna** appeared before the Board on 5th October, 2021 through video conferencing and made his oral representation thereat. OD



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4. **CA. Tehmul B. Sethna** in his written representation dated 28th September, 2021, inter-alia submitted that the Order of the Board of Discipline is not fair and proper justice was not delivered by the Board on the following grounds:-

- a. Regarding the quorum of the Board of Discipline, the Respondent stated that one of the members of the Board, Ms. Rani Singh Nair, Retd-CBDT Chairperson is an interested party.
- b. The Respondent further challenged the jurisdiction of the Board of Discipline and the Director (Discipline) with respect to formation of Opinion by stating that the formation of Opinion by the Council about bringing disrepute is a pre-requisite before initiating action under Clause (2) of Part IV of First Schedule.
- c. In response to Para 9 of the Report, the Respondent submitted that the Board mentioned that they had come to the conclusion based on facts and documents, however, the Board seems to have only considered the documents and facts as stated by the Complainant. The Findings by the Board is absolutely false. When the FSL report by the Government of Gujarat clearly contradicts the tampered affidavit that Respondent had not signed any of the documents, the Board cannot override that power and find the Respondent guilty of illegally opening an account and forging signatures of trustees. Also, it does not make common sense on how they found that the Respondent has withdrawn amount for personal gains, when all the Balance Sheets of the Trust have been signed by the Trustees and are uncontested. The Income Tax Authorities have not rejected the books of the Trust as per Assessment Orders of AY 2011-12 to AY 2017-18, rather the Respondent was exonerated of any wrong doing. The Respondent further requested the Board of Discipline to reconsider its decision.
- d. In response to Para 10 of the Report, the Respondent submitted that the Board comes to an imaginary conclusion to show that whatever the Complainant has alleged is all true by the various Assessment Orders, Charge Sheet filed and Court Orders. The same is not true, since the Board has not taken into consideration the Assessment Orders of the Trust and the findings of the DCIT, the Assessing Officer which have been passed after the Complainant represented the Trust in the Assessment Proceedings. In all 7 Assessment Orders of the Trust, the Assessing Officer has disregarded the Affidavit of the Respondent, has accused the Trustees of wrong doings and has mentioned that the Trustees are lying and are trying to blame the Respondent.



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- e. The complaint filed by the Complainant in Point no. 5 of Form I is for FIR filed by the wife of the Complainant Mrs. Shivangi Panchal who is the trustee of Trust. The Complainant is in no way connected with the Trust, neither he is a trustee nor an authorized agent to produce the documents relating to the Trust or documents relating to other parties referred to. Hence, no reliance can be placed on such documents produced without proper authorisation. Further, the Complainant has sent certain documents to the Board after the final hearing on 8th February, 2021 and the Respondent had not been given an opportunity to verify the authenticity of such documents.
- f. The Complaint is time barred as the account of the Complainant was opened in 2007 as per Bank Account Opening Form and as per Rule 12 of Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct Of Cases) Rules, 2007, it is more than 7 years hence the complaint filed by the Complainant should be dismissed.
- g. An FIR filed against the Respondent does not hold enough ground to hold him guilty unless the guilt is proved by evidence. The Hon'ble Supreme Court has clarified in one of its judgments that when the proceedings are going simultaneously for different connotations, but based on the same FIR, documents and evidences under such circumstances matter be kept pending till the Respondent is held Guilty by the relevant Court and it is premature to hold him guilty – if held guilty by those Courts under said Indian Penal Code, or Civil Court, then at that time the case can get covered in Clause (1) of Part IV of the First Schedule if the offense is punishable with imprisonment.
- h. In his 37 years career he has never faced disciplinary action and unfortunately due to greed of his ungrateful client whom he had not charged a single rupee for 25 years, he had faced the present wrong complaint.
4. The Board has carefully gone through the facts of the case and also the oral and written representation of **CA. Tehmul B. Sethna**. Considering the same, the Board was of the following view:
- (i) As regards the plea of the Respondent that the Quorum of the Board of Discipline was not proper as Ms. Rani Singh Nair, Retd-CBDT Chairperson, the Government Nominee was an interested party, the Board observed as under:-
- a. The Prima Facie Opinion dated 22nd November, 2019 formed by the Director(Discipline) in the case was considered by the Board at its meeting held on 3rd and 4th March, 2020 wherein



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all the three members of the Board were present and the Board duly concurred with the reasons given against the charge(s) and agreed with the Prima Facie Opinion of the Director (Discipline). Accordingly, the case was referred for enquiry.

- b. Thereafter, the hearings in the case were listed before the Board on 19th January, 2021, 29th January, 2021 and 8th February, 2021. However, the hearing fixed for 19th January 2021 had been adjourned at the request of the Respondent. The Respondent was physically present before the Board both on 29th January, 2021 and 8th February, 2021.
- c. The Respondent duly filed his detailed written submissions/documents before the Board vide communication dated 22/07/2020, 19/08/2020, 5th February 2021, 9th February 2021 and 10th February 2021 and presented his oral defense during the proceedings before the Board.
- d. The Respondent raised the plea of one of the members of the Board being an interested party only on 28/09/2021 through his written representation i.e. only after receipt of the Findings of the Board dated 11/02/2021 holding him Guilty.
- e. The documents brought on record by the Respondent to prove the non-independence of one of the Member of the Board was his filing of Form 1 (declaration under Section 183 of the Finance Act, 2016 in respect of Income Declaration Scheme, 2016) alleged to be received by the IT Department, Ahmedabad on 30/09/2016, Form 2 (Acknowledgment of Declaration under Section 183 of the Finance Act, 2016) dated 14/10/2016 issued by Principal Commissioner of Income Tax, Ahmedabad and Order dated 28/11/2016 passed by Principal Commissioner of Income Tax, Ahmedabad in the matter of Shri Maheshkumar Champaklal Shah, one of his clients.
- f. The Board after perusing the said documents viewed that the said allegation is on the face of it is not maintainable as the subject matter of the extant proceedings emanates from the takeover of premises of Environment Research and Development Centre, Ahmedabad (Trust) allotted by the Government on lease for educational purpose and the Respondent used the personal information of the Complainant which was in his possession for wrongful benefits. However, the Respondent represented his client Mr. Mahesh Kumar Champaklal Shah before the Income Tax Department where none of the Orders/ documents issued by the Income Tax Department in 2016(as brought on record by the Respondent) even mentions the name of the Government Nominee of the Board.
- g. The Board also noted that the instant complaint regarding Other Misconduct of the Respondent had been filed by one of the clients of the Respondent who also happened to be



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the husband of one of the family friends of the Respondent. It was not comprehensible as to how there is conflict of interest in the instant case with respect to IDS matter represented by the Respondent before the Income Tax Department. IDS was a scheme introduced by the Government of India when the Honorable Government Nominee of the Board was the Chairman, CBDT. The Respondent did not bring on record any material to prove any past or present relationship or interest in subject matter of the extant proceedings which is likely to give rise to justifiable doubts as to her independence or impartiality. The Board was of the view that it seems to be a tactics adopted by the Respondent to divert the attention of the Board to unwarranted issues.

- h. The Board also took a serious view of the conduct of the Respondent in this respect as despite being physically present before the Board during hearing, he neither verbally nor in written form raised such objection when the Disciplinary proceedings were going on and raised the said objection at the fag end of the extant Disciplinary proceedings wherein he had already been held Guilty.

- (ii) As regard the plea of the Respondent regarding non- fulfilment of the requirement stipulated in Clause (2) of Part IV of the First Schedule, the Board referred to Para 15 of the Order dated 13th May, 2017 passed by the Hon'ble Appellate Authority in the matter of *Gyan Prakash Agarwal (Appeal No. 08/ICAI/2014)*, *Rajiv Maheshwari (Appeal No. 05/ICAI/2014)* and *Sameer Kumar Singh Vs. ICAI (Appeal No. 07/ICAI/2014)* wherein it is held as under:

"15. Based on the above and by taking note of the written submissions made on behalf of the Institute of Company Secretaries of India, the Institute of Cost Accountants of India and the Institute of Chartered Accountants of India containing the detailed Page 9 of 14 analysis of the issue in question, we are of the considered view that the proper and correct interpretation which can be given to Clause (2) of Part-IV of the First Schedule to the respective Acts, in the light of the principles laid down and having regard to the case laws of various courts and further considering the basic objects, reasons and purpose of the amendment brought in the statutes as quoted above is that, 'Prima facie Opinion (PFO)' formed by the Director (Discipline) in all such complaints / information cases serves the purpose for proceeding further for taking disciplinary action against the errant members as in terms of the amended mechanism for conduct of cases, it is the Director (Discipline) who has to form the first Prima Facie Opinion for the disciplinary proceedings to be initiated. Therefore, the opinion of Council as is mentioned in the clause (2) of Part-IV of the First Schedule to the Act has to be given a purposive meaning and has to be read in consonance with the letter and scheme of the enactment".

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Hence, the issue had already been decided by the Hon'ble Appellate Authority, and therefore, there is no merit in the argument of the Respondent in this regard.

- (iii) As regard the plea of the Respondent regarding the authority of Complainant to file extant complaint, the Board was of the view that the complaint had been registered against the Respondent after due scrutiny in accordance with the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct Of Cases) Rules, 2007. Raising of such preliminary issues by the Respondent when the Disciplinary proceedings have already been concluded against him holding him Guilty and when the case is for award of punishment before the Board seems to have been raised to divert the attention of the Board from the core issue.
- (iv) As regard the plea of the Respondent that the matter is time barred as per the provisions of Rule 12, the Board viewed that Rule 12 is attracted in a situation / circumstance where on account of time lag, the Respondent faces any difficulty in securing proper evidence for his/her defence and it does not ipso facto render the complaint/ information as not maintainable. However, in the instant case, the Respondent did not express any difficulty being faced by him in leading the evidence in his defence despite being physically present before the Board during hearing either verbally or in written form when the Disciplinary proceedings were going on and raised the said objection at the fag end of the extant Disciplinary proceedings wherein he had already been held Guilty. Accordingly, the Board was of the view that the plea of the Respondent is not maintainable.
- (v) As regards the plea of the Respondent to keep the proceedings pending referring to SC judgements, the Board opined that proceedings before the Board of Discipline are quasi-judicial in nature where the Misconduct can be proved by preponderance of probabilities having regard to the conduct of the Respondent. While coming to the said view the Board took into consideration the decision of the Hon'ble Supreme Court in the matter of "Ajit Kumar Nag -vs- General Manager (PJ) Indian Oil Corporation Limited-AIR 2005 SC 4217 wherein the Hon'ble Apex Court held as under:-
- "The degree of proof which is necessary to order a Conviction is different from the degree of proof necessary to record the commission of delinquency. The rules relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt*



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of the accused beyond reasonable doubt he cannot be convicted by a Court of law. In a departmental enquiry penalty can be imposed on the delinquent officer on a finding recorded on the basis of preponderance of probability."

Similarly in the matter of Capt. M Paul Anthony –vs- Bharat Gold Mines Limited - AIR....1999 SC 1416 the Hon'ble Supreme Court held as under:-

"In departmental proceedings, factors prevailing in the mind of the disciplinary authority may be many, such as enforcement of discipline of to investigate level of integrity of delinquent or other staff. The standard of proof required in those proceedings is also different from that required in a criminal case. While in departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt."

Further, it is not an inflexible rule of Law that disciplinary proceedings must be stayed in each and every case where a trial is pending before the Criminal Court on the very same facts/charges. The stay Orders have been passed in specific cases keeping in view the facts of the case and cannot be applied in general to stay/keep in abeyance all the disciplinary proceedings before it.

(vi) As regards the plea of the Respondent that he was not been given an opportunity to verify the authenticity of documents sent by the Complainant to the Board after the final hearing on 8th February, 2021, the Board held that on 8th February 2021, the proceedings had been concluded with the direction to provide the following with a copy of the same to the other party for their comments thereon, if any:

--- To the Respondent:

- (a) Gist of the case mentioning the relevant page numbers of the documents of his submission
- (b) Copy of his Income Tax Assessment Order for A.Y. 2011-12 to A.Y. 2017-18
- (c) Report of the Special Auditor in Form 6B issued for A.Y. 2011-12 to A.Y. 2017-18.

----To the Complainant:

- (a) Gist of the case mentioning the relevant page numbers of the documents of his submission.



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The Complainant vide email dated 9th February 2021 submitted his response which was basically a gist of the case, a copy of which was also marked to the Respondent by him. Thus, the Board did not find any merit in the plea raised by the Respondent.

5. Thus, as per the Findings of the Board as contained in its report, the Respondent abused his professional relationship for personal gains from the initial period of creation of The Environment Research & Development Centre, Ahmedabad (Trust) and for wrongful benefits, the Respondent created various documents, opened bank accounts, forged signature of trustees, misused the documents entrusted with him during his professional engagement with the Trust and illegally withdrew the amount from the bank account of the Trust through his peon Mr. Vijay Solanki, thus, bringing disrepute to the profession. The misconduct of the Respondent is duly established in the charges alleged by the Complainant duly substantiated by the various Assessment Orders, Charge Sheet filed against him and Court Orders available on record. Thus, it has already been held that **CA. Tehmul B. Sethna** 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.

6. Upon consideration of the facts of the case, the consequent misconduct of **CA. Tehmul B. Sethna (M.No.035476)** and keeping in view his oral and written representation before it, the Board decided to remove the name of **CA. Tehmul B. Sethna (M.No.035476)** from the Register of Members for a period of 01 (one) month and also imposed a fine of Rs.1,00,000/- (Rs. One lakh only) upon him payable within a period of 60 days from the date of receipt of the Order.

Sd/-

CA. PRASANNA KUMAR D.
(PRESIDING OFFICER)

Date: 1st February, 2022

प्रमाणित सत्य प्रतिलिपि / Certified true copy

आर. एस. श्रीवास्तव / R. S. Srivastava
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

BOARD OF DISCIPLINE

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/373/17-DD/08/18-BOD/547/2020

CORAM:

CA. Prasanna Kumar D., Presiding Officer (in person)

Smt. Rani Nair (IRS, retd.), Government Nominee (Through video conferencing)

In the matter of:

Shri Amit M Panchal
56, Chaitanyanagar
Navjivan,
Near Sardar Patel Stadium Petrol Pumps,
AHMEDABAD 380014

.....Complainant

Versus

CA. Tehmul B. Sethna (M.No. 035476)
M/s. Apaji Amin & Co. LLP,
Chartered Accountants
304, Aakansha Building,
Opp. Vadilal House,
Navrangpura,
AHMEDABAD 380009

.....Respondent

DATE OF FINAL HEARING : 8th February, 2021

PLACE OF FINAL HEARING : New Delhi

PARTIES PRESENT:

Complainant : Shri Amit M Panchal
(through video conferencing)

Respondent : CA. Tehmul B. Sethna
(physically at ICAI office, Indraprastha Marg, New Delhi)

FINDINGS:**Brief facts of the case:**

1. The Respondent was known to Shri Pannalal Modi (father of the Complainant's wife). Shri Pannalal Modi, Mrs. Shivangi Panchal (Complainant's wife), and Ms. Parul Modi (sister of Complainant's wife) were trustees of Environment Research and Development Centre, Ahmedabad (hereinafter referred to as the "Trust"). After death of Shri Pannalal Modi on 31/03/2006, the Respondent approached other two trustees i.e. Complainant's wife and her sister and represented to them that since they were ladies they would not be in a position to run the Trust and look after the financial activities of the Trust. Accordingly, the Trust work was assigned to the Respondent and Memorandum of Understanding (MoU) was executed between the Respondent and the Complainant's wife on 26/10/2013 to become Trustee and to takeover premises of Trust allotted by the Government on lease for educational purpose.

Charges alleged:

2. The Respondent used the personal information of the Complainant which was in his possession without Complainant's knowledge and consent for opening of Individual Savings Bank a/c no. 0179053000010765 with South Indian Bank at Ashram Road, Ahmedabad Branch.

2.1 The Respondent forged the signatures of the Complainant on the copy of PAN Card and telephone bill dated 06/08/2007 which were in his possession being a Chartered Accountant for the Complainant and his family members for last many years and submitted the same for the opening of the said bank account on 10/09/2007.

2.2 The Respondent also became introducer of said Bank account and made financial transactions in said bank account fraudulently opened by him in the name of Complainant on 10/09/2007 and also forged the signatures of Complainant on the cheques of Individual Savings Bank account and ever since 10/09/2007 until 05/12/2017 with withdrawals in said bank account amounting to Rs. 1,00,22,160/- after deposits amounting to Rs. 1,00,30,269/- until 22.01.2011.

The said acts came to the knowledge of the Complainant through Mr. Desu Vijayakumar, Manager, South Indian Bank, and accordingly the Respondent has committed the offence of forgery and criminal breach of trust, by deceiving and cheating the Complainant.

2.3 The Respondent opened the bank account of the trust with South Indian Bank without the knowledge of the trustees and withdrew huge amount of money from the said bank account of the Trust.

Brief of proceedings:

3. During the hearing held on 29th January, 2021, the Respondent was physically present before the Board and the Complainant was present through video conferencing and both of them made their detailed oral submissions. On consideration of the documents and submissions, on record, the Board directed the Respondent to submit the following documents with a copy marked to the Complainant:

- a. Copy of the Income Tax return of Mr. Amit Panchal for AY 2011-12 and 2012-13 together with its acknowledgement.
- b. Audited Balance Sheet, Profit and Loss Account and Tax Audit Report of Mr. Amit Panchal for AY 2011-12 and 2012-13.
- c. Copy of the Income Tax return of M/s Environment Research and Development Centre for AY 2011-12 and 2012-13 together with its acknowledgement.
- d. Copy of his Income Tax return along with the Income Tax Assessment Order for AY 2011-12 and 2012-13.

In compliance of the above directions, the Respondent vide email dated 5th February, 2021 submitted his response.

4. Thereafter, at the final hearing held on 8th February, 2021 wherein the Respondent was physically present before the Board and the Complainant was present through video conferencing and after considering the submissions of both the parties, the Board decided to conclude the proceedings in the case with the direction to provide the following with a copy of the same to the other party for their comments thereon, if any:

To the Respondent:

- a. Gist of the case mentioning the relevant page numbers of the documents of his submission
- b. Copy of his Income Tax Assessment Order for A.Y. 2011-12 to A.Y. 2017-18
- c. Report of the Special Auditor in Form 6B issued for A.Y. 2011-12 to A.Y. 2017-18.

To the Complainant:

- a. Gist of the case mentioning the relevant page numbers of the documents of his submission.

Accordingly, the decision on the conduct of the Respondent was kept reserved by the Board. In compliance of above directions, the Respondent vide email dated 09/02/2021 and 10/02/2021 submitted his response. The Complainant vide email dated 09/02/2021 also submitted his response.

Thereafter, the Board at its meeting held on 11th February 2021, on the basis of the documents and submissions on record, arrived at its findings.

Brief Submissions of the Respondent:

5. The Respondent in his submissions inter-alia submitted as under:-
 - a. Regarding the affidavit dated 24/12/2016 signed by the Respondent, the Respondent submitted that Mrs. Shivangi Panchal and Ms. Parul Modi requested the Respondent to make a affidavit so that Respondent can face the Income Tax Department and take everything on himself. The Respondent further submitted that as a family member, he signed the affidavit prepared by the Complainant and shown to him at the last moment before signing and suddenly after making the affidavit, they started demanding money from the Respondent.
 - b. The Respondent referred to FSL Report given by Directorate of Forensic Science to the Police Department and stated that what was written in the affidavit was not totally true and his stand was vindicated as per said FSL Report. Further, the FSL Report establishes that Respondent has not signed any cheques either of Complainant or of Trust.
 - c. Regarding the MoU dated 26/10/2013 executed between the Respondent and Mrs. Shivangi Panchal, the Respondent referred to FSL Report of Mrs. Shivangi Amit Panchal (wife of Complainant) and submitted that the said MoU was signed by Mrs. Shivangi Panchal and she received Rs. 5 Lakhs on signing MoU. The said MoU was lying at the office of the Respondent and during search by the Income Tax Department, the copy of same was seized and was printed in Assessment Order of Trust which shows that the same was lying in the office and was not fabricated later. The Respondent further submitted that FSL report exonerated him of any wrong doing.
 - d. The Respondent further referred to the Assessment Orders of Trust for AY 2011-12 to AY 2017-18 wherein the Complainant represented the Trust, attended the hearing and explained the issues. The Dy. Commissioner of Income Tax Circle 1(1) after scrutiny came to the conclusion that the trustees were totally aware of all the transactions in the Trust and were trying to shift onus on the Respondent.

- e. The Respondent filed the Civil Defamation Suit against the Complainant, Trust, Mrs. Shivangi Panchal and Ms. Parul Modi praying to refrain the Complainant and others in not using the affidavit made by him and to recover Rs. 10 crores from them.
- f. Regarding Respondent's role in opening of the bank account, the Respondent submitted that in the year 2007, Mrs. Shivangi Panchal (wife of the Complainant) and Mr. Amit Panchal (Complainant) wanted to visit USA, and they wanted to have some balance to show in his account. They approached him to help her out and he helped them and due to this, the bank accounts were opened. The Respondent added that the Complainant compared with his account but not compared to Ms. Shivangi account which the Respondent had opened it and entry of Rs. 11 lakhs was coming from Ms. Shivangi Panchal account to his account. The Respondent stated that this transaction was done on Ms. Panchal's request and she promised to pay him back on the sale of some land. The Respondent added that he gave Rs. 5 lakh further to Ms. Panchal with MOU signed by her in this regard.
- g. The Respondent also took the plea that Special Auditor in his report has given clean chit to the Respondent as far as findings of Assessing Officer is concerned in various Orders passed by the Assessing Officer.

Brief Submissions of the Complainant:

- 6. The Complainant in his submissions, inter-alia submitted as under:-
 - a. The Respondent is a habitual offender and has been involved in a series of offences of forgery, committing fraud, cheating etc. and has not even spared his wife, Kamalrukh Sethna, who has also filed a Criminal Complaint against him on 26.12.2016, with Navrangpura Police Station, Ahmedabad, CR. No. 132/2016 under Sections 406, 420, 465, 467, 468 and 471 of the Indian Penal Code, 1860, (I.P.C).
 - b. The Income Tax Department had on 29.11.2016, raided Respondent's residential and business premise for conducting search operation u/s 132 of the Income Tax Act, 1961. The action u/s 132 of the Income Tax Act, 1961, on a practicing Chartered Accountant itself puts the Chartered Accountant, under the cloud of suspicion.
 - c. During the course of search proceedings, some incriminating documents related to the Trust were also found and seized from the office premises of the Respondent by the Officers of the Income Tax Department. The said documents include the forged donation receipts, bank passbooks and forged signed blank cheques etc. All such aspects are mentioned in the Reassessment Orders passed by the Income Tax Department in the case of the Trust and submitted by the Respondent along with his reply dated 22/07/2020.

- d. This action of the Income Tax Department exposed the Respondent and all his malpractices which the Respondent has been carrying out since years together. The clients of the Respondent, including the Complainant and family members of Complainant, keeping full trust in Respondent for such a long period of time, were under a bonafide belief that the Respondent being a professional is doing a good service for all.
- e. It was for the first time on 19/07/2017 and 15/12/2017, that the Trustees were made aware of Assessment Proceedings, as since the Respondent was only handling all the matters of the Trust and had even changed the communication address from the Original Address of the Trust to his office Address, there was no occasion and opportunity for the Trustees to be aware of the dealings the Respondent had with the Trust and/or with regard to the Income Tax Department or any other authority calling for information by issuing Notice of the dealings of the Trust.
- f. The Trust was created by father-in-law of the Complainant 20 years ago and since its inception till date, this Trust has remained dormant. There were no activities being carried out by the Trust over this period of time. The original address of the Trust was the residence of Complainant's father-in-law, being A/5 Swastik Society, Navrangpura, Ahmedabad 380009. During the course of time, the Respondent got the address of the Trust changed from A/5, Swastik Society, Navrangpura, Ahmedabad 380009, which was the residential address of Complainant's father-in-law and the founder of the said Trust, to the address of his office premises without any authority given to him and also without knowledge of the remaining two Trustees, after the death of Complainant's father-in-law.
- g. It was only after getting notices at residential address by the Complainant, from the ITO (Exemption), Ward-1, dated 19.07.2017 and 15.12.2017, that Complainant and his family members came to know that due to search action on the Respondent, assessment of the Trust for A.Y. 2010-11, was reopened. The Respondent had never ever informed Complainant and the Trustees of the consequences of these proceedings and kept on appearing before the Income Tax Authority on behalf of the Trust without being ever authorized to do so by the surviving Trustees. It was only after perusing the notice of the ITO (Exemption), Ward-1, dated 15.12.2017 the Complainant came to know that the Respondent was still appearing before the Income Tax Authorities on behalf of the Trust without any authority, consent and knowledge and even after filing affidavit dated 24.12.2016.
- h. As regards the alleged report of the Private Hand Writing Agency submitted by the Respondent, the Complainant denied the same and stated that the said report has no credence. Further, the Investigating Officer has not accepted and has not relied upon

such purported Private Hand Writing Agency report made by a Private Agency, and even the Charge Sheet has been filed before the Hon'ble Competent Court for offences of forgery, misappropriation, cheating etc.

- i. The wife of the Complainant being dissatisfied by the earlier investigation carried out by in connection with FIR I-Cr. No. 187/2017, filed Special Criminal Application No. 3521 of 2019 before Hon'ble High Court of Gujarat seeking reliefs as mentioned in the Order dated 12/04/2019, passed by the Honourable High Court of Gujarat. The Hon'ble High Court of Gujarat after hearing the Learned Public Prosecutor appearing for the State of Gujarat was pleased to allow the Petition and directed further investigation to be carried out by Assistant Commissioner of Police which was to be supervised by the Deputy Commissioner of Police of the concerned Police Station and also directed that further investigation be completed within a time frame fixed by the Hon'ble Court.
- j. Regarding the alleged Memorandum of Understanding (MoU) referred by the Respondent, the Complainant submitted that the Trustees were shocked to have come to know of its existence. The signature of the Trustee was also forged on the said MoU by the Respondent. The two witnesses who have signed the said MoU are only one, Ms. Aarti R. Panchal who was working as an employee of the Respondent. The two representations made to the Police Commissioner by the Respondent, one on 12.12.2017 and second on 13.12.2017, there is no reference to the said MoU at all. There is one more aspect which requires to be pointed out with regard to the alleged MOU, fraudulently created by the Respondent on which the Respondent has alleged that One Trustee, Ms. Shivangi Panchal has signed the said MOU. The Complainant drew attention to the following para 14 of the Affidavit dated 24.12.2016, affirmed by the Respondent, to substantiate the point that the MOU has been forged by the Respondent :

"I say that as regards the parcel of land given to the Trust on lease by the Deputy Collector by Order dated 10.06.2002, is concerned, the Trustees of the Trust have in no manner ever dealt with the said land contrary to the conditions for the grant of the said land and have in no manner entered into any negotiation with any person, firm or company, so as to create any encumbrance in any manner with regard to the land in question."

Whereas, the Respondent referred to MoU dated 26/10/2013 and has claimed that Ms. Shivangi Panchal has signed the said MoU dated 26/10/2013 and the same establishes the false allegation of the Respondent and the MoU is forged and was never in existence.



- k. As regards filing of Civil Defamation Suit against the Complainant by the Respondent is concerned, the said Civil Suit is nothing but a frivolous litigation and the suit is without any substance whatsoever. The Complainant also submitted copy of replies filed by the Trustees of the Trust and by him in Civil Suit No. 1423 of 2019 to support his claim.
- l. As regards the copies of Assessment Orders, passed in the case of the Trust by the ACIT Central Circle-I (I), Ahmedabad, for the A.Y. 2011-12 to A.Y. 2017-18, the Complainant submitted that it is a matter of further investigation by an independent Investigating Agency, as to how the Respondent obtained copies of these Assessment Orders passed in the case of the Trust and how the said Assessment Orders are in possession of the Respondent, without any authority in law or without the consent and knowledge of the Trustees of the Trust. The Complainant further confirmed that none of the Trustees have ever given the Respondent copies of the said Assessment Orders, neither has the Respondent requested the Trustees of the Trust and/or the Complainant to give him copies of the same.
- m. During the course of action on 29/11/2016, taken u/s 132 of the Income Tax Act, 1961, at the business and residential premise of the Respondent, the statement of the Respondent was recorded on oath u/s 132 (4) of the Income Tax Act, 1961, together with the statement of the peon of the Respondent Mr. Vijay Solanki. The said statements were placed before the Hon'ble High Court of Gujarat alongwith the Affidavit filed by Shri. Rajneesh Yadav, Deputy Commissioner of Income Tax, Central Circle in the Affidavit in Reply filed by the said Officer in Special Civil Application No. 21233 of 2017, which petition was filed by the Respondent challenging the Notice under Section 148 of the Income Tax Act 1961 dated 30.03.2017, seeking to reopen the Income Tax Assessment of the Respondent for the A.Y. 2010-11. The case of the Respondent was approved for reopening by the Jurisdictional Principal Commissioner of Income-tax, Central Charge, Ahmedabad, and such approval was granted on the basis of the reasons recorded by Shri Rajnish Yadav, the then AO, after considering all the relevant materials found and seized during the course of search action u/s 132 of the IT Act 1961, on the Respondent. The said Affidavit filed by Shri Rajneesh Yadav, Joint Commissioner of Income Tax (OSD), Central Circle II (I), Ahmedabad, reveal how the Respondent has illegally and without any authority in law operated the bank account of the Trust and has admitted the said aspects in the statement recorded by the Income Tax Authorities.
- n. The Income Tax Department also found that substantial amount of cash has been withdrawn from the bank account of the Trust by the Respondent's peon Mr. Vijay Solanki, and that the cash amount of almost Rs. 47,40,000 was handed over to the

Respondent. The aforesaid search proceedings taken by the Income Tax Department under Section 132 of the IT Act 1961 and the statements recorded under sections 132(4) of the IT Act 1961 of the Respondent and his peon Mr. Vijay Solanki by the Income Tax Authorities, that the Respondent has received cash through his peon, which was withdrawn from the bank account maintained with South Indian Bank, and which Bank Account was controlled by the Respondent and the money withdrawn in cash was utilised by the Respondent, which the Respondent has admitted in his statement recorded by the Income Tax Authorities and the same was not reflected in the books of accounts of the Respondent.

- o. The Respondent sought permission to withdraw Special Civil Application No. 21233 of 2017, after the Hon'ble High Court of Gujarat heard the Learned Counsel for the Income Tax Department and after taking into consideration the Affidavit filed by the Joint Commissioner of Income Tax.
- p. The Respondent has consciously produced only 12 pages of his Assessment Order for the AY 2011-12 and from the same it appears that the remaining 61 pages have not been produced though specifically directed by the Board of Discipline. The Complainant submitted that the above non production of the said 61 pages by the Respondent would tantamount to suppression of material facts and concealment of relevant material and facts. The relevant discussion at last paragraph of Page 40 deals with the analysis of the bank accounts by the Assessing Officer and the same clearly bring out the facts and the manner in which the Respondent has misconducted himself. Further, the Assessing Officer has made the addition of amount of Rs. 49,54,158/- to the total income of the Respondent under Section 69A of the Act in the hand of the Respondent and the said amount of Rs. 49,54,158/- has been treated as unexplained money and has been added in the computation of income chart and the penalty proceedings against the Respondent under Section 271(1)(c) of the IT Act 1961 for concealment of incomes initiated separately against the Respondent. This amount of Rs. 49,54,158/- is the amount of cash which has been withdrawn by the Respondent from the Bank Account of the Trust as conclusively proved by the Assessing Officer considering the material evidences available on record and gathered during the search conducted on 29.11.2016, wherein the Respondent and his employee Mr. Vijay Solanki have admitted to the said cash withdrawal from the bank account of the Trust.
- q. Ms. Devina Panchal is in no manner even remotely related to the Complainant or any of his family members or his relatives. During the course of Police investigation, it has come to light that she was one of the employees working in the office of the Respondent.

Observations and Findings of the Board:

7. On perusal of documents on record, the Board observed the following sequence of events which is relevant to understand the role of the Respondent in the matter:-

- a. In the year 2000, Mr. Pannalal Modi alongwith his two daughters Mr. Parul Modi and Mrs. Shivangi Panchal (Wife of Complainant) formed a charitable trust "The Environment Research & Development Centre, Ahmedabad (Trust)" and also got a land on lease of 15 years from the Government for environment purpose and the Respondent was instrumental in the establishment of the said Trust and also assisted the trustees.
- b. Mr. Pannalal Modi expired in the year 2006 leaving his two daughters as trustees of the Trust.
- c. On 22/11/2006, account of the Trust bearing number 0179053000010596 was opened with South Indian Bank, Ashram Road, Ahmedabad, Gujarat Branch.
- d. On 11/09/2007, account of the Complainant was also opened with South Indian Bank, Ashram Road, Ahmedabad, Gujarat Branch wherein mobile number of the Respondent was mentioned in the Account Opening Form.
- e. The Respondent also acted as Auditor of the said Trust from the initiation of the Trust till 31/03/2013 as per Audit Reports of the said Trust.
- f. The Respondent in his audit reports of the Trust issued for the year ended 31/03/2002 to 31/03/2005 mentioned in the Remarks Column on First Page of respective Audit Reports as under:
"The Trust has not started any activities till date".
- g. The Respondent vide letter dated 15/09/2009 addressed to The Income Tax Officer (HQ) (Exem.), Ahmedabad requested to change the address of the Trust to his own address.
- h. Through the execution of Memorandum of Understanding (MoU) dated 26/10/2013 between the Respondent and Mrs. Shivangi Amit Panchal (Wife of Complainant), the Respondent along with his son Mr. Huzan Sethna became the Trustees of the said Trust.
- i. The search proceedings were initiated at the office of the Respondent on 29/11/2016 by the Income Tax Department.
- j. The Respondent gave an affidavit dated 24/12/2016 wherein he confirmed and admitted his role in the matter and conduct of affairs of the Trust. The Respondent categorically exonerated the trustees and admitted the fact that he has signed all the cheques.

- k. On 30th March 2017, the DCIT Central Circle 2(1), Ahmedabad recorded the following reasons for initiation of proceedings under Section 147 of the Income Tax Act, 1961 against the Respondent for the A.Y. 2010-11:

"Saving account maintained by the above mentioned trust was being controlled by Mr. Tehmul Sethna and therefore, the money withdrawn in cash by Mr. Vijay Solanki has been utilized by the Assessee. The Assessee has also admitted that such cash withdrawal is not reflected in his books of accounts."

- l. On 07/12/2017, Mrs. Shivangi Panchal (wife of the Complainant) on behalf of the Trust lodged an FIR- CR No. 187/2017, PS: Navrangpura, Ahmedabad against the Respondent for the offences punishable of criminal breach of trust, cheating, forgery and fraud punishable under Indian Penal Code, 1860.
- m. The Affidavit dated 29/01/2018 of Sh. Rajneesh Yadav, JCIT (OSD), Central Circle-2(1), Ahmedabad filed in Special Civil Application No. 21233 of 2017 before the Hon'ble High Court of Gujarat at Ahmedabad in the matter of "Tehmul Barjor Sethna Vs. The Joint Commissioner of Income Tax, Ahmedabad" wherein the Deponent in para 8 to 14 explicitly stated that Mr. Vijay Solanki (peon of Respondent) has withdrawn huge amount from the bank account of the Trust maintained with South Indian Bank and has handed over the said amount to the Respondent and the statement of said Mr. Vijay Solanki was also recorded under Section 131 of the Income Tax Act in this behalf.

8. The Board while considering the oral and written submissions forwarded by the parties in the extant matter noted as under:

- a. The Board on perusal of Account Opening Form of Sh. Amit Panchal (Complainant herein) dated 11/09/2007 with respect to the bank account maintained with South Indian Bank submitted by the Complainant alongwith his complaint observed that the said account was introduced by the Respondent and the mobile number mentioned in the customer profile of the Complainant was the mobile number of the Respondent which was also registered with the Institute for communication with the Respondent.
- b. The charge sheet filed against the Respondent in the matter FIR no. I-C.R. No. 187/2017 dated 07/12/2017 PS: Navrangpura was also placed on record by the Complainant wherein the Respondent was charged with an offence of breach of trust, cheating, forgery, etc. with the Complainant, his wife and sister in law.
- c. The Board further noted that the Respondent has referred to Forensic Examination Report issued by Directorate of Forensic Science, Gandhinagar in AB Case No. 568/2018 (i.e. PS: Navrangapura, I.C.R. 187/2017) dated 18/04/2019 for disputed

signatures and sample signatures of Respondent, where the Forensic Expert has opined as under:-

"4. No definite opinion could be expressed on the red enclosed disputed signatures marked D1 to D97 in comparison with the blue enclosed standard writings and signatures marked S181 to S360, S361 to S612, S721 to S756 and N2."

The Board in this regard observed that the said forensic report relied by the Respondent is subject to examination of concerned expert before the Court of Competent Jurisdiction and as such no benefit can be extended to the Respondent at this stage and the said plea seems a weak piece of evidence.

- d. The Board observed that the amount of cash which has been withdrawn by the Respondent from the Bank Account of the trust as conclusively proved by the Assessing Officer considering the material evidence available on record and gathered during the search conducted on 29/11/2016 wherein the Respondent and Mr. Vijay Solanki (peon of the Respondent) had admitted to the said cash withdrawals from the bank account of the Trust and established the modus operandi as alleged by the Complainant. It further surfaced that Respondent has used various bank accounts of other parties including Trust and the Complainant and was beneficiary of such fraudulent transactions. Several documents for misappropriation of funds were noticed during course of search.
- e. The Board further sought the clarification during the proceedings from the Respondent that whether he had challenged the proceedings under Section 148 of the Income Tax Act and in response thereto the Respondent submitted that he filed the writ petition before the Hon'ble High Court, wherein it was stated that Respondent cannot reopen it due to Authorisation issue. The Respondent further submitted that he has filed Section 142(2A) before in the Hon'ble High Court, which was initiated by the Income Tax Deputy Commissioner. In this regard, the Board noted the Sh. Rajneesh Yadav's, JCIT had filed an Affidavit before the Hon'ble High Court of Gujarat at Ahmedabad in the matter Special Civil Application No. 21233 of 2017 "Tehmul Barjor Sethna Vs. Deputy Commissioner of Income Tax Central Circle 2(1)" wherein he stated undisputed facts related to the Respondent and the Modus Operandi of the Respondent. The Respondent challenged the reopening of assessment in his case. However, he subsequently sought permission to withdraw the petition. The Hon'ble High Court of Gujarat at Ahmedabad vide its Order dated 21/02/2018 observed that after full arguments, the Counsel of the Respondent has himself withdrawn the said petition in order to avoid reasoned Order from the Court.

- f. The Board while considering the Special Audit Reports dated 02/08/2019 as referred by Respondent during his oral submissions before it, the Board observed that there was various limitations/ reservations as mentioned in Special Report under Form No. 6B (Section 142(2A) of Income Tax Act, 1961) wherein it was categorically mentioned that the Auditor has not been provided with books of accounts, balance sheet, P&L account of the Respondent. Moreover, no information/ explanation required for the above said report was also not been provided to the Special Auditor which itself negates the plea taken by the Respondent.
- g. On perusal of various documents provided by both the parties, the Board believes that the modus operandi and motive behind the bank accounts very clearly depicted the clear role of the Respondent wherein while looking at Assessment Orders for the AY 2011-12, 2012-13 and 2013-14 passed by Deputy Commission of Income Tax against the Respondent found that the Environmental Research Development Trust had received donations through cheque and took back a certain portion of such donation in cash. Wherein undue benefits like donation under Section 80G and an unexplained income related to Trust was added back by him. The relevant portion of said assessment orders all dated 31/12/2019 is reproduced hereunder:-

For AY 2011-12

"9.....Hence, in view of the above and discussion made in the show-cause, amount of Rs. 49,54,158/- is treated as unexplained money u/s 69A of the Act in the name of the assessee (Respondent herein) and added back to income of A.Y. 2011-12. Penalty proceedings u/s. 271(1)(c) of the I.T. Act for concealment of income is initiated separately."

For AY 2012-13

"8.2 Hence, in view of the above and discussion made in the show-cause , amount of Rs. 5,45,000/- is treated as unexplained money u/s 69A of the Act in the name of the assessee (Respondent herein) and added back to income of A.Y. 2012-13. Penalty proceedings u/s. 271(1)(c) of the I.T. Act for concealment of income is initiated separately."

....
"9.1 Hence, in view of the above and non-compliance on this issue, amount of Rs. 50,000/- claimed as deduction u/s 80G of the Act is disallowed and added back to income of A.Y. 2012-13. Penalty proceedings u/s. 271(1)(c) of the I.T. Act for furnishing inaccurate particulars of income is initiated separately."

For AY 2013-14

"7.4 Hence, in view of the above and discussion made in the show-cause , amount of Rs. 42,50,000/- is treated as unexplained money u/s 69A of the Act in the name of the assessee (Respondent herein) and added back to income of A.Y. 2013-14. Penalty proceedings u/s. 271(1)(c) of the I.T. Act for concealment of income is initiated separately."

CAI Bhowan, Vishwas Nagar, Shastri, Delhi-110025
The Institute of Chartered Accountants of India
100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

"8.1 Hence, in view of the above and non-compliance on this issue, amount of Rs. 50,000/- claimed as deduction u/s 80G of the Act is disallowed and added back to income of A.Y. 2013-14. Penalty proceedings u/s. 271(1)(c) of the I.T. Act for furnishing inaccurate particulars of income is initiated separately."

"9.3 Hence, in view of the above and discussion made in the show-cause, amount of Rs. 23,82,000/- is treated as unaccounted and unaccounted expenditure u/s 69C of the Act in the name of the assessee (Respondent herein) and added back to income of A.Y. 2013-14. Penalty proceedings u/s. 271(1)(c) of the I.T. Act for concealment of income is initiated separately."

9. Considering the above facts and documents on record, it is observed that the Respondent has abused his professional relationship for personal gains from the initial period of creation of Trust itself and for the said wrongful benefits he created various documents, opened bank accounts, forged signature of trustees, misused the documents entrusted with him during his professional engagement with the Trust and has illegally withdrawn the amount from the bank account of the Trust through his peon Mr. Vijay Solanki and the said conduct of Respondent is clearly unbecoming of member of the Institute. Through the said conduct, the Respondent has also brought disrepute to the profession and thus, Respondent is held liable within the meaning of Item (2) of Part IV of First Schedule.

10. Keeping in view the circumstances and documents vis-à-vis role of the Respondent in opening and operations of bank accounts and modus-operandi related to above mentioned Trust, the misconduct of the Respondent is duly established in the charges alleged by the Complainant duly substantiated by the various Assessment Orders, Charge Sheet filed against him and Court Orders available on record. The above said act of the Respondent makes him liable for bringing disrepute to the profession while doing such an illegal act.

CONCLUSION:

11. Thus, in conclusion, in the considered opinion of the Board, 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.

Sd/-

CA. PRASANNA KUMAR D.
(PRESIDING OFFICER)

DATE: 11th February, 2021

प्रमाणित सत्य प्रतिलिपि / Certified true copy
मुकुल कुमार मित्तल / Mukul Kumar Mittal
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nager, Shahdara, Delhi-110032