THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – IV (2022-2023)]

[Constituted under Section 21B of the Chartered Accountants (Amendment) 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. Vinod Kumar Gupta (M. No. 083418), New Delhi in Re:

C-450 Chitrakoot DDA LIG Flats

East Loni Road Shahdara,

Delhi – 110093 ..... **Respondent**

[PPR/P/258 /17/DD/242/TAMC/INF/17/DC/1097/2019]

Date of Meeting : 25th April, 2022

Place of Order : ICAI, New Delhi

Party Present:

CA. Vinod Kumar Gupta : Respondent (through VC)

MEMBERS PRESENT:

1. CA. (Dr.) Debashis Mitra, Presiding Officer (In person)
2.Shri Jayanti Prasad, Govt. Nominee (Thru. VC)
3.CA. Mangesh P Kinare (In person)
4. CA. Sripriya Kumar (Thru. VC)

1. That vide findings dated 8th February 2022 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. Vinod Kumar Gupta (M. No. 083418),** (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 with respect to the allegations relating to conduct of tax audit under section 44AB of Income Tax Act, 1961 beyond the limit prescribed by the Institute during financial years 2010-11 and 2011-12.

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 dated 12th April 2022 was addressed to him thereby granting an opportunity of being heard in person and/or to make a written representation before the Committee on 25th April, 2022.

3. The Committee noted that the Respondent was present before it for hearing through video conferencing from his personal location. Thereafter, he gave a declaration that there was nobody except him in room from where he was appearing and that he would neither record nor store the proceedings of the Committee in any form.

4. On being asked by the Committee whether the Respondent had received the Findings of the Disciplinary Committee, the Respondent confirmed to have received the same. Thereafter, the Committee drew attention of the Respondent that the purpose of instant hearing was to afford him an opportunity of hearing before passing order for punishment.

The Respondent thereafter, made his submissions in the matter.

4.A. He submitted written submissions vide letter dated 21.03.2022 and again submitted the same through email dated 16/04/2021 and inter-alia, stated that *'he got heart attack and his heart is getting weak day by day and from 40% then 35% now it has come to 25%. Doctor advised him that there is no treatment for increasing heart pumping power and it will decrease in coming time the only option is heart transplant. He has become weak and difficult to walk independently and due to that his earning has fallen down. He assured the Committee that after receiving notice he never did excess audit and will never do in future'*. Further, before the Committee he submitted that he has acute health problems and requested the Committee to consider these aspects as well while taking decision in the matter.

5. The Committee has considered the reasoning as contained in findings holding the Respondent Guilty of professional misconduct vis-à-vis oral/written representations of the Respondent on the findings of the Disciplinary.

6. The Committee considered the oral 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.

The Committee further noted that Clause (1) of Part II of the Second Schedule to the Chartered Accountant Act 1949 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"

6.1 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 the ceiling of tax audit limit is not in any way unreasonable or discriminatory.

6.2 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, is 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".

6.3 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. The Committee noted that the Respondent had violated Council guidelines bearing No.1-CA (7)/02/2008 dated 8th August, 2008 by conducting tax audits under section 44AB of Income Tax Act, 1961 in excess of number stipulated in said guidelines.

6.4 Thus, the Committee viewed that the Respondent has conducted following excess tax audits under section 44AB of Income Tax Act, 1961 as given hereunder in column (3):

Audits conducted during the Financial Year (1)	No. of Audits conducted (2)	Excess No. of Audits conducted

		(3)
2010-11	236	191
2011-12	198	153
Total Excess Audits		**344**

6.5. Further, the Committee noted that the Respondent has not made any submission/ argument on merit on the findings of the Committee, except making submissions on his present ill-health and giving assurance that he has not undertaken excess tax audit assignments after receipt of notice from the Institute. The Committee was of the view that ends of justice can be met, if CA. Vinod Kumar Gupta, the Respondent is given a reasonable punishment.

7. The Committee viewed that the misconduct on the part of the Respondent has been established within the meaning of Clause (1) of Part II of the Second Schedule to the Chartered Accountant Act 1949. Therefore, keeping in view the facts and circumstances of the case, material on record, submissions of the Respondent before it and after due deliberations on its findings, the Committee imposed a fine of Rs. 3,44,000/- (Rupees Three Lakh and Forty Four Thousand Only) upon the Respondent i.e. **CA. Gupta Vinod Kumar (M.No.083418), New Delhi** which shall be paid within a period of 03 (Three) months from the date of receipt of this Order.

Sd/-
(CA. (DR.) DEBASHIS MITRA)
PRESIDING OFFICER

Sd/-
(SHRI JAYANTI PRASAD, IAAS (RETD.))
GOVERNMENT NOMINEE

Sd/-
(CA. MANGESH P KINARE)
MEMBER

Sd/-
(CA. SRIPRIYA KUMAR)
MEMBER

DATE: 01/06/2022
PLACE : NEW DELHI

प्रमाणित सत्य प्रतिलिपि/Certified true copy
सी.ए. सुनील कुमार/CA. Suneel Kumar
सहायक सचिव/Assistant Secretary
अनुशासनात्मक निदेशालय/Disciplinary Directorate
इंस्टिट्यूट 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

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – III (2021-22)]
[Constituted under Section 21B of the Chartered Accountants 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

Ref.: [PPR/P/258/17/DD/242/TAMC/INF/17-DC-1097/2019]

In the matter of:

CA. Vinod Kumar Gupta
C-450 Chitrakoot DDA LIG Flats
East Loni Road Shahdara,
Delhi – 110 093 ..... **Respondent**

MEMBERS PRESENT:
Smt. Anita Kapur, Member(Govt. Nominee) & Presiding Officer
Shri Ajay Mittal, Member (Govt. Nominee)
CA. Chandrashekhar Vasant Chitale, Member
Shri P K Boob, Member

Date of Final Hearing: 17th December 2021
Place of Final Hearing: New Delhi (through video-conferencing)

Charges in Brief:

1. The allegation against the Respondent is that he had conducted Tax Audit u/s 44AB of the Income Tax Act, 1961 beyond the limit prescribed by the Institute. It is further observed that as per letter no. Tax Audit/2014-15/20 issued in August, 2014 **(A-3)** followed by the another letter no. Tax Audit/2014-15/20-1 dated 23rd January, 2015 **(A-4)** issued by Tax Audit Monitoring Cell, the tax audits reported to be done by the Respondent for the financial years 2010-2011 and 2011-12 are as under:

Audits conducted during the Financial Year	No. of Audits
2010-11	236
2011-12	198

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. At the time of hearing on 17th December 2021, the Committee noted that the Respondent had vide letter dated 12th December, 2021 expressed his inability to appear before the Committee due to his health problem and requested the Committee to consider the submissions made by him vide letter dated 18th November, 2020.

Based on the documents and information available on record and after considering the written submissions made by the Respondent, the Committee concluded hearing in the matter. Accordingly, the matter was heard and concluded.

Submissions made by the Respondent:

3A. The Committee noted the Respondent's written submission dated 18th November 2020 wherein he submitted that his office clerk had not made the difference between section 44AB audits and 44AD audits due to which excess audits were conducted by him. He , thereafter assured that he would not conduct the tax audit in excess of the limits prescribed by ICAI in future and offered his unconditional apology.

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 permitted to audit more than 20 companies in a financial year. The said limit earlier excluded private limited companies. However,

later Act excludes one person companies, dormant companies, small companies and private companies having paid-up share capital less than Rs. 100 crores.

4.10 In view of above, the Council, which is duty-bound to regulate the professionals, i.e. the Chartered Accountants, has considered it fit to put such restrictions in the interest of the profession. It is regulatory in nature and such regulation is permissible under the Chartered Accountants Act, 1949. The Guidelines do not in any way affect the rights of the Chartered Accountant under the Constitution of India being only a reasonable restriction.

4.11 In the process of regulating and maintaining the status of chartered accountant, the measures taken to put a cap on tax audit assignments are intended to maintain and improve the quality of work and cannot in any way be stated to be an unreasonable restriction. Such restrictions are necessary for maintaining the status of Chartered Accountants and also for ensuring quality of work by Chartered Accountants.

4.12 This Act seeks to regulate the profession and hence the guidelines is made to ensure maintenance of quality and standards in the work done by the Chartered Accountants which is indisputably in furtherance of the statutory duty cast upon the ICAI to regulate the profession of Chartered Accountants.

4.13 In view of the above, the Council after consideration of all relevant material and facts as also the nature of tax audits, had found such a ceiling to be necessary in the larger interest of the profession and the guidelines on the tax audit assignment under Section 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 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, 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 though the Respondent has admitted to have exceeded the limits of tax audits laid by way of Council Guidelines and had during the stage of forming *prima facie* opinion brought on record the number of tax audits conducted by him u/s 44AB as 91 and 81 in respect of Financial Years 2010-11 and 2011-12. It was viewed that the contended numbers could not be accepted in absence of any documentary evidence in respect of the same from the Respondent who being a professional was required to maintain data pertaining to his assignments. Hence, it is noted that the Respondent has conducted 236 and 198 Tax Audits during the year 2010-11 and 2011-12 respectively 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 years 2010-11 and 2011-12. It was viewed that

being a member of the Institute, the Respondent is expected to adopt highest standard of ethical behavior and professional compliance of the Council General Guidelines. Thus the Respondent is, accordingly held **GUILTY** of Professional Misconduct falling within the meaning of Clause (1) of Part II of the Second Schedule to the Chartered Accountant Act, 1949.

Conclusion :

7. Thus, in light of the above, 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/-
[Smt. Anita Kapur]
Member (Govt. Nominee) & Presiding Officer

Sd/-
[Shri Ajay Mittal]
Member (Govt. Nominee)
[Approved and confirmed through e-mail]

Sd/-
[CA. Chandrashekhar Vasant Chitale]
Member

Sd/-
[CA. P.K. Boob]
Member

Date:8th February, 2022
Place: New Delhi

प्रमाणित सत्य प्रतिलिपि/Certified true copy
Mohita Khanna
सीए. मोहिता खन्ना/CA. Mohita Khanna
सहायक सचिव/Assistant Secretary
अनुशासनात्मक निदेशालय/Disciplinary Directorate
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