



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

[PPR/P/66/15/DD/59/INF/15/BOD/346/2017]

**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.**

[PPR/P/66/15/DD/59/INF/15/BOD/346/2017]

In the matter of:

CA. Bimal Kumar Nohria (M. No. 081459)  
Chandigarh.

.....Respondent

MEMBERS PRESENT (physically at ICAI Bhawan, Indraprastha Marg, New Delhi):

CA. Prasanna Kumar D., (Presiding Officer)  
Ms. Dolly Chakrabarty (IAAS, ret'd.), (Government Nominee)

CA. (Dr.) Raj Chawla; (Member)

**Date of Final Hearing: 22<sup>nd</sup> April, 2022**

1. The Board of Discipline vide its Report dated 11<sup>th</sup> February, 2022 held that CA. Bimal Kumar Nohria is Guilty of Other Misconduct falling within the meaning of Item (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. Bimal Kumar Nohria and communication dated 08<sup>th</sup> April, 2022 was addressed to him thereby granting him an opportunity of being heard in person and/or to make Written Representation before the Board on 22<sup>nd</sup> April, 2022.
3. CA. Bimal Kumar Nohria was physically present before the Board on 22<sup>nd</sup> April 2022 alongwith his son CA. Nalin Kumar Nohria as he had difficulty in speaking and walking on account of neurological problems and thus, requested the Board to allow his son to make submissions on his behalf. Looking into the physical condition of the Respondent, the Board acceded to his request. Thereafter, the son of the Respondent made oral representation on behalf of CA. Bimal Kumar Nohria before the Board. The Respondent also submitted his written representation on the Findings of the Board.

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4. CA. Bimal Kumar Nohria in his written representation dated 18<sup>th</sup> April, 2022 and 22<sup>nd</sup> April 2022, inter-alia, stated as under:
- a. The Findings are absolutely incorrect and not based on any documentary evidence. The Respondent has not been supplied with the letters or correspondence on the basis of which it is stated that Respondent has levelled allegations of Other Misconduct as Chartered Accountant while the informant was working as ITO and posted at Chandigarh. Unless those letters are supplied to the Respondent it is very difficult to ascertain the veracity, execution, admissibility and authenticity of those letters, which is against the principles of natural justice.
  - b. The charge of not having the Power of Attorney of the Assessee-M/s Shivalik Telecom Ltd. for the Assessment year 2006-07 to 2012-13 could not be established on record. In case there was no POA on record for the Assessment Year 2006-07 to 2012-13, then said ITO-Mr. V.K. Bathla should not have entertained the Respondent or should have reported the matter to his higher authorities. But there is nothing on record in this regard. He was duly authorized by M/s Shivalik Telecom Limited to represent them before the Income Tax Officer, Chandigarh for getting the Income Tax demand rectified and refunds issued for the Assessment Year 2006-07 to 2012-13 through a valid executed Power of Attorney and all the acts done by him are with the consent of M/s Shivalik Telecom Limited.
  - c. To hold the Respondent guilty on mere 'preponderance of probability' relying on the judgement of the Supreme Court in the case of Ajit Kumar Nag Vs. General Manager (PJ) Indian Oil Corporation Ltd (AIR 2005 SC 4217) AND Capt. M Paul Anthony vs. Bharat Gold Mines Ltd. (AIR 1999 SC 1416) would be misconstruing the said principle. In both these matters the Supreme Court was adjudicating on the reason that the matter therein was guided by the employer-employee relationship at its core viz-a-viz criminal cases pending on the same charges as well as the Departmental proceedings on the same allegations. Whereas in the present case, no such relationship of employer-employee exists. Here the Respondent is a professional Chartered Accountant and it governed by the Rules and Regulations of the Chartered Accountants Act, 1949. The misconduct must fall within the stated parameters of the Rules and in the absence of such facts which does not fall within the set parameters, it cannot be said that Respondent can be held guilty on the basis of 'preponderance of probability'. As per the guidelines established by the above said judgment, the principle of probability is not established against the Respondent as there are plenty of doubts, discrepancies and derelictions in the information supplied by the informant. Merely stating few lines or some extract of letters or correspondence, in the information ought not to create a dent in the mind of the Board of Discipline against the Respondent.

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- d. It is a fundamental right of an Assessee to approach the High Court to set right the illegalities committed by the Income Tax Department and Respondent had just passed on the information about the thought process of the Assessee and cannot be said to have 'brought disrepute to the profession'.
- e. Though not admitted, but for the sake of arguments, even if it is assumed for the sake of arguments that such lines were written as alleged by the Informant, then the letter was written to make the Income Tax Department more careful, efficient, diligent and responsible while issuing refund cheques. Further a request is made to the Income Tax Department to look into the matter and in case if any discrepancy is found in the performance of the duties of the informant (AO) then necessary action be taken to set right the business of Govt. Department. It is the Department who is to take action as per the procedures and in that situation Respondent has no role to play. Information given to the Govt. Department to make the system more efficient cannot be said to have brought disrepute to the profession and is not covered by "other misconduct".
- f. Facts of the case of B. K. Chakraborty's case are entirely different than that of the present case in hand. The Respondent had not used any objectionable, derogatory and abusive language or made irrelevant, incoherent, irresponsible and insane statements, expressions against the informant. Therefore wrong reliance has been placed on the decision rendered in the case of Chakraborty's case.
- g. He being a Chartered Accountant is governed by the Rules and Regulations of the Chartered Accountant Act, 1949. It is a well settled fact that to be guilty of 'Misconduct', the same should be constricted to the definitive omission/commission that amount to 'Misconduct' as per the Act. Since CA. Bimal Kumar Nohria did not fulfill such criteria hence he cannot be charged just on the basis of 'Preponderance of probabilities'. The Respondent further relied upon the case of *State of Rajasthan & Ors. Vs. Heem Singh, Civil Appeal No. 3340 of 2020* decided by the Supreme Court wherein it was held as under:

*" ....the law would fail to protect the community if it admitted fanciful possibility to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favor which can be dismissed with the sentence 'of course it is possible, but not in the least probable' the case is beyond reasonable doubt, but nothing short of that will suffice....."*

Thus he relying on the *ratio decidendi* in the above case law has refuted the applicability of principle of probability in his case, as there are lacunas in the information supplied against him which do not prove his guilt beyond reasonable doubt.

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The professional misconduct cases fall in category of quasi criminal and the same cannot be decided on the principle of 'Preponderance of possibility'. It has been established by the Hon'ble Apex Court that the principle of preponderance derived its applicability from criminal cases; hence the guilt needs to be proved beyond any doubt.

- h. The Board of Discipline overlooked an important fact that the Director(Discipline) pronounced the Respondent NOT GUILTY vide Prima Facie Opinion dated 17th August, 2017, communicated vide letter dated 16th March, 2018 where the Hon'ble BOD have rejected the PFO of the Director Discipline without specifying any reasons and documentary evidences regarding followance of the Rules 2007 (Rule 7(1), 7(2) and 7(3) read with other applicable rules) of the ICAI by the Director(Discipline) and the Complainant/Informant.
- i. It is now the settled law that a charge of corrupt practice is substantially akin to a criminal charge. A two-Judge Bench of this Court while dealing with the said issue in Razik Ram v. Jaswant Singh Chouhan and others[5], held:

*"15. ...The same evidence which may be sufficient to regard a fact as proved in a civil suit, may be considered insufficient for a conviction in a criminal action. While in the former, a mere preponderance of probability may constitute an adequate basis of decision, in the latter a far higher degree of assurance and judicial certitude is requisite for a conviction. The same is largely true about proof of a charge of corrupt practice, which cannot be established by mere balance of probabilities, and, if, after giving due consideration and effect to the totality of the evidence and circumstances of the case, the mind of the Court is left rocking with reasonable doubt – not being the doubt of a timid, fickle or vacillating mind – as to the veracity of the charge, it must hold same as not proved."* The same view was followed by this Court P.C. Thomas v. P.M. Ismail and others [6], wherein it was held as follows:

*"42. As regards the decision of this Court in Razik Ram and other decisions on the issue, relied upon on behalf of the appellant, there is no quarrel with the legal position that the charge of corrupt practice is to be equated with criminal charge and the proof required in support thereof would be as in a criminal charge and not preponderance of probabilities, as in a civil action but proof "beyond reasonable doubt". It is well settled that if after balancing the evidence adduced there still remains little doubt in proving the charge, its benefit must go to the returned candidate."*

Further, DELHI HIGH COURT COUNCIL OF THE INSTITUTE OF ... VS DEEPAK JAIN & ANR. NO 4 AUGUST, 2016 – Quasi criminal proceeding held as under:

*"It is urged that the Council fell into error in holding that the burden of proving innocence was placed on the, which is contrary to established canons of*

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*procedure. It is also argued that the charges alleged against the respondent were not proved beyond reasonable doubt. Being quasi criminal proceedings the result of which can severely affect the professional reputation of a chartered accountant, the higher burden of proof was required. Here reliance is placed on H.V. Panchaksharappa v K.G. Eshwar, AIR 2000 SC 3344 and Council of The Institute of Chartered Accountants of India vs. C.H. Padliya and Another, 1977 MPLJ 722.*

*While disciplinary proceedings may not be in the nature of court proceedings, yet when a professional, such as a chartered accountant is arrayed for misconduct which has quasi criminal overtones, the Council has to be circumspect; some modicum of objective evidence- both documentary and oral (and not only the say of the complainant- possibly the relative bank records and relevant statement of bank officers, too have to be considered) evidence is necessary.*

*That the charges against a chartered accountant are to be proved with convincing materials and the nature of the proceeding is quasi criminal. They also highlight that the onus of establishing and proving the acts or omissions alleged against the charged professional is upon those who allege such acts or omissions."*

Both the case laws of Hon'ble Supreme Courts, quoted by the Hon'ble Board of discipline are related with departmental enquiry which are administrative in nature and does not apply in this case as the said case was of a delinquency by the employee but all the case laws quoted by the appellants are related with Professional Misconduct. The professional misconduct cases are quasi criminal in nature and cannot be decided on the basis of preponderance but should be decided based on proof beyond reasonable doubt.

- j. BOD overlooked that Clause in which Respondent has been held guilty, the power to decide the same rest with Hon'ble Council (in the opinion of the Council) even in the amended Act, Rules and Code of Ethics.
- k. He further prayed that :
  - The Complaint is devoid of any merits, thus liable to be quashed.
  - He should be given a fair opportunity to start the hearing de novo, so that he can present his case and evidences before the Board.

5. The Board has carefully gone through the facts of the case alongwith the oral and written representation of CA. Bimal Kumar Nohria. On consideration of the representation of the Respondent, the Board was of the following view:

(a) The charge alleged against the Respondent was that the Respondent without filing any Power of Attorney with respect to his client M/s. Shivalik Telecom Ltd., wrote various letters to the ITO and made derogatory remarks which is an unethical act on his part. The issue that has been examined by the Board is writing of the derogatory remarks in communication addressed to the Government authorities. Whether the said act was with or without a valid power of Attorney is not that germane to the issue. Further, due opportunity had been given to the Respondent to defend himself with respect to the charges alleged against him. The hearing in the case had already been concluded and the Board had already arrived at its Findings

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which had been duly served upon the Respondent. Thus, there was no ground for the Board to entertain the request of CA. Bimal Kumar Nohria for De-novo hearing.

(b) The grounds on which the Board disagreed with the opinion of the Director(Discipline) was duly communicated to the Respondent.

(c) 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".*

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.

(d) The Board also viewed that the strict Rules of Evidence are not applicable to disciplinary proceedings while examining the conduct of the members. Further, the question to be considered before the Board is that of Other Misconduct that is whether the alleged act of the Respondent has brought disrepute to the Profession or the Institute. The scope of inquiry by the Board of Discipline and that of the Criminal / Civil Court are on a separate footing and the procedure to be followed for enquiry by the BOD/DC is specifically given in the CA Act 1949 and the Rules framed thereunder. The Board also took into view the following Order passed by the Hon'ble Andhra High Court in the case of The Institute of Chartered ... vs Shri Mukesh Gang, Chartered ... on 26 September, 2016:

*"One of the contentions urged by Sri Ashok Anand Kumar, learned counsel for the respondent, is that no evidence was recorded following the rules of evidence but, based on admission of the respondent, a finding was recorded. Undoubtedly, there is no specific procedure prescribed to be followed by the Disciplinary Committee to*

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*record its finding. The strict rules of evidence, under the Indian Evidence Act, and the elaborate procedure prescribed under the Code of Civil Procedure or the Criminal Procedure Code, are not applicable to proceedings before the Disciplinary Committee of the Institute except for a few provisions of the Code of Civil Procedure as stipulated under Section 21 (C) of the Act. There is nothing in the Act, or in the Regulations, which disables the Committee from evolving its own procedure in conducting an enquiry into the misconduct alleged to have been committed by a member of the Institute.*

.....

*The Disciplinary Committee has been conferred the power to enquire into the matter. In causing such an enquiry, the provisions of the CPC are applicable only to the limited extent specified in Section 21 (8) of the Act i.e. summoning and enforcing the attendance of any person and examining him on oath; the discovery and production of any document; and receiving evidence on affidavit. While the Disciplinary Committee is required to follow the procedure prescribed under Section 21 (8) of the Act, it cannot exercise the powers of a Civil Court.*

*After considering the entire material on record, we are satisfied that the Disciplinary Committee, and the Council, have not violated any of the Regulations, more particularly Regulation 16 (2) and (5) thereof. Therefore, this point is held against the respondent and in favour of the petitioner."*

The Board also noted that Section 21C of the Chartered Accountants Act 1949 specifically provides that for the purposes of an inquiry under the provisions of this Act, the Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the same powers as are vested in a **Civil Court(emphasis provided)** under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) the discovery and production of any document; and
- (c) receiving evidence on affidavit.

Although, Section 21C of the Chartered Accountants Act 1949 is with respect to specific requirements, however, it is clear that the intent of the legislature was to equate the disciplinary proceedings with civil proceedings and thus, the disciplinary proceedings are akin to civil proceedings.

(e) Also, as regard the contention of the Respondent that wrong reliance has been placed on the decision in Chakraborty's case, the Board held that neither any inclusive nor an exclusive definition of 'Other Misconduct' has been given under the Chartered Accountants Act 1949. Thus, what constitutes 'Other Misconduct' is determined on the basis of the facts of the case. The limited reliance on the said case law had been placed with respect to the use of derogatory remarks.

6. Further, as per the Findings of the Board as contained in its report, the Informant vide his letter dated 30<sup>th</sup> May, 2014 had given references to various communications addressed by CA. Bimal Kumar Nohria to the Income Tax Department with a copy

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marked to various authorities wherein the remarks made were neither courteous nor appropriate. The Board noted that the words used in the letter addressed by CA. Bimal Kumar Nohria were as under:-

*"...submitted to your predecessor personally and if it has not been placed on your goodself files, it is not the fault of mine or the assessee and still your goodself need a photocopy of the same, it can be provided...."*

....

*"the present Id. AO who is not ready to issue the refund for reasons known to him and my client directed me to file petition before HC for passing strictures against the Officers and making it public through News Papers) whereas the same refund was issued after approval on 08.11.2013 i.e. before receipt of any reminder. Though the Id. Counsel conveyed thanks in his letter dated 02.12.2013 but in the endorsement made to various authorities, it is mentioned ...copy to ... for information and appropriate action by treating this letter as a grievance matter"*

.....

*"Refund issued of Rs.8,75,617/- on 04.04.2014 by the Informant has been returned through his letter dated 23.05.2014, stating that "signature differs which is shame on the part of such officer and a clear case of harassment". Not only this, he further wrote in the endorsements made to various authorities i.e. copy to .... For information and request to register a vigilance case as it gives a clear message which I was avoiding to inform for want of clear evidence that your ITO is demanding money and directing to your Office to register a vigilance case and I am ready to dispose for the same".*

7. The Board on perusal of language used in the correspondence letters by the Respondent observed that the same was not courteous and a Chartered Accountant is expected to be courteous and decent not only in his behavior but also while addressing communications and representing their client before the Income Tax Department or any Statutory Authority. The Respondent failed to provide any plausible reply/ response with respect to use of such derogatory remarks while addressing letters to the Informant. The Board viewed that such letters/ correspondence addressed by the Respondent to Informant was not expressly denied by him during the proceedings before it. Throughout, his main contention had been that the letters are not on record. However, the same does not give any immunity to the Respondent to deal with Government agencies/ Officials in an un-courteous manner while representing his clients and addressing their concerns before them. The Board also observed that despite best efforts made to bring on record the alleged letters, the same were not received. The Board observed that no

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professional is expected to use demean language in their official communication with the Government agencies/ Officials while representing their client.

8. The Board further viewed that the Respondent is a Senior Member of the Institute and it is not expected from a Member to indulge in such kind of un-courteous and non-professional communication with Government officials. The Board observed that if the Respondent had any grievance with respect to the Assessment proceedings, he should have approached appropriate forum for the same to protect interest of his client instead of airing his grievance through such kind of formal communication demeaning the interest of the profession and the Institute. Such an Act on the part of the Respondent has certainly brought disrepute to the profession and thus, it has already been held that CA. Bimal Kumar Nohria is Guilty of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule of the Chartered Accountants Act, 1949 read with Section 22 of the said Act.
9. Upon consideration of the facts of the case, the consequent misconduct of CA. Bimal Kumar Nohria (M. No. 081459) and keeping in view his oral and written representation before it, the Board decided to Reprimand CA. Bimal Kumar Nohria (M. No. 081459).

Sd/-  
CA. Prasanna Kumar D.  
(Presiding Officer)

Sd/-  
Ms. Dolly Chakrabarty (IAAS, retd.)  
(Government Nominee)

Sd/-  
CA. (Dr.) Raj Chawla  
(Member)

DATE: 2<sup>nd</sup> June, 2022

सही प्रतिलिपि होने के लिए प्रमाणित /  
Certified to be true copy

*Bishwa Nath Tiwari*  
बिषा नाथ तिवारी / Bishwa Nath Tiwari  
कार्यकारी अधिकारी / Executive Officer  
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**

**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. : PPR/P/66/15/DD/59/INF/15/BOD/346/2017**

**CORAM:**

**CA. Prasanna Kumar D., Presiding Officer (in person)**  
**Smt. Rani Nair, (IRS, Retd.), Government Nominee (through video conferencing)**  
**CA. Satish Kumar Gupta, Member (through video conferencing)**

**In Re:**

**CA. Bimal Kumar Nohria (M. No. 081459) .....Respondent**  
**Chandigarh**

**DATE OF FINAL HEARING : 17<sup>th</sup> December, 2021**  
**PLACE OF FINAL HEARING : New Delhi/ through video conferencing**

**PARTIES PRESENT:**

**Counsel for the Respondent : CA. Nalin Kumar Nohria**

**FINDINGS:**

**Brief Background of the case:**

1. The facts of the case in brief are as under:-
  - a. A letter dated 30<sup>th</sup> May, 2014 was submitted by Shri. V.K. Bathla, Income Tax Officer, Chandigarh (hereinafter referred to as "**Informant**" and the "**Informant Department**" respectively) containing various allegations against the conduct of the Respondent.
  - b. The Respondent who without holding any Power of Attorney in the case of the Assessee M/s. Shivalik Telecom Ltd. for the Assessment Year 2006-07 to 2012-13 wrote various letters for the first time to the Informant with derogatory remarks and allegations.

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- c. The Respondent submitted his 1<sup>st</sup> letter dated 17.10.2013 to the ITO Ward 2(1) Chandigarh without having any Power of Attorney (POA) provided to the Informant stating as under:-

*"submitted to your predecessor personally and if it has not been placed on your goodself files, it is not the fault of mine or the assessee and still your goodself need a photocopy of the same, it can be provided."*

But no such POA was provided by the Respondent till the date of extant complaint. So much so, there is no representation in the assessment for the AY 2007-08 completed on 29.12.2009 by the then ITO, Ward 2(1), Chandigarh and Mr. Atul Gupta, Advocate and Shri Survesh kumar, CA attended the proceedings as mentioned in the Assessment Order itself.

- d. Hence the refund due to the Assessee, for the AY 2007-08, ought to have been claimed / made by the Assessee after 29.12.2009 have not been pressed, but started following it with derogatory remarks to the present ITO who joined on 01.07.2013. Refund of the following Assessment Years were issued to the Assessee immediately after receipt of applications from the Assessee:-

S. No.	A.Y.	Amount of refund issued to the assessee	Reply of the A.O.
1	2006-07	Rs.6,86,910/-	Appeal effect given by Informant's Predecessor in May 2013 as mentioned in the assessee application, but pointed out to the Assessing Officer 1 <sup>st</sup> time by the Respondent through his letter dated 17.10.2013 stating that <i>"the present Id. AO who is not ready to issue the refund for reasons known to him and my client directed me to file petition before HC for passing strictures against the Officers and making it public through News Papers"</i> whereas the same refund was issued after approval on 08.11.2013 i.e. before receipt of any reminder. Though the Id. Counsel conveyed thanks in his letter dated 02.12.2013 but in the endorsement made to various authorities, it is mentioned <i>"...copy to ... for information and appropriate action by treating this letter as a grievance matter"</i>
2	2008-09	Rs.16,17,630/-	1 <sup>st</sup> letter received after joining on 10.10.2013 and refund issued on 06.11.2013 before receipt of any reminder, but derogatory remarks in his letter sent by the Respondent was the same as reproduced above. Similar remarks further made in his letter of thanks dated 02.12.2013 for AY 2008-09 reproduced above, calling <i>"for appropriate action by treating this letter as a grievance matter"</i>
3	2007-08	Rs.8,75,617/-	Refund issued of Rs.8,75,617/- on 04.04.2014 by the Informant has been returned through his letter dated 23.05.2014, stating that <i>"signature differs which is shame on the part of such Officer and a clear case of harassment"</i> . Not only this, he further wrote in the endorsements made to various authorities i.e. <i>copy to .... For information and</i>

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			<p><i>request to register a vigilance case as it gives a clear message which I was avoiding to inform for want of clear evidence that your ITO is demanding money and directing to your office to register a vigilance case and I am ready to dispose for the same."</i></p> <p>Instead of having issued the above said refunds, for all the years, mentioned above, earlier which had been credited to the assessee's account except for the AY 2007-08 about which the Bank has clarified in writing that the refund cheque as present earlier will be cleared as such on its representation by the assessee. Hence, the same has been returned back to the assessee with the said assurance of the Bank.</p>
4	2012-13 or 2010-11		<p>The application now received for issue of refund of the amount deducted by the CPC. Since it is e-filed case processed by the CPC but file is not pushed to the AO's jurisdiction as also the working of the system stands stopped by the Deptt. for whole month of May and is not restored as yet, the refund shall be issued to the assessee as intimated, to him in the letter through which the said refund of Rs.8,75,617/- has been returned, which has been duly received by the assessee.</p>

- e. It is a case where the returned income shown in e-return in this case is Rs.1,24,45,300/- and Rs.85,51,930/- for the AY 2012-13 and 2013-14 respectively. Besides, the assessee is not doing any business in the Indl. Area Phase-I, Chandigarh i.e. the jurisdiction pertaining to this Ward. Therefore, the jurisdiction over the case in terms of income returned or area-wise i.e. Sector 17 claimed by the assessee does not lie with the office of the Informant. Moreover, while receiving the said refund for the AY 2007-08, the assessee has given in writing that his present address is A-4, Phase 8-B, Industrial area, Mohali which has also not been intimated to the Department as yet by the Respondent, Counsel of the assessee as claimed. In spite of this, since the PAN laid with Informant's office, all these refunds has been issued after seeking prior approval from the higher Authorities.

**Charge alleged against the Respondent:**

2. The ITO, Chandigarh (Informant) has alleged that the Respondent without filing any Power of Attorney with respect to his client M/s. Shivalik Telecom Ltd., wrote various letters to the ITO and made derogatory remarks which is an unethical act on the part of the Respondent.

The Board on consideration of the Prima Facie Opinion of Director (Discipline) noted that the Respondent wrote various letters for getting refunds for AY 2006-07, 2007-08, 2008-09, 2010-11 and 2012-13 to the Informant who is Income Tax Officer, Chandigarh with derogatory remarks in respect of the assessment proceedings made against the Company

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which he was representing as a POA which were not appropriate and unethical on his part.

Thus, the Board did not agree with the Prima Facie Opinion of the Director (Discipline) that the Respondent is Not Guilty of "Other Misconduct" falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 and decided to proceed under Chapter IV of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

**Brief of Proceedings held:**

3. During the hearing held on 7<sup>th</sup> April 2021, the Respondent alongwith his Counsel were present before the Board through video conferencing, the Respondent was put on oath and the Respondent alongwith his Counsel confirmed that they have read and understood the contents of the modalities and protocols of e-hearing and will follow them. Thereafter, on being asked by the Board as to whether the Respondent is aware of charges against him, he replied in affirmative and on further being enquired pleaded not guilty in respect of the charges alleged against him. Thereafter, his Counsel made detailed submissions before the Board. On consideration of the documents and the submissions on record, the Board adjourned the hearing in the case and directed the office to write a letter to:
  - (a) The Principal Chief Commissioner of the Income Tax and copy marked to Income Tax Officer, Chandigarh for seeking copy of all the correspondence held in the case of the assessee M/s. Shivalik Telecom Ltd. for the Assessment Year 2006-07 to 2012-13 especially the letters written by the Respondent.
  - (b) M/s. Shivalik Telecom Ltd.: seeking copy of all the correspondence held with the Income Tax Department for the Assessment Year 2006-07 to 2012-13 especially the letters written by the Respondent for getting refunds for the said Assessment Years.

In response to the letter dated 9<sup>th</sup> August 2021 sent to the Principal Chief Commissioner of the Income Tax (Pr. CCIT), Aayakar Bhawan, Chandigarh, letter No. ITOW – 2(1)/Chd/2020-21/489 dated 25/08/2021 was received from the office of Income Tax Officer, W 2(1), Aayakar Bhawan, 4<sup>th</sup> Floor, Room No. 423, Sector 17E, Chandigarh wherein it was intimated that the assessment records in this case is not readily traceable being old one.

In response to letter dated 9<sup>th</sup> August, 2021 sent to Shri Adaish Pratap Singh Kairon, Director, M/s. Shivalik Telecom Ltd., letter Ref. No. STL/2021-22/ 1018 dated 20/08/2021 was received wherein it was informed that the matter of Income Tax refund was settled long back for Assessment Years 2006-07 to 2012-13. After receipt of the Income Tax refunds, the Company had weeded out the old correspondence record being no longer required on settled issues.

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4. Thereafter, during the hearing held on 17<sup>th</sup> December 2021, the Counsel for the Respondent who was present before the Board through video conferencing made his detailed oral submissions before the Board. Upon consideration of the documents and submissions on record, the Board decided to conclude the proceedings in the case with the direction to the Respondent to provide the following:
1. Copy of the Engagement letter issued in respect of the assignment under question alongwith the purpose of engagement.
  2. Details of other Chartered Accountants who were working in connection with the company under question alongwith their address.

Accordingly, the decision on the conduct of the Respondent was kept reserved by the Board.

5. In compliance of above directions, the Respondent vide email dated 20/01/2022 submitted as under:-
- a. The Respondent was engaged by M/s Shivalik Telecom Limited for representation before Income Tax Department for getting their Income Tax demand rectified and refunds issued for the Assessment Year 2006-07 to 2012-13. A confirmation of the same from M/s Shivalik Telecom Limited vide reference number STL/2019-20/53 dated 20th July, 2019 has already been placed on record.
  - b. Scrutiny assessment of M/s Shivalik Telecom Limited had taken place for the Assessment Year 2006-07 and 2007-08 only. For assessment year 2008-09 to Assessment Year 2012-13 there were no scrutiny assessment. As per the Assessment Order for AY for 2007-08 Adv. Atul Gupta and CA. Survesh Kumar appeared during the assessment proceedings. The Respondent doesn't possess the address or contact details of the above mentioned persons. Further, the Respondent has contacted M/s Shivalik Telecom Limited for the said information. They have stated that CA. Survesh Kumar was not hired by them directly but by Adv. Atul Gupta and are not aware of the contact details of CA. Survesh Kumar. M/s Shivalik Telecom Limited also stated that they have not dealt with Adv. Atul Gupta since the completion of the assessment proceedings AY 2007-08 and they need to check their old record which they will do once they are free from the election being held in the state of Punjab.

Thereafter, the Board at its meeting held on 3<sup>rd</sup> February 2022 considering the submissions and documents on record decided on the conduct of the Respondent.

**Submissions of the Respondent:**

6. The Board noted that the Respondent in his defence, inter-alia, stated as hereunder:-

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- a. The information appears to be anonymous information and cannot be entertained as per Rule 7(3) of CA Rules, 2007 as letter of Informant dated 30/05/2014 is not on letter head and does not contain any rubber stamp of designated Officer.
- b. Informant has neither provided any evidence nor responded as mentioned in his complaint inspite of opportunities provided by the Disciplinary Directorate vide letter dated 03/03/2016 and 24/05/2016.
- c. The Respondent produced on record letter Ref. No. STL/2019-20/53 dated 20/07/2019 issued by Shivalik Telecom Limited (Company) wherein the Director of the Company stated that Respondent was authorized to represent the Company before Income Tax Officer Ward 2(1) Chandigarh for getting their Income Tax demands rectified and refunds issued for Assessment Year 2006-07 to 2012-13 in the year 2013 through a valid executed power of attorney and copy of which has not been retained by the said Company.

### Observations of the Board:

Upon overall examination of the facts, submissions and documents on record, the Board observed as under:-

7. As regard the plea of the Respondent that the extant case is filed based on the anonymous letter as the same is not submitted on letter head and does not contain any rubber stamp of designated Officer, the Board noted that a duly signed letter with the details of the address of the Informant containing allegations against the Respondent had been provided and thus, the same cannot be treated as 'Anonymous'. Further, a complaint can be filed by an individual in his individual capacity or on behalf of an entity/ Government organization, etc. Accordingly, the plea of the Respondent that the said information is an anonymous information and not received on the letter head and also does not contain rubber stamp of concerned official is not sustainable.
8. As regard the plea of the Respondent that no evidence is brought on record by the Informant, the Board opined that the 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 which is distinct from Criminal proceedings where the misconduct has to be proved beyond reasonable doubt. 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 of the*

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*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 or 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."*

Thus, the Board viewed that the strict Rules of Evidence may not necessarily be considered while examining the conduct of the Respondent as the question to be considered before the Board is that of Other Misconduct that is whether the alleged act of the Respondent has brought disrepute to the Profession or the Institute. Accordingly, the case was dealt with on its merits by the Board of Discipline, keeping in view, the documents and submissions on record.

9. As regard the allegation that the Respondent without filing any Power of Attorney (POA) wrote various letters for getting refunds for AY 2006-07 to 2012-13 to the Informant with derogatory remarks, the Board noted that the Informant vide his letter dated 30<sup>th</sup> May, 2014 had given references to various communications addressed by the Respondent to their Department with a copy marked to various authorities wherein the remarks made were neither courteous nor appropriate. The Board noted that the words used in the letter addressed by the Respondent are as under:-

***"...submitted to your predecessor personally and if it has not been placed on your goodself files, it is not the fault of mine or the assessee and still your goodself need a photocopy of the same, it can be provided...."***

....

***"the present Id. AO who is not ready to issue the refund for reasons known to him and my client directed me to file petition before HC for passing strictures against the Officers and making it public through News Papers) whereas the same refund was issued after approval on 08.11.2013 i.e. before receipt of any reminder. Though the Id. Counsel conveyed thanks in his letter dated 02.12.2013 but in the endorsement made to various authorities, it is mentioned ...copy to ... for information and appropriate action by treating this letter as a grievance matter"***

.....

***"Refund issued of Rs.8,75,617/- on 04.04.2014 by the Informant has been returned through his letter dated 23.05.2014, stating that "signature differs***

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**which is shame on the part of such officer and a clear case of harassment". Not only this, he further wrote in the endorsements made to various authorities i.e. copy to .... For information and request to register a vigilance case as it gives a clear message which I was avoiding to inform for want of clear evidence that your ITO is demanding money and directing to your Office to register a vigilance case and I am ready to dispose for the same"**

- 9.1 The Board on perusal of language used in the correspondence letters by the Respondent observed that the same was not courteous and a Chartered Accountant is expected to be courteous and decent not only in his behavior but also while addressing communications and representing their client before the Income Tax Department or any Statutory Authority. The Board also examined the Respondent during the hearing held on 07/04/2021 and observed that the Respondent failed to provide any plausible reply/ response with respect to use of such derogatory remarks while addressing letters to the Informant. The Board viewed that such letters/ correspondence addressed by the Respondent to Informant was not expressly denied by him during the proceedings before it. Throughout, his main contention had been that the letters are not on record. However, the same does not give any immunity to the Respondent to deal with Government agencies/ Officials in an un-courteous manner while representing his clients and addressing their concerns before them. The Board also observed that despite best efforts made to bring on record the alleged letters, the same were not received.
- 9.2 The Board observed that no professional is expected to use demean language in their official communication with the Government agencies/ Officials while representing their client.
10. The Board also took into view the judgment on the said issue as provided under the Code of Ethics, 2009 (Edn. Reprinted May, 2009, Pg. 115) as under:-

*The Respondent, inter alia, had used objectionable, derogatory and abusive language. He made irrelevant, incoherent, irresponsible and insane statements, expressions in all his correspondence with the complainant. He was, inter alia, held guilty of "other misconduct". (K. Bhattacharjee vs. B.K. Chakraborty - Page 86 of Vol. VII(1) of Disciplinary Cases – Council's decision dated 11th to 13<sup>th</sup> February, 1988 - Judgement dated 10th June, 1996)*

11. The Board further viewed that the Respondent is a Senior Member of the Institute and it is not expected from a Member to indulge in such kind of un-courteous and non-professional communication with Government officials. The Board observed that if the Respondent had any grievance with respect to the Assessment proceedings, he should have approached appropriate forum for the same to protect interest of his client instead of airing his

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grievance through such kind of formal communication demeaning the interest of the profession and the Institute.

12. Thus, such an Act on the part of the Respondent has certainly brought disrepute to the profession and accordingly, the Respondent is held Guilty in respect of the charge alleged.

**CONCLUSION:**

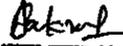
13. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **GUILTY** of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

Sd/-

**CA. PRASANNA KUMAR D.  
(PRESIDING OFFICER)**

**Date: 11<sup>th</sup> February, 2022**

सही प्रतिलिपि होने के लिए प्रमाणित /  
Certified to be true copy



अरुण कुमार / Arun Kumar

कार्यकारी अधिकारी / Executive Officer

अनुशासनात्मक निदेशालय / Disciplinary Directorate

इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया

The Institute of Chartered Accountants of India

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