



भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[DISCIPLINARY COMMITTEE [BENCH-I (2022-2023)]]

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

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

In the matter of:

Shri Deepak J. Mehta, Mumbai

-Vs-

**Shri Sanat Kumar Sinha (M. No. 052610), Kolkata
[PR/162/16/DD/181/2016/DC/1069/2019]**

MEMBERS PRESENT:

CA. ANIKET SUNIL TALATI, PRESIDING OFFICER

SHRI JUGAL KISHORE MOHAPATRA, IAS (RETD.), (GOVERNMENT NOMINEE)

SHRI PRABHASH SHANKAR, IRS (RETD.), (GOVERNMENT NOMINEE)

CA. GYAN CHANDRA MISRA, MEMBER

CA. PRITI PARAS SAVLA, MEMBER

1. That vide findings dated 05.02.2022 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. Sanant Kumar Sinha (M. No.052610)** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

2. That pursuant to the said findings, an action under Section 21B(3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and communication was addressed to him thereby granting an opportunities of being heard in person / through video conferencing to make a written & verbal representation before the Committee on 5th July, 2022.

3. The Committee noted that on the date of hearing i.e., 05th July, 2022, the Respondent was present through video conferencing. The Respondent confirmed receipt of findings of the Committee and he made his verbal submissions on the same.

4. The submissions brought on record by the Respondent are in brief as under:-

4.1. The Respondent stated that the Complainant harassed the Auditee and asked for bribe. The Auditee complained with the CBI and the CBI arrested the Complainant on 30.06.2014 based on the charges of corruption. The Complainant was suspended from the service of the Income-tax



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Department. The Complainant committed the theft of the important documents belonging to the Auditee, while leaving his office in Income-tax Department.

4.2. As regard the working papers, the Respondent stated that the working papers in the form of noting which were available, were furnished to the Director (Discipline).

4.3 In respect of charge related to certification of fake and bogus audit report, the Respondent stated that nothing was mentioned in the Punchnama that any books of accounts was impounded by the Income Tax Department. The Complainant had not substantiated the figures narrated by him with reference to any document except the deposition of the managing partner, which cannot be conclusive and acceptable evidence as per Indian Evidence Act and further, the financial statements are prepared based on actual books of accounts and not on deposition.

4.4. In respect of charge related to Overdraft, term loan and charge related to commission and labour expenses, the Respondent reiterated his earlier submissions as made before the Committee at the time of hearing.

4.5. In respect of charge relating to disclosure of inadmissible deduction of Rs.27,50,000/-, the Respondent stated that provisions of Section 40A(2)(b)(ii) instead of Section 40(b)(i) seems to be overlapping and both pertains to disallowance of expenses related to payment to partners.

4.6 In respect of charge relating to payment of service tax, the Respondent stated that the Auditee was carrying on the business as its own enterprise and not on commission etc. for anybody else. Just because the nomenclature of the revenue was the commission, it cannot be termed as such in the usual parlance. The nomenclature 'commission' also prompted the Service Tax Department to demand service tax on the same although the Auditee was not liable to Service Tax since the deep sea fish harvesting does not amount to any service activity to anybody.

5. The Committee considered the reasoning as contained in findings holding the Respondent Guilty of professional misconduct vis-à-vis written and verbal submissions of the Respondent as made before the Committee.

6. Keeping in view the facts and circumstances of the case and material on record including verbal and written submissions on the findings, the Committee is of the view that the misconduct on the part of the Respondent is established. Accordingly, the Committee ordered that name of the Respondent i.e., CA. Sanant Kumar Sinha (M.No.052610) be removed from the Register of Members for a period of one year.

Sd/-

(CA. ANIKET SUNIL TALATI)
PRESIDING OFFICER


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

(approved and confirmed through e-mail)
(SHRI PRABHASH SHANKAR, I.R.S. (RETD.))
GOVERNMENT NOMINEE

(approved and confirmed through e-mail)
(CA. GYAN CHANDRA MISRA)
MEMBER

(approved and confirmed through e-mail)
(CA. PRITI PARAS SAVLA)
MEMBER

DATE : 10.08.2022
PLACE: NEW DELHI

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

उप सचिव / Deputy Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
अधिकारिता भवन, विनायक नगर, गांधीवा, दिल्ली-110002
ICAI Bhawan, Vaidya Nagar, Gandhiwa, Delhi-110002

DISCIPLINARY COMMITTEE [BENCH – I (2021-2022)]

[Constituted under Section 21 B 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. No. PR/162/16/DD/181/16-DC/1069/2019

In the matter of:

Shri Deepak J. Mehta
302 Harsh-II, Raheja Complex
7 Bungalows, Andheri (W),
Mumbai – 400053.

.....Complainant

Versus

Shri Sanat Kumar Sinha (M. No. 052610)
3, Shyam Bazar Street,
Kolkata – 700005.

.....Respondent

MEMBERS PRESENT: -

CA. Nihar N Jambusaria, Presiding Officer
Shri Jugal Kishore Mohapatra, I.A.S. (Retd.) (Government Nominee),
Ms. Rashmi Verma, I.A.S. (Retd.) (Government Nominee),

DATE OF FINAL HEARING : 27.10.2021
PLACE OF FINAL HEARING : Through Video Conferencing

PARTIES PRESENT:

Complainant : Shri Deepak J Mehta
Counsel for the Respondent : CA. Jai Narayan Gupta



BRIEF OF THE DISCIPLINARY PROCEEDINGS: -

1. The Committee noted that on the day of final hearing held on 27.10.2021, the Complainant was present. The Respondent was not present, but his Counsel was present. Thereafter, the hearing commenced from the stage as it was left in last hearing. The Committee asked the Counsel for the Respondent to make their submissions on the charges. The Counsel for the Respondent made his submissions. The Committee also posed questions to the Counsel for the Respondent. After submissions of the Counsel for the Respondent, the Complainant made his final submissions. Thereafter, the Counsel for the Respondent made his submissions. After hearing the submissions, the Committee decided to conclude the hearing. With this, the hearing in the matter was concluded.

1.1 In respect of previous hearing(s) held in the matter, the Committee observed as under: -

i) In respect of hearing held on 19.04.2021, the Committee noted that the Complainant was not present. The Respondent was not present, but his Counsel was present. With respect to the charges leveled against the Respondent, the Counsel for the Respondent pleaded not guilty to the charges. Thereafter, he made his submissions on the charges and stated that only books were seized by the CBI and no vouchers and other records were seized. The Respondent did audit based on the accounts maintained in tally software on computer. After hearing the submissions, the Committee directed the office to call copy of Punchnama from the Auditee firm and the Complainant. The Committee also directed the office to call copy of working papers from the Respondent. With the aforesaid directions, the hearing in the above matter was partly heard & adjourned to a later date.

ii) In respect of next hearing held in the matter on 24.06.2021, it is noted that the Complainant was present. The Respondent was neither present nor he sent copy of Annexure 'I' for attending hearing through VC. In absence of any information from the Respondent, the Committee decided to proceed ahead with the hearing ex-prate the Respondent. The Complainant explained his charges and made his submissions. The Complainant also raised his contentions that on two charges, the Director (Discipline) has not given his specific observations. After hearing the submissions, the Committee directed the office to call for submissions of the Respondent and supporting documents





on the following two charges appearing in Form I on which the Director (Discipline) has not given any specific observations: -

a) The Respondent failed to disclose the inadmissible deduction of Rs. 27,50,000 (in column 21 of Form 3CD by not updating the same) debited to the Profit & Loss Account as commission paid to a Corporate Partner in complete violation of Section 40 (b). In this regard, the Committee observed that the net profit of the firm was Rs. 11,98,293/- whereas the Commission paid to the partners were Rs. 27,50,000/-. Hence, keeping in view the provisions of Section 40 (b) of the Income Tax Act, 1961, commissions paid to the partners appears to be inadmissible u/s 40(b) of the Income Tax Act, 1961.

b) The Respondent failed to disclose material and relevant information like non-payment of Service tax by the audited firm in his audit report.

The Committee also directed the Complainant to submit copy of Order of Service Tax Department as referred by him in his verbal submissions. With the aforesaid directions, the hearing in the above matter was partly heard and adjourned to a later date. It is also observed that as per directions of the Committee, the copy of Order of Service tax Department was submitted by the Complainant, and it was shared with the Respondent. The Respondent was also asked to submit his submissions on the aforesaid two charges and the Respondent through his Counsel vide e-mail dated 29th July 2021 submitted his submissions on the same.

iii) In respect of hearing held in the matter on 23rd August 2021, the Complainant was present. The Respondent was not present, but his Counsel was present. Thereafter, the hearing continued from the stage as it was left in last hearing held on 24.06.2021. The Complainant made his contentions. The Counsel for the Respondent made submissions on the charges. The Committee also posed questions to the Complainant and the Counsel for the Respondent. After hearing the submissions of the parties, the Committee directed the Complainant and the Counsel for the Respondent to submit certain documents / explanation on certain charges. The Committee also directed the office to summon auditee for next hearing. With this, the hearing in the above matter was partly heard and adjourned to a later date.



CHARGES IN BRIEF AND FINDINGS OF THE DISCIPLINARY COMMITTEE: -

2. As regard of the background the case, it is observed that an Information was received by the ITO 53(3), Kolkata in March 2014, that M/s. Zenith Fish Corp., a partnership firm (hereinafter referred to as the "Firm") carrying on the business of commission agent (Aarat) selling fish for the trawler owners of Kakdwip, had earned a huge amount of commission income in F.Y. 2013-14 and had not paid a single paise as Advance Tax during the entire year. The ITO had conducted a survey u/s 133A of the Income Tax Act, 1961 on 20th March 2014 at the business premises of the firm and impounded the books of accounts of the F.Y. 2013-14. The Respondent had conducted tax audit of the firm for the financial year 2013-14. In view of above background, the following charges were levelled against the Respondent: -

- i) The Respondent certified a fake and bogus tax audit report for Assessment Year 2014-15 in the case of the firm without examining the actual books of accounts and other related records/documents of the said financial year which were lying in the custody of the Income Tax Dept. (ITO 53(3)/26(2)) from 20.03.2014 to 30.06.2014 and with the CBI, Nizam Palace, Kolkata thereafter till date.
- ii) The firm, ZFC had a bank overdraft and term loan of around Rs. 1 crore which was not shown in the balance sheet filed by the Respondent for A.Y. 2014-15 whereas the firm has claimed interest payments to its Bank of Rs. 6,52,787/- on O.D. and Rs. 2,00,989/- as interest on TOD in its profit & loss account for the year ended 31.03.2014.
- iii) The Respondent certified bogus profit & loss account of the firm for the financial year ending 31.3.2014. It is alleged that as per the original books of accounts impounded by the Income Tax Dept. u/s 133 A on 20.03.2014, the firm had received a total commission of Rs. 1,45,92,409/- from the sale of fish while the profit & loss account certified by the Respondent declares the commission income of Rs. 1,08,10,750/- only. The said fact of having received Rs. 1,45,92,409/- as commission in A.Y. 2014-15, has been confirmed by the managing partner of the firm, Shri Srimanta Chakraborty in his statement dated 02.05.2014, recorded on oath u/s 131 of the Income tax act 1961 by the ITO Ward 53(3) Kolkata. Also, that as per the original

books of accounts, the firm has not incurred any expenditure in the nature of processing fees and labor charges, while the profit & loss account e-filed by the Respondent, a total bogus expense of Rs. 35,50,000/- under these two account heads has been shown. The firm has been carrying on the same business from 2003 onwards and has never claimed any such expenditure till 31.03.2013.

~~A~~ Apart from above charge, the following charges were also alleged against the Respondent: -

~~i~~ iv) The Respondent failed to disclose the inadmissible deduction of Rs.27,50,000/- (in column 21 of Form 3CD by not updating the same) debited to the Profit & Loss Account as commission paid to a Corporate Partner in complete violation of Section 40 (b).

~~v~~ v) The Respondent failed to disclose material and relevant information like non-payment of Service tax by the audited firm in his audit report.

3. In respect of above charges, the Respondent in his written / verbal submissions on the charges stated as under: -

i) The Respondent stated that he had made examination of the records and the Complainant has not brought any material on record to prove that the Respondent had not made examination of the financial statements and related records. The Respondent as auditor was not aware about deposition by the partner of the Auditee before the Income Tax Authorities.

ii) As regard the question as to whether based on data available on tally can audit be conducted, the Respondent stated that all the records & documents were not seized by the Income Tax Department. In support of his submissions, the Respondent referred the copy of Punchnama and stated that the basic documents are not appearing in the list of seized documents. There were several records available which supports the entries made in the books of accounts on computer. The Respondent also stated that it is not necessary to own the computer to get the accounts maintained on the computer.



iv) As regard the charge related to commissions, the Respondent stated that during the survey, the assessee becomes uncomfortable and the deposition cannot, by itself, be the conclusive proof. The Respondent reiterates that the financial statements are in collaboration with the books of accounts and even if anything is fictitious, the auditee is the proper person to explain the same and not the Respondent.

v) The Respondent stated that if there is dispute between the income department and the assessee, then the auditor is helpless. The Respondent stated that if Rs. 1.45 crore had been recorded in the books then there must have been documentary evidence. The Respondent stated that there is no documentary evidence to show that the firm had received commissions of Rs. 1,45,92,409/- as alleged. When the attention of the Respondent was drawn to the statement of the partner of the firm, the Respondent stated that though the assessee was admitting in his statement about commission income of Rs. 1,45,92,409/- yet there was no recording of the same in books of account. The Respondent also stated that whatever has been stated by the partner in the deposition was not in his knowledge at the time of audit.

vi) As regard the next charge related to inadmissible deduction of Rs. 27,50,000/-, the Respondent stated that tax audit report was signed on 26.9.2014 that was before due date of payment of TDS. Therefore, the issue of inadmissibility u/s 40(b), would not be covered in the Tax audit report.

vii) As regard the charge related to overdraft, the Respondent stated that the Complainant failed to understand that at the end of the financial year, balance of overdraft became positive.

viii) As regard the processing fees and labour charges, the Respondent stated that allegation is not supported with the evidence.

ix) As regard the charge related to Service tax, the Respondent stated that auditee is engaged in a fishing business. In fishing business, service tax is not applicable. The activities carried on by the firm, were in the nature of harvesting of the fish from the deep sea for own purposes. The Auditee did not provide any sort of service to anybody. The fish harvested by the firm constituted the stock belonging to the firm. The

stock was later on, disposed of or sold by way of auction. There was no service provided to anybody. As regard the demand raised by the Service tax Department, the Respondent stated that the demand from service tax was issued much after the Respondent has done its audit.

x) The terming the disclosure in the accounts as 'fake', 'bogus', fraudulent, fictitious and 'evasion' etc. were denied by the Respondent and he stated that these charges were not supported by any material on record. The financial statements were audited by him based on the books of accounts produced before him and strictly based on books of accounts, following specific submissions are made against the charges: -

- a) Taxable income of the assessee was Rs. 11,98,293/-,
- b) Remuneration paid to the partners amounted to Rs. 10,80,000/-,
- c) There was no concealment of income of Rs. 87,21,707/-,
- d) Receipt of Commission was Rs. 1,08,10,750 and not Rs. 1,45,92,409/-,
- e) Expenses on processing fees and labor charges were Rs. 35,50,000/-
- f) Rs.27,50,000/- was paid as commission,
- g) As on 31.03.2014, there was no overdraft from bank.

4. The Complainant apart from reiterating contentions as made in complaint, through his written and verbal submissions, made the following contentions in support of the charges: -

i) As regard the charge related to inadmissible deduction of commission paid to a Corporate Partner, the Complainant stated that Section 40 (b) (1) clearly lays down that any payment of commission to a non - working partner is an inadmissible deduction in the hands of a firm while computing its taxable income. The Profit & Loss Account of the Auditee firm had recorded only an entry of Commission payment of Rs.27,50,000/- from which it is not clear as to whom the said Commission was paid. However, in Form - 3 CD, in Column No. 23, it was confirmed that the Commission was paid to a Corporate Partner i.e., RFIL - Rista Fisheries & Infrastructure Limited. The Complainant further stated that Section 40 (b)(1) had nothing to do with Section 40 A(2)(b) as tried to be made out by the Respondent.



ii) The Complainant stated that the assessee did not have the computer. If the Respondent stated that the professional has maintained the books of accounts in the computer, then that professional during that financial year was Mr. Anurag Mathur and Mr. Anurag Mathur vide his letter confirmed that he did not have any books of accounts. In this regard, the Respondent stated that the story of Mr. Anurag Mathur has been invented by the Complainant and he do not recognize Mr. Anurag Mathur.

iii) The Complainant stated that auditee is not a fisherman. He is only a commission agent. He stated that the commission agent is liable for Service tax.

Findings of the Committee: -

5. In respect of first charge that the Respondent had certified fake and bogus tax audit reports for the A.Y. 2014-15, it is observed that the Respondent denied the said charges and stated that the Complainant did not provide any documentary evidence in support of this charge. He further stated that all the books of accounts and records were not seized by the Income Tax Department and vouchers and other documents were available for audit. He also stated that the firm had maintained books of accounts on computer. Based on data available on the computer, a new cash book was generated which was presented before him at the time of audit. On the contrary, the Complainant brought on record list of seized documents and stated that the firm did not have any computer during the alleged period. In respect of charge, the Committee noted that the Respondent signed the tax audit report of the firm on 26.09.2014 and as per list of books of accounts & documents impounded, bill books, purchase register, cash register, commission registers and other documents were impounded by the Income Tax Department. Hence, it is observed that most of the documents/records were seized by the Income Tax Department and accordingly, were not available to the Respondent.

5.1 On perusal of the fixed assets scheduled as on 31.03.2014, it is noted that the firm was not having any computer. Though the Respondent stated that the work of maintaining books of accounts can be outsourced yet he could not support his submissions with documentary evidence. Further, when the Respondent was requested to submit his working papers based on which he had signed the financial statement and audit report for the financial year 2013-14, the Respondent did not provide copy of the same. In view of above, it is apparent that the Respondent certified the financial statement and audit reports without verifying the relevant



documents and records. Therefore, the Respondent is guilty of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1956.


6. In respect of second charge related to the bank overdraft and term loan, which was not shown in the balance sheet, it is observed that the Respondent submitted that at the end of the financial year, balance of the overdraft became positive. On perusal of the Balance Sheet as on 31.03.2013, it is noted that the Company had a secured loan of Rs. 58.88 lakh and paid interest of Rs. 6.52 lakh on overdraft. As on 31.03.2014, the aforesaid secured loan was not shown in the liability side of the Balance Sheet. The Committee observed that though the Respondent made claim that overdraft became positive at the end of the financial year 2013-14 yet he did not provide any documents in support of his claim. Keeping in view the materiality of opening balance of the overdraft, the benefit could not be extended to the Respondent merely based on his verbal submissions. Accordingly, the Committee decided to hold the Respondent guilty with respect to above charge, falling within the meaning of clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

7. In respect of next charge related to commissions and expenses, it is observed that the Respondent submitted that there was no documentary evidence to show that the firm had received commission of Rs. 1.45 crore. Further, the partner of the firm had given statement after completion of the audit and accordingly, the deposition was not in the knowledge of the Respondent at the time of audit. In this regard, on perusal of the statement of the Managing Partner of the firm, it is noted that the Managing Partner in his firm stated that the figure (Commission of Rs. 1.45 Crore) recorded in the impounded material by his manager is actual amount of commission which has actually been collected and received from the Trawler owners till the date of survey. In respect of above, it is noted that though the charge was made yet no documentary evidence such as copy of invoice or cash receipts etc. were produced on record to substantiate that income from commissions during the financial year was of Rs. 1.45 crore. In respect of second leg of the charge related to expenses of Rs. 35.50 lakh, the Respondent stated that expenses incurred on labor charges and processing fees were Rs. 35.50 lakh. The Respondent also stated that the financial statements are in corroboration with the books of accounts and even if anything is fictitious then the auditee is the right person to explain it. In respect of above charge, the Committee noted that question

has been raised on the authenticity of expenses incurred under the head processing fees and labor charges, but the Respondent has failed to bring on records any working paper to justify the same. The Committee on perusal of the Profit & Loss Account for the year ended 31st March 2013, it is noted that no such expenses were there in the previous year. Accordingly, the same raise doubt on the recording of the same in the profit & loss account for the financial year ended 31.03.2014. Further, as it appears that most of the transaction of the firm were in cash, the Respondent as auditor was required to be more cautious and apply checks to verify the relevant documents such as agreements between parties, bills & cash receipts but the Respondent does not appear to have applied checks as he fails to produce any documents in respect of verification of the aforesaid items. Accordingly, the Committee decided to hold the Respondent guilty with respect to above charge, falling within the meaning of clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

8. As regard the next charge relating to disclosure of inadmissible deduction of Rs. 27.50 lakh, the Respondent stated that this amount was duly disclosed in Item 23 of the Form 3 CD of the Tax Audit Report with respect of disallowances u/s. 40A(2)(b). On perusal of tax audit report along with Form 3CD, it is noted that commission of Rs. 23 lakh was debited to the Profit & Loss Account of the firm for the financial year ended 31.03.2014. As per the Complainant, the said payment was made to the corporate partner of the firm. On perusal of the Capital Account of the firm, it is noted that an amount of Rs. 26.16 lakh was payable to M/s. Rista Fisheries & Infrastructure Ltd (RFIL). It is noted that Section 40(b) of the Income Tax, 1961 deals with the inadmissibility of interest, salary, bonus & commissions / remuneration paid to partners. As regard the reporting made in Form 3CD, it is noted that the Respondent had not mentioned anything in point no. 21(b)(c) of Form 3CD in respect of inadmissibility of commission paid to the partners. The Committee also noted that keeping in view of the profit of the firm for the financial year 2013-14 i.e., Rs. 11.98 lakh, payment of commission to a corporate partner and total payment of Rs. 38,58,000/- (Rs. 27,50,000+Rs. 10,08,000) made to partners, the Respondent was required to point out the inadmissibility in Form 3CD, but he failed to point out the same. Accordingly, the Respondent is held guilty of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

9. As regard the charge related to non-payment of service tax by the firm, the Respondent stated that the service tax was not applicable on the firm as the firm was engaged in a fishing business. He also stated that the demand from service tax was issued much after the Respondent has completed the audit. When the Committee drew the attention of the Respondent to the nature of business mentioned in the Form 3CD as Commission Agent, the Respondent did not give any cogent reply and only stated that the firm was engaged in fishing business. The Complainant brought on record copy of service tax order dated 23rd May 2017 wherein the demand of Rs. 45.75 lakh was made and a penalty of Rs. 45.75 lakh was also imposed on the firm for non-payment of service tax during the financial years 2011-12 to 2014-15. Further, the aforesaid order states that the firm was providing "Business Auxiliary Services" without taking the service tax registration. It was also mentioned in the said order that the activity of Commission Agent of sea fishes cannot be classified as Commission Agent dealing with sale/purchase of agriculture produce and is very much subject to Service Tax. It is also noted that in the financial statement for the financial year 2012-13, it was mentioned that the firm is commission agent having income from commission on fish sale. From the above, it was clear that the firm was acting as commissioner agent. When the Committee asked the Respondent to provide copy of expert opinion that business activity of the firm was an agriculture activity, the Respondent did not provide anything and stated that the activities carried out by the auditee is harvesting of the fish from deep sea for his own purpose.

9.1 Since there was nothing on record from the Respondent to show that he has taken reasonable step to ensure that the service tax is not applicable on the service provided by the firm and consequently, there was no reporting in audit report about non-payment of service tax by the firm, the Committee is of the view that the Respondent failed to exercise due diligence while performing professional duties, accordingly, the Respondent is guilty of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949. 

Conclusion: -

[PR/162/16/DD/181/16-DC/1069/2019]

10. Thus in the considered opinion of the Committee, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

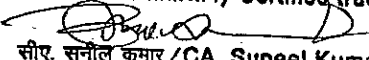
Sd/-
(CA. NIHAR N JAMBUSARIA)
PRESIDING OFFICER

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

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

प्रमाणित सत्य प्रतिलिपि / Certified true copy

Date: 05.02.2022


सीए. 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
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