



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

**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:**

**Shri Santosh Kumar, Joint Director (RD, NR) and  
Shri S K Saxena, Deputy Director, SFIO  
Office of the Regional Director (NR),  
Ministry of Corporate Affairs,  
PDILBhawan, Ground Floor,  
A-14, Sector-1,  
Noida-201 301**

**.....Complainant**

**Versus**

**CA. Sanjay Bhardwaj  
506, New Delhi House  
27, Barakhamba Road  
NEW DELHI – 110 001.  
[PR/227/2014/DD/230/14/DC/959/18]**

**.....Respondent**

**Date of Meeting : 26<sup>th</sup> December, 2022**

**Party Present:**

**CA. Sanjay Bhardwaj : Respondent**

**MEMBERS PRESENT:**

- 1. CA. (Dr.) Debashis Mitra, Presiding Officer (through VC)**
- 2. Ms. Dakshita Das, IRAS (Retd.), Government Nominee (through VC)**
- 3. CA. Mangesh Pandurang Kinare, Member (through VC)**
- 4. CA. Sripriya Kumar, Member (through VC)**

1. That vide findings dated 11<sup>th</sup> February, 2020 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 of the opinion that **CA. Sanjay Bhardwaj (M.No.087847)** (hereinafter referred to as the “Respondent”) was **GUILTY** of Professional Misconduct falling within the meaning of Clauses (7) and (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.



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2. That an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and a communication dated 16<sup>th</sup> December, 2022 was addressed to him thereby granting an opportunity of being heard in person and/or to make a written representation before the Committee in its hearing fixed on 26<sup>th</sup> December, 2022. The Committee noted that this case was earlier fixed on 20/09/2022 and was adjourned at the request of the Respondent.

3. 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 in terms of Section 21B(3) of the Chartered Accountants (Amendment) Act, 2006 read with Rule 19(1) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

4. The charges levelled against the Respondent and decisions thereon are contained in the findings dated 11.02.2022 of the Committee arrived under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007; and the present Order under Section 21B (3) of the Chartered Accountant Act, 1949 be read along with the said findings dated 11.02.2022.

5. The Committee considered the oral as well as written submissions made by the Respondent, facts of the case and various documents on record with the findings of the earlier Committee holding the Respondent guilty of professional and other misconduct.

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6. The Committee noted that the Respondent was present personally in the premises of ICAI New Delhi and appeared before it. He submitted written submissions dated 23.12.2022 and inter-alia, stated that *"I never had any intention to violate any law or the accounting standards prescribed by the Institute and the Ministry of Corporate Affairs. I applied the law as per my legal understanding in a completely bonafide manner. I have not procured any personal benefit, much less any pecuniary benefit, nor did I ever intend to benefit any other individual in any manner whatsoever, nor is there any such allegation. I assure this august body that I will be more careful in performance of my duties as a Chartered Accountant in future. In the light of the fact that I have never been guilty of any such violation in more than three decades of my professional career, I pray to this Hon'ble Institution to be lenient"*.

6.1 During the hearing, the Respondent referred to his submissions dated 24/03/2017 and submitted that in an Order dated 13.01.2015 of ITAT and Commissioner Income Tax (Appeals), wherein DDCA was a party, it was held that :

*"Delhi District Cricket Association (DDCA) is not an entity for profit. DDCA is an entity for promoting cricket & registered as not for profit entity under section 25 of the Companies Act, 1956. This status of DDCA being a not for profit and charitable organization or not commercial undertaking, has duly confirmed by the Hon'ble Income Tax Appellate Tribunal, New Delhi and also by Commissioner of Income Tax (Appeal), New Delhi, in granting the exemption available to DDCA"*.

6.2 The Respondent submitted that DDCA is a charitable institution / non-commercial undertaking as observed by the Hon'ble ITAT in its Judgment dated 13.01.2015; and hence Accounting Standards are not applicable in case of DDCA. He further submitted that the activity of sale of certain items by DDCA was ancillary and was meant only for its members with an object to provide services, and not to the public with the motive of profit making.



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7. The Committee perused the above Order(s) and was of the view that in the subject case, the Respondent has been held guilty of professional misconduct for not following Accounting Standards applicable to the auditee entity as it has generated some portion of its income from commercial activities. The Committee further noted that the status of the auditee entity as per abovesaid Order of ITAT and Income Tax (Appeals) was 'Charitable' and 'not for profit Organization'. The Committee was of the view that the nature of omission on the part of Respondent in the instant matter was only technical in nature; and it was therefore a matter which deserved to be viewed leniently for award of punishment.

8. Accordingly, the Committee, looking into the gravity of the charges *vis-a-vis* submissions of the Respondent before it, was of the view that end of justice would be met, if minimum punishment is awarded in the interest of justice in the instant case.

9. Thus, keeping in view the facts and circumstances of the case as aforesaid, material on record and submissions of the Respondent before it, the Committee ordered that the Respondent i.e., CA. Sanjay Bhardwaj (M.No.087847), New Delhi, be REPRIMANDED.

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

Sd/-  
(MS. DAKSHITA DAS, IRAS (RETD.))  
GOVERNMENT NOMINEE

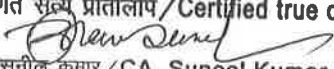
Sd/-  
(CA. MANGESH P KINARE)  
MEMBER

Sd/-  
(CA. SRIPRIYA KUMAR)  
MEMBER

Date: 03.02.2023

Place: New Delhi

प्रमाणित सत्य प्रतिलिपि / Certified true copy

  
सीए. सुनील कुमार / CA. Suneel Kumar  
सहायक सचिव / Assistant Secretary  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute of Chartered Accountants of India  
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032  
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

CONFIDENTIAL

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

[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.

File No. : [PR/227/2014/DD/230/14/DC/959/18]

**Shri Santosh Kumar, Joint Director (RD, NR) and  
Shri S K Saxena, Deputy Director, SFIO**

Office of the Regional Director (NR),  
Ministry of Corporate Affairs,  
PDILBhawan, Ground Floor,  
A-14, Sector-1,  
Noida-201 301

.....Complainants

**Versus**

**CA. Sanjay Bhardwaj (M. No. 087847)**  
707, Sunjev Tower-II,  
District Centre, Janakpuri  
New Delhi 110 058

.....Respondent

**MEMBERS PRESENT:**

**CA. Nihar N Jambusaria, Presiding Officer**  
**Shri Arun Kumar, IAS (Retd.) Govt. Nominee**  
**CA. G Sekar, Member**  
**CA. Manu Agrawal, Member**

**DATE OF FINAL HEARING: 13.12.2021**

**PARTIES PRESENT:**

- (i) Shri Arib Ansari, Prosecutor of SFIO – Complainant's Representative**
- (ii) CA. Sanjay Bhardwaj - Respondent**
- (iii) Shri Amit Khemka, Advocate – Counsel for Respondent (Speaking Counsel)**
- (iv) CA. Ashwani Taneja, Advocate – Counsel for Respondent  
(all appeared from their personal location through VC)**





**Charges in Brief:-**

**1. Charges are as under:-**

- 1.1 Huge payments towards professional charges were given to the auditors over their Audit fees.
- 1.2 Non compliance of Schedule VI read with section 211 and AS-15 read with section 211 (3A) (3C).
- 1.3 Non compliance of AS-18 read with section 211 (3A) (3C)
- 1.4 Non compliance of AS-19 read with section 211 (3A) (3C).
- 1.5 Non compliance of AS-5 read with section 211 (3A) (3C).
- 1.6 Failure of the Respondent in qualifying mandatory requirements in financial statements of the Company under Schedule VI r/w Section 211 of the Companies Act, 1956.
- 1.7 The next charge is in respect of miscellaneous expenses.
- 1.8 The next allegation is in respect of non-compliance of the other provisions of the Companies Act, 1956 like Section 309, 314, 299 & 209 of the Act
- 1.9 The next allegation is regarding instead of crediting party/ supplier, the amount is directly paid by debiting expenditure account.
- 1.10 The next allegation is regarding certain expenses have been incurred by DDCA but were actually required to be borne by GMR as per agreement between DDCA and GMR.
- 1.11 The next allegation is regarding signing of vouchers by the General Secretary and other Directors beyond sanction limit given by resolution dated 09.09.2010.
- 1.12 The next allegation is regarding conflict of interest as an Auditor and as a consultant of the Company.

**Brief facts of the Proceedings:**

2. On the day of hearing i.e. on 13.12.2021, the Committee noted that the Authorised representatives of the Complainant Department as well as the Respondent alongwith his Counsel (s) were present before it for hearing. Thereafter, they all gave a declaration that there was nobody except them in room from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form.

Being first hearing, the Complainant and the Respondent were put on oath and the Respondent pleaded not guilty and opted to defend the matters against him. The Complainant sought adjournment as he required some more time to prepare this case. The Committee rejected his plea as this matter pertains to year 2014 and decided to proceed in the matter.

Thereafter, the Committee asked the Respondent to make submissions in this matter. The Counsel for the Respondent made his submissions. The Committee examined the Respondent based on submissions made by him.

Based on the documents available on record and after considering the oral and written submissions made by the Counsel for the Respondent before it, the Committee concluded the hearing and kept its decision reserved and directed the Respondent to file charge-wise submissions within two weeks from the date of hearing.

Accordingly, the matter was heard and concluded.

2.1 Thereafter this matter was placed in meeting held on 28<sup>th</sup> January 2022 for consideration of the facts and arriving at a decision by the Committee. The Committee noted that as per direction dated 13<sup>th</sup> December, 2021, the Respondent has submitted the desired information/ documents vide letter dated on 21/12/2021.

The Committee members considered and discuss these matters and after consideration, the decision was deferred to the next meeting and directed the Secretariate to seek expert opinion from Accounting Standard Board, on following issues:

- (i) Whether Accounting Standards are applicable to the subject Company. if yes, what extent?
- (ii) Please elaborate in context of applicability of Accounting Standards 5, 15, 18, 19 and 22 in case of subject Company.
- (iii) Will their answer differ, if it is also stated that the said Company is also registered under Section 12AA of the Income Tax Act, 1961.





2.2 After that, this matter was placed before the Committee in its meeting held on 08/02/2022 and expert opinion of the Accounting Standard Board received on above issues dated 03/02/2022 was put before Committee for its consideration.

Keeping in view the facts and circumstances of the case, material on record and submissions of the Complainant and the Respondent at the time of hearing, the Committee passed its judgement.

### Findings of the Committee

3. The Committee noted the submissions of the Respondent made before it during the hearing (s). The Respondent submitted that auditee entity i.e. DDCA is a 'Not for Profit Company' and is registered under Section 25 of the Companies Act, 1956. It is also registered under Section 12A of the Income Tax Act, 1961 and thus, is charitable institution which has also been observed by the Hon'ble ITAT in its Judgment dated 13.01.2015. Hence, Accounting Standards are not applicable in case of DDCA as its is a Charitable Institution.

4. After noting the above submissions of the Respondent, the Committee perused the Audited Financial Statements of DDCA certified by the Respondent and noted the Components as credited in Profit & Loss account of DDCA, which are reproduced as under:-

Particulars	Financial Years (Income in Rs.)			
	2008	2009	2010	2011
Income	4,80,32,394	15,63,25,630	15,71,88,307	13,08,31,124
Sales (liquor, soft drink, cigarette)	44,84,637	48,87,071	41,99,977	44,57,388
Other Income	11,43,302	41,38,938	65,90,978	27,36,777
Increase in Stock	4,30,130	38,559	87,786	1,10,061
Income from match	66,85,147	1,23,007	56,78,453	---
<b>Total (Rs.)</b>	<b>6,07,75,610</b>	<b>16,55,13,205</b>	<b>17,37,45,500</b>	<b>13,81,35,351</b>

*[Signature]*

*[Signature]*



5. After that, the Committee observed that Accounting Standards are designed to apply to the general purpose financial statements and other financial reporting, which are subject to the attest function of the members of the ICAI. Accounting Standards apply in respect of any enterprise (whether organised in corporate, cooperative or other forms) engaged in commercial, industrial or business activities, irrespective of whether it is profit oriented or it is established for charitable or religious purposes. Accounting Standards will not, however, apply to enterprises **only** carrying on the activities which are not of commercial, industrial or business nature, (e.g., an activity of collecting donations and giving them to flood affected people). ***Exclusion of an enterprise from the applicability of the Accounting Standards would be permissible only if no part of the activity of such enterprise is commercial, industrial or business in nature. Even if a very small proportion of the activities of an enterprise is considered to be commercial, industrial or business in nature, the Accounting Standards would apply to all its activities including those which are not commercial, industrial or business in nature.***”

5.1 It is also apparent that the Accounting Standards formulated by the ICAI do not apply to a Non-for-Profit Organisation (NPO) if **no part** of the activity of such entity is commercial, industrial or business in nature. The Standards would apply even if a very small proportion of activities is considered to be commercial, industrial or business in nature.

5.2 In the instant case, as the company's Profit & loss account comprises of components such as Income, Sales (liquor, soft drink, cigarette), Other Income etc, it can be concluded that the said auditee entity was engaged in the commercial activity. Hence, Accounting Standards formulated by the ICAI would apply to such an entity

5.3 Moreover, section 211(3A) of the erstwhile Companies Act, 1956 required that every profit and loss account and balance sheet of the company shall comply with the accounting standards.



5.4 Accordingly, no specific exemption was there in the Companies Act, 1956 for section 25 Companies. All Accounting Standards are applicable to the said auditee entity.

5.5 Moreover, the Committee was of the view that the accounting standards would apply irrespective of the fact that the said entity is also registered under Section 12AA of the Income Tax Act, 1961.

6. In view of above, the Committee held the Respondent Guilty of professional misconduct for non – compliances of Accounting Standards 5, 15, 18, 19, and 22 and 29 in the auditing of Financial statements of DDCA as elaborated in Prima Facie Opinion accepted by the Committee.

7. In respect of charge professional charges given to auditors over the audit fees, were not disclosed in the Profit and Loss Account nor in notes to accounts. In this respect the Committee noted that audit fees paid to the auditor was Rs.50,000/- during Financial Year 2008-09 (C-152), 2009-2010 (C-183) and Rs.1 lakh during 2011-2012 (C-214). But on perusal of Profit and Loss Account, it is noted that said amounts paid to the auditors were not separately disclosed as per disclosure requirement of Schedule VI (Part II) of the Companies Act, 1956.

8. In respect of other charges i.e. expenses in excess of 1% has not been disclosed separately and professional charges given to auditors over the audit fees, were not disclosed in the Profit and Loss Account nor in notes to accounts. In this respect the Committee noted that DDCA admitted this mistake and is in process of filing of compounding application under section 621A of the Companies Act, 1956. Although, it is noted that the bifurcation and the exact figures of expenses are not available, however looking at the admission by DDCA about said mistake, the Committee is of the view that Respondent failed to report the expenses more than 1% separately as per requirements of Part II of Schedule VI of Companies Act, 1956.

8.1 It is observed from the perusal of Profit and Loss Account that amounts paid to the auditors were not separately disclosed as required as per disclosure requirement

of Schedule VI (Part II) of the Companies Act, 1956. Accordingly, the Respondent is guilty of professional misconduct.

9. The next allegation is in respect of failure of the Respondent in qualifying mandatory requirements in financial statements of the Company under Schedule VI r/w Section 211 of the Companies Act, 1956.

9.1 The Respondent in this respect has submitted that GMR required the services of the professionals for IPL – Season I in the year 2008-09. They approached DDCA to propose name of such professionals who were engaged by GMR. GMR made payment to DDCA for further disbursing the same to said professionals naming Mr. Sunil Mittal, Mr Anil Khanna, Dr, S.S. Sareen and Mr. Pradeep Kashyap. It is further submitted that DDCA received Rs 7.50 lacs vide Cheque No. 210035 from GMR on this account. Meaning thereby there was no financial burden on DDCA as the amount was not charged to Revenue.

9.2 In view of these submissions, it is observed that the above clarification is in respect of directors and in respect of F.Y. 2008-09 only. In respect of other persons and in respect of remaining years no explanation was given and thus, by not offering any clarification, it could mean that the Respondent has nothing further to state and is accepting the allegation in respect of other persons and in respect of remaining years.

10. In respect of remaining charges as elaborated in para 1 above, the Committee noted that large advances were given to certain employees in cash which indicate weakness in internal control system (C-10 to C-11). Further, it is noted that entry is made by debiting expenditure account and crediting cash and/or bank account. The inspecting officer had cited certain instances (C-12 to C-13) for such transactions. On perusal of the same, it is clear that the amount is backed by the vouchers, but the amount involved is material and payment in lacs is made through cash only. It is further seen that in allegation mentioned under (v) (C-13), there were no corresponding vouchers and for which disclosure was not provided by the Respondent in Audit Report.





11. Moreover, the Committee observed that inspecting officer had cited certain instances (C-17 to C-18) regarding expenses which have been incurred by DDCA but were actually required to be borne by GMR as per agreement between DDCA and GMR. But it is observed that the DDCA had admitted that in the spirit of the game of cricket and healthy relations with all parties concerned, it had borne some of the expenses. The said fact was required to be disclosed by the Respondent in his audit report, but he failed make such disclosure in audit report.

### Conclusion

12. In view of above findings, the Committee was of the considered opinion that the Respondent is held **GUILTY** of Professional Misconduct falling within the meanings of Clauses (7) and (9) of Part-I of Second Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

h/

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

Sd/-  
(SHRI ARUN KUMAR, I.A.S. {Retd.})  
GOVERNMENT NOMINEE

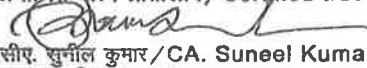
Sd/-  
(CA. G SEKAR)  
MEMBER

Sd/-  
(CA. MANU AGRAWAL)  
MEMBER

Date: 11/2/2022

h/

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सीए. सुनील कुमार / CA. Sunee! Kumar  
सहायक सचिव / Assistant Secretary  
अनुशासनान्तक निदेशालय / Disciplinary Directorate  
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
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