

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. : [PR/G/282/2017/DD/272/2017/BOD/447/2018]**

**CORAM (Present in Person):**

CA. Rajendra Kumar P, Presiding Officer  
Ms. Dolly Chakrabarty (IAAS, ret'd.), Government Nominee  
CA. Priti Savla, Member

**In the matter of:**

Sh. Bholu Ram Dewasi  
DDIT (Inv.), Unit-4(2),  
AayakarBhawan Annexe,  
P-13, Chowringhee Square,  
5th Floor,  
KOLKATA – 700 069.

.....Complainant

Versus

CA. Banwari Lal Mittal, (M.No. 055920)  
Sastasundar Ventures Ltd.,  
Azimganj House,  
Second Floor,  
7 Camac Street,  
Kolkata-700017.

.....Respondent

DATE OF FINAL HEARING : 27<sup>th</sup> July 2023  
PLACE OF FINAL HEARING : Kolkata

**PARTIES PRESENT(in person):**

Counsel for the  
Complainant Department : Shri Shailendra Prasad Kanaujia, Advocate  
Respondent : CA. Banwari Lal Mittal  
Counsel for the Respondent : CA. A. P. Singh

**FINDINGS:**

**CHARGE ALLEGED:**

- 1.1 The Respondent had formed various paper/shell companies for the sole purpose of providing of accommodation entries and selling of the companies so formed.
- 1.2 The Respondent is involved in financial irregularities by providing of accommodation entries through various jamakharchi companies controlled and managed by him to several beneficiaries in lieu of commission.
- 1.3 The Respondent had facilitated evasion of taxes by various beneficiaries to which he provided accommodation entries through the companies controlled and managed by him.
- 1.4 The Respondent appointed his employees, close relatives and associates as dummy directors in the companies controlled and managed by him and through them indulged in financial irregularities by facilitating accommodation entries through his said companies.

The Board noted that the Director(Discipline) in his Prima Facie Opinion held the Respondent 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 read with Section 22 of the said Act. However, the Board on consideration of the same was of the view that the conduct of the Respondent retracting with the earlier statement especially when the allegation is in relation of role of the Respondent in the shell companies needs to be examined. Accordingly, 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 read with Section 22 of the said Act and decided to proceed under chapter IV of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.



**BRIEF OF PROCEEDINGS HELD:**

2.

S.No.	Date of Hearing(s)	Status/direction	Compliance of direction, if any, given by the Board
1	31 <sup>st</sup> May 2019	Adjourned at the request of the Respondent.	-----
2	16th August 2019	<p>Part-heard and adjourned with the direction to Office and the Respondent to provide the following documents/information:</p> <p>The Office:</p> <p>i. To check from RoC whether there is any relation viz. Director/Auditor/shareholder of the Respondent for the Financial years 2013-2014 and 2014-2015 with the companies namely:</p> <p>a) M/s Trinetra Consultants Pvt. Ltd.</p> <p>b) M/s Arrav Developers Pvt. Ltd.</p> <p>c) M/s Daulat Finalease Pvt. Ltd.</p> <p>d) M/s Jagatjanani Consultants Pvt. Ltd.</p> <p>e) M/s Aarav Conclave Pvt. Ltd.</p> <p>f) M/s Inox Housing Pvt. Ltd.</p>	<p>The Respondent, in compliance of the said directions submitted the documents to the extent available.</p> <p>The Respondent also submitted that in the history of these companies, there is no adverse order on the issue of accommodation entries. There is no allegation in the complaint filed in this case regarding these companies.</p>

		<p>ii. Address of the aforesaid companies along with address of M/s Sastasundar Ventures Ltd.</p> <p>iii. Residential address of the Respondent.</p> <p>The Respondent:</p> <p>i. Address of the Companies where the Respondent is Director of other than above mentioned 6 companies.</p> <p>ii. Address and details of other Directors of the above mentioned 6 companies.</p> <p>iii. Copy of transaction (Journal) details (one month each) of years 2013-14 and 2014-15.</p>	
3	25 <sup>th</sup> September, 2019	<p>The case was part-heard and adjourned with the direction to the Complainant Department to provide the following documents/information:</p> <p>(i) Copy of Assessment Order of the Respondent for the financial year 2013-14 to 2014-15.</p> <p>(ii) Who were the beneficiaries from such transaction and Assessment Order for financial year 2013-14 to</p>	<p>1. Copy of assessment order of the Respondent for financial year 2013-14 to 2014-15</p> <p><u>Response:</u></p> <p>Assessment order of Banwari Lal Mittal for FY 2013-14 &amp; 2014-15 is not available as of now and will be provided at the earliest.</p> <p>2. Who were the beneficiaries from such transaction and assessment order for financial year 2013-14 in 2014-15 of such beneficiaries?</p>

		<p>2014-15 of such beneficiaries.</p> <p>(iii) Copy of Assessment Order of Sri Sushil Kumar Khetan for financial year 2013-14 to 2014-15.</p> <p>(iv) Copy of Assessment Order of M/s Janki Textiles and Industries Pvt. Ltd., M/s Arena Textiles and Industries Pvt. Ltd., M/s Prism Impex Private Ltd. and M/s Deevee Commercials Limited for financial year 2013-14 to 2014-15.</p> <p>(v) Form 16, Form 26 AS of Mr. Manoj Sharma, Mr. Mantosh Yadav.</p>	<p><u>Response:</u></p> <p>During FY 2008-09, both M/s Advent Fiscal Pvt. Ltd. and M/s Nifty Portfolio Pvt. Ltd. had taken accommodation entries in the form of share capital amounting to Rs 100 crores from paper shell companies, controlled &amp; managed by Banwari Lal Mittal. Name of those paper shell companies are M/s Deevee Commercial Pvt. Ltd. M/s Arena Textiles and Industries Ltd, M/s Janki Textiles &amp; Industries Ltd. and Ms Prism Impex Pvt. Ltd. However, disclosure of information with respect of assessee will be provided after receipt of application in Form No. 46 (see rule 113) as per section 138 of Income Tax Act, 1961. Copy of Form No. 46' is enclosed with this letter.</p> <p>3. Copy of assessment order of Shri Sushil Kumar Khaitan for financial year 2013-14 to 2014-15.</p> <p><u>Response:</u></p> <p>Assessment orders of Shri Sushil Kumar Khotan for FY 2013-14 &amp;</p>
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			<p>2014-15 is not available at this end, as of now and will be provided to you at the earliest.</p> <p>4. Copy of assessment order of M/s Janki Textiles and Industries Pvt. Ltd., M/s Arena Textiles and Industries Pvt. Ltd., M's Prism Impex Private Ltd. and M/s Deevee Commercials Limited for financial year 2013-14 to 2014-15.</p> <p><u>Response:</u></p> <p>Assessment orders of M/s Janki Textiles and Industries Pvt. Ltd., M/s Arena Textiles and Industries Pvt. Ltd., M/s Prism Impex Private Ltd. and M/s Deevee Commercials Limited for FY 2013-14 &amp; 2014-15 is not available at this end, as of now and will be provided at the earliest.</p> <p>5. Form 16. Form 26 AS of Mr. Manoj Sharma, Mr. Mantosh Yadav</p> <p><u>Response:</u></p> <p>Since year in this point is not mentioned, information cannot be provided.</p>
4	12th December, 2022	The matter was part-heard and adjourned with the following direction to:	The Complainant Department did not submit their response.

		<p>The Complainant:</p> <ol style="list-style-type: none"> <li>1. Authorization letter in terms of the provision of Rule 3 (2) read with Rule 3 (5) of the Chartered Accountants Rules, 2007, by an officer holding a post not below the rank of Joint Secretary or equivalent of the Department.</li> <li>2. To submit the papers/documents/evidence before 6th January 2023 to establish the role of Respondent.</li> </ol>	
5	6 <sup>th</sup> January 2023	Adjourned at the request of the Complainant Department.	-----
6	3 <sup>rd</sup> May, 2023	<p>Final opportunity given to the Complainant Department to provide evidence (with a copy to the Respondent) to the effect that steps have been taken by them to collect the tax from the Respondent in respect of the income which they purport has been earned by him on account of alleged transactions/any other evidence to substantiate the allegations against the Respondent. Also, whether any of the family members of the Respondent are directors in the alleged companies and any action taken by the Complainant Department against them.</p>	The Complainant Department did not submit their response.

7	27 <sup>th</sup> July, 2023	Heard and concluded.	-----
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**BRIEF SUBMISSIONS OF THE PARTIES TO THE CASE:**

**(a) Respondent:**

3. The Respondent in his written submissions, inter-alia, stated as under:
- I. Section 21A of the Chartered Accountants Act 1949 specifically mentions that the council "shall" constitute "a" Board of Discipline, which means that the council shall only constitute the one Board of discipline. Further having two Board of Discipline at any given point of time, becomes invalid, unconstitutional and goes outside of the purview of what is envisaged in the law prescribed under Section 21A of the Chartered Accountants Act, 1949. The Respondent brings to notice the fact that in FY 2018-19, the ICAI had two Board of Discipline which is illegal and unconstitutional. The said fact has been mentioned in the annual report of ICAI for 2018-19, wherein it has been clearly stated that there were two Board of Disciplines.
  - II. The proceedings are going on as per Clause (2) of PART IV of the First Schedule of the Chartered Accountants Act 1949 wherein the Opinion of the Council is a pre-requisite. In spite of my requests for the copy of the opinion of the Council, the same has not been provided.
  - III. Form-I of the complaint is not filled in as per the requirements of the regulations. Form-I was submitted without mentioning the Clause, Particulars of allegation(s) serially numbered together with clause/part of the relevant Schedule(s) under which the alleged acts of commission or omission or both would fall) under which the allegations are made. Form was submitted with the assumption that the Respondent is a "Member in Practice" without even verifying the fact that he is not a Member in Practice. This is a Technical and factual error. The applicable clause was mentioned only in the subsequent letter, which is not as per the Regulations, as Rule 5(5) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 207 specifies a particular procedure to rectify Form I.



- IV. In the absence of Form duly filled in, this is just an Information and should be dealt with as per Rule 7 of Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 for the purpose of "Information". The current proceeding before the Hon'ble Board of Discipline is not as per Regulations.
- V. Rule 3(5) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 requires authorization by competent authority. This is a well settled Law that "*I cannot delegate something which I don't have*". In the instant case, the authorization by Director of Income Tax (Investigation) is not as per the Provisions of the Income Tax Act, 1961 as the said Act don't have any provision to file such complaints and the said Director of Income Tax (Investigation) has the authority only under Section 131 and 132 of the Income Tax Act, 1961. The complaint has been filed without jurisdiction as the complainant is not the Respondent's Assessing Officer and therefore, without proper authorization under the said Rule 3(5).
- VI. The case is regarding complaint made by the Deputy Director of Income Tax (Investigation), Unit-4(2), Kolkata regarding the alleged offence under the provisions of the Income Tax Act, 1961 (The Act). The basis of complaint is only an alleged Statement (Disputed document) which was taken forcefully and under stress. The said alleged Statement was retracted by notarizing a sworn Affidavit on the very next day and a copy of the said affidavit of retraction was filed with the Office of the Principal Director of Income Tax (Inv), Kolkata, immediately. The Income Tax authorities have not cross-examined Shri Mantosh Kumar Yadav, Shri Manoj Sharma and the Respondent on their retraction statements to which reference has been made in Form-I. In the circumstance, there can also be no question about the said statements being relied on either by the Director (Discipline) or by the Board of Discipline.
- VII. The BOD has overlooked the fact mentioned in Para 10.10 of the PFO, that the Complainant Department also did not question further with regards to the retractions dated 24 March 2015 made by the Respondent when the new statements on 4<sup>th</sup> August 2016 and 26<sup>th</sup> August 2016 were taken by the Complainant Department.
- VIII. After the disputed document, further survey was conducted at the Respondent's premises and detailed investigations were conducted by the Income Tax Department

including recording of further statements. All investigations have been completed after the disputed statement and there were no adverse findings against him in the subsequent Investigation made by the Income Tax Department. There is no assessment order under the provisions of the Act wherein there is any adverse findings against him and there is no proceeding pending against him under the provisions of the Act.

- IX. The BOD has not considered that fact that there were no additions, or any adjustments made, in the Income Tax Returns of the Companies under Survey.
- X. The Statements were taken on 23 March 2015, however, the complaint as per Form I was only filed on 7 September 2017. The reason for such a delay in filing the complaint has not been mentioned. Further, the delay of more than two years shows that the filing of the complaint was an afterthought of the Income Tax Department. These are nothing but dubious intents of the Government Authorities to harass the professionals by hook or by crook.
- XI. The officer - Sri N.T Glow, who recorded the statement under Section 131 of the Income Tax Act, 1961 on 23 March 2015 as DDIT - Unit 1(2) had not held respondent involved in the alleged practice of accommodation entries. This shows that the person who took the statement and the person who filed the complaint are two different people and there is no communication between them with regard to the facts.
- XII. The disputed alleged statement is an identical and largely copy paste prewritten document wherein the signature of the respondent was taken under stress and threat.
- XIII. The disputed alleged statement is not the only statement recorded on the allegation, but in fact apart from the disputed alleged statement, 5 more statements have also been recorded. Three times on three different dates before the date of disputed alleged statement and two times on two different dates after the said disputed alleged statement. But the complainant just filed by picking up the disputed alleged statement and was conveniently silent on the other 5 statements.
- XIV. A total of three times full scale of Survey have been undertaken by the Income Tax Department to examine and investigate the allegation two before the date of the disputed alleged statement and one after the date of the disputed alleged statement. Investigation and assessment of all three surveys were completed after the



date of the disputed alleged statements. Nothing adverse was found in the investigation and assessment by the Income Tax Department.

- a. As a matter of fact, the assessment of one survey was completed after the date of the disputed alleged statement by Mr. N T Glow, who recorded the said disputed alleged statement but subsequently was transferred to the assessment wing. The same officer found nothing against the Respondent while making the assessment.

XV. Overlooking the subsequent investigation and only on the basis of disputed documents the complaint has been filed. The basis of any complaint to Board of Discipline regarding Income Tax matter has to be an assessment order and not a disputed statement.

**(b): Complainant:**

4. The Complainant Department, inter-alia, made the following submissions:
  - (i) The Circular vide F.No. 286/2/2003-IT (Inv) dt. 10.03.2003 is related to confession of additional Income during the course of search & seizure and survey operation. In the instant case, there is no such confession of additional income by Shri Banwari Lal Mittal in his statement dt. 23.03.2015. Hence, the referred circular is not related to this case. At the same time, it is hereby mentioned that the Respondent in his Statement dt. 23.03.2015 has admitted that he would pay tax to the Department many times more than the accommodation entry he had arranged. Hence, the submission of the Respondent should be rejected.
  - (ii) Statement of the Respondent was recorded u/s 131 of the Income Tax Act on dt. 23.03.2015. Whether the statement is recorded u/s 131 or 132(4) of the Income Tax Act, both are juridical proceedings with due importance before the Income Tax Act.
  - (iii) In his statement dt. 23/03/2015, the Respondent had stated that Mantosh Kumar Yadav, Manoj Sharma, Pritam Ghosh, Akash Chatterjee, Shailesh Sahal, Sandeep Sharma, Sashi Kant Das and Sushil Kumar Khaitan are dummy directors of all the paper companies controlled and managed by him. He had also stated that all the work and regulatory compliance of all the paper companies is supervised by his employee named, Pradip Kumar Choudhary.

- (iv) Earlier, in his statement dt. 10/03/2015, Sri Mantosh Kumar Yadav had stated that he was a salaried employee of the Respondent, and he was made director in various companies controlled by the Respondent. He had also admitted that Advent Fiscal Private Limited, Mumbai & Nifty Portfolio Service Pvt. Ltd., Mumbai are beneficiary companies who had taken accommodation entries in the form of share capital to the tune of Rs. 100 Crores from the companies, controlled and managed by the Respondent.
- (v) Later, the statement of the Respondent was recorded on 04.08.2016 and 24.08.2016, which were not linked to the proceedings under which statement of the Respondent was recorded on 23.03.2015. Hence, the allegations made based on the statement of the Respondent recorded on oath on 23.03.2015 before the DDIT(Inv), Unit-1(2), Kolkata stands firm as the issues mentioned in the statement was not touched in the statements recorded on later dates i.e., on dt. 04.08.2016 and 24.08.2016.
- (vi) The Respondent was not the beneficiary himself but was an entry operator provider. Thus, the question of pending demand doesn't arise per se.
- (vii) It was declared in Affidavit before the Notary Public, Kolkata dt. 24.03.2015 by the Respondent that he was put under pressure by the Income Tax Authorities and hence, he retracts from such deposition made under extreme distress and threats. Also, he stated that the matter was informed to the Directorate of Income Tax (Investigation), Kolkata and according to his advice, a letter along with the retraction statement was submitted on 25th March 2015. However, there is nothing in record that the statement was recorded under pressure, extreme distress, and threats. In contrary to this, he himself has handwritten the following words in conclusion note with signature before the DDIT(Inv.), Unit-1(2), Kolkata during the course of recording of statement on dt. 23.03.2015, which is reproduced below: -
- "The above statement has been recorded exactly in my own version and without any fear, force or coercion. I have given the above statement in sound state of mind."*
- In view of above facts, it is clearly proved that it is a case of falsification of facts by the Respondent so that he may come clean against the allegation made by the Department.



(viii) There is no specific jurisdiction of the DDIT(Inv.) and his enforcement of power does not require any pending proceedings u/s 131 or 132 of the I.T. Act.

(ix) On perusal of Assessment Orders in the case of M/s Advent Fiscal Pvt. Ltd. & M/s Nifty Portfolio Pvt. Ltd. for the A.Y. 2009-10, it is found that both the companies had received share premium of Rs. 50 Crores during the F.Y. 2008-09. Details are given below:-

F.Y.	Share premium received by M/s Advent Fiscal Pvt Ltd (in Rs.)	Share premium received by M/s Nifty Portfolio Pvt Ltd (in Rs.)
2008-09	25.00 Crores	25.00 Crores

Both these companies - M/s Advent Fiscal Pvt. Ltd & M/s Nifty Portfolio Pvt Ltd. has received share capital and share premium of Rs. 50 crores from four companies namely, M/s Deevee Commercial Pvt. Ltd., M/s Arena Textiles and Industries Ltd., M/s Janki Textiles & Industries Ltd. and M/s Prism Impex Pvt. Ltd. All these four share-holder companies are paper/shell companies and they have provided accommodation entries in the form of bogus share capital and share premium in M/s Advent Fiscal Pvt. Ltd. & M/s Nifty Portfolio Pvt. Ltd. During the course of assessment proceedings, the jurisdictional Assessing Officer has added bogus receipt of share capital and share premium to the tune of Rs. 25 Crores each (in case of both companies namely, M/s Advent Fiscal Pvt. Ltd. & M/s Nifty Portfolio Pvt. Ltd.) received during the F.Y. 2008-09 to their respective business income. In his statement dt. 23/03/2015, the Respondent has stated that Sushil Kumar Khaitan is a dummy director of paper companies controlled and managed by him. During the course of survey action u/s 133A of the I.T. Act on 12/04/2013, statement of Sushil Kumar Khaitan was recorded u/s 131 of the I.T. Act 1961. Sushil Kumar Khaitan is a director of all these four shares- holder companies mentioned above and he has confirmed in his statement that accommodation entries in the form of share capital and share premium has been introduced in the companies of Valuable Group (M/s Advent Fiscal Pvt. Ltd. & M/s Nifty Portfolio Pvt Ltd.) during the F.Y 2008-09.

Also, in his statement dt. 23/03/2015, Shri B.L. Mittal has stated that Pradeep Kumar. Choudhary is his employee who looks after all the work and regulatory compliances of all the paper companies. During the course of survey operation u/s 133A on 12/04/2013,

statement of Shri Pradeep Kumar Choudhary was recorded, and he had admitted that above said four companies are bogus share applicants and accommodation entries in the form of share capital & share premium has been provided to M/s Advent Fiscal Pvt. Ltd. & M/s Nifty Portfolio Pvt. Ltd during the F.Y. 2008-09.

- x. Mere filing of Income Tax Return does not exempt any company to be jama kharchi company. Financial accounts viz., Balance Sheet, Profit & Loss A/c etc. can exactly ascertain the nature of company whether it is paper/jama kharchi companies or not. On perusal of Income Tax Returns of M/s Trinetra Consultants Pvt. Ltd. & M/s Jagatjanni Consultants Pvt. Ltd. for the F.Y. 2013-14 and 2014-15, following information about both the companies have been gathered:-

	M/s Trinetra Consultants Pvt. Ltd.		M/s Jagatjanni Consultants Pvt. Ltd.	
	FY 2013-2014	FY 2014-2015	FY 2013-2014	FY 2014-2015
Share capital and premium	8,79,51,904	8,79,51,904	43,82,48,000	43,96,44,531
Loans and advances taken	0	21,15,00,000	0	0
Fixed assets: Gross Block	0	0	0	0
Investment in unlisted equities	0	0	19,64,50,000	26,58,94,000
Loans & advances given	8,75,20,000	29,90,20,000	2,53,85,000	68,00,000
Stock in trade/finished goods	0	0	0	0
Turnover	33,000	0	25,000	25,000

Rent paid	0	0	0	0
PBT	17,319	(-)22,184	(-)2,90,763	17,10,744
PAT	13,589	(-)22,184	(-)2,90,763	17,10,744

It is apparent from the above table that both these companies have received huge share capital and premium in crores and have made investments in unlisted equities in crores and also have given loans and advance in crores. Both these companies have neither any fixed assets nor any stock-in-trade / finished goods. Both these companies neither have any fixed assets or paying any rent. Also, both the companies have shown meagre turnover (in thousands) in comparison to huge capital and premium. These figures corroborate that both M/s Trinetra Consultants Pvt. Ltd. & M/s Jagatjanni Consultants Pvt. Ltd. do not have any actual business and are basically jama kharchi / paper companies.

In view of above facts, allegations made based on the statement of the Respondent recorded on oath on 23.03.2015 before the DDIT(Inv.), Unit-4(2), Kolkata stands firm that the Respondent was engaged in providing accommodation entries through jama kharchi companies controlled and managed by him.

- (xi) In addition to above, following points should also be considered while making an opinion regarding allegation made against the Respondent which are given below:
- a) He is engaged in providing accommodation entry through various paper companies in which he has appointed many dummy directors.
  - b) He has stated three addresses being used for providing accommodation entries which are at (a) 1. British India Street, (b) 7C, Kiran Shankar Roy Road, (c) 2G, Ballygunge Place East (d) 8. Camac Street.
  - c) Financial analysis of the two companies namely, M/s Trinetra Consultants Pvt. Ltd. & M/s Jagatjanni Consultants Pvt. Ltd. also indicate the same.
  - d) He has stated modus operandi of accommodation entries in the form of share capital/share premium and unsecured loan.

**OBSERVATIONS OF THE BOARD:**

On perusal of the documents and submissions on record, the Board observed that the Respondent raised certain technical objections with regard to the admissibility of the case and decided to deal with them before arriving at its Findings.

5. As far as the objection of the Respondent as to constitution of two Benches of the Board is concerned, the Board viewed that two Benches of the Board of Discipline were constituted with an avowed object to accelerate the disposal of disciplinary cases and the administrative Ministry i.e. Ministry of Corporate Affairs had also nominated the members as required under Section 21A (1)(b) to the Board of Discipline. On a conjoint reading of the provisions of the General Clauses Act, 1897 (which explicitly states that the words in singular shall include the plural, and vice versa) with the provisions of the Section 21A (1) of the Chartered Accountants Act, 1949(as amended) it is clear that the Council is empowered to constitute more than one Board of Discipline. The Benches so constituted carried out its functions inter-alia by conducting hearings and awarding punishments in disciplinary cases falling within their respective jurisdictions during the relevant period. Besides, the Respondent failed to place any material to show that the constitution of two benches caused any prejudice to him. Also, the Board of Discipline was of the view that it is not the appropriate forum to challenge the constitution of its two Benches.
6. As regards the objection of the Respondent regarding the opinion of the Council as stipulated in Item (2) of Part IV of the First Schedule, the Board relied on para 17 and 18 of the Order dated 18<sup>th</sup> October 2018 passed by the Hon'ble Appellate Authority in the Appeal no. 12/ICAI/2017 and 14/ICAI/2017 - Anil Kumar Aggarwal Vs. The Institute of Chartered Accountants of India and others and Radhey Shyam Bansal Vs. The Institute of Chartered Accountants of India and others as under:  
*"17. It is pertinent to note here that this Authority has already dealt with and decided this issue in the Appeals earlier namely 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) and has 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.

18. In our considered view, the same shall *mutatis mutandis* apply in both these Appeals and accordingly, we find no merit in this ground. Thus, we hereby reject this ground of Appeal as taken by the Appellants.”.

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.

7. As regard the objection of the Respondent that specific clause of the misconduct had not been defined by the Complainant, the Board was of the view It is trite that a Complainant is required as per law to state the allegations which are to form a factual foundation for an Adjudicating Authority to exercise jurisdiction and even if an incorrect provision of law/no clauses is mentioned by the Complainant in FORM I, that alone cannot be a ground to dismiss a complaint if otherwise the Authority has the jurisdiction to entertain the complaint.

Further, though the provision of Rule 3 is couched in a “mandatory form” by use of words such as “shall” and appear to be mandating a procedure that must be necessarily followed. However, mere use of language which suggest or purports to suggest a “mandate” may not alone be sufficient to regard a procedural rule to be mandatory to the extent that its non-compliance could vitiate the entire proceeding.

While coming to the said view the Board took into view the following observations of the

Hon'ble Supreme Court in the matter of Uday ShanakarTriyar v. RamKalewar Prasad Singh and Anr. (Reported in AIR 2006 SC 269) as under:

*“ Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use.”*

Thus, non-mentioning of clauses can at the highest be treated as “technical defect.” Infact, the procedure to be adopted in case of defective complaint is that the defect, if pointed out, and not cured by the complainant, it is incumbent upon the Director (Discipline) to form a prima facie opinion of no case and recommend its closure. However, the Board of Discipline is vested with discretion to ignore the recommendation, if it deems fit, and proceed further with the matter.

The onus to formulate a prima facie opinion as to the misconduct rests with the Director (Discipline) and therefore, premised on the pleadings filed which contains the allegations and documents placed on record, it is the Director (Discipline) which has to first formulate a prima facie opinion on the alleged misconduct.

Therefore, notwithstanding the assertions as to the particular clause of misconduct by a Complainant, the Director (Discipline) shall, after perusing the material available, conclude as to existence or otherwise of the misconduct alleged. This is also apparent from the provisions of various sub clauses of Rule 9(2)(a) of the Misconduct Rules, 2007 , which require the Director(Discipline) to place the matter before the Board of Discipline , if the misconduct alleged falls within the First Schedule and before the Disciplinary Committee , if the alleged misconduct falls within the Second Schedule or both under the First and Second Schedule. This also supports the view that the sifting of the allegations to identify the clauses of misconduct is to be performed by the Disciplinary Directorate.

This issue can also be addressed from the perspective of the status of the complainant. The requisite provision in the statute or under the Rules does not prescribe as to who can

file a complaint under the provisions of the Act alleging misconduct by a member. Therefore, the Complainant can be a statutory authority, a member of the Institute who is well versed with the provisions of the Act or even a member of public who may not be familiar with the provisions of the Act. In such a scenario, to give a pedantic interpretation to the provisions of the Act and the Rules making it incumbent on a Complainant to specify clauses of misconduct would be denying the remedy otherwise available under the statute.

If the allegations stated in the complaint do not fall within any specified clauses of professional misconduct, the same may however be a case of "other misconduct" and the ICAI would be within jurisdiction to proceed further on the allegations. Therefore, non-mentioning of clauses pertaining to "misconduct" does not in any manner vitiate the proceedings.

8. As regard the charge alleged, the Board noted the Complainant Department had recorded a Statement of the Respondent on Oath before DDIT (Inv.), Unit 1(2), Kolkata in connection with an enquiry conducted by Directorate of Income Tax (Investigation), Kolkata under section 131 of the Income Tax Act, 1961 on 23.03.2015 wherein he, inter-alia, deposed as under:

*"Q.2- What is your business/profession?"*

*Ans.- I am engaged in providing accommodation entry through the various paper companies in which Mr. Mantosh Kumar Yadav, Manoj Sharma, Mr. Pritam Ghosh, Shri Akash Chatterjee, Shailesh Sahal, Sandeep Sharma, Shashi Kant Das and Mr. Sushil Kumar Khaitan are dummy Directors. All the work and regulatory compliance of all the paper companies are supervised by Mr. Pradip Kumar Choudhary, my employee.*

*Q.5 Please state modus operandi of accommodation entries.*

*Ans- Sir, cash/chèque is received from actual beneficiaries which is rotates through numerous paper companies and then finally cheque is issued to the beneficiary in form of share capital/share premium and unsecured loan. In lieu of providing accommodation entry we get commission from beneficiaries.*

Q. 14. Please go through the statement given by Mr. Manoj Sharma, Mr. Mantosh Kumar Yadav recorded u/s 131 of the Income Tax Act, 1961 on 10-03-2015. Please offer your comments.

Response- Sir, I confirm the same. They are dummy directors and worked under Mr. Pradeep Kumar Choudhary for the companies engaged in providing accommodation entry and controlled and managed by me. I want to add that they are my employee. "

9. However, the Respondent retracted the above statement on 24.03.2015(i.e. on the next day of the Statement) by filing a notarised sworn Affidavit before the Complainant Department on 25<sup>th</sup> March 2015. The Respondent in the said Affidavit, inter-alia, deposed as under:

"1) That as on 23.03.2015, The Deputy Director of Income Tax (Investigation), Unit - 1(2), Kolkata - 700 069 required my personal appearance for recording of statement at the office of the said officer.

2) That I am a patient of diabetic and high blood pressure.

3) That due to Hypertension and high Diabetic my health was not in good condition on 23-03-2015.

4) That the concerned officer had given me a prewritten statement and asked me to sign under oath. I was sick and was not in good health and proper mind to give fair statement about Income Tax Proceedings. Still, I was put under pressure by the Income Tax Authorities. I was completely exhausted and tensed under the continuous pressure from the Income Tax Authorities. Under such exhausted, tensed and depressed & psychological fear, I signed the statement, and I was totally in dark or may say unaware of the contents of the statement as produced in front of me at their office.

5) That I was never involved in any activity of accommodation entry.

6) That Trinetra Consultant Pvt Ltd is a company not managed and controlled by me. I am neither a shareholder nor a director of the company and never had been a beneficiary of any kind from Trinetra Consultant Pvt Ltd.

7) That Mr Manoj Sharma, Mr Mantosh Kumar Yadav and Mr Sashi Kanta Das has never been my employees.

8) That Mr Pradeep Kumar Chaudhary is not my employee but an employee of Microsec financial Services Ltd wherein he was deputed to provide consultancy to the clients of Microsec financial Services Ltd. He was never instructed to indulge in any activity which is not as per law of the land including the Income Tax Act, 1961.

Therefore, Now I retract from such deposition, made under extreme distress and threats. The above statements are true to the best of my knowledge and belief."

10. The Board also noted that the Complainant Department brought on record statements before DDIT (Inv.), Unit-1(2), Kolkata in connection with an enquiry conducted by Directorate of Income Tax (Investigation), Kolkata under section 131 of the Income Tax Act, 1961 of two persons namely Shri Mantosh Kumar Yadav and Shri Manoj Sharma, who were the alleged employees of the Respondent. Their relevant deposition in their Statements is as follows:

Statement of Shri Mantosh Kumar Yadav- 10<sup>th</sup> March, 2015

"Q.6- Please state your business/profession?

Ans- Sir, I am a salaried employee of Banwari Lal Mittal of Microsec group. I am working under him since 2006 and subsequently made as director in various companies controlled by Pradeep Kumar Choudhary and B.L. Mittal. The following are the companies and concerns in which I am/was director:

A list of 66 companies has been provided by Shri Mantosh Kumar Yadav.

All the above concerns were form with sole purpose of providing accommodation entries.

Q.9. Please explain the role of Pradeep Kumar Choudhary and B.L Mittal in detail.

Ans. Sir, Mr. Pradip Kumar Choudhary and Mr. B.L Mittal actually controls and manages all the companies/concerns in which I am a director.

Q.10. Please state modus operandi of accommodation entries.

Ans. Sir, Cash is received from actual beneficiaries and are routed through web of paper companies and then finally funds are transfers to the beneficiaries through RTGS/NEFT in form of share capital/share premium and unsecured loan."

Statement of Shri Manoj Sharma- 10<sup>th</sup> March, 2015

*"Q.7. Please state your business/profession.*

*Ans. Sir, I am a salaried employee of Mr. Banwari Lal Mittal. I am one of the directors in various paper companies which are managed and controlled by Mr. Banwari Lal Mittal and Pradeep Kumar Choudhary*

*Q.8. Please state your Source of Income.*

*Ans. Sir, I am working under B.L Mittal since 2007, I get Salary of Rs.9000/- per month.*

*Q.9. Please furnish the details of companies in which you are one of the Directors.*

*Ans. Sir, I am/was directors in the following companies :-*

*A list of 62 companies was provided by Shri Manoj Sharma.*

*However, all the above companies are controlled and managed by Mr. Banwari Lal Mittal and Mr. Pradeep Kumar Choudhary. The above said companies do not have any real business activities. These companies are engaged in providing accommodation entry.*

*Q.10. Please state modus operandi of accommodation entries.*

*Ans-Sir, as far as my knowledge goes cash is received from actual beneficiaries and fund is rotate through numerous paper companies and then finally cheque is issued to the beneficiary in form of share capital/share premium and unsecured loan. However, Mr. Banwari Lal Mittal will De able to explain the details of modus operandi.*

*Q. 22. Please go through your statement recorded u/s 131 of the Income Tax Act, 1961 at 8, Camac Street, Gauri Business Centre, Shanti Niketan Building, Kolkata on 03-02-2015 by DDIT (Inv), Mumbai and offer your comments.*

*Response- Sir, the statement recorded on 02-02-2015 is correct. However, I want to add that I work under the instructions of Mr. Banwari Lal Mittal and Pradeep Kumar Choudhary not on instruction of Mr. Mantosh Kumar Yadav."*

11. The Board further noted that Mr. Mantosh Kumar Yadav and Mr. Manoj Sharma had also retracted their above statements by filing Affidavit on 12.03.2015 before Notary Public, Kolkata.
12. Further, the Board observed that the 2<sup>nd</sup> Statement of the Respondent was recorded on 4<sup>th</sup> August 2016 under section 131 of the Income Tax Act, 1961 before the ACIT/CIT, Circle 2(3), Kolkata, wherein, he, inter-alia, deposed as under:

*"Q5. Please take your Business or Profession.*

*Ans. I am actively engaged in the business of online digital pharmacy [www.sasta.sundar.com](http://www.sasta.sundar.com) and consumer engagement portal [www.foreseegame.com](http://www.foreseegame.com). further, I am also Managing Director of M/s. Microsec Financial Services Ltd. and Director in Microsec Resources Pvt. Ltd., M/s. Microsec Commerce Ltd., M/s. Microsec Insurance Brokers Ltd., Microsec Capital Limited and other group companies of Microsec Group.*

*Q6. Please state clearly the nature of the business activities of the companies in which you are working as a director.*

*Ans. Microsec financial Services Ltd. is the core investment company and engaged in the business of providing investment in form of equity and debt to other Microsec group companies. Microsec Resources Pvt. Ltd. is RBI registered NBFC and engaged in the business loan advances. Microsec Commerce Ltd. is member of MCX and NCDEX and engaged in providing commodity broking services to its registered clients Microsec Insurance Broker Ltd. is IRDA registered insurance broker and engaged in providing Insurance Broking Services. Microsec Health Buddy Ltd. is engaged in online digital pharmacy through its portal [www.sastasundar.com](http://www.sastasundar.com). Microsec Tech solutions Pvt.Ltd. is engaged in providing consumer engagement services through its portal [www.foreseegame.com](http://www.foreseegame.com) Microsec Capital Limited is engaged in the business of providing financial services i.e. Equity Broking, Investment Banking, Debt Syndication, Depository Participant etc."*

13. Also, a third statement of the Respondent u/s 131 of the Income Tax Act, 1961 was recorded during the course of survey operation under Section 133A of the Income Tax Act, 1961 on 24<sup>th</sup> August 2016 by DDIT(Inv.), Kolkata wherein nothing is coming to

establish that the Respondent is involved in business of accommodation entries as being alleged.

14. The Board also noted that the Respondent is a director in 8 companies. He brought on record copy of the audited financial statements together with the Income Tax Return of the said companies for the AY 2014-15, 2015-16 and 2018-19 and the copy of the last Assessment Order under Section 143(3)/143(1) of the Income Tax Act 1961 of the 7 companies. The Board noted that the following companies had filed a return of loss for the following AYs:

S.no.	Name of the company	AY
1.	M/s Microsec Financial Services Ltd.	AY 2014-15 and 2015-16
2.	M/s SastaSunder Ventures Ltd.	AY 2018-19
3.	M/s Microsec Health Buddy Ltd.	AY 2014-15 and 2015-16
4.	M/s SastaSunder Health Buddy Ltd.	AY 2018-19
5.	M/s Microsec Technologies Ltd.	AY 2014-15 and 2015-16
6.	M/s Microsec Tech Solutions Pvt. Ltd.	AY 2015-16
7.	M/s Retailer Shakti Supply Chain Pvt. Ltd.	AY 2018-19
8.	M/s Genu Path Labs Ltd.	AY 2018-19
9.	M/s Luv Kush Projects Ltd.	AY 2014-15, 2015-16 and AY 2018-19

Further, on perusal of the copy of the Assessment Order(s) brought on record by the Respondent in respect of the companies in which he is one of the directors, the Board observed as under:

Name of the assessee	Assessment year	Expenditure disallowed	Reason for disallowance
M/s Microsec Finance Services Limited	2014-2015	Rs. 9,00,000/- excess provision for Standard Asset	No plausible reason given by the assessee for writing back Rs. 9,00,00/- as provision for Standard Asset. So, the same was disallowed for want



			of any reasonableness and evidence. Hence, a demand of Rs. 1,29,940/- was determined by the Income Tax Department.
M/s Microsec Health Buddy Limited	2014-2015	Rs. 9,80,845/- disallowance u/s 14A of the IT Act 1961 read with Rule 8D of the IT Rules.	Rule 8D of the IT Rules provides for disallowance on investment, income from which does not or shall not form part of total income. Disallowance u/s 14 A of the I.T. Act is applicable in the case of assessee, even if, the assessee has not earned/claimed any exempt income during the year under consideration.
M/s Microsec Resources Private Limited	2014-2015	Rs. 1,30,73,310/- discount written off on Deep Discount Debentures	The assessee has unreasonably allowed discounts to a person covered by Clause (b) of Sub-section (2) to the Section 40A of the I.T. Act, 1961 which is now denied to the assessee and is being disallowed to add back with the returned income in normal. Hence, a demand of Rs. 1,01,870/- was determined by the Income Tax Department.

15. Thus, on a detailed perusal of the submissions and documents on record, the Board was of the view that the Complainant Department has not been able to substantiate with documentary evidence its claim that the Respondent had formed various shell companies for the purpose of providing accommodation entries in lieu of commission. The Complainant Department could not bring on record any Assessment Order to show that commission income has either been added to the income of the Respondent on account of any accommodation entries provided by him, as alleged or bogus income has been added to the income of the beneficiary companies. The Board noted that the primary evidence which the Complainant Department has brought on record for the charges alleged against the Respondent is the copy of his own Statement recorded on 23<sup>rd</sup> March 2015 and the Statement of his alleged 2 employees recorded on 10<sup>th</sup> March 2015 before the concerned official of the Complainant Department which had been subsequently retracted by him. The subsequent Statement of the Respondent recorded on 4<sup>th</sup> August 2016 and 24<sup>th</sup> August 2016 before the concerned official of the Complainant Department does not indicate any admission on the part of the Respondent as alleged. Also, the Statement of Sh. Sushil Kumar Khaitan, director of Shoparna Brothers Pvt. Ltd., Gauri Advisory Pvt. Ltd., Arena Textiles and Industries Ltd. and others and Sh. Pradeep Kumar Choudhary, advisor in Shoparna Brothers Pvt. Ltd., recorded on 12<sup>th</sup> April 2013 before the concerned officials of the Complainant Department does not establish anything in respect of the charge alleged against the Respondent. Beyond that, despite opportunities given to the Complainant Department to substantiate the charges alleged against the Respondent, the Complainant Department failed to bring on record any conclusive evidence to substantiate the charge alleged against the Respondent. In view of the same, the Board held the Respondent **NOT GUILTY** in respect of the charge alleged.

**CONCLUSION:**

16. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **NOT 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. Accordingly, the

Board passed Order for closure of the case in terms of the provisions of Rule 15 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.


Sd/-  
CA. Rajendra Kumar P  
(Presiding Officer)

Sd/-  
Ms. Dolly Chakrabarty (IAAS, ret'd.)  
(Government Nominee)

Sd/-  
CA. Priti Savla  
(Member)

DATE: 21-11-2023

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

  
नीलम पुंडीर / Neelam Pundir  
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
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