

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-207/2017-DD/203/2017/BOD/454/2018]

CORAM (Present in Person):

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

In the matter of:

Shri Amit Kumar Singh,
ADIT (Inv.), Unit-6,
Aayakar Bhawan,
Annexure Building,
P-13, Chowringhee Square,
4th floor,
Kolkata-700069.

.....Complainant

Versus

CA. Subhash Agrawal (M. No. 060747)
P-41, Princep Street,
5th floor, Room no. 502,
Kolkata-700072.

.....Respondent

DATE OF FINAL HEARING : 28th July 2023
PLACE OF FINAL HEARING : Kolkata

PARTIES PRESENT(in person):

Counsel for the Respondent : CA. A. P. Singh

FINDINGS:

CHARGE ALLEGED:

1. It is alleged that the Respondent was involved in financial irregularities in the activities of providing/facilitating formation/running, control and management of bogus shell/paper

entities/companies having no business activities and carrying out the activities of providing bogus Long Term Capital Gain (LTCG), Short Term Capital Loss (STCL) through pre-arranged accommodation entries of share capital, share premium and unsecured loans etc.

BRIEF OF PROCEEDINGS HELD:

2.

S. No.	Date of Hearing(s)	Status/direction	Compliance of direction, if any, given by the Board
1	31 st May 2019	<p>Part-heard and adjourned with the direction to the Complainant to provide the following documents/information:</p> <p>I. To submit Assessment Orders of the 17 Companies under question in the matter along with details of transactions entered between 17 Companies.</p>	<p>The Complainant, in compliance of the said directions submitted the documents to the extent available.</p> <p>The Complainant further submitted from the financial analysis of the companies under the control of the respondent that:</p> <ul style="list-style-type: none"> • It is known fact that for running a business, office premise is essential and for the said purpose either the companies have their own office or rented. In majority of the cases, it has been found that these lending Companies have 'zero' fixed assets and not paying any rent for the years. • Almost all of the companies, PBT never went beyond a certain limit. • Bogus turnover and fictitious activities further establishes as none of the company have any other business establishment. • From the returns filed by these companies, it is found that

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			most of these companies do not manufacture any product and are nothing but shell companies which is also corroborated from the statement of the Respondent.
2	16 th August 2019	Adjourned with the following direction to the office: a. Write to Chairman, CBDT about non-appearance of any Officer from the Complainant Department and request for arranging of their appearance at the time of next hearing.	-----
3	25 th September, 2019	Part-heard and adjourned with the direction to the Complainant Department to provide the following documents/information: i. To establish link of the Respondent in whole event i.e. as to how the Respondent was engaged in alleged transactions.	The Complainant Department did not submit their response.
4	13 th December, 2022	Adjourned at the request of the Complainant.	-----
5	29 th December, 2022	Part-heard and adjourned with the direction to the Complainant Department to provide the following documents/information: • Copy of the Assessment Order of the beneficiaries showing addition of income. • Whether the 12 companies in	The Complainant vide email dated 1 st May 2023 In compliance of the said directions submitted the documents to the extent available.

		<p>which the Respondent is a director come under the list of 82 shell companies.</p> <ul style="list-style-type: none"> Any other documentary evidence to establish the charge alleged against the Respondent. 	
6	3 rd May, 2023	Adjourned due to non-appearance of any representative from the Complainant Department.	-----
7	28 th July, 2023	Heard and concluded.	-----

BRIEF SUBMISSIONS OF THE RESPONDENT:

3. The Respondent in his defence, inter-alia, submitted as under:-

3.1 The Director(Discipline) has improved the complaint by introducing charges against the Respondent at his own will. This process is not recognised by law, and the Director Discipline has acted beyond his jurisdiction, thereby rendering the entire PFO bad in law. The Director Discipline has held the Respondent to be guilty under Clause 2 of Part IV of the First Schedule without giving him an opportunity to defend himself in respect of such a charge. This is against the principles of natural justice and the enquiry thus needs to be closed forthwith.

3.2 The Director(Discipline) has formed his PFO without the Respondent having been given an opportunity to file his written statement in respect of the charge for which he has been held guilty. The objections of the Respondent had been totally ignored and not considered by the Director(Discipline).The Director(Discipline) has displayed his bias, prejudice and his pre-determined mind. Denial of the right to submit his written statement is denial of right to present the defence by the Respondent. The actions of the Director(Discipline) render the entire inquiry bad in law.

3.3 No specific amount has been identified as having been lost to the Revenue Department of the country because of the Respondent. After having considered the contents of this so-called statement of the Respondent, based on which the Complainant has made the allegations and the Director(Discipline) has formed the PFO, the Assessing Officer of the Respondent has not determined or ascertained any such loss to the Revenue Department. This so-called statement of the Respondent did not in any case

contain the truth of the matter, and the same was not given by the Respondent under normal circumstances and voluntarily. The so-called statement of the Respondent contains comments that are self-incriminating in nature. The Courts have settled that in cases of departmental inquiries, if punishment is to be given only on the basis of the said self-incriminating statements that will not be enough; the complainant is required to provide undeniable corroborative evidence. The complainant has not provided any proof of the nature of confirmations from any beneficiary of the accommodation entities, or from any brokers or middlemen or from any other person that can settle beyond reasonable doubt that the Respondent was engaged in the business of accommodation entries.

- 3.4 The so-called statement of the Respondent had been recorded in the mechanical manner and does not constitute any admissible evidence. Further that, in the absence of any corroborative evidence, no reliance can be placed for holding the Respondent to be guilty of Professional Misconduct based on the contents of the statement alone. The Respondent had continuously communicated with the Disciplinary Directorate and made submissions why and how he could not provide his written statement under the Rules that govern the Disciplinary mechanism of ICAI, but that entire contention has been thoroughly disregarded by the Director(Discipline) at the time when the exchange of letters between the Directorate and the Respondent was taking place, and more particularly when forming the PFO. Considering the technicalities of the matter, the requirements under the Rules, the facts and circumstances of the case, the legal pronouncements, the process of natural justice and the law, Disciplinary mechanism of ICAI, the inquiry needs to be closed forthwith and the Respondent be held not guilty.
- 3.5 All matters of Professional Misconduct against members of the Institute are required to be inquired and investigated in compliance with the contents of Chapter V of the Chartered Accountants Act and the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The Respondent drew attention to Section 21A of the Chartered Accountants Act, 1949 and Section 21B of the Chartered Accountants Act, 1949. Section 21A of Chartered Accountants Act, 1949. The Section specifically mentions that the Council "shall" constitute "a" Board of Discipline, which means that the Council shall only constitute one Board of Discipline. 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. Similar provision has been inserted with regards to Section 21B Disciplinary Committee, here the proviso in the Section 218 specifically provides that more Disciplinary Committees can be

constituted by the Council. However, no such specific proviso has been given under Section 21A. If at all the law makers would have intended to have more than one Board of Discipline, the same would have been included in the Act itself. This clearly shows that the constitution of more than one Board of Discipline is ultra-vires the provisions of the Chartered Accountants Act, 1949. In Financial Year 2018-2019, the Institute of Chartered Accountants of India had two Boards 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. The report specifically states as follows:

" Five benches i.e. TWO benches of Board of Discipline and THREE benches of Disciplinary Committee have been constituted for expeditious disposal of pending disciplinary cases under enquiry."

It is thus evident, and the same may be verified from the records of ICAI that two Boards were existing at the time when this PFO was forwarded to it. The letter from ICAI does not even state which bench of the BOD was presented with this PFO. In any case, constitution of two Boards is beyond the powers conferred by law, and the acts/decisions of any of those Boards would be beyond jurisdiction and ultra vires the law. There are innumerable case laws which establish and settle that if any decision is delivered by a forum that has no jurisdiction and that is not lawfully constituted, the same is not sustainable. Accordingly, this matter cannot proceed any further. The PFO of the DD has not been considered by a lawfully constituted Board. The Respondent thus prays that this inquiry be closed forthwith.

3.6 The Complainant had not produced any evidence in relation to allegations made.

3.7 The Clause (2) of Part IV of the First Schedule clearly states that the Respondent can be held guilty only if there is an opinion of the Council. The Respondent has not been provided any opinion of the Council. Without such an opinion, no member of ICAI can be held guilty under this clause.

3.8 The Complaint in Form 'I' has been filed in June, 2017 based on a statement of the Respondent dated 20th March 2014. The Complainant has provided no other evidence except the statement of the Respondent referred above. It is thus, abundantly clear and established that between March 2014 and June 2017 the Income Tax Department gathered or came across no other additional material and/or information based on which a complaint for Professional Misconduct could be filed. It is incomprehensible why the complaint was suddenly filed after a gap of more than 3 years. The circumstances of the case clearly point

to the fact that this complaint has been filed in a mechanical manner without application of mind and without first ascertaining whether at all a case for Professional Misconduct is made out against the Respondent.

3.9 The following sequence of events is relevant to the case:

- a) Search and seizure operation was conducted against the Respondent on 19th/20th March 2014.
- b) This search and seizure operation was related to the Kolkata based Pasari Group.
- c) The statement of the Respondent was recorded u/s 132 of the Income Tax Act during the search and seizure operation.
- d) The statement of the Respondent was recorded at his residence during the search and seizure operation.
- e) The statement was a printed statement on which the Respondent was required to put his signatures in a confused and exhausted state of mind. The Respondent was under pressure when the search and seizure operations commenced in 19th March, 2014 at around 8.30 A.M. and continued till 2.15 A.M. on 20th March 2014. The Respondent was asked to put his signatures on a printed letter, and only few sentences were hand written as per the instructions of the officers. The statement contains the "canned", "standard" or "stock" comments that were used by the officers for being included in the printed sheet. The Respondent noted that the so called statement of the Respondent was prepared by resorting to copy-paste of the comments that were available with the officers in their pen drive. Considering the manner in which the officers indulged in copy-paste of their "ready" comments, the Respondent believes that the same statement may have been used in the case of any other person, not even connected with the Respondent, and that by itself will prove beyond doubt that the statement dated 20th March, 2014 does not contain the comments of the Respondent given voluntarily, under normal circumstances, and thus cannot be admissible as evidence.

3.10 The Complainant has alleged that the Respondent was engaged in the business of providing accommodation entries. A search and seizure operation were conducted at the premises of the Respondent and no incriminating documents were seized during the search and seizure operations.

3.11 The Complainant Department assessed the income of the Respondent by re-opening the income tax assessments for the assessment years 2008-09 to 2014-15. During this entire span of 7 years the ITD added back a punt of Rs 69000/- (Sixty-nine thousand only), effectively amounting to less than Rs 10,000/- (approx) per year. The Respondent did not

challenge that addition and did not file any appeal against the same as the costs of the legal proceedings and the time required for going through the rigours of such proceedings is much more than the amount of taxes on Rs 69,000/- only.

- 3.12 The Complainant has listed some 82 companies, thereby concluding that these were bogus companies engaged in providing accommodation entries. The question that arises is, "What verification did the complainant do, and what verification was done by the Director Discipline to check the veracity of this allegation?" and the answer is: None of them bothers to make any verification. The so-called statement of the Respondent did not contain the truth of the matter, and neither the Complainant nor the Director Discipline was justified in placing reliance on it without any corroborative evidence.
- 3.13 The Companies wherein he and his wife are directors had made investments of crores of rupees in fixed deposits with banks and in properties. When the funds of these companies were employed in such manner, the Respondent failed to understand how and why these companies could be labeled as bogus. There is no question of those companies being bogus companies for accommodation entries. The Fixed Deposits in those companies as at 31st March 2014 stood at Rs.3.50 Crores (approx) and as at 31st March 2018 stood at Rs. 3.75 Crores (approx); and the investments in properties as at 31st March 2014 in those companies stood at Rs.7.85 Crores (approx) and as at 31 March 2018 stood at Rs. 8.79 Crores (approx). One wonders how the Director Discipline could have concluded that those companies are bogus.
- 3.14 The Respondent also puts the Complainant to strict proof to bring forth evidence that he was connected with all the other companies that have been specified in the list of 82 companies. More specifically, the Respondent fails to understand why the names of 16 companies, where Suchandan Koley is a director, have been included. Basically, the comments contained in this statement are not a reflection of the truth of the matter. Even with respect to the other companies, the Respondent explicitly submitted that there is no question of providing any accommodation entries through them. The statement of the Respondent was available with the assessing officer who has completed the assessments of the Respondent for the assessment years 2008-09 to 2014-15 and has found no reason to add back any income in respect of the business of providing accommodation entries as alleged by the Complainant.
- 3.15 The Complainant has not produced any proof or evidence demonstrating how different transactions of accommodation entries were performed and completed by the Respondent. Until and unless the Complainant provides undeniable proof clearly identifying the specific transactions, dates/amounts and the parties concerned, maybe the broker concerned, their acceptance such that it may constitute admissible evidence in the instant case, and details of any movement of cash (without which the transactions involving accommodation interest cannot be completed) which identifies the involvement of the Respondent, the question of holding the Respondent guilty of Professional Misconduct under such circumstances does not arise.

- 3.16 The Complainant has not produced any statement given by any other person, whether a beneficiary or a broker or any other individual involved in the business of accommodation entries, stating that the Respondent was involved or engaged in the business of providing such entries through bogus or shell companies.

OBSERVATIONS OF THE BOARD:

4. 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.

- 4.1 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.

- 4.2 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 18th 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.

- 4.3 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 Shankar Triyar v. Ram Kalewar Prasad Singh and Anr. (Reported in AIR 2006 SC 269) as under:

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“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.” In fact, 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.

- 4.4 As regard the charge alleged, the Board noted that the Complainant Department had recorded a Statement of the Respondent on Oath before ADIT (Inv.), Unit-VI, Kolkata in connection with an enquiry conducted by Directorate of Income Tax (Investigation), Kolkata under section 132 (4) of the Income Tax Act, 1961 on 20.03.2014, wherein he, inter-alia, deposed as under:

“Q.6- What is your source of income?”

Ans. My main source of income is from commission income earned by arranging and providing accommodation entry to various beneficiaries through “jama-kharchi”/paper companies”.

Q.8- Please explain the nature of business done by you.

Ans. My main source of income is from commission income by providing accommodation entries through “jama-kharchi”/paper companies. Although the companies formed by me have different addresses, they are maintained from my office located at P-41, Princep Street, 5th Floor, R/N-502 and 509, Kolkata – 72. My other locations that are used as registered office of my companies are:

- 1) 7 A. Waterloo Street, Kolkata.*
- 2) 27 Weston Street, Kolkata.*
- 3) 31/33, Rameshwar Mally Lane.*
- 4) P-41, Princep Street, R/N-509, Kolkata-72.*

Q.10- Please state in brief the modus operandi of the business run by you as ‘accommodation entry provider’.

Ans. I, as accommodation entry providers, collect cash from various beneficiaries and deposit the same in the bank accounts of various shell companies/proprietary concerns controlled by other sub entry operators, who receive cash and provide us cheques. We have to pay 5 paisa (approximately) per thousand rupees as commission to the operator of those companies/concerns. Those

companies/proprietary concerns usually transfer the amount through cheques/RTGS to the companies actually controlled by us. Thereafter, the said companies owned by us have been used for providing accommodation entry to various beneficiaries. In return, we get 30 paise (approximately) per thousand rupees as commission.”

4.5 The Board further noted that the Complainant Department brought on record copy of the Assessment Order of some of the beneficiary companies for certain assessment years wherein addition of income had been there in the following assessment years on the following grounds:

S. No.	Name of the assessee (Beneficiary)	Assessment year	Addition in Income/ Advance Taken	Reason for Addition/Reason for Advance Taken	Expenditure Disallowed	Reason for Disallowance	Income Tax Liability (Amount)
1.	M/s City Shoppe Estates Ltd.	2010-2011	Rs. 40,00,000/-	By Introducing its unaccounted money in the garb of share capital & premium in its books, the assessee has concealed its income and therefore, penalty proceedings u/s 271(1)(c) of the I.T. Act read with Sec 274 of the I.T. Act is initiated separately.	NIL	NIL	Rs.23,69,900/-
2.	M/s City Shoppe Estates Ltd.	2014-2015	Rs. 30,00,000/-	By Introducing its unaccounted money in the garb of unsecured loan in its books, the assessee has concealed its income and therefore, penalty proceedings u/s 271(1)(c) of the I.T. Act read with Sec 274 of the I.T. Act is initiated separately.	NIL	NIL	Rs.13,32,680/-
3.	M/s Hi-Rise Properties.	2008-2009	NIL	NIL	Rs. 2,00,000	The assessee firm debited	Rs.1,32,360/-

					/-	Rs.2,00,000/- as commission paid to Sri Sanjay Singh for the purpose of marketing of flats. To verify the genuineness and correctness of such commission notice were issued to him. But no response has been received from Sri Sanjay Singh. Accordingly, the assessee failed to discharge their primary onus in establishing the genuineness of the transaction.	
4.	M/s Hi-Rise Properties.	2009-2010	NIL	NIL	Rs. 4,77,588 /-	The assessee firm debited Rs.4,77,588/- as commission paid to Sri Sanjay Singh for the purpose of marketing of flats. To verify the genuineness and correctness of such commission notice were issued to him. But no response has been received from Sri Sanjay Singh.	Rs.11,935 /-

						Accordingly, the assessee failed to discharge their primary onus in establishing the genuineness of the transaction.	
5.	M/s. Pasari Multiproject Pvt. Ltd.	2011-12	Rs. 3,60,00,000/-	Claim of introduction of fresh credit advance even after given sufficient opportunities, it is held that the purported fresh advance of Rs. 3,60,00,000/- is nothing but the assessee's own money conducted under the garb of fresh advance. Therefore, Rs.3,60,000/- is treated as unexplained cash credit and subsequently added back to the total income of the assessee.	NIL	NIL	Rs.2,02,09,527/-
6.	M/s. Pasari Multiproject Pvt. Ltd.	2013-14	Rs.15,35,00,000/-	Claim of introduction of fresh credit advance even after given sufficient opportunities, it is held that the purported fresh advance of Rs. 15,35,00,000/- is nothing but the assessee's own money conducted	NIL	NIL	Rs.7,22,06,673/-

				under the garb of fresh advance. Therefore, Rs.15,35,00,000/- is treated as unexplained cash credit and subsequently added back to the total income of the assessee.			
7.	M/s. Pasari Multiproject Pvt. Ltd.	2009-10	Rs.1,95,00,000/-	Claim of introduction of fresh credit advance even after given sufficient opportunities, it is held that the purported fresh advance of Rs. 1,95,00,000/- is nothing but the assessee's own money conducted under the garb of fresh advance. Therefore, Rs. 1,95,00,000/- is treated as unexplained cash credit and subsequently added back to the total income of the assessee.	NIL	NIL	Rs.2,75,76,502/-
8.	M/s. Pasari Multiproject Pvt. Ltd.	2012-13	Rs.5,15,00,000/-	Claim of introduction of fresh credit advance even after given sufficient opportunities, it is held that the purported fresh advance of Rs. 5,15,00,000/- is nothing but the	NIL	NIL	Rs.2,62,18,450/-

				<p>assessee's own money conducted under the garb of fresh advance. Therefore, Rs. 5,15,00,000/- is treated as unexplained cash credit and subsequently added back to the total income of the assessee.</p>			
9.	M/s. SPA Apartments Pvt. Ltd.	2014-15	Rs.65,00,000/-	<p>1. Claim of introduction of fresh credit advance even after given sufficient opportunities, it is held that the purported fresh advance of Rs. 65,00,000/- is nothing but the assessee's own money conducted under the garb of fresh advance. Therefore, Rs. 65,00,000/- is treated as unexplained cash credit and subsequently added back to the total income of the assessee.</p> <p>2. During the post search proceedings, the assessee disclosed Rs.50,00,000/- under the head "Unsecured Loan". But in the return of income</p>	NIL	NIL	Rs.41,15,840/-
			Rs.50,00,000/-				

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				filed for F.Y. 2014-15, the assessee has not made any provision of additional income. In view of the above, undisclosed income of Rs.50,00,000/- is being added to the income of the assessee.			
10.	M/s. SPA Apartments Pvt. Ltd.	2011-12	Rs.30,00,000/-	Claim of introduction of fresh share capital with so much high premium even after given sufficient opportunities, it is held that the purported fresh capital along with the premium aggregating to Rs. 30,00,000/- is nothing but the assessee's own money conducted under the garb of fresh capital into assessee's business. Therefore, Rs. 65,00,000/- is treated as unexplained cash credit and subsequently added back to the total income of the assessee.	NIL	NIL	Rs.13,98,365/-
11.	M/s. Ahnlk Goods Pvt. Ltd.	2014-15	Rs.45,00,000/-	Claim of Introduction of fresh credit advance even after given sufficient opportunities, it is held that the purported fresh advance of Rs. 45,00,000/- is	NIL	NIL	Rs.18,32,818/-

				nothing but the assessee's own money conducted under the garb of fresh advance. Therefore, Rs. 45,00,000/- is treated as unexplained cash credit and subsequently added back to the total income of the assessee.			
12.	Smt. Shashi Pasari	2014-15	NIL	NIL	Rs.32,76,918/-	Statement on oath of brokers, entry operators, intermediaries who are directly or indirectly involved in this 'bogus LTCG scam' were recorded and they admitted the modus operandi and its technicality how unaccounted income of persons are routed in finally returned to them in the disguise of LTCG without suffering any tax. Hence, I disallow Rs.32,76,918/-.	Rs.15,83,020/-
13.	M/s Sri Jaichandlal Ashok Kr. & Co. (P) Ltd.	2014-15	Rs.1,00,00,000/-	1. Claim of introduction of fresh credit advance even after given sufficient opportunities, it is			Rs. 64,72,778 /-

				<p>held that the purported fresh advance of Rs. 1,00,00,000/- is nothing but the assessee's own money conducted under the garb of fresh advance. Therefore, Rs. 1,00,00,000/- is treated as unexplained cash credit and subsequently added back to the total income of the assessee.</p>			
			Rs.50,00,000/-	<p>2. During the post search proceedings, the assessee disclosed Rs.50,00,000/- under the head "Unsecured Loan". But in the return of income filed for F.Y. 2014-15, the assessee has not made any provision of additional income. In view of the above, undisclosed income of Rs.50,00,000/- is being added to the income of the assessee.</p>			

The Board also observed that out of the 13 instances cited above, in the case of assessee specified at pt 1,2,5,7,8,10 and 11 , the addition of income had been there on the basis of the Respondent's own Statement recorded before the Complainant Department on 20th March 2014. Further, in the case of assessee specified at pt. 6 above, the addition of

income had been there on the basis of the Statement of one entry operator recorded before the Complainant Department and in the case of assessee specified at pt. 9 and 13 above, the addition of income had been there on the basis of the Statement of one of the directors of the company from where the loan was taken and the Statement of one entry operator recorded before the Complainant Department.

- 4.6 The Board also noted that the Respondent was the Director in 15 Companies and he brought on record copy of the audited financial statements wherein clean audit report had been issued together with the Income Tax Return acknowledgement of the said companies for the following years :

S. No.	Name of the companies in which the Respondent is one of the directors	Balance Sheet (as on year)	I.T. Acknowledgment (as on year)
1.	M/s Doss Realtors Pvt. Ltd.	F.Y. 2013-2014 and 2017-2018.	A.Y. 2014-15 and 2018-19.
2.	M/s Procure Mercantile Pvt. Ltd.	F.Y. 2013-2014 and 2017-2018.	A.Y. 2014-15 and 2018-19.
3.	M/s Torrent Agencies Pvt. Ltd.	F.Y. 2013-2014 and 2017-2018.	A.Y. 2014-15 and 2018-19.
4.	M/s Salasar Realtors Pvt. Ltd.	F.Y. 2013-2014 and 2017-2018.	A.Y. 2014-15 and 2018-19.
5.	M/s Shakambari Buildcon Pvt. Ltd.	F.Y. 2013-2014 and 2017-2018.	A.Y. 2014-15 and 2018-19.
6.	M/s Goodshine Real Estate Pvt. Ltd.	F.Y. 2013-2014 and 2017-2018.	A.Y. 2014-15 and 2018-19.
7.	M/s Sarvlok Heights Pvt. Ltd.	F.Y. 2013-2014 and 2017-2018.	A.Y. 2014-15 and 2018-19.
8.	M/s Ratnagiri Developers Pvt. Ltd.	F.Y. 2013-2014 and 2017-2018.	A.Y. 2014-15 and 2018-19.
9.	M/s Dico Transport Corporation Ltd.	F.Y. 2013-2014	A.Y. 2014-15.

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10.	M/s Subhash Realtors Pvt. Ltd.	F.Y. 2013-2014 and 2017-2018.	A.Y. 2014-15 and 2018-19.
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4.7 Further, the Board on perusal of the copy of the Respondent's Assessment Order(s) brought on record by him for the following years observed that addition of commission income had been there on the basis of his own Statement recorded before the Complainant Department on 20th March 2014:

S. No.	Name of the assessee	Assessment year	Addition in Income	Reason for Addition	Income Tax Liability (Amount)
1.	Shri Subhash Agrawal	2008-2009	Rs. 9,857/-	The amount of commission income is determined Rs.69,000/- for providing accommodation entry to different group concerns of the Pansari group during the F.Y. relevant to the A.Ys 2008-09 to 2014-15. Hence, commission income for the A.Y. 2008-09 is determined 1/7 th of Rs.69,000/- i.e., Rs.9,857.	Rs.17,968/-
2.	Shri Subhash Agrawal	2009-2010	Rs. 9,857/-	The amount of commission income is determined Rs.69,000/- for providing accommodation entry to different group concerns of the Pansari group during the F.Y. relevant to the A.Ys 2008-09 to 2014-15. Hence, commission income for the A.Y. 2009-10 is determined 1/7 th of Rs.69,000/- i.e., Rs.9,857.	Rs.3,750/-
3.	Shri Subhash Agrawal	2010-2011	Rs. 9,857/-	The amount of commission income is determined Rs.69,000/- for providing accommodation entry to	Rs.3,511/-

				different group concerns of the Pansari group during the F.Y. relevant to the A.Ys 2008-09 to 2014-15. Hence, commission income for the A.Y. 2010-11 is determined 1/7 th of Rs.69,000/- i.e., Rs.9,857.	
4.	Shri Subhash Agrawal	2011-2012	Rs. 9,857/-	The amount of commission income is determined Rs.69,000/- for providing accommodation entry to different group concerns of the Pansari group during the F.Y. relevant to the A.Ys 2008-09 to 2014-15. Hence, commission income for the A.Y. 2011-12 is determined 1/7 th of Rs.69,000/- i.e., Rs.9,857.	Rs.804/-
5.	Shri Subhash Agrawal	2012-2013	Rs. 9,857/-	The amount of commission income is determined Rs.69,000/- for providing accommodation entry to different group concerns of the Pansari group during the F.Y. relevant to the A.Ys 2008-09 to 2014-15. Hence, commission income for the A.Y. 2012-13 is determined 1/7 th of Rs.69,000/- i.e., Rs.9,857.	Rs.1,594/-
6.	Shri Subhash Agrawal	2013-2014	Rs. 9,857/-	The amount of commission income is determined Rs.69,000/- for providing accommodation entry to different group concerns of the Pansari group during the F.Y. relevant to the A.Ys 2008-09 to 2014-15. Hence, commission income for the A.Y. 2013-14 is determined 1/7 th of Rs.69,000/- i.e., Rs.9,857.	Rs.1,103/-

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7.	Shri Subhash Agrawal	2014-2015	Rs. 9,857/-	The amount of commission income is determined Rs.69,000/- for providing accommodation entry to different group concerns of the Pansari group during the F.Y. relevant to the A.Ys 2008-09 to 2014-15. Hence, commission income for the A.Y. 2014-15 is determined 1/7 th of Rs.69,000/- i.e., Rs.9,857.	Rs.1,108/-
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4.8 Thus, on a combined reading of the aforesaid documents, the Board viewed that primarily on the basis of the Statement of the Respondent recorded before the Complainant Department on 20th March 2014, a miniscule amount has been added to his income for which the additional tax liability has already been paid by him. Similarly, primarily on the basis of the said Statement of the Respondent, there has been addition of income in the hands of some of the beneficiary companies for some assessment years. The Respondent has raised concerns over the said Statement as not being given under normal circumstances and voluntarily. The Complainant Department did not bring on record any corroborative and conclusive evidence to substantiate the way and the manner in which accommodation entries had been provided by the Respondent which is considered essential to establish the misconduct alleged on the part of the Respondent.

4.9 Thus, on a detailed perusal of the submissions and documents on record, the Board was of the view that the Complainant has not been able to substantiate with corroborative and conclusive documentary evidence its claim that the Respondent had formed various shell companies for the purpose of providing pre-arranged accommodation entries through the companies controlled and managed by him. In view of the same, the Board held the Respondent NOT GUILTY in respect of the charge alleged.

CONCLUSION:

5. 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. 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, retd.)
(Government Nominee)

Sd/-

CA. Priti Savla
(Member)

DATE: 06-12-2023

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy
Nitika Gupta
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