

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-246/2017-DD/236/2017/BOD/436/2018]

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), Aayakar Bhawan Annexe,

P-13, Chowringhee Square, 5th Floor,

KOLKATA – 700 069.

.....Complainant

Versus

CA. Sunil Kumar Dokania (M. No. 062097)

M/s Dokania Sunil & Co.,

Chartered Accountants,

Anupam Chamber, 18, Giri Babu Lane,

1st Floor, Suite No. 1E & 1F,

KOLKATA – 700 012.

.....Respondent

DATE OF FINAL HEARING : 27th July, 2023

PARTIES PRESENT(in person):

Counsel for the Complainant

Department

: Shri Shailendra Prasad Kanaujia, Advocate

Counsel for the Respondent

: CA. A. P. Singh

FINDINGS:

CHARGE ALLEGED:

- 1.1 The Respondent had formed various shell companies for the sole purpose of providing of accommodation entries through the companies so formed.



1.2 The Respondent is involved in financial irregularities by providing of accommodation entries in the form of share capital, share premium, unsecured loan and LTCG/STCG/STCL through various Jamakharchi companies controlled and managed by him to several beneficiaries in lieu of commission.

1.3 The Respondent facilitated evasion of taxes by various beneficiaries to which he provided accommodation entries in the form of share capital, share premium, unsecured loan and LTCG/STCG/STCL through various Jamakharchi companies controlled and managed by him to several beneficiaries in lieu of commission.

BRIEF OF PROCEEDINGS HELD:

2.

S.No.	Date of Hearing	Status/Directions	Compliance of the directions, if any, given by the Board
1.	31st May, 2019	Adjourned at the request of the Complainant Department.	-----
2.	16th August, 2019	Part-heard and adjourned with the direction to the Respondent to provide the following documents/information: (i) Whether the Respondent was Director/ Auditor in any of the alleged Company. If yes, he was directed to submit copy of bank statement of 2014, 2015 and relevant year(s) under question. (ii) Assessment order(s) of the alleged Companies wherein the Respondent is connected in any	The Respondent, in compliance of the said directions submitted the documents to the extent available.

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		capacity with the Companies i.e. Director/ Auditor/shareholder. (iii) Assessment order of the Respondent for relevant years.	
3.	25th 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) To establish, how (apart from the statement on oath of the Respondent submitted on 12th June, 2015 and 6th March, 2013) the Respondent was involved/ associated with M/s Kailash Auto Finance.</p> <p>(ii) Assessment order of M/s Kailash Auto Finance for financial years 2007-08 to 2010-11.</p> <p>(iii) Who were the beneficiaries from transaction in shares and also the assessment order of such beneficiaries for financial year 2007-08 to 2010-11.</p>	<p>The Complainant Department vide letter dated 05/12/2022 submitted as under:</p> <p>1. To establish, how (apart from the statement on oath of the Respondent submitted on 12th June, 2015 and 6th March, 2013) the Respondent was involved/ associated with M/s Kailash Auto Finance.</p> <p>Response:-</p> <p>The Respondent has floated various shell/paper companies including Kailash Auto Finance Ltd. for providing accommodation entries in the form of bogus share capital, share premium, unsecured loans and pre-arranged LTCG/STCG/STCL. These shell/paper companies were</p>

			<p>managed & controlled by Respondent and his dummy directors. Therefore, Respondent has facilitated tax evasions to various beneficiaries. Shares of M/s Kailash Auto Finance Ltd are rigged by way of circular trading and price of shares were increased artificially. Initially, beneficiaries are allotted shares of M/s Kailash Auto Finance Ltd. at nominal rate. After holding shares for one year, shares are sold on abnormally higher rate. At this stage, cash received from beneficiaries are deposited to various proprietorship concerns and get it layered through various accounts and finally the fund is transferred to bogus/shell companies who purchase shares from beneficiary concerns.</p> <p>2. Assesment order of M/s Kailash Auto Finance for</p>
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			<p>financial years 2007-08 to 2010-11</p> <p>Response:-</p> <p>Assessment orders of M/s Kailash Auto Finance Ltd. is not available at this end, as of now and will be provided to you at the earliest.</p> <p>3. Who were the beneficiaries from transaction in shares and also the assessment order of such beneficiaries for financial year 2007-08 to 2010-11</p> <p>Response:-</p> <p>Beneficiaries in this instance are M/s Rashmi Cement Ltd., M/s Rashmi Metaliks Ltd., M/s Orissa Metaliks Pvt. Ltd., M/s Rosemay Sponge and Ispat Pvt. Ltd., M/s Rashmi Infrastructure Pvt. Ltd. from FY 2007-08 to 2010-11.</p> <p>Assessment orders of aforesaid beneficiaries are not available at this end, as</p>
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			of now and will be provided to you at the earliest.
4.	12th December, 2022	<p>The matter was part-heard and adjourned with the following direction to:</p> <p>The Complainant:</p> <ol style="list-style-type: none"> 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. 2. To submit the papers/documents/evidences before 29th December, 2022 to establish the role of Respondent. 3. Assessment order of M/s Kailash Auto Finance for financial years 2007-08 to 2010-11. 	The Complainant Department did not submit their response.
5.	29th December 2022	Adjourned at the request of the Complainant Department.	-----
6.	3rd May, 2023	The case was part-heard and adjourned with the direction to the Complainant Department to provide the following documents/information (with a copy to the Respondent):	The Complainant Department, in compliance of the said directions submitted the documents to the extent available.

		<p>(a) copy of the Assessment Order issued to the Respondent under the Vivad Se Vishwas Scheme together with the documents on the basis of which the same had emerged, and/or any other evidence to substantiate the allegations against the Respondent.</p> <p>(b) 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>	
7.	27 th July, 2023	Heard and concluded.	-----

BRIEF SUBMISSIONS OF THE PARTIES TO THE CASE:

(a) Respondent:

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

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annual report of ICAI for 2018-19, wherein it has been clearly stated that there were two Board of Disciplines.

- b) The clause under which the Respondent has been held guilty is Clause (2) of Part-IV of the First Schedule to the Act. This clause 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. There is no decision of the Council or a notification by the Government of India by which any such power of the Council are delegated to the Director(Discipline). Accordingly, without even looking into the merit of the issues the Director(Discipline) has erred in applying this clause for holding the Respondent guilty for Other Misconduct since there is no opinion of the Council in this regard.
- c) 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 Rules require the complaint to be filed in Form-I mandatorily. Form-I mandatorily requires the Complainant to specify the particulars of the allegations together with the corresponding clause/part/relevant schedule to the Chartered Accountants Act under which the allegations are made. The Director(Discipline) has held the Respondent to be guilty under Clause 2 of Part IV of the First Schedule without giving the Respondent 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.
- d) 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). In doing so, the Director(Discipline) has displayed his bias, prejudice and his pre-determined mind. The actions of the Director(Discipline) render the entire inquiry bad in law.
- e) The contents of the statements recorded in the Income Tax Department on 12th June 2015 are not reliable as evidence under any circumstances as appropriate steps were taken under the law of the land to record that the contents of the statement dated 12th



June 2015 did not represent his voluntary statements, and thus cannot be taken as admissible evidence.

- f) The disciplinary proceedings are quasi criminal in nature and the nature of proof required in such cases is one that is beyond reasonable doubt. The proceedings pending before the Board of Discipline in the instant case do not relate to the computation and payment of taxes, in which case some Courts have opined that the proof required may not be beyond reasonable doubts. Since the Board of Discipline is required to consider matters of professional misconduct, it is important and non-negotiable that proof beyond reasonable doubt must be produced before an individual can be held guilty of professional misconduct.
- g) The Complainant has not produced any proof/evidence in respect of large-scale transactions as referred in the complaint and the so-called statement of the Respondent. There are no other proceedings in the Income Tax Department against the Respondent with respect to the issues listed in the so-called statement of the Respondent. The Respondent was not provided with copies of the statements of Mr Jyoti Vardhan Sonthalia and Mr. Ajay Kedia. The Respondent does not even know Mr Jyoti Vardha Sonthalia, and Mr. Ajay Kedia. Under such circumstances, there is no reason or justification to hold the Respondent guilty of professional misconduct.
- h) The complaint in Form I has been filed in June 2017 based on a statement of the Respondent dated 12th June 2015. The Complainant has provided no other evidence except the statement of the Respondent between June 2015 and August 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 2 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.
- i) Form I submitted by the Complainant refers to the statement of the Respondent recorded on 12th June 2015 as the evidence adduced in support of the allegations that have been made. The covering letter with the complaint dated ninth August 2017 also refers to the enclosure of the statement of the Respondent recorded on 12th of June 2015 only. The

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documents that have been attached to the complaint also includes a statement of the Respondent recorded in the office of the Income Tax Department on 6th March 2013. That statement has not been referred by the Complainant or the Director(Discipline) in forming the PFO. The statement dated March 2013 does not contain the true state of affairs with respect to the questions that were posed to the Respondent at the time of recording this statement, and the same does not contain the comments of the Respondent given voluntarily and under normal circumstances.

- j) The Respondent was asked to present himself in the office of the Income Tax Department on 12th June 2015. After his arrival at that office, he was served the summons under Section 131 of the Income Tax Act 1961. The Respondent was then immediately required to confirm the so-called statement of the Respondent in the office of the Income Tax Department entirely against his will. Following the recording of the so-called statement on 12th June 2015, the Respondent has never been summoned to the Income Tax Department in this matter. In fact, this issue has not been raised up by any other officer of the Income Tax Department, including the Respondent's Assessing Officer. Hence, there has been no occasion in the past (since 12th June 2015) where the Respondent could have produced proof of his having brought on record the fact that the so-called statement dated 12th June 2015 did not represent his views and did not contain his assertions provided voluntarily. The Complainant has not provided any proof/evidence in respect of the so-called accommodation entries provided by the Respondent to various beneficiaries. The so-called statement of the Respondent dated 12th June 2015 refers to three beneficiaries: Jyoti Vardhan Sonthalia, Rashmi Group and Anmol Biscuits Group. Although certain figures and names of entities have been mentioned, there is no proof relating to the exchange of cash, earning of commission income and handling of such cash to ostensibly return the fund to the real owner.
- k) In response to Question No: 9 requiring names of entities for providing accommodation entries and Question No: 17 requiring names of the various beneficiaries of the accommodation entries, the Respondent had not provided any such names. The answers to the said questions contain a statement that the details would be given in the next 7 days. No such details were required to be given by the Income Tax Department and no such details were actually provided by the Respondent at any point of time. These so-



called statements regarding providing accommodation entries did not contain any truth and were thus not even pursued by the Income Tax Department.

- l) Similarly; even with respect to the quantum of LTCG provided to Shri J. V. Sonthalia and his family, no amount was specified in the answer to question No: 24; no details were provided or required to be provided by the officers of the Income Tax Department at any stage. For any transactions related to accommodation entries, there would be movement of cash, some brokers or intermediary, methodology for routing of cash and exact entries in the banking channel. None of them have been ascertained or identified. There is no proof or evidence of any nature beyond reasonable doubt in respect of the allegations made against the Respondent. The allegations relate to accommodation entries for LTCG and STCL with reference to the scrips of an entity listed with Bombay Stock Exchange. However, there is no complaint or concern of any nature raised by the authorities of the BSE; if share prices would have been rigged on the BSE, that would entail punishment and various other prosecutions against the individuals involved with such transactions. The Complainant has produced no evidence of any nature with respect to such transactions.
- m) As far as, the questioning relating to Rashmi Group and Anmol Biscuits is concerned, The Respondent's answer refers to a certain percentage being earned as commission. However, this is not the fact at all and the Income Tax Department has not levied any taxes on the Respondent for any income calculated in such a manner. This by itself is a clear proof that the so-called statement of the Respondent is not a reliable document and cannot be used for any purpose to hold the individual guilty.
- n) The judicial pronouncements have settled that even if any individual records statement that are self-incriminating, the prosecution would require corroborative evidence to prove that he is guilty. In the instant case, there is nothing on record in the nature of any corroborative evidence.

(b) Complainant Department:

4. The Complainant Department, inter-alia, made the following submissions:

- a) In his statement dt. 12/06/2015, the Respondent had stated that he had been controlling & managing many companies which were formed for the purpose of providing accommodation entries in the form of share capital, share premium, unsecured loan and

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LTCG/STCG/STCL to various beneficiaries in lieu of commission. He also added that accommodation entries were provided through the scrip of Kailash Auto which was controlled & managed by him. Hence, it may be concluded that the Respondent was involved in facilitation of evasion of taxes to various beneficiaries.

b) The statement was recorded under oath u/s 131 of the Income Tax Act 1961. Section 131 of the Income Tax Act, 1961, confers power of a Court under the Code of Civil Procedure (5 of 1908). Hence, recording of statement is a legal proceedings and statement in its entirety is a legal document and evidence in itself. The relevance and validity of statement recorded u/s 131 of the Income Tax Act cannot be questioned.

c) The Statement of the Respondent which was recorded on 06/03/2013 was in connection with Rashmi group of Kolkata. In his admission under Oath, the Respondent had stated that he had provided accommodation entry to M/s Rashmi Cement Ltd., M/s Rashmi Metaliks Ltd., M.s Orissa Metaliks Pvt. Ltd., M/s Rosemary Sponge and Ispat Pvt. Ltd., M/s Rashmi Infrastructure Pvt. Ltd. and other Rashmi group companies during the F.Y. 2007-08 TO 2010-11. The Respondent had handwritten the following words in concluding part of the said statement dt. 06/03/2013:-

"I have given the above statement without any fear, threat or coercion. The above statement has been recorded exactly as per my version."

Hence, the submission of the Respondent is misleading and therefore, should be rejected.

d) There is nothing in record that the statement was recorded against his will. 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. 12.06.2015, which is reproduced below:-

"I have gone through the above statement & same are recorded 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. Hence, the submission of the Respondent should be rejected.

e) With regard to issue of his contact with Mr. Jyoti Vardhan Sonthalia, the Respondent has admitted his contact with Mr. Jyoti Vardhan Sonthalia in his reply to Q.No. 20 & 21 of statement dt. 12/06/2015. Hence, the submission of the Respondent should be rejected.

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- f) Mere non-submission of details within given time, as stated in statement and even non-requisition of the same from the department do not question the validity and truthfulness of statement recorded on oath under the Income Tax Act. The disciplinary proceedings should consider the facts which has been brought to light from the statement of the Respondent which has been strategically ignored by the Respondent.
- g) The Respondent was an entry operator & had provided accommodation entries to beneficiaries. Due tax has been levied on those beneficiaries by the Jurisdictional Assessing Officers.
- h) The Respondent has given statement on 12.06.2015 without any fear, force or coercion and the fact that the statement was recorded exactly in his own version was written by himself at the end of the said statement. The statement was recorded voluntarily on 12.06.2015.
- i) In his statement dt. 12/06/2015, the Respondent admitted that he had provided accommodation entries in the form of LTCG/STCG/STCL through scrips of Kailash Auto to various clients. These scrips were controlled and managed by him. He also admitted that some of his clients are M/s Bimal Kumar Choudhary (HUF) and M/s Biswanath Choudhary (HUF).
- j) On perusal of assessment orders in the case of M/s Bimal Kumar Choudhary (HUF) and M/s Biswanath Choudhary (HUF) for the A.Y. 2014-15, it is found that both the assesses has traded in the scrip, Kailash Auto Finance Ltd [Scrip name KAILASH AUTO] during the F.Y. 2013-14 relevant to A.Y. 2014-15. Both the assesses had earned long term capital gain and had claimed exemption u/s 10(38) of the Income Tax Act. During the course of assessment proceedings, the Assessing Officer has found these share transactions to be bogus and hence, added back LTCG exemption to the total income of the assessee for the A.Y. 2014-15. The scrip of Kailash Auto has been managed & controlled by the Respondent as accepted in answer to Q.No. 2 of his statement dt. 12/06/2015.

OBSERVATIONS OF THE BOARD:

- 5. 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.



5.1 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.

5.2 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

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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.

5.3 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:

" 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

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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.

5.4 As regard the charge alleged, the Board noted the Complainant Department had recorded a Statement of the Respondent on Oath before DDIT (Inv.), Unit(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 12.06.2015 wherein he, inter-alia, deposed as under:

"Q.5 Please state your business/profession.

Ans. Sir, I engaged in providing accommodation in form of share capital. Share premium, unsecured loan and LTCG/STCG/STCL through various jamakharchi companies controlled and managed by me. For this purpose I use to create various companies by appointing various dummy directors who sign the cheques/papers on my instructions.

Q.6 Please state your source of income.

Ans. Sir, my main source of income is commission in lieu of providing accommodation in form of share capital. Share premium, unsecured loan and LTCG/STCG/STCL.

Q.8 Please state nature of business of the companies in which you are one of the Directors.

Ans. Sir, these companies are paper companies and engaged in providing accommodation entry in form of share capital, unsecured loan and LTCG/STCG/STCL.

Q.9 Please furnish the list of companies which are engaged in providing accommodation entry and controlled and managed by you.

Ans. Sir, there are various paper companies which are engaged in providing accommodation entry and controlled and managed by me. Some of them are as under:

- 1. M/s Vishesh Plastic Pvt. Ltd.*
- 2. M/s UP & UP Traders Co. Pvt. Ltd.*
- 3. M/s SNR Trading Co. Pvt. Ltd.*
- 4. M/s Key Dealers Pvt. Ltd.*

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5. *M/s Gopalka Savings & Investment Pvt. Ltd.*
6. *M/s Rima Impex Pvt. Ltd.*
7. *Balasarria Holdings Pvt Ltd.*
8. *Kailash Auto Finance Ltd.*

Sir, I will submit the details of rest of the companies within 7 days.

Q.13 Please state who are the Directors of Kailash Auto Finance Limited.

Ans. Sir, Mr. Dipan Patel Jesingbhai, Vanita Mansukh Parmar, Babalu Prasad Keshari, Deepak Kunjbihari Dave.....are Directors in Kailash Auto Finance Limited. However, they are only dummy Directors and company is controlled and managed by me."

5.5 The Board further noted that the Respondent retracted the above Statement after 03 days by way of a notarized sworn Affidavit dated 16/06/2015.

5.6 The Board also noted that the Complainant Department brought on record copy of the Statement on Oath of the Respondent recorded on 6th March 2013 in connection with Rashmi group of Kolkata.

5.7 The Board also noted that the Respondent was a director in 20 companies. Out of those companies, he was a continuing director in the following 7 companies in respect of which he brought on record copy of the audited financial statements for the FY 2015-16 wherein clean audit report had been issued and the Respondent was one of the directors who authenticated the said Financial Statements together with the copy of the intimation/ Order under Section 143(1) of the Income Tax Act 1961:

- a) Komal Niketan Private Limited
- b) Vedant Infradev Private Limited
- c) Dokania Corporate Consultants Private limited
- d) Bhagwati Realcon Private Limited
- e) Wiseman Infrastructure Private Limited
- f) Nightangle Projects Private Limited
- g) Dokania Realdev Private Limited

On perusal of the Assessment Orders of the said companies for the FY 2015-16, the Board noted that in the following company, an additional deemed total income u/s 115JB to the tune of Rs.9635/- had been computed:

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Name of the Company	Deemed Taxable Income u/s 115JB as per the assessee	Deemed taxable Income as per the Assessment Order
Wiseman Infrastructure Private Limited	22,829	32,464

Further, as per the Assessment Order in respect of the company M/s Komal Niketan Pvt. Ltd., long term capital loss to the tune of Rs. 7,77,961/- was not allowed to be carried forward for the FY 2015-16.

5.8 The Board also noted that the Complainant Department brought on record the copy of the Assessment Order of M/s Bimal Kumar Choudhary (HUF) and M/s Biswanath Choudhary (HUF) for the AY 2014-15 who were the family members of the Anmol Biscuit Group to whom allegedly the accommodation entries were provided in the scripts of Kailash Auto Finance. On perusal of the same, the Board noted that Long Term Capital Gain exemption in the reported stock to the extent of Rs 58,74,915/- and 44,23,082/- respectively had been disallowed and added back to the total income of the assessee as unexplained cash credit u/s 68 of the Income Tax Act 1961.

5.9 The Board also noted that the Complainant Department brought on record copy of the Order u/s 250 of the Income Tax Act 1961 passed in the case of the Respondent for the AY 2015-16 under the Vivad Se Vishwas Scheme wherein a demand of Rs. 16,51,770/- had been made.

5.10 Thus, on a detailed perusal of the submissions and documents on record, the Board noted that the primary evidence which the Complainant Department brought on record for the charge alleged against the Respondent is the copy of his own Statement recorded on 12th June 2015 which had been subsequently retracted by him. The Complainant Department also brought on record copy of the Statement on Oath of the Respondent recorded on 6th March 2013 in connection with Rashmi group of Kolkata over which concern has been raised by the Respondent as not being given under normal circumstances and voluntarily. Further, the Board noted that although the Complainant Department brought on record copy of the Assessment Order in respect of two beneficiaries for one assessment year showing addition of income in their hands on account of disallowance of long term capital gain exemption, they

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could not substantiate with any corroborative and conclusive evidence, 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. Also, the Complainant Department could not bring on record any Assessment Order to show that commission income had been added to the income of the Respondent on account of any accommodation entries provided by him, as alleged. Thus, the Board was of the view that the Complainant Department 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 lieu of commission. Accordingly, the Board held the Respondent NOT GUILTY in respect of the charge alleged.

CONCLUSION:

- 6 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, retd.)

(Government Nominee)

Sd/-

CA. Priti Savla

(Member)

DATE: 18-12-2023

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

बिना नाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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