

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-215/2017-DD/234/2017/BOD/439/2018]**

**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:**

**Sh. Vivek Singh**

ADIT (Inv.), Unit-2(1),  
Aayakar Bhawan Annexe, P-13, Chowringhee Square,  
4th Floor, Room No. 4/5,  
KOLKATA – 700 069.

.....Complainant

**Versus**

**CA. Vishal Kumar Bhuwania (M. No. 060745)**

Commercial House,  
2A, Ganesh Chandra Avenue, 4th Floor, Room No. 8A,  
KOLKATA – 700 013.

.....Respondent

**DATE OF FINAL HEARING : 28<sup>th</sup> 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. The Complainant alleged against the Respondent as under:
  - a. The Respondent formed various shell Companies for the sole purpose of providing accommodation entries.

10

- b. The Respondent is involved in financial irregularities by providing accommodation entries of share capital, share premium and unsecured loans.
- c. The Respondent facilitated evasion of taxes by various beneficiaries of pre-arranged accommodation entries through the Companies controlled and managed by him.

**BRIEF OF PROCEEDINGS HELD:**

2.

| S. No. | Dates of Hearing(s)           | Status of Hearing(s)  | Compliance of direction, if any, given by the Board |
|--------|-------------------------------|---|---|
| 1.     | 31 <sup>st</sup> May 2019     | Hearing adjourned due to non-availability of the Complainant.   | -----   |
| 1.     | 16 <sup>th</sup> August, 2019 | <p>Part-heard and adjourned with the direction to Respondent and the Office to provide the following documents/information:</p> <p>From the Respondent:</p> <p>(i) Address of the Companies as mentioned in page numbers C22 to C25 of the annexure of Prima facie opinion.</p> <p>(ii) Confirmation/ clarification as to whether the Respondent is auditor of these Companies</p> <p>To the office:</p> <p>(i) Download the details of Auditor/ Director of above Companies from website of MCA.</p> | The Respondent submitted his response.              |

M

|    |                                       |  |   |
|----|---------------------------------------|--|---|
|    |                                       | (ii) 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.  |   |
| 2. | 25 <sup>th</sup><br>September<br>2019 | Part-heard and adjourned with the direction to the Complainant to provide the following documents/information:<br><br>(i) To submit assessment order and appraisal report (in case of chain), reassessment, addition in income/tax imposed.<br><br>(ii) Who were the beneficiaries from such transaction and assessment order for financial year 2008-09 to 2009-10 of such beneficiaries. | The Complainant Department submitted their response.      |
| 3. | 12 <sup>th</sup><br>December,<br>2022 | Part-heard and adjourned with the direction to the Complainant to provide the following documents/information:<br><br>(i) Authorization letter in terms of the provision of Rule 3(2) read with Rule 3(5) of the   | The Complainant Department did not submit their response. |

|    |                                |  |   |
|----|--------------------------------|--|---|
|    |                                | <p>Chartered Accountants Rules, 2007, by an officer holding a post not below the rank of Joint Secretary or equivalent of the Department.</p> <p>(ii) To submit the papers/documents/evidence before 29th December 2022 to establish the role of Respondent.</p> |   |
| 4. | 29 <sup>th</sup> December 2022 | Part-heard and adjourned at the request of the Complainant Department to provide some more time to effectively substantiate their case before the Board.   | The Complainant Department vide email dated 4th January 2023 submitted certain submissions/documents to substantiate the charge alleged against the Respondent. |
| 5. | 6th January, 2023              | Part-Heard and Adjourned to provide an opportunity to the Respondent to provide his comments on the submissions/documents submitted by the Complainant Department.   | -----   |
| 6. | 4 <sup>th</sup> May, 2023      | Part-Heard and Adjourned to provide an opportunity to the Respondent to provide his comments on the submissions/documents submitted  | -----   |

|    |                                |                                |       |
|----|--------------------------------|--------------------------------|-------|
|    |                                | by the Complainant Department. |       |
| 7. | 28 <sup>th</sup> July,<br>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:-
- 3.1 The Director(Discipline) has improved the complaint by removing reference of charges of professional misconduct under the Chartered Accountants Act, as included by the Complainant in Form-I, and replacing them by a separate charge introduced by him at his own will. This process is not recognised by law, and the Director(Discipline) has acted beyond his jurisdiction. 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.
- 3.2 The objections of the Respondent had been totally ignored and not considered by the Director(Discipline).
- 3.3 The Director(Discipline) in his letter dated 21<sup>st</sup> December 2017 clearly refers to the issues of "Mere omission to mention appropriate clause" as his reasoning to proceed to the next state without giving the Respondent an opportunity to file his written statement. In the instant case, there was no question of any such "mere omission to mention the appropriate clause".
- 3.4 The Director(Discipline) while forming his PFO has relied on the statement of Shri Satish Saraf whereas the Complainant did not even consider that particular statement to be included in the list of evidence used in support of the allegations made. The entire

M

enquiry has been conducted in a manner that is not sustainable under the law. The statements of the Respondent were recorded on the same day when the notice was served upon him (12th June 2014) in the office of the Income Tax Department. Thus, once the notice was served, he was immediately required to consent to the contents of the statements consisting of 11 questions. When the officers of the Income Tax Department are claiming two statements of two different persons having been given "voluntarily" without pressure, fear and coercion", that is an impossibility considering the fact that the statements of the Respondent and Shri Rahul Jhunjhunwala are identical word by word.

- 3.5 The statements of the Respondent were recorded during the course of search and seizure in 2013. The Complainant has not explained or dealt with in any manner to explain how the companies were related to the allegations contained in this complaint. 55 companies in respect of which the Complainant has not provided any proof/evidence of the involvement of the Respondent in accommodation entry business. It is specifically stated and submitted that the statements recorded in the office of the Income Tax Department by the Respondent cannot be relied upon.
- 3.6 The Complainant has not produced any statement by the owners of the said Mahabir Jewellers alleging any kind of business relationship with the Respondent. The Respondent is not even aware whether at all Respondent has made any statement of his proximity for such transactions with the Respondent.
- 3.7 The Director(Discipline) has failed to realise that matters of professional misconduct are quasi criminal in nature and the nature of proof required in such cases would be one that is "beyond reasonable doubt". This contention has been settled by the Courts of the country and the judicial pronouncements have further settled that it is the duty/obligation of the person making the allegations to provide proof/evidence in support of the allegations. No negative burden can be cast on the Respondent to produce proof/evidence that he is not guilty.

3.8 The Director(Discipline) has held the Respondent guilty without even obtaining an opinion of the Council. The word "Council" has been specifically defined under the Chartered Accountants Act, and there is no notification from the Government of India delegating the powers of the Council to any other person/body for this purpose.

3.9 Around fifteen to twenty companies are being controlled by the Respondent; the books of accounts of those companies are maintained in the computers in his offices. Other directors in all of these companies are dummy directors who are mostly Respondent's relatives and associates who lend their name for directorship in lieu of some remuneration which he provided them time and again. Some of the names are as under:

1. Shri Pradeep Sulltania;
2. Shri Amit Bajoria;
3. Shri Sanakar Jha, other names the Respondent is unable to recall at present.

3.10 The statements of the respondent contained on page C-7 to C-11 were recorded during the course of search and seizure in 2013. Although the statements of one Shri Satish Saraf have also been attached to the complaint, C-24 and C-25 contain a list of companies belonging to Shri Satish Saraf and one Shri Anand Pandey. The list contained on Page C-22 to C-24 refers to 55 companies in respect of which the complainant has not provided any proof/evidence of the involvement of the respondent in accommodation entry business.

3.11 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."*

M

It is thus evident, and the same may be verified from the records of ICAI that two Boards existed at the time when this PFO was forwarded to it. The 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.

**B. COMPLAINANT:**

4. To substantiate its case, the Complainant Department, inter-alia, submitted as under:-

4.1 The Respondent has admitted his guilt in his statement on oath recorded under section 131 & 132(4) of Income Tax Act, 1961. The Respondent's relative Mr. Satish Saraf the cousin brother of Mr. Rahul Jhunjhunwala has also given their statement and confirm that they provide accommodation entries through "JAMA-KHARCHI" and SHELL Companies to various beneficiaries in lieu of commission. The respondent admitted in question no.10 of his statement recorded under section 131 of Income Tax Act, 1961 that they have arranged a whole process of accommodation entries in the form of share capitals to Mahabir Group of Companies during the financial year 2008-2009 and 2009-10 in lieu of commission. The sources of such share capitals are nothing but undisclosed cash income of the group which were transferred by the Mahavir Group of Companies to Bijay Kumar Agarwal who used to give it to various entry operators including the Respondent through Rahul Jhunjhunwala.

4.2 Attention is invited to the answer made by Respondent to the question no. 10 of his statement recorded under section 131 of the Income-Tax Act, 1961 on oath on 12.06.2014. In his answer to the queries made, the deponent himself has confessed that he has arranged accommodation entries to Mahabir Group of companies during the financial years 2008-09 and 2009-10 in collusion with his brother-in-law Shri Rahul Jhunjhunwala. He has also explained the whole process adopted by them in arrangement of accommodation entries for Mahabir Group companies.

4.3 There is a clear violation of laws to convert black money into white money through the JAMA-KHARCHI and SHELL Companies. More than 15 shell companies are involved in the



whole process accommodation entries in the form of share capital to Mahavir Group of Companies and there is a gross negligence by the Respondent in discharge of professional duties.

- 4.4 The appraisal report of the facilitation by the Respondent through JAMA-KHARCHI and shell companies to various beneficiaries in lieu of commission and it is fact that Chartered Accountant CA. Bijay Kumar Agarwal working for Mahabir Group of Companies who approached the Respondent to arrange the accommodation entries in the form of share capital to route back the undisclosed black money of Mahabir Group of Companies into their regular books of accounts after that the Respondent approached his brother in law Mr. Rahul Jhunjhunwala and Mr. Satish Saraf for providing the accommodation entries operators through his chain of Companies "CIMMCO VINIMAY PRIVATE LIMITED."
- 4.5 Non-mentioning Clauses or wrong mentioning of them in the complaint does not make the complaint defective as being claim by the respondent.
- 4.6 The respondent himself admitted his involvement in the accommodation entries received by the Mahavir Group Of Companies in his statement and after appraisal order of the accounts of the Mahavir Group Of Company it is well established that the respondent and his relatives provided the accommodation entries to route back the undisclosed black money into their regular books of accounts.
- 4.7 The Respondent never gave any satisfactory explanation about arranging the accommodation entries through JAMA- KHARCHI" and SHELL COMPANIES to various beneficiaries in lieu of Commission. The Respondent also admitted in the answer of the question no-8 that arranged 15 to 20 companies are being control by him and most of the directors in all of this companies are dummy directors who are mostly his relatives and associates, he also admitted that all the books of register mention properly. In this case the Respondent is the facilitator through the relatives by arranging accommodation entries in form of share capital by way of JAMA-KHARCHI" and SHELL COMPANIES to various beneficiaries in lieu of Commission to route back the undisclosed companies.

4

- 4.8 The statement of the said two persons namely Mr. Rahul Jhunjhunwala and Mr. Satish Saraf are similar in nature of business and modus operandi. The complainant generally arises the question considering the business nature of the respondent is can be similar for two (2) or more persons. It is very much clear that the statement made by Mr. Rahul Jhunjhunwala and Mr. Satish Saraf which was recorded under section 131 of the Income Tax Act, 1961 are similar in nature and they have admitted their environment in providing accommodation entries through JAMA- KHARCHI" and SHELL COMPANIES in the form of share capital to route back the undisclosed black money to Mahavir Group of Companies to the regular books of account.
- 4.9 Mr. Rahul Junjhunwala and the Respondent had acted collectively with the same modus operandi to provide accommodation entries through shell companies to the Mahabir Group of Companies as such the question bear similarities. The contention taken by the Respondent is unacceptable and the statement recorded is voluntarily without any fear and coercion. All the relevant questions asked to the Respondent and Mr. Rahul Jhunjhunwala do not seek any voluminous data or details, so it is impossible for the Respondent and Mr. Rahul Jhunjhunwala for taking plea that it is beyond the memory of both of them.
- 4.10 The statement of Mr. Satish Saraf under section 131 of Income Tax Act 1961 reveal the name of Respondent in various occasion and he has referred the Respondent as an Entry operator in Kolkata. The email discloses between them contain the details of his transactions which happened with the Respondent at Kolkata that has been mentioned in statement of Mr. Satish Saraf.
- 4.11 The Companies/proprietorship firm controlled by the Respondent were operated through verbal instruction to the Dummy Key managerial Persons deliberately to avoid any direct transaction to save the name of the Respondent. It is also a fact that the direct connection of the Respondent with the shell Companies is hard to establish, however, in

his statement recorded during search proceedings he was shown statement of his employee namely Kashinath Parida.

- 4.12 The Respondent was also involved as a facilitator to various other beneficiaries through accommodation entries by JAMAKHARCHI and SHELL Companies, he has already been himself assessed on his head bogus LTCG claimed in his books of accounts during financial year 2012-13 u/s 147/143(3) of Income Tax Act 1961. The Respondent has challenged the assessment order dated 31.12.2017 and thereafter when he got chance in DTVSV Act 2020 he preferred to pay the applicable taxes as per the said scheme.

**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.

*M*

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 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."*

*12*

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 that 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 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.

- 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-IV (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 01.10.2013 wherein he, inter-alia, deposed as under:

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

*Ans. I am a Chartered Accountant by profession. I am also in the business of functioning as an entry operator. I provide as well as facilitate the aspect of providing accommodation entries. For my services I receive a commission fee which is disclosed partly in my annual return of income under the head miscellaneous income.*

*Q.6- Please explain the modus operandi of providing accommodation entries as given by you.*

*Ans. The modus operandi of providing accommodation entries is described as below:*

*The process is dependent on market requirement. Whenever, there is any client who requires accommodation entry in the form of either share capital, or unsecured loans, they get in touch with us via our contact persons located in that city. In Mumbai, our contact person is Mr. Satish Saraf who provides us the details of the requirements of our clients. Accordingly, we float the requirement in the market in Kolkata, those parties who are interested in furnishing the cheques/RTGS get in touch with us. The actual client in Mumbai gives us the cash in return of which we give him the cheque/RTGS of the Bogus paper companies through which the money*



*is being routed. In this entire process the agents who provide the accommodation entries as well I who arranges the fund transfer earn commission income.*

*The same process is applicable in terms of giving bogus unsecured loans.*

*Q.5- How are you related to Mr. Satish Saraf, Mr. Rahul Jhunjhunwala and Mr. Rajeev Jhunjhunwala?*

*Ans. Mr. Rahul Jhunjhunwala is my brother-in-law and also my business partner. He is equally a part of the entry operator business of providing accommodation entries to different parties, which I practice. Mr. Rajeev Jhunjhunwala is the younger brother of Mr. Rahul Jhunjhunwala. He is a CA by profession and is a business partner in my CA Firm by the name Bhuwania & Company located at Commerce House, 2A G. C. Avenue, 4th floor, Room No. 8A, Kolkata-13. Mr. Rajeev Jhunjhunwala is based in Mumbai and is not an active partner in the CA Firm. We have recently opened a branch in Mumbai in the Chirabazar area. I am unable to recollect the postal address at the moment. Mr. Satish Saraf is the cousin brother of Mr. Rahul Jhunjhunwala. He is one of my business associates based in Mumbai. Mr. Saraf is our contact point in Mumbai and provide us necessary inputs and details about clients who require accommodation entries. Accordingly, from such inputs we provide accommodation entries through paper companies in Kolkata."*

- 5.5 The Board also noted that the Complainant brought on record statements before DDIT (Inv.), Unit-IV (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 Rahul Jhunjhunwala and Shri Satish Saraf dated 01.10.2013, who were the alleged business partner and business associates respectively of the Respondent. Their relevant deposition in their Statements is as follows:

Statement of Shri Rahul Jhunjhunwala:

12



*"Q.5- Please state about your profession?"*

*Ans. I am engaged in the business of construction, stock broking, commodity trading and providing accommodation entries to other business concerns to introduce their unaccounted cash in the books of account*

*Q.6- Please provide the details of modus operandi of providing accommodation entries to other business concerns.*

*Ans. I admit and confirm that entries have been accommodated in the form of unsecured loan, one time entry of share application money to various beneficiaries based in Kolkata, Mumbai, Delhi, Ahmadabad through the assistance of brokers based in those cities and I assisted number of business concerns in introducing their unaccounted cash in their books of accounts. The name of the brokers based in Mumbai is Mr. Satish Saraf, Pintoo and Sirish Chandrakant Shah. Mr Satish Saraf is my cousin who is also engaged in the business of providing accommodation entries to various business concerns. We are working in close coordination and cooperation in this business of accommodation entries. His mobile no is 9867679988 based in Malad, Mumbai. If any beneficiary based in Mumbai is required accommodation entry to introduce its unaccounted money, then Mr. Satish Saraf calls me or messages me the name and account no. of the company and also detail of the cash against which accommodation entry is required to be adjusted. I through my companies or through the companies of other entry providers based in Kolkata arrange accommodation entries to beneficiaries and cash directly transfers to the brokers of the companies who have provided the entries through Angadia/Cash Hawala Dealers.*

*Sometimes, we facilitate the transactions of providing accommodation entries without involving our concerns. There is no direct involvement of our books of accounts. The modus operandi of providing accommodation entry to the other business concerns for introducing their unaccounted money is as under:*

*NS*

1. Sometimes, I through companies controlled and managed by me directly provide unsecured loan, share application money or share capital entry to the various business concerns by already lying capital in my balance sheet or taking unsecured loan from other conduit companies managed by other brokers in Kolkata or by selling the unquoted shares of my company to others. In this scenario, cash directly reaches to the brokers of the companies who have provided cheque entry in the form of investment in shares or unsecured loan to my concerns. I forward the hawala no. (currency note no and its value) and amount details to the broker of the company through whom I have arranged entries for concerns in various part of country.

2. Sometimes, I facilitate the entry in indirect manner. In this case, brokers based in Mumbai, Delhi, Ahmedabad or Kolkata contacts me for unsecured loan, share application money or share capital entry and I through the companies controlled by other brokers in the market directly provide the accommodation entries from their companies. In this scenario, the RTGS / Cheque Entry doesn't route through books of accounts of companies managed or controlled either by me or Vishal Bhuwania.

The name of the brokers with whom I have done transactions are Shri Amit Agarwal,( 08274997329 ), Shri Multanmal Pareek (09748705500), Shri Ashok Gupta (09038299864). Shri Sushil Ji ( 09331115311 ), Shri Kasera Ji ( 09830619901). They are based at Kolkata. Mr Satish Saraf (09867679988), Mumbai; Mr Anand Pandey (9910781948), Delhi; Mr Radhey Shyam Bansal (9811019647) both are based in Mumbai.

Sir, I also admit this fact that in the process of providing accommodation entries to the business concerns, I charge commission at various rates amounting to 0.10% to 0.30% depending on the nature of entries. I again admit and confirm this fact that I am running the business of providing accommodation entries to the other business concerns for introducing their unaccounted money or cash in the books of accounts."

Statement of Shri Satish Saraf:

*"24. Provide details of the jobs and/businesses carried out by you since the completion of your education.*

*Ans. I completed by B.Com in the year 1985. I joined the firm of C.P. Thakkar (which was a share market broker), as a back office person. During late 1980s, I joined the firm of Kamal Jalan (share broker) while in around 1991, I joined Vishvapriya Financial Services (share brokers). Around 1995, I joined Jetage Securities (share brokers) & in 1999 Olympia Securities Ltd (share brokers). Around year '2003, I joined Mangal keshav Insurance Brokers. During the month of October 2008, I lost my job at Mangalkeshav. The reason was mainly the downturn of securities markets & Mangalkeshav was not doing very well around that time.*

*In the year 2009, I started my own business of adjustment or accommodation entries. I have carried out only this business till about March 2013. From March 2013 onwards, I have tried to diversify in the business of customer services training & business coaching under the company, Whiteboard Studios Pvt. Ltd."*

- 5.6 Further, the Board observed that the 2<sup>nd</sup> Statement of the Respondent and Shri Rakesh Jhunjunwala was recorded on 12<sup>th</sup> June 2014 under section 131 of the Income Tax Act, 1961 before the ACIT/CIT, Circle 2(3), Kolkata. Their relevant deposition in their Statements is as follows:

Statement of Shri Vishal Bhuwania:

*"Q.6. Please explain the nature of business done by you.*

*Ans. My main business is arranging accommodation entries through "Jama-kharchi"/shell companies to various beneficiaries in lieu of commission. At times I also provide accommodation entries through the companies controlled by me. My office address is 'Commerce House', 2A, G.C. Avenue, 4th Floor, Room No. 8A, Kolkata - 700013.*

*W*

Q.10. Shri Rahul Jhunjhunwala, an established accommodation entry operator of Kolkata, has stated under oath in his statement recorded u/s 131 of the IT Act, 1961 on 12.06.2014 that he has provided accommodation entries in the form of share capital to Mahabir Group of Companies during the F.Y. 2008-09 and 2009-10. He has also stated that you have arranged the whole process of accommodation entries in the form of share capital to route back the undisclosed black money of Mahabir Group of Companies into their regular books of accounts. Please offer your comment.

Ans. Yes, I do agree that I have arranged the whole process of accommodation entries in the form of share capital to Mahabir Group of Companies during the F.Y. 2008-09 and 2009- 10 in lieu of commission. Initially, Shri Bijay K Agarwal, the in-house C.A. of Mahabir Group of Companies approached me to arrange accommodation entries in the form of share capital to route back the undisclosed black money of Mahabir Group of Companies into their regular books of accounts. After that, I approached my brother-in-law, Shri Rahul Jhunjhunwala, an accommodation entry operator to provide the same to Mahabir Group of Companies by multiple layering through his chain of companies like Cimcco Vinimay Pvt Ltd. The sources of such share capital are nothing but the undisclosed black money transferred by Mahabir Group of Companies to Shri Bijay K Agarwal who used to give it to various market brokers including me from whom Shri Rahul Jhunjhunwala used to collect the same and deposit the same in the accounts of his own companies. Necessary adjustments were made to the amount of money by adjusting the premium amounts of each share as per the client's instruction by Shri Rahul Jhunjhunwala."

Statement of Shri Rakesh Jhunjhunwala:

"Q.5. Please explain the nature of business done by you.

*Ans. My main business is providing accommodation entries through "jama-kharchi"/shell companies to various beneficiaries in lieu of commission. Although the companies formed by me have different addresses but they are being maintained from my offices located at the following addresses:*

- 1. 2A, G.C.Avenue, Commerce House, 4th Floor, Room No-8A, Kolkata - 700013.*
- 2. 16, M.S.Lane, 1st Floor, Kolkata - 700001.*

*Q.9. Please explain the sources of such share capital provided to Mahabir Group of Companies and also explain the modus operandi of providing accommodation entry.*

*Ans. Initially, I was approached by my brother in law Shri Vishal Bhuwania, another established accommodation entry operator of Kolkata to provide accommodation entries in the form of share capital to Mahabir Group of Companies. However, Shri Vishal Bhuwania was approached by Shri Bijay K Agarwal, the in-house Chartered Accountant of Mahabir Group to arrange accommodation entries in the form of share capital to route back the undisclosed black money of Mahabir Group to their regular books of accounts. The sources of such share capital are nothing but the undisclosed black money transferred by Mahabir Group to Shri Bijay K Agarwal who used to give it to various market brokers including Shri Vishal Bhuwania from whom I used to collect cheques and deposits the same in my own company accounts. In the books of accounts of my companies, the money received from Mahabir Group of Companies used to be shown as money received for sale of investments (shares). Subsequently, I used to issue cheques from my own company's accounts to Mahabir Group of Companies in the garb of paying for share capital to return back their own black money. In this way, I used to route back the same amount of black money received from Mahabir Group of Companies to their regular books of accounts in the form of share capital. Adjustments were made to the amount of money by adjusting the premiums amounts of each share offered. The valuation of the shares along with premiums had no other financial rationale."*

*NS*

5.7 The Board also noted that the Complainant Department brought on record copy of the Assessment Order for the following years wherein addition of income had been there in respect of the company M/s Mahabir Danwar Jewellers Pvt. Ltd. to whom allegedly the accommodation entries were provided:

| Assessment Year | Date of Assessment Order    | Addition of income   |
|-----------------|-----------------------------|--|
| AY 2008-09      | 31 <sup>st</sup> March 2016 | Rs. 1,50,00,000/- had been added to the income on account of cash deposit detected in the cash trail as unexplained cash credit u/s 68 of the Income Tax Act 1961 and Rs. 10,00,000/- had been added back to the total income of the assessee as unexplained cash credit u/s 68 of the Income Tax Act 1961 on account of coordination of bogus capital on behalf of beneficiaries. |
| AY 2009-10      | 31 <sup>st</sup> March 2016 | Rs. 25,00,000/- had been added back to the total income of the assessee as unexplained cash credit u/s 68 of the Income Tax Act 1961 on account of coordination of bogus capital on behalf of beneficiaries.   |
| AY 2010-11      | 31 <sup>st</sup> March 2016 | Rs. 2,09,00,000/- had been added to the income on account of cash  |

|  |  |  |
|--|--|--|
|  |  | deposit detected in the cash trail as unexplained cash credit u/s 68 of the Income Tax Act 1961 and Rs. 10,00,000/- had been added back to the total income of the assessee as unexplained cash credit u/s 68 of the Income Tax Act 1961 on account of coordination of bogus capital on behalf of beneficiaries. |
|--|--|--|

5.8 The Board further noted that the Complainant Department brought on record copy of the Assessment Order dated 31<sup>st</sup> December 2017 of the Respondent for the A.Y. 2013-14 wherein Long-Term Capital Gain to the extent of Rs. 18,43,329/- had been disallowed as bogus and added back to the total income of the assessee u/s 68 of the Income Tax Act 1961 and a demand of Rs. 8,71,150/- had been made which had been accepted by the Respondent under the Vivad Se Vishwas Scheme.

5.9 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 01.10.2013 and 12.06.2014 and the Statements of Shri Rahul Jhunjunwala and Shri Satish Saraf, before the concerned official of the Complainant Department. Further, the Board noted that although the Complainant Department brought on record copy of the Assessment Order in respect of one beneficiary for three assessment years showing addition of income in their hands on account of unexplained cash credit u/s 68 of the Income Tax Act 1961, they 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

W

establish the misconduct alleged on the part of the Respondent. Also, the Complainant Department brought on record copy of the Assessment Order of the Respondent for the A.Y. 2013-14 wherein Long-Term Capital Gain of Rs. 18,43,329/- had been disallowed and demand of Rs. 8,71,150/- had been made which had been accepted by the Respondent under the Vivad Se Vishwas Scheme. However, 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/-

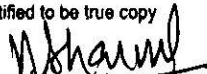
Ms. Dolly Chakrabarty (IAAS, retd.)  
(Government Nominee)

Sd/-

CA. Priti Savla  
(Member)

DATE: 02-02-2024

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

  
निशा शर्मा / Nisha Sharma  
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute of Chartered Accountants of India  
आईसीएआई भवन, विद्यास नगर, शाहदरा, दिल्ली-110032  
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

18