

CODE OF ETHICS

Volume-III

[CASE LAWS REFERENCER]



The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

New Delhi

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(VOLUME – III)
[CASE LAWS REFERENCER]



Issued by
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(Set up by an Act of Parliament)
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FOREWORD

Professional Ethics is a very specialized subject and it is essential that suitable guidance is provided to the Members so that they are duly aware about the requirements applicable to them and they can address the expectations of all Stakeholders. The Challenge to keep the Members updated is very big in this fast changing environment. Despite leaps in technological advances, the place of a well researched book in knowledge dissemination is privileged.

The disciplinary case laws relating to the ethical issues were hitherto appearing in the commentary to various Sections and Clauses of two Schedules in the Code of Ethics. This is for the First time that the Cases have been separated from the commentary and issued separately as Case Laws Referencer. I compliment the Ethical Standards Board of ICAI for this initiative. The Members will benefit enormously from this initiative as now they can have separate reference to the disciplinary case laws under respective Sections and Clauses.

The Case Laws Referencer brings out clearly the Disciplinary cases that a Member in practice and service should have in mind while performing their duties. There is improved guidance on number of issues as compared to earlier editions, e.g. under "Other Misconduct" lot of new instances have been incorporated and updated. It will be a kind of ready reckoner for all the Members.

The Case Laws Referencer which will be Code of Ethics (Volume-III) along with the revised Volumes I and II will act as complete set of guidance on Professional Ethics for the Members.

I congratulate the Chairman, Ethical Standards Board CA. Ranjeet Kumar Agarwal, and Vice Chairperson, Ethical Standards Board CA Kemisha Soni and the entire team of Ethical Standards Board for bringing out this useful publication for the benefit of Members.

It is really hoped that this Referencer will provide useful guidance to the Members.

New Delhi
7th February, 2020

CA. Prafulla P. Chhajed
President

PREFACE

The Institute brought the First Edition of the Code of Ethics for Members, then '*Code of Conduct*' in November, 1963. The said edition included not only the provisions of the Chartered Accountants Act, 1949 (Act), but also the interpretation of the Council, various High Courts and the Supreme Court pronouncements. It may be noted that the Act itself, along with the two Schedules to the Act set out norms for permissible activities for the Members of the profession.

Section 22 of the Act defines and describes what constitutes 'Professional Misconduct'. The two Schedules (Schedule I & II) describe in detail the various acts and omissions entailing professional/other misconduct, which are dealt with punishment in accordance with Chapter-V of the Act. These Schedules are distinguished on the basis of gravity of misconduct and quantum of punishment for the misconduct. The Second Schedule pertains to comparably more grave misconduct and higher punishment compared to First Schedule. The Disciplinary mechanism of the Institute is provided in the Act, and thus with the sanction of law behind, it has effectively been followed since the enactment of the Act without any difficulty.

Since this year the Code of Ethics has been aligned with the International Ethical Standards Board for Accountants (IESBA) after a gap of ten long years and volume of Case Laws are increasing every year, we decided to separate the part pertaining to Case Laws, and bring a new book titled Code on Ethics (Volume – III) - Case Laws Referencer.

The highlights of this Case Laws Referencer are: -

- It has incorporated all the decided/published case laws of both the Schedule till 1st April, 2019.
- It is very handy for the easy understanding of the Members using it.
- It is being issued in E-book form also with advance search feature.
- Members would be able to search the issue by clicking on the heading and all decided case laws on those issues can be referred instantly.
- All the decided case laws have been segregated issue wise in the Index.
- All the Case Laws have been numbered for easy remembrance.

We are hopeful that this publication will act as a complementary guide to the Members to help them acting in compliance with the provisions of Code of Ethics.

We compliment CA. Prafulla P. Chhajed, President and CA. Atul Kumar Gupta, Vice-President of ICAI, Shri Ashish Swaroop, Secretary of ESB and all Council Colleagues, Co-opted Members and Special invitees for their co-operation and support in bringing out this Referencer.

7th February, 2020
New Delhi

CA. Ranjeet Kumar Agarwal
Chairman, Ethical Standards Board

CA Kemisha Soni
Vice-Chairperson, Ethical Standards Board

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S.22. PROFESSIONAL OR OTHER MISCONDUCT

S 22 *For the purposes of this Act, the expression “Professional or Other Misconduct” shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of Section 21 to enquire into conduct of any member of the Institute under any other circumstances.*

False Certificate issued by Member

S 22.1(1) Where a Chartered Accountant admitted before the Examination Committee that he had issued a certificate to a person that he worked with him knowing it to be false.

Held, he was guilty of other misconduct.

(K.C. Jain Satyavadi in Re:- Page 98 of Vol. II of the Disciplinary Cases and pages 221-222 of December, 1955 issue of the Institute’s Journal - Judgement delivered on 7th November, 1955).

Retention of Books of Accounts & documents without Client Permission

S 22.1(2) Where a Chartered Accountant retained the books of account and documents and failed to hand them over to the clients regardless of their repeated requests.

Held, he was guilty of “other misconduct”.

(Jamnadas Harakchand and Others vs. P.C. Parekh - Page 492 of Vol. IV of the Disciplinary Cases and pages 26-44 of July, 1967 issue of the Institute’s Journal - Judgement delivered on 12th January, 1967).

Paid Assistant taking no steps to check Cash Balance

S 22.1(3) Where a paid assistant on whom the employer had implicit reliance took absolutely no steps whatsoever to check the cash balance facilitating and resulting in serious defalcations. Though no doubt he did pass on some information as to what he was doing to his employer he did not mention any fact from which the

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employer could have known that he had been so grossly negligent.

Held, he was guilty of "other misconduct" as envisaged in Section 21 of the Act.

(D.B. Parelkar in Re:- Page 805 of Vol. IV of the Disciplinary Cases and pages 502-504 of March, 1969 issue of the Institute's Journal - Judgement delivered on 27th November, 1968).

Fabrication or Window-Dressing of facts and figures

- S 22.1(4) Where a Chartered Accountant filed two separate returns of income in his individual capacity viz. one for the income from the profession as Chartered Accountant for and from the A.Y. 1965-66 to 1986-87 and another for the income from LIC Commission for and from A.Y. 1967-68 to 1986-1987. Thus, the Respondent evaded substantial income-tax and was liable for punishment. The Respondent was also guilty of committing fraud by giving two separate names to evade payment of the proper amount of income-tax.

Held that the Respondent was guilty of "Other misconduct".

(The Chief Commissioner (Administration) & Commissioner of Income - Tax, Karnataka-I, Bangalore vs. H. Mohanlal Giriya-Page 137 Vol. VIII-1-21(6) of Disciplinary cases).

Coercion in securing Fees

- S 22.1(5) Where a Chartered Accountant had exercised undue influence and coercion in securing from the Company payment of his fee and the letter of appointment for the next year. Held he was guilty of professional misconduct of a type not specified in the Schedules.

Where a Chartered Accountant committed acts of commission and omission in regard to the minute book of a Company containing the minutes of the proceedings of the annual general meeting purported to be held on a particular date thus knowingly made a false record. Held he was guilty of professional misconduct for acts not specified in the Schedules.

(Qaroon Trading and Finance Pvt. Ltd. vs. Laxmi Narain Saxena

PROFESSIONAL OR OTHER MISCONDUCT DEFINED

and Jitendra Mohan Chadha - Page 828 of Vol. IV of the Disciplinary Cases and pages 47-49 of July, 1969 issue of the Institute's Journal - Judgement delivered on 12th February, 1969).

Misrepresentation of Experience

- S 22.1(6) Where a Chartered Accountant had misrepresented to a firm while seeking employment as an Accountant that he had worked for 3 years as a senior Assistant with another firm.

Held he was guilty of "other misconduct" in terms of Section 21 of the Act.

(B.K. Chakraborty in Re:- Page 872 of Vol. IV of the Disciplinary Cases and pages 254-255 of October, 1969 issue of the Institute's Journal - Judgement delivered on 19th July, 1969).

Misuse of Services of Audit Assistant

- S 22.1(7) A Chartered Accountant was charged with misconduct for having used the services of his audit clerk during the period of his audit service for promoting the agricultural activities of the former. The Disciplinary Committee though satisfied from the evidence recorded that the audit clerk was required to attend to the agricultural activities of his employer during office hours, very regrettably came to the conclusion that engaging the services of the audit clerk for agricultural operations not casually but for a considerable time during his service as an audit clerk did not render the Member guilty of professional or other misconduct. The Council, having found the Member not guilty of any professional or other misconduct, dismissed the complaint.

On appeal made by the audit clerk against the order of the Council, the High Court held that the conduct of the Member in having asked the audit clerk to attend to his agricultural work instead of giving training to him to make him an auditor clearly amounted to "other misconduct".

(P.N.S. Murthy vs. D.V. Lakshmana Rao - Page 26 of Vol. V of the Disciplinary Cases and page 579 of June, 1975 issue of the Institute's Journal - Judgement delivered on 21st March, 1975).

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Misappropriation of Institute's Fund

S 22.1(8) A Chartered Accountant being the Secretary & Treasurer of the Central India Regional Council of the Institute misappropriated a large amount and utilised it for his personal use.

Held that the Chartered Accountant was guilty of charge of misappropriation and the Court directed the removal of his membership for a period of five years. It was observed that warnings and reprimands in such cases would undermine the basic purpose of Sections 21 and 22 of the Act and instead of acting as a deterrent for such misconduct may embolden erring Members to entertain hopes of lenient punishment.

(J.C. Tandon in Re:- Published at pages 548-549 of December, 1979 issue of the Institute's Journal and page 26 of Vol. VI(1) of Disciplinary Cases - Judgement delivered on 6th August, 1979).

Issuing certificate without verification

S 22.1(9) A Chartered Accountant issued consumption certificate of a firm on the strength of which Export Authorities issued licence for importing raw material and components. The Chartered Accountant failed to verify the certificate inspite of repeated enquiries raised by the Export Authorities.

Held that the Chartered Accountant was guilty of misconduct by not replying within a reasonable time and without a good cause to the letters of the Deputy Chief Controller of Imports & Exports. It was his implicit duty to verify the certificate issued by him in the case of an inquiry by Public Authority and in not doing so he committed an act of impropriety.

The words "professional or other misconduct" used in Section 21(1) are meaningful as they widen the authority of the Council not only to inquire into the professional misconduct of the Members, but misconduct otherwise also.

(Sri Gopal Shukla in Re:- Published at pages 546-548 of December, 1979 issue of the Institute's Journal and page 32 of Vol. VI(1) of Disciplinary Cases - Judgement delivered on 6th August, 1979).

PROFESSIONAL OR OTHER MISCONDUCT DEFINED

Possession of Government Records by a Member

S 22.1(10) Where a Chartered Accountant, being a tenant of premises, was searched in connection with the taxation matter of the owner of the said premises.

During the search, Income-Tax Assessment records of a Hindu Undivided Family (HUF) were found inside the steel almirah in the bedroom of the said Chartered Accountant. When interrogated, he explained that he had requested the concerned Income-tax Officer for one HUF assessment record to enable him to know how HUF accounts were prepared and maintained and, according to him the Income-tax Officer obliged him by handing over the said assessment records. The Income-tax Officer, however, categorically denied having passed on the Income-Tax Assessment records to him.

The Council was of the opinion that the possession of Government records by a Chartered Accountant constitutes "other misconduct" under Section 21 of the Chartered Accountants Act, 1949. A Chartered Accountant is not expected to be in possession of Government records or to retain them with him. Such an action on the part of a Chartered Accountant is grossly improper and unworthy of his status as a Chartered Accountant and is against the ethics of the profession. The said Chartered Accountant could not give any satisfactory explanation as to how the records came into his possession and also why he did not return the records to the Department immediately when he came to know that the records came to be in his possession. He was held guilty of "other misconduct".

(S.K. Bhaumik in Re:- Page 568 of Vol. VI(1) of Disciplinary Cases - Judgement dated 5th March, 1990).

Use of Abusive Language

S 22.1(11) The Respondent, *inter alia*, had used objectionable, derogatory and abusive language. He made irrelevant, incoherent, irresponsible and insane statements, expressions in all his correspondence with the complainant. He was, *inter alia*, held guilty of "other misconduct".

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(K. Bhattacharjee vs. B.K. Chakraborty - Page 86 of Vol. VII(1) of Disciplinary Cases – Council's decision dated 11th to 13th February, 1988 - Judgement dated 10th June, 1996).

Bogus Bills

S 22.1(12) The Respondent who was allotted the audit work of three branches of the Complainant-Bank for a year submitted bogus bills/receipts for claim of halting allowance expenses for audit of said branches, as found on the investigation by the Complainant-Banks Vigilance Department. He was held guilty of "other misconduct".

(State Bank of Patiala vs. Rishi K. Gupta – Page 291 of Vol. VII(1) of Disciplinary Cases – Council's decision dated 5th & 6th August, 1991 - Judgement dated 20th July, 2000).

Fake Certificate of Incorporation of Company

S 22.1(13) The Respondent was entrusted with the work of incorporation of a Company. He was also entrusted with the work of filing the return for registration of the charge in Form No. 8 with the Registrar of Companies. After making enquiries, he made available a certificate of incorporation issued by the Registrar of Companies. But on enquiry from the Office of the Registrar of Companies, it was learnt that the name of the said Company, was not borne on the Register of Companies and Form No. 8 was not traceable in the Registrar's office. He had later admitted that the above certificate was fake, forged and not genuine. He had not filed any of the documents with the Registrar of Companies. He had failed to make available or return the documents despite requests on the pretext that the same were not traceable. He had provided to the Complainant a communication issued by the Office of the Registrar of Companies which had also been discovered to be fake.

He was, *inter alia*, held guilty for "other misconduct".

(Deepak Pahwa vs. A.K. Gupta – Page 346 of Vol. VII (1) of Disciplinary Cases – Council's decision dated 6th September, 1995 - Judgement dated 4th September, 2000).

PROFESSIONAL OR OTHER MISCONDUCT DEFINED

Advertisement with malafide intention to malign

S 22.1(14) Where the Respondent published an advertisement in the newspaper with a malafide intention to malign the Complainant.

Held that Respondent was inter alia guilty of "other misconduct".

(S.C. Katyal vs. O.P.C. Jain & O.P. Sharma –Page 1 of Vol. VIII-1-21(6) of Disciplinary cases – Council's decision dated 25th to 27th February, 1999 - Judgement delivered on 27th April, 2001 and published in the September, 2001 issue of Journal at pages 309 to 311).

Member in Employment giving declaration of being in Practice

S 22.1(15) A Chartered Accountant while in employment with a Corporation conveyed acceptance as Statutory Auditor to the complainant and give a wrong declaration to the bank that he was a full time practicing Chartered Accountant and not employed elsewhere with an intention to obtain Bank Branch Audits and derive undue benefits. The Respondent having committed an act which is unbecoming a Chartered Accountant was therefore inter alia guilty of "Other misconduct".

(The Senior Manager, Punjab National Bank vs. N.K. Chopra – Page 121 Vol. VIII-1-21 (6) of Disciplinary Cases – Council's decision dated 22nd July, 1997 - Judgement delivered on 20th May, 2003 and published in the December, 2003 issue of Institute's Journal at page 686).

Authoring Book on Black Money

S 22.1(16) The Respondent authored a book titled 'Tax Planning for Secret Income (Black Money)'. On going through the preface as well as the contents of the book it was seen that the author had explained in detail the various methods of creation of black money followed by different sections of society and the methods, legal as well as illegal, generally adopted to convert the same into white. Since it appeared that the title of the book, its preface, its contents and in totality the book was likely to create an impression in the eyes of common man that Chartered Accountants are experts in helping in

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the creation of black money and its conversion into white money though there is no direct reference as such to the Chartered Accountants; this might tend to lower the image of the profession in the public eyes.

Held that the Respondent was guilty of "other misconduct".

The Hon'ble Gujarat High Court in its judgement dated 14th February, 2003 observed that:

"... Having regard to the old age of the Respondent, ailments that he is suffering from, repentance that he has shown in the Court and the time lag that has elapsed, as also his statement that he has never published any such writing after the publication of the said book, in our opinion, interest of justice will be met if the Respondent is removed forthwith from the membership of the Institute for a period of five years. We accordingly, while upholding the Respondent guilty of misconduct, direct that the Respondent be removed forthwith from the membership of the Institute for a period of five years. The reference stands disposed of accordingly with no order as to costs.

At this stage, the learned counsel for the Respondent submits that the operation of this order may be stayed to enable the Respondent to approach the higher forum. In our opinion, in the facts and circumstances of the case, it will be improper for us to stay the operation of this order when the removal of the Respondent was due long back, having regard to the serious nature of the misconduct committed by him."

The Respondent filed a review petition and special Leave Petition against the above judgement of the Gujarat High Court, in the Supreme Court. The Supreme Court, by its judgement dated 6 August 2003, dismissed the review petition. The text of the order is given below:

"We have gone through the review petition and the connected papers. We do not find any good reason to review our order. It lacks merits. The review petition is therefore dismissed."

(P.C. Parekh in Re: –Page 63 Vol. VIII-1-21(6) of Disciplinary Cases – Judgement of the Gujarat High Court dated 14th February

PROFESSIONAL OR OTHER MISCONDUCT DEFINED

2003 and judgement of Supreme Court dated 6th August, 2003 and published in the February, 2004 issue of Institute's Journal at pages 869 to 890).

Fabrication/Forgery of challans

S 22.1(17) The Respondent had fabricated and filed challans for advance tax in respect of certain clients and relatives and then filed their returns of Income showing nominal income so as to claim refund against advance tax paid. On investigation it was found by the Income Tax Department that the Respondent had changed the amount of advance tax paid in copies of challans that are retained by the assessee and sent to the Department alongwith the return. The returns also, in many cases, were verified by him. The address given in the returns was his own so that the refund vouchers could reach him and he had, in fact, encashed these vouchers by opening bank accounts in the names of the assessees. The Respondent was said to have admitted having committed this forgery etc. thereby defrauding the exchequer to the tune of Rs. 15 lakhs. As per FIR filed by the Income Tax Officer, the Respondent was arrested and was remanded first to police custody and thereafter to judicial custody.

Held that the Respondent was guilty of "Other misconduct". The Council also decided to recommend to the High Court that the name of the Respondent be removed permanently from the Register of Members.

The Hon'ble Gujarat High Court while delivering the order observed that:

"...The petitioner Council is one such representative body charged with responsibility of ensuring discipline and ethical conduct amongst its members and impose appropriate punishment on members who are found to have indulged in conduct which lowers the esteem of the professionals as a class. Adopting the aforesaid approach, it is not possible to find any infirmity, either on facts or in law, in the reasoning and the findings recorded by the Disciplinary Committee and the petitioner Council by holding the Respondent as being guilty of "other misconduct" under Section 21 read with Section 22 of the Act and hence, there is no

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necessity to interfere with the punishment recommended. It has been proved beyond reasonable doubt, in the facts and circumstances of the case and by the evidence on record, that the Respondent and only the Respondent, is guilty of "other misconduct" and hence liable to punishment under section 21(6)(c) of the Act i.e. removal from membership of the Institute permanently.

The reference is accordingly disposed of with a direction to the petitioner Council to remove the Respondent from the membership of the Institute permanently."

(Commissioner of Income - Tax, Gujarat -III, Ahmedabad vs. Mukesh R. Shah –Page 161 Vol. VIII-1-21(6) of Disciplinary Cases – Judgement delivered dated 11th November 2003 and published in the January, 2004 issue of Institute's Journal at pages 764 to 781).

Issuing false certificates for Monetary consideration

S 22.1(18) While investigating into cases of some fraudulent imports and clearance, the Custom Department came across a case of one Chartered Accountant who issued false certificates to several parties for past exports for monetary consideration, without verifying any supporting records or documents. On the strength of these false certificates, certain unscrupulous importers were able to obtain import license, effect imports and clear these free of duty, perpetuating a fraud on Government revenue and depriving the Government of its legitimate revenue to the tune of several Crores of Rupees. In his statement recorded under section 108 of the Custom Act, 1962, the Respondent had also confessed his role in this affairs as well as the fact that he also got a share in this deal of issuing false certificates.

Held that he was guilty of "Other Misconduct".

(Additional Collector of Customs, Department of Customs vs. K.N. Kanodia:- Page 691 Vol. VIII-1-21(6) of Disciplinary cases- Judgement dated 12th August, 2004).

PROFESSIONAL OR OTHER MISCONDUCT DEFINED

Demand of excess Money & failure to refund Unspent Money

S 22.1(19) A Chartered Accountant demanded and received large sums of money towards advance payment and claimed expenses beyond the eligibility/entitlement as per RBI guidelines and failed to refund the unspent money. The Council held him guilty of "other misconduct" in terms of Section 22 read with Section 21 of the Chartered Accountants Act, 1949 which was accepted by the High Court.

(S.N. Banerjee, Dy. General Manager, State Bank of Hyderabad vs. Lokesh Dhawan-Page 323 Vol. IX -1-21(6) of Disciplinary cases- Council's decision dated 23rd June, 2001 and Judgement of High Court dated 5th November, 2007).

Issuing False Certificate for disbursement of Loan

S 22.1(20) A Chartered Accountant was engaged by his client for getting financial assistance from bank, but for disbursement of a term loan in favour of his client he issued a false certificate. The act of issuing the vague certificate by him contributed and enabled the officers of the bank to have paper formalities completed which amounted to aiding and abetting by the Chartered Accountant, for disbursement of the loan and for this act he was held guilty of "other misconduct". The High Court confirmed the decision of the Council.

(Supdt. of Police, CBI, ACB, New Delhi vs. Dayal Singh - Page 177 & 288 Vol. IX-1-21(60) of Disciplinary cases- (25-CA(55)/92), Decision of the Council dated 30th April, 2001, 216th Meeting of the Council and Judgement of High Court dated 10th May, 2007).

Failure to repay the Loan /Overdraft

S 22.1(21) A Chartered Accountant, appointed as Concurrent Auditor of a bank, firstly used his influence for getting some cheque purchased and thereafter failed to repay the loan/overdraft. He acted in an irresponsible manner and had not discharged his duties professionally. Being a Concurrent Auditor used his position to obtain the funds and failed to repay the same to the Complainant. Though such conduct may not directly attract any particular clause(s) specified in any of the schedule(s) of the Chartered Accountants Act, 1949, yet such act is certainly unpardonable.

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The Council held him guilty of “other misconduct” under Section 22 read with Section 21 of the Chartered Accountants Act, 1949 and the High Court further confirmed the same.

(Manager, Punjab National Bank vs. M.K. Sachdeva- page 273 Vol-IX-1-21(6), Decision of the Council dated 16th April, 2004, 242nd Meeting of the Council and Judgement of High Court dated 7th August, 2007).

Not completing work of Audit on time

S 22.1(22) Where a Chartered Accountant had not completed his audit work of the accounts of a Company, in spite of several reminders and payment of advance fee of audit, the Council held him guilty under Clause (7) of Part I of the Second Schedule and ‘other misconduct’ within the meaning of Section 21 read with Section 22. The High Court also accepted the Council’s decision and ordered to remove his name from the Register of Members for a period of one year.

(R. K. Goswami, Administrator, Delhi Nagrik Sekhari Bank Ltd. vs. M/s Dayal Singh & Co – Page 288 Vol.IX -1-21(6)of Disciplinary cases, Council’s decision dated 16th April, 2004 and Judgement of High Court dated 7th August, 2007).

Failure to appear before Tax Authorities

S 22.1(23) Chartered Accountant was held guilty under Clause (7) of Part I of the Second Schedule and “other misconduct as being a tax consultant and a tax auditor he failed to appear before the Income Tax Authorities for his client even after having instructions from his client. In spite of being fully paid for his professional services and provided all the books of account and other documents, he failed to satisfy the Income Tax Officer because of his negligence and careless attitude. There were several anomalies in the books of account. The opening and closing balances as per the bank statements and pass-books were not re-produced correctly in the cash book.

(R.C. Dutta vs. Kailash C. Mishra - Page 143 Vol.IX-1-21(6) of Disciplinary cases-, Council’s decision dated 5th January, 2005 and Judgement of High Court dated 1st March, 2007).

PROFESSIONAL OR OTHER MISCONDUCT DEFINED

Violation of PCAOB Rules

S 22.1(24) A Chartered Accountant in practice was involved in numerous and repeated violations of PCAOB (Public Company Accounting Oversight Board) Rules, Quality Control Standards and Auditing Standards in connection with the audits of its client for which PCAOB barred him for specified period from its membership.

Held, the default on the part of the Respondent brought disrepute to the profession under Clause (2) of Part IV of the First Schedule, read with section 22 of Chartered Accountants Act, 1949.

It was also held that a corrective action needs to be taken to signal the Members at large that before/while undertaking any professional assignment particularly in case of international clients, due care, caution and compliance in terms of their respective standards needs to be exercised and Members need to ensure that they are adequately equipped professionally and otherwise to execute such professional assignments.

(Sandeep P S G Nair, Mumbai in Re:- [PPR/20/W/13-DD/17 /W/INF/13-BOD/302/2017]).

SECTION 24: PENALTY FOR FALSELY CLAIMING TO BE A MEMBER

- S 24 Any person who -
- (i) not being a member of the Institute-
 - (a) represents that he is a member of the Institute; or
 - (b) uses the designation Chartered Accountant; or
 - (ii) being a member of the Institute, but not having a certificate of practice, represents that he is in practice or practices as a Chartered Accountant, shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months or with fine which may extend to five thousand rupees, or with both.

Failure to pay the fine, sentenced to rigorous imprisonment

S 24.1(25) In a case under the above provision, the Court of Additional Chief Judicial Magistrate had by its judgement dated 18th July, 1989 found the accused guilty under Section 24(i)(a) & (b) of the Chartered Accountants Act and Section 465 of the Indian Penal Code. The Court imposed a fine on the accused and in the event of his failure to pay the fine, sentenced to rigorous imprisonment for three months.

(Case of Prem Batra decided on 18.7.1989 and published in September, 1989 issue of the Institute's Journal at Page 246).

SECTION 27: MAINTENANCE OF BRANCH OFFICES

S 27 (1) *Where a chartered accountant in practice or a firm of such chartered accountants has more than one office in India, each one of such offices shall be in the separate charge of a member of the Institute:*

Provided that the Council may in suitable cases exempt any chartered accountant in practice or a firm of such chartered accountants from the operation of this sub-section.

(2) *Every chartered accountant in practice or a firm of such chartered accountants maintaining more than one office shall send to the Council a list of offices and the persons in charge thereof and shall keep the Council informed of any changes in relation thereto.*

Opening of Branch Office without Member in Charge

S 27.1(26) *Where a Chartered Accountant kept the Branch Office without putting a Member in charge thereof thereby committing a breach of clause (i) of Section 27 of the Act.*

Held that the fault was only technical which had been made good and ordered the papers to be filed.

(P.N. Mehta in Re:- Page 774 of Vol. IV of the Disciplinary Cases and pages 396-399 of February, 1969 issue of the Institute's Journal - Judgement delivered on 12th November, 1968).

PART I OF FIRST SCHEDULE

Professional Misconduct in Relation to Chartered Accountants in Practice

- 1.1.1 **Clause (1):** *allows any person to practice in his name as a chartered accountant unless such person is also a chartered accountant in practice and is in partnership with or employed by him.*

PART I OF FIRST SCHEDULE – CLAUSE (2)

1.1.2 Clause (2): *pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualifications as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India:*

Some of the decisions under Clause (2) are given below:

Agreement to Share the Profits

1.1.2(27) In a decision of the Council, where a Chartered Accountant entered into an agreement whereby he had clearly agreed to pay the share in profits of his professional business to the complainant and another person who were not the Members of the Institute.

It was held that he was guilty of professional misconduct under the clause.

(Vadilal V. Shah vs. J.B. Sanghavi - Page 239 of Vol.V of the Disciplinary Cases -decided from 13th to 16th February, 1974).

Sharing Audit Fees as “Allowance”

1.1.2(28) A Chartered Accountant gave 50% of the Audit Fees received by him to the complainant, who was not a Chartered Accountant, under the nomenclature of office allowance and such an arrangement continued for a number of years, it was held by the Council that in substance the Chartered Accountant had shared his profits.

Held, he was guilty of professional misconduct under the clause. It is not the nomenclature to a transaction that is material but it is the substance of the transaction which has to be looked into.

(D.S. Sadri vs. B.M Pithawala - Page 300 of Vol. V of the Disciplinary cases - decided from 14th to 17th September, 1977).

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- 1.1.3** **Clause (3):** *accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute:*

PART I OF FIRST SCHEDULE – CLAUSE (4)

- 1.1.4 Clause (4):** *enters into partnership, in or outside India, with any person other than a chartered accountant in practice or such other person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under Clause (v) of sub-Section (1) of Section 4 or whose qualifications are recognised by the Central Government or the Council for the purpose of permitting such partnerships:*

The decisions of the Council under Clause (4) are given below:

Entering in Partnership with Business Firms

- 1.1.4(29) Where a Chartered Accountant had engaged himself as a partner in two business firms and Managing Director in two Companies and was also holding Certificate of Practice without obtaining permission of the Institute.

Held that he was a guilty of professional misconduct inter alia under Clauses (4) and (11).

(Harish Kumar in Re:—Pages 286 of Vol. VIII (2) of Disciplinary Cases – Council's decision dated 1st to 3rd August, 2001).

Managing Partner with two Partnership Firms

- 1.1.4(30) The Respondent was a Taxation Advisor of a group of Companies. During search and seizure under Section 132 of The Income Tax Act, 1961 of the group and also of the Chartered Accountant, the Complainant found that the Respondent was colluding with this group in evasion of tax. The Respondent had signed two sets of financial statements of the same auditee, for the same financial year. The two financial statements showed different figures of contract receipts, net profits and balance sheet. He was grossly negligent in the conduct of his professional duties. The Respondent admitted that he was Managing Partner / Partner in two partnership firms where there were other partners who were not Chartered Accountants.

Held, the respondent was guilty under Clause (4) of Part I of First Schedule and under Clauses (5), (6) & (7) of Part I of Second Schedule.

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(Assistant Director of Income Tax (Investment), Calicut vs. P. Subramanian – Page 132 of Volume X -2B-21(4) of the Disciplinary Cases-Council decision of 281st Meeting held in October, 2008).

Partnership with a person being a client and non-member

- 1.1.4(31) Where the Respondent entered into a partnership in the name and style of a Builder. Also, the Respondent being a Chartered Accountant and a professional entered into a business partnership with his client whose returns and accounts had been maintained by him, which was conflict of interest.

Held guilty of Professional Misconduct falling within the meaning of Clauses (4) & (11) Part I of the First Schedule of the Chartered Accountants Act, 1949.

(The Assistant Commissioner of Income-Tax, Agra vs. Anurag Jain [PR/101/2011/DD/125/11/BOD/164/2014] - Judgement delivered on 6th November, 2015).

PART I OF FIRST SCHEDULE – CLAUSE (5)

- 1.1.5 **Clause (5):** *secures, either through the services of a person who is not an employee of such chartered accountant or who is not his partner or by means which are not open to a chartered accountant, any professional business:*

Writing letters with details and experience for securing work

- 1.1.5(32) A Chartered Accountant wrote various letters to officers of different Army Canteens giving details about him and his experience, his partner & office and the norms for charging audit fees.

He was held guilty for violation of Clauses (5) & (6).

(Jethanand Sharda vs. Deepak Mehta – Council's decision dated 1st to 4th July, 1998 – Page 61 of Volume VIII(2) of Disciplinary Cases).

CASE LAWS REFERENCER

- 1.1.6 **Clause (6):** *solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means;*

Printed card for solicitation of work

- 1.1.6(33) Where a Chartered Accountant sent a printed card and circular letters soliciting work.

Held, he was guilty under the clause.

(M.J. Gadre vs. W.G. Ambekar - Page 43 of Vol. I of the Disciplinary Cases and pages 87-89 of August, 1952 issue of the Institute's journal-judgement delivered on 4th April, 1952).

Issuing letters of Authority

- 1.1.6(34) Where a Chartered Accountant firm issued a letter of authority in favour of two other Chartered Accountants to accept and carry out audits of Co-operative Societies on its behalf and they (the two Chartered Accountants) issued circulars of which the firm was not aware.

Held that the firm was **not guilty** of Professional Misconduct.

(V.B. Kirtane in Re: - Page 423 of Vol.III of the Disciplinary Cases and page 465 of January, 1958 issue of the Institute's journal - Judgement delivered on 11th November, 1957).

But the person, in whose favour the letter of authority was given in the above case, was held guilty.

(M.R. Walke in Re: - Page 441 of Vol.III of the Disciplinary Cases and pages 469-470 of January, 1958 issue of the Institute's journal-Judgement delivered on 11th November, 1957).

Application offering himself as an Auditor

- 1.1.6(35) Where a Chartered Accountant sent an application to the Chairman of a Co-operative Society offering himself for appointment as an auditor.

Held that the infringement was a serious breach of professional ethics.

PART I OF FIRST SCHEDULE – CLAUSE (6)

(G.K. Joglekar in. Re: and D.G. Jawalker in Re:- Pages 429 and 433 of Vol. III of the Disciplinary Cases and pages 466-469 of January, 1958 issue of the Institute's Journal-Judgement delivered on 11th November, 1957).

- 1.1.6(36) A letter of request was sent for being appointed as auditor. Held, he was guilty.

(B.K. Swain in Re: - Page 134 of Vol. IV of the Disciplinary Cases and pages 356-358 of March, 1960 issue of Institute's Journal - Judgement delivered on 12th February, 1960)

- 1.1.6(37) A Chartered Accountant sent a printed circular to a person unknown to him offering his services in profit planning and profit improvement programmes. The circular conveyed the idea that it was meant for strangers only.

Held, the Chartered Accountant was guilty of professional misconduct under the clause as he used the circulars to solicit clients and professional work.

(B.S.N Bhushan in Re: - Page 989 of Vol.IV of the Disciplinary cases decided on 11th& 12th January, 1965).

Roving Enquiries

- 1.1.6(38) A Chartered Accountant wrote several letters to the Assistant Registrar of Co-operative Societies, Government of West Bengal stating that though his firm was on the panel of auditors, no audit work was allotted to the firm and requested them to look into the matter.

Held the Chartered Accountant was guilty of professional misconduct under the clause.

(D.C. Pal in Re: - Page 1001 of Vol. IV of the Disciplinary Cases - decided on 12th, 13th and 14th September, 1966).

- 1.1.6(39) A Chartered Accountant wrote several letters to Assistant Registrars/Registrars of Co-operative Societies, Government of West Bengal requesting for allotment of audit work and to enroll his name on panel of auditors.

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Held, he was guilty of professional misconduct under the clause. The activities of the Chartered Accountant went much beyond the instructions of the Council to the effect that roving enquiries should not be made with the Government Department for empanelling the name unless it had been ascertained in advance that specific panel was being maintained. It was also held that an auditor of co-operative societies under a licence granted by co-operative department was not its employee and, therefore, he could not solicit work.

(Chief Auditor of Co-operative Societies, West Bengal vs. B.B. Mukherjee- Page 1007 of Vol. IV of the Disciplinary Cases - decided on 16th September, 1967).

- 1.1.6(40) The Respondent issued circular offer to a Govt. Agency, antedated in the nature of offer-cum-appointment seeking letter/circular tantamounting to enquiries, advertisement and soliciting the work. It is noteworthy that the above letter of the Respondent did not indicate reference of any enquiry by the Agency in response to which the said offer was made. The Respondent had used his acquaintance with the then Chairman/D.M. of the Agency for fetching the assignment, ignoring the recommendations of original committee and influencing the subordinate officers for changing the recommendation in favour of the Respondent. The said act of the Respondent amounted to solicitation of work.

Held that the Chartered Accountant is guilty of professional misconduct within the meaning of Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(A.K. Gupta of M/s G.P. Jaiswal & Co. vs. Habibullah – Page 110 of Vol.X-2B-21(4) of Disciplinary Cases – Council’s decision dated 15th to 17th April, 2004).

- 1.1.6(41) A Chartered Accountant, inspite of the previous reprimand, sent letters to Registrar, Co-operative Societies, Calcutta, stating that no allotment of audit was made to him and requested to take action immediately and oblige.

Held he was guilty of professional misconduct under the clause.

PART I OF FIRST SCHEDULE – CLAUSE (6)

(D.N. Das Gupta, Chief Auditor of Co-operative Societies, West Bengal vs. B.B. Mukherjee - Page 1028 of Vol. IV of the Disciplinary Cases-decided on 15th and 16th September, 1969).

Approaching through third person for appointment as Auditor

- 1.1.6(42) A Chartered Accountant approached the Principal of a Secondary school through a third person known to the Principal for his appointment as auditor of that school. Further, the Chartered Accountant misrepresented to the previous Auditor that he had been offered appointment as Auditor of the School and enquired whether he had any objection to his accepting the same though it was a fact that the appointment of Chartered Accountant was not made.

Held, the Chartered Accountant was guilty of professional misconduct under the clause. It was further held that writing letter by the Chartered Accountant to the previous auditor offering his services to audit the accounts of School was not wrong as it was an offer to a professional colleague and not to a prospective client.

(M.L. Agarwal in Re: - Page 1033 of Vol. IV of the Disciplinary Cases-decided on 16th and 17th February, 1973).

Assistant of Member writing request for Professional Work

- 1.1.6(43) An assistant of the Chartered Accountant under his authorisation wrote letter to a stranger association requesting for appointment as auditor.

Held, the Chartered Accountant was guilty of professional misconduct under the Clause.

(S.N. Mukherji & Co. vs. P.K. Ghosh - Page 273 of Vol.V of the Disciplinary Cases-decided on 20th & 21st February, 1975).

Writing letters of change of Address to non-Clients

- 1.1.6(44) A Member was found guilty of professional misconduct under Clauses (6) and (7) of Part I of the First Schedule for having issued circular letter regarding change of address of his firm to persons who were not in professional relationship with him and for having written to the shareholders thanking them for appointing him as Auditor.

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He was reprimanded by the Council under Section 21(4). On an appeal made by him against the order of the Council, the High Court confirmed the order passed by the Council having regard to the ethical requirements about publicity by the Members of the Institute as laid down in the Code of Conduct.

(K.K. Mehra vs. M.K. Kaul - Page 80 of Vol. V of the Disciplinary Cases and pages 189-191 of February, 1976 issue of the Institute's Journal - Judgement delivered on 23rd October, 1975)

Advertisement of Congratulations for opening of Office

- 1.1.6(45) An advertisement was published in a newspaper containing the Member's photograph wherein he was congratulated on the occasion of the opening ceremony of his office.

He was found guilty by the Council and later, by High Court - of violating this Clause (soliciting work by advertisement). The following observations of the High Court may be relevant:

- (a) The advertisement which had been put in by the Member is a noticeable one and the profession of Chartered Accountancy should maintain high standards of integrity, professional ethics and efficiency.
- (b) If soliciting of work is allowed the independence and forthrightness of a Chartered Accountant in the discharge of duties cannot be maintained and therefore some discipline must be maintained by the profession.

(G.P. Agrawal in Re: - Page 14 of Vol. VI(2) of Disciplinary Cases - Judgement dated 30th April, 1982).

- 1.1.6(46) A Member had an advertisement published in a newspaper regarding inauguration of his professional office. It was held that having regard to:

- (i) the nature of the advertisement
- (ii) the function organised on that occasion
- (iii) the persons invited
- (iv) the medium used

PART I OF FIRST SCHEDULE – CLAUSE (6)

- (v) the names of various concerns which had conveyed their good wishes
- (vi) the advertisement having been released by the Respondent himself, and he had solicited professional work by advertisement, he was found guilty in terms of this clause.

(Shashindra S. Ostwal in Re: - Page 81 of Vol. VI(2) of Disciplinary Cases - Decided on 11th, 12th and 13th February, 1988).

Writing to Company highlighting Professional attainments

- 1.1.6(47) A Member issued a printed circular letter to a Company highlighting the details of his professional attainments and services which he could render in various fields offering his professional services on a contractual basis.

He was found guilty in terms of this clause.

(Parimal Majumder in Re: - Page 333 of Vol. VI(2) of Disciplinary Cases - Decided on 11th, 12th, 13th and 14th September, 1989).

Advertisement seeking work from other Professionals

- 1.1.6(48) A Member gave an advertisement in a Newspaper seeking works from other professionals.

He was found guilty in terms of this clause.

(B.K. Sharma in Re: - Page 340 of Vol. VI(2) of Disciplinary Cases - Decided on 11th, 12th, 13th and 14th September, 1989).

- 1.1.6(49) A Chartered Accountant issued circular/letter to Chartered Accountants/firms of Chartered Accountants outside Kanpur. In the said circular, while offering his services, the details regarding expenses to be incurred and fees to be charged by him for rendering professional services etc. were also mentioned.

Held that he was guilty of professional misconduct under the Clause.

(Sanjeev Srivastava in Re: – Page 249 Vol. IX-2A-21(4) of Disciplinary Cases – Council's decision dated 11th to 13th November, 2002).

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Highlighting expertise in Sales matters in letter

- 1.1.6(50) A Member wrote a letter to a Company in standard format highlighting his expertise in Sales tax matters and had requested for a draft of Rs. 200/- if his knowledge of the Sales tax matters has been found worthwhile.

The Member was found guilty in terms of this Clause.

(K.A. Gupta in Re: - Page 371 of Vol. VI(2) of Disciplinary Cases - Decided on 18th, 19th and 20th December, 1989).

Liasoning with Government Departments

- 1.1.6(51) Where a Chartered Accountant had sent a letter to another firm of Chartered Accountants, in which he had introduced his firm as pioneer in liasoning with Central Government Ministries and its allied Departments for getting various Government clearances for which he had claimed to have expertise and had given a list of his existing clients and details of his staff etc.

Held that he was guilty under the clause.

(Bijoy Kumar in Re: - Page 69 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 16th September, 1991).

Personal visit for securing Appointment as Auditor

- 1.1.6(52) Where a Chartered Accountant had visited personally the clients for securing the appointment as auditors of the Institutions.

Held that he was guilty under clause (6) of Part I of First Schedule.

(J.S. Bhati vs. M.L. Aggarwal - Page 87 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 4th& 5th December, 1975 - Judgement dated 30th October, 1991).

Writing letter for Empanelment with a recommendation

- 1.1.6(53) Where a Chartered Accountant had addressed an undated but signed letter to a Bank requesting for empanelment of his firm as auditor alongwith the particulars of his firm showing the past experience and other details of the firm; and a Member of

PART I OF FIRST SCHEDULE – CLAUSE (6)

Parliament had also sent a letter to the Bank recommending the name of the said Chartered Accountants firm for immediate empanelling for Internal Audit/Inspection Audit/Management Audit, Expenditure Audit.

Held that the Member was guilty under clause (6) of Part I of the First Schedule.

(Naresh C. Agarwal in Re: - Page 160 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 16th to 18th July, 1992).

- 1.1.6(54) Where a Chartered Accountant had solicited clients and professional work by personal communication as also by enclosing a circular with his communication, utilized the influence of a Minister as well as created political pressure to secure professional work, etc.

Held he was guilty under the clause.

(K. Bhattacharjee vs. B.K. Chakraborty - Page 462 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 11th to 13th February, 1988 and Judgement dated 10th June, 1996 dismissing appeal filed by the Respondent).

Advertisement mentioning administrative ability and availability for retainership

- 1.1.6(55) Where a Chartered Accountant had published an advertisement in two newspapers mentioning that he was a Senior Chartered Accountant having administrative ability and was available on retainership for setting up Accounts Department/Internal Auditing/Finance Management.

Held that he was guilty under the clause.

(D.M. Kothari in Re: - Page 253 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 5th to 7th August, 1993).

Sending letter with details of services and fees charged

- 1.1.6(56) Where a Chartered Accountant had sent a letter on the letterhead of his firm to a non-member introducing himself as a Chartered Accountant giving details of services rendered by him and the schedule of his fees for rendering various kinds of services.

Held that he was guilty under the clause.

CASE LAWS REFERENCER

(V.K. Goel in Re: - Page 340 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 5th to 7th December, 1994).

Letter to Co-operative Society with request to contact

- 1.1.6(57) Where a Chartered Accountant had written a letter to a Co-operative Society wherein he had mentioned that he had been authorised by the Registrar of Societies to conduct the statutory audit of the Societies and requested it to contact him.

Held that it tantamounts to solicitation of the audit and he had violated the provisions of the clause.

(M.V. Lonkar in Re: - Page 410 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 23rd & 24th February, 1996).

Letter to Shareholder about eligibility for appointment as Auditor

- 1.1.6(58) A Chartered Accountant had issued a letter to a shareholder of a Company informing him about his eligibility for appointment as statutory auditor of any Company and the said shareholder had forwarded the aforesaid letter of the Chartered Accountant to the Company proposing the Chartered Accountant's appointment as auditor, as a special notice under Section 225 read with Section 224(2)(d) of the Companies Act, 1956. The Company had informed the shareholder that it could not take any action on his letter as the Chartered Accountant's certificate in terms of Section 224(1) of the Companies Act had not been received. The Chartered Accountant had directly written to the Complainant Company certifying that the appointment, if made, would be in accordance with the limits specified in Section 224(1B) of the Companies Act. Besides the above Company, other 9 Companies had also received such notices under Section 225 of the Companies Act.

It was held by the Council that he was guilty under Clause (6). The Council decided that his name be removed from the Register of Members for a period of one month. He appealed against the decision of the Council to the High Court. The High Court allowed the appeal in part. While upholding the finding of the Council that he was guilty of committing professional misconduct, the Court

PART I OF FIRST SCHEDULE – CLAUSE (6)

modified the punishment awarded to him by substituting the same with a censure that he shall be careful in future in observing the high tradition and best standards of the noble profession of Chartered Accountants.

(V.K. Goenka, VC & MD, Warren Tea Ltd. vs. P.K. Lodha - Page 588 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 6th to 8th December, 1995 and judgement of the High Court dated 29th August, 1996).

- 1.1.6(59) A Chartered Accountant had addressed a letter to the Managing Director of a Company seeking appointment as its internal auditor. He had stated that he was of the bona fide belief that the Company might be maintaining a panel of Chartered Accountants for assigning the internal audit work. He was held guilty for violation of Clause (6).

(P.G. Biswas in Re:- Page 790 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 8th to 10th December, 1997).

- 1.1.6(60) A Chartered Accountant wrote various letters to officers of different Army Canteens giving details about him and his experience, his partner & office and the norms for charging audit fees. He was held guilty for violation of Clauses (5) & (6).

(Jethanand Sharda vs. Deepak Mehta – Council's decision dated 1st to 4th July, 1998 – Page 61 of Vol. VIII(2) of Disciplinary Cases).

Details of Services and books written along with New Year Greetings

- 1.1.6(61) A Chartered Accountant sent New Year Greeting Cards bearing his name, qualification, the name and address of his firm and also containing the following:

“List of super hit books written by Suresh D. Chauhan. Guide to win girls – Income-Tax raid. Contact for any type of bank for institutional loans or deposits”.

Held that the Chartered Accountant contravened Clause (6) & (7) of Part-I of the First Schedule to the Chartered Accountants Act, 1949 in having solicited assignment relating to any type of bank or institutional loans or deposits.

CASE LAWS REFERENCER

(S.D. Chauhan in Re:- Page 226 of Vol. VIII (2) of Disciplinary Cases – Council's decision dated 1st - 3rd August, 2001).

Publication of details of Member in Souvenir

- 1.1.6(62) The Souvenir published on the occasion of “Navaratrotsav” by ‘Parel Paschim Vibhag Va Tata Mills Welfare Centre 1991’ contained an advertisement with a caption “With Best Compliments from Abhiraj R. Ranawat B.Com., A.C.A. (Chartered Accountant) Share and Stock Sub-Broker. The said advertisement also contained office timing 8 A.M. to 10 A.M., telephone nos. of market and residence and addresses of office and market.

Arising out of the above, the Respondent was, inter alia, held guilty in having published his designation as Chartered Accountant with telephone nos., office address etc. in the Souvenir for soliciting professional work directly or indirectly in violation to Clause (6).

(A.R. Ranawat in Re:- Page 414 of Vol. VIII (2) of Disciplinary Cases – Council's decision dated 26th to 28th August, 2001).

Advertisement in Newspaper

- 1.1.6(63) A Chartered Accountant had issued the following advertisements in “Hindustan Times” –

“Experienced C.A. having Posh Office with telephones, Computer, Telex, Car, Qualified Staff available for taxation, Company Law, Accounts, Internal control, Financing from banks and institutions, contact phone” By issuing the above advertisement, the Respondent has tried to (i) Solicit clients of professional work either directly or indirectly, (ii) Advertised his professional attainments of services in violation of Clause (6) & (7) Part I of First Schedule to the Chartered Accountants Act, 1949.

Held that he was guilty of professional misconduct under the said Clauses.

(Rajeev Sharma in Re:- Pages 454 of Volume VIII (2) of Disciplinary Cases – Council's decision dated 26th to 28th August, 2001).

PART I OF FIRST SCHEDULE – CLAUSE (6)

Approached Chairman for Audit of Institution

- 1.1.6(64) Where a Chartered Accountant approached the Chairman of an Institution and offered to accept the audit of said Institution.

Held that he was inter alia guilty of professional misconduct within the meaning of Clause (6) of Part I of the First Schedule of the Chartered Accountants Act, 1949.

(L.K. Kathare vs. G. Sreenivasa -Page 784 of Vol. X-2A-21(4) of Disciplinary Cases – Council's decision dated 16th to 18th September, 2003).

Using Signboard on Electric Poles and Shutters of shops

- 1.1.6(65) An Industrial Consultant was providing services of Income Tax Returns, TDS Return, PAN No. etc. and the same was run by the Member's wife. However, the address, telephone number, email id, PAN No. form, calendars etc. of Consultant all belonged to the Member. The signboard of the firm was hanged on various electric poles and shutters of shop. The firm of the Member was closed w.e.f. 30.12.2004 and yet the Member continued to advertise the name of the said firm. The Member also failed to give any reply to explain as to how he could advertise whereas all these ways are prohibited under the Chartered Accountants Act.

Held, guilty of professional misconduct falling within the meaning of Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Sunil Kumar in Re: Page 37 of Vol I Part I of Disciplinary Cases, Judgement Delivered on 3rd February, 2011).

CASE LAWS REFERENCER

- 1.1.7 **Clause (7):** *advertises his professional attainments or services, or uses any designation or expressions other than chartered accountant on professional documents, visiting cards, letter heads or sign boards, unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the Institute of Chartered Accountants of India or of any other institution that has been recognised by the Central Government or may be recognised by the Council:*

Provided that a member in practice may advertise through a write up, setting out the services provided by him or his firm and particulars of his firm subject to such guidelines as may be issued by the Council;

Using designations other than Chartered Accountant

- 1.1.7(66) Where a Chartered Accountant used the designation 'Incorporated Accountant, London' and 'Registered Accountant, India', in the Balance Sheet and also failed to report to the shareholders in the prescribed form under the Banking Companies Act

Held the Chartered Accountant was guilty of the two charges. The word 'member' in Section 21 of the Act should be construed as including a past member for the purpose of enquiry, as what was required was membership at the time of the commission of the alleged misconduct.

(Mirza M. Hussain in Re: - Page 24 of Vol. II of the Disciplinary Cases and pages 26-29 of July, 1955 issue of the Institute's Journal-Judgement delivered on 10th May, 1955).

- 1.1.7(67) A Chartered Accountant used the designation 'Industrial and Management Consultant' in addition to the designation 'Chartered Accountant' on printed circular sent to a stranger. Held, he was guilty of professional misconduct under the clause.

(B.S.N. Bhushan in Re: - Page 989 of Vol.IV of the Disciplinary Cases-decided on 11th and 12th January, 1965).

PART I OF FIRST SCHEDULE – CLAUSE (7)

- 1.1.7(68) Where a Chartered Accountant in his firm's letter head had used the designation 'Manager (Liaison & Sales)'.

Held that he was guilty under clause (7) of Part I of the First Schedule.

(Bijoy Kumar in Re:- Page 69 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 16th September, 1991).

- 1.1.7(69) Where a Chartered Accountant had used the designation and expression other than the Chartered Accountant, mentioned his experience as General Manager of a Cooperative Bank, expressed himself as President and Chief Executive of an Institute in his professional documents and had depicted religion and politics in his letterheads and letters for professional attainments.

Held he was guilty under clause (7).

(K. Bhattacharjee vs. B.K. Chakraborty - Page 462 of Vol.VII(2) of Disciplinary Cases - Council's decision dated 11th to 13th February, 1988 and Judgement dated 10th June, 1996 dismissing appeal filed by the Respondent).

- 1.1.7(70) Where the Respondent used the designation "Share and Stock Sub-broker" alongwith the designation of "Chartered Accountant" violating inter alia provisions of this clause.

(A.R. Ranawat in Re: - Page 414 of Vol. VIII (2) of Disciplinary Cases – Council's decision dated 26th to 28th August, 2001)

Advertising Professional Attainments

- 1.1.7(71) A Chartered Accountant wrote several letters to Government Department, inter alia, pointing out seniority of his firm, sending his life sketch and stating that he had a glorious record of service to the country as well as to the organisation of accountancy profession with a view to get the audit work. These letters were clearly in the nature of advertising professional attainments.

Held, he was guilty of professional misconduct under the clause.

(Sirdar P.S. Sodhbans in Re: - Page 1022 of Vol. IV of the Disciplinary Cases - decided on 13th and 14th March, 1969).

CASE LAWS REFERENCER

Offering Concessions along with services

- 1.1.7(72) Where a Chartered Accountant had issued two insertions in a Journal published by a Chamber of Commerce offering various services and expressing his willingness to offer the concession in respect of all services offered by him.

Held that he was guilty under clauses (6) & (7).

(N.O. Abraham Isaac Raj in Re:- Page 117 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 9th to 11th April, 1992).

Letter giving Impression as if sent to many organisations

- 1.1.7(73) Where a Chartered Accountant had addressed a letter to the Managing Director of a Company offering his services as a practising Chartered Accountant and giving impression that the letter had been addressed to more than one organisation for the above purpose, it was held that the Member had contravened the provisions of clauses (6) & (7).

(Yogesh Gupta in Re:- Page 400 of Vol.VII(2) of Disciplinary Cases - Council's decision dated 23rd & 24th February, 1996)

Advertisement of Services

- 1.1.7(74) A Chartered Accountant sent New Year Greeting Cards bearing his name, qualification, the name and address of his firm and also containing the following:

“List of super hit books written by Suresh D. Chauhan. Guide to win girls – Income-Tax raid. Contact for any type of bank for institutional loans or deposits”. Held that the Chartered Accountant contravened Clause (6) & (7) of Part-I of the First Schedule in having solicited assignment relating to any type of bank or institutional loans or deposits.

(S.D. Chauhan in Re: – Page 226 of Vol.VIII(2) of Disciplinary Cases – Council's decision dated 1st - 3rd August, 2001).

- 1.1.7(75) A Chartered Accountant had issued the following advertisements in “Hindustan Times” –

PART I OF FIRST SCHEDULE – CLAUSE (7)

“Experienced C.A. having Posh Office with telephones, Computer, Telex, Car, Qualified Staff available for taxation, Company Law, Accounts, Internal control, Financing from banks and institutions, contact phone” By issuing the above advertisement, the Respondent has tried to (i) solicit clients of professional work either directly or indirectly, (ii) advertised his professional attainments of services in violation of Clause (6) & (7) Part I of the First Schedule.

(Rajeev Sharma in Re: - Page 454 of Vol.VIII(2)of Disciplinary Cases – Council’s decision dated 26th to 28th August, 2001).

- 1.1.7(76) Where a Chartered Accountant advertised services and used designations/expression other than “Chartered Accountant” in professional stationery. Held that he was inter alia guilty of professional misconduct under the Clause (7) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Sri Nath Prasad vs. Vineet Aggarwal – Page 23 Vol. IX-2B-21(4) of Disciplinary Cases – Council’s decision dated 2nd to 4th February, 2004).

Representation as an Agent of LIC Housing Finance Ltd.

- 1.1.7(77) A Chartered Accountant firm was working as Recovery Agent for Housing Finance Company without taking any permission from the Council to engage in any work other than the profession of Chartered Accountancy. The Respondent had written a letter to the Complainant for recovery of money wherein he represented himself as an agent of LIC housing Finance Ltd. He intimidated the Complainant with harsh and coercive method of recovery. Held that the Respondent was guilty under clauses (7) & (11) of Part I of First Schedule.

(Yogesh Kumar Sharma vs. O.P. Maheshwari of M/s O.P. Maheshwari & Co. (25-CA(212)/2003). - to be published later under Disciplinary Cases Volume X-2B–21(4). Council decision of 281st Meeting held in October, 2008).

CASE LAWS REFERENCER

Use of Logo

- 1.1.7(78) Where a Chartered Accountant as an in-charge of TIN Facilitation Centre of National Securities Depository Limited (NSDL) had accepted part of the profits of the professional work of a person who was not a Member of the Institute. He was acting as CEO of the said facilitation centre and had written on public platform and sought work from an undisclosed person. He responded to a mail soliciting the job. In his resume, he advertised his professional attainments and which was like a circular and the same was sent to stranger. In addition, he used the logo in his visiting card and in the resume of the firm.

Held guilty of “professional misconduct” falling under Clause (7) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Amresh Kumar Vashisht vs. Anuj Goyal Re: Page 165 of Vol I Part I of Disciplinary Cases, Judgement delivered on 3rd February, 2011, Further Judgement delivered on 28th January 2012 by Appellate Authority).

Propagating services through SMS

- 1.1.7(79) Where a Chartered Accountant allegedly propagating his services subsequent to demonetization, an objective of Government of eradicating black money, through mass SMS alongwith his mobile number offering his services towards conversion of cash with minimum tax liability.

Held guilty of Professional Misconduct falling within the meaning of Clause (6) & (7) of Part I and “Other Misconduct” falling within the meaning of Clause (2) of Part IV of First Schedule read with section 22 of the Chartered Accountants Act, 1949.

(Kailash Shankarlal Mantry in Re: [PPR/392/2016 /DD/135/INF /2016/BOD/240/17] Judgement delivered on 30th May 2017).

PART I OF FIRST SCHEDULE – CLAUSE (8)

- 1.1.8 **Clause (8):** *accepts a position as auditor previously held by another chartered accountant or a certified auditor who has been issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing;*

Failed to communicate unintentionally

- 1.1.8(80) Where a Chartered Accountant failed to communicate in writing with the previous Auditor of his appointment as Auditor of a Co-Operative Bank and such omission was not intentional.

Held that the breach was only technical and that it was open to the High Court to award a lesser punishment than removal of a Member.

(S.V. Kharwandikar vs. D.K. Borkar - Page 113 of Vol.I of the Disciplinary Cases and page 236 of November, 1952 issue of the Institute's Journal-Judgement delivered on 18th August, 1952).

Reasonable time not given for reply

- 1.1.8(81) A Chartered Accountant commenced the work of audit on the very day he sent letter to the previous Auditor

Held, he was guilty of professional misconduct under the clause. The appointment could be accepted only when the outgoing auditor does not respond within a reasonable time.

(S.N. Johri vs. N.K. Jain - Page 1042 of Vol.IV of the Disciplinary Cases - decided on 13th, 14th & 15th September, 1973).

- 1.1.8(82) Where a Chartered Accountant as incoming Auditor had made written communication with the outgoing Auditor by hand delivery for seeking his 'No Objection Certificate' and without providing reasonable time the incoming auditor conducted the audit and signed the audit report. He also could not produce any documentary evidence of written communication.

Held guilty of professional misconduct falling under Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(Rajesh Rathi of M/s Rathi Pasari & Associates vs. Ramod Tapdiya of M/s Pramod Tapdiya & Associates Re:-Page 207 of Vol. II Part I of Disciplinary Cases, Judgement delivered on 13th January, 2014)

CASE LAWS REFERENCER

- 1.1.8(83) Where a Chartered Accountant had accepted the Statutory Audit of a Bank without giving reasonable time period to the previous Auditor for responding. He sought NOC from the previous auditor and on the same date he commenced the Audit. Though he submitted that he had sent the communication earlier but could not produce any documentary evidence.

Held guilty of professional misconduct falling within the meaning of Clause (8) of Part - I of First Schedule to the Chartered Accountants Act. 1949.

(Milind Ramchandra Kulkarni (based on letter received) Re: Page 76 of Vol I Part I of Disciplinary Cases, Judgement delivered on 3rd February, 2011).

Sent Communication after commencement of Audit

- 1.1.8(84) A Chartered Accountant sent a registered letter to the previous auditor after the commencement of the audit by him.

Held he was guilty of professional misconduct under the clause.

(Radhe Shyam vs. K.S. Dubey - Page 234 of Vol. V of the Disciplinary Cases - decided on 15th & 16th February, 1974).

Commenced Audit in Five Days without Communication

- 1.1.8(85) A Chartered Accountant commenced the audit within five days of the date of his appointment without sending any communication to the previous auditor. The previous auditor also denied the receipt of any communication.

Held, he was guilty of professional misconduct under the clause.

(S.B. Chidrawar vs. C.K. Rao - Page 251 of Vol. V of the Disciplinary Cases - decided on 19th & 20th July, 1974).

Registered Post without Acknowledgement

- 1.1.8(86) A Chartered Accountant had sent a communication to the previous auditor under certificate of posting without obtaining any acknowledgement thereof. The Council held the Member guilty in terms of this Clause.

On an appeal made by the Member, the High Court observed that the expression "in communication with" when read in the light of

PART I OF FIRST SCHEDULE – CLAUSE (8)

the instructions contained in the booklet “Code of Conduct” could not be interpreted in any other manner but to mean that there should be positive evidence of the fact that the communication addressed to the outgoing auditor had reached his hands. Certificate of Posting of a letter could not in the circumstances be taken as positive evidence of its delivery to the addressee.

(M.L. Agarwal vs. J.S. Bhati - Page 65 of Vol. V of the Disciplinary Cases and pages 305-307 of November, 1975 issue of the Institute's Journal - Judgement delivered on 29th August, 1975).

- 1.1.8(87) A Member accepted the position of a statutory auditor and sent the communication to the previous auditor through Registered Post without Acknowledgement Due. The Council held the Member guilty of professional misconduct under Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Ashok K. Aggarwal vs. Yogesh Thakur - Page 89 Vol X-2A-21(4) of Disciplinary Cases – Council's decision dated 29th August, 2005).

Communication under Certificate of Posting

- 1.1.8(88) A Chartered Accountant sent under postal certificate, letters to the previous auditor before appointment and also before commencement of audit by him but there was no proof that they were received by the previous auditor.

Held he was guilty of professional misconduct under the clause. The communication was not proper within the meaning of the words Communication with occurring in the clause.

(Mehra Khanna & Co. vs. Man Mohan Mehra - Page 292 of Vol.V of the Disciplinary Cases - decided on 22nd& 23rd December, 1976).

- 1.1.8(89) A Member sent under Certificate of Posting a letter to the previous auditor before accepting his appointment as the auditor of a society but there was no proof that the said letter was received by the previous auditor. He was found guilty in terms of this Clause because a mere posting of a letter under certificate of posting is not sufficient to establish communication with the retiring auditor unless there is some other evidence to show that the letter has in fact reached the person communicated with.

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(A.K. Todani vs. A.P. Bhadani - Page 177 of Vol.VI(2) of Disciplinary Cases - Decided on 15th, 16th and 17th December, 1988)

- 1.1.8(90) A Member sent "under Certificate of Posting" letter to the previous auditor before accepting the audit of a Charitable Society. He could not produce any conclusive evidence that the said letter was received by the previous auditor. Mere posting of a letter "under Certificate of Posting" is not sufficient to prove communication with the retiring auditor unless there is other evidence that the letter has in fact reached the person communicated with. He was found guilty in terms of this Clause.

(J. Patnaik vs. Y. Pani - Page 219 of Vol. VI(2) of Disciplinary Cases - Decided on 15th, 16th and 17th December, 1988).

- 1.1.8(91) A Member sent "under Certificate of Posting" letter to the previous auditor before accepting the tax audit of a Partnership Firm. But there was no proof that the said letter was received by the outgoing auditor. He was found guilty in terms of this Clause because a mere posting of a letter "Under Certificate of Posting" is not sufficient to establish communication with the retiring auditor unless there is some other evidence to show that the letter has in fact reached the person communicated with.

(S.K. Jain vs. D.K. Karmakar - Page 348 of Vol. VI(2) of Disciplinary Cases - Decided on 11th, 12th, 13th and 14th September, 1989).

- 1.1.8(92) It was observed that mere posting of a letter under 'Certificate of Posting' was not sufficient to prove communication with the previous auditor unless the following requirements have been complied with:

- (i) if there is evidence that a communication to the previous auditor had been by R.P.A.D.
- (ii) if there was positive evidence about delivery of the communication to the previous auditor.

The Respondent had failed to produce in defence that the communication was received by the previous auditor.

PART I OF FIRST SCHEDULE – CLAUSE (8)

The Respondent was held guilty of professional misconduct falling within the meaning of Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(Rajiv Bhatnagar, Trustee, Saraswati Educational Foundation, Noida vs. Sanjeev Vohra, Ludhiana, [DD/188/09/DC/131/2010]).

- 1.1.8(93) Where the Respondent had accepted the assignment as a Statutory Auditor of the Trust and sent a letter under Post Certificate to the previous auditors, about his appointment as Statutory Auditor of the Trust. The Respondent waited for a reasonable period before proceeding to commence the Statutory Audit but no response was received from the previous auditors.

The Respondent accepted the assignment of the Internal Audit work and continuing the Internal Audit work without communicating to Complainant firm.

As per the ICAI Regulations – Code of Ethics, Clause (8) of Part I of the First Schedule, the incoming auditors before accepting to carry out any professional work done by a previous Auditor, should necessarily communicate with the previous Auditors in writing and that too by way “Registered Post with Acknowledgement Due” (R.P.A.D).

The Respondent was failed to comply with the above and held guilty of professional misconduct.

(N. Raja, Chennai vs. Subrata Roy Re: [PR/27/2012-DD/80/2012-BOD/165/2014]).

Communication vide Ordinary Post

- 1.1.8(94) A Chartered Accountant sent a letter by ordinary post to the previous auditor after the acceptance of the audit assignment. Moreover, no evidence was produced to show that the said letter was either sent to or was received by the previous auditor.

Held that he was guilty of professional misconduct under the clause as the same amounts to non-communicating with the previous auditor.

(K.K. Sud vs. K.N. Chandla - Page 306 of Vol. V of the Disciplinary Cases - decided on 27th 28th & 29th October, 1978).

CASE LAWS REFERENCER

- 1.1.8(95) Member sent the communication by Ordinary Post. The Council held the Member guilty of professional misconduct under Clause (8) of Part I of the First Schedule read with Sections 21 and 22 of the Chartered Accountants Act, 1949.

(Mahendra R. Shah vs. Ms. Deepali Dattatraya Dalal - Page 443 Vol.X-2A-21(4) of Disciplinary Cases – Council's decision dated 6th October, 2005).

Communication applicable to Appointment by Governemnt Agencies also

- 1.1.8(96) The provision of Clause (8) requiring a communication with the previous auditor is absolute and applicable even in respect of appointment by the Government agencies and even in cases where the Member is aware that the previous auditor had been made aware of the appointment.

(Rajeev Kumar vs. R.K. Agrawal - Page 143 of Vol. VI(2) of Disciplinary Cases - Decided on 15th, 16th and 17th December, 1988).

Non-Communication in case of Tax Audit

- 1.1.8(97) Where a Chartered Accountant had conducted Tax Audit of a firm without first communicating in writing with the Complainant, who was the previous tax auditor of the said firm.

Held that hewas guilty under the clause.

(V.A. Parikh vs. R.I. Galledar - Page 19 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 6th to 8th June, 1991).

- 1.1.8(98) Where a Chartered Accountant accepted the Tax Audit of a company without communicating with the outgoing Auditor. Further in Schedule IV – Sundry Creditors for Expenses to the Balance Sheet of that FY, Rs.3,000/- was shown as outstanding and payable to him as Audit Fees.

Held guilty of “professional misconduct” falling under Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Vishnu Kumar Javar vs. Vinod K. Jain - Page 7 of Vol I Part I of Disciplinary Cases, Judgement delivered on 3rdFebruary 2011).

PART I OF FIRST SCHEDULE – CLAUSE (8)

Accepting audit without Communication in Writing

- 1.1.8(99) Where a Chartered Accountant had accepted a position as Auditor of a Co-operative Bank previously held by the Complainant without first communicating with him in writing before accepting the audit.

Held that he was guilty under the clause.

(D.H. Firke vs. L.B. Jadhav - Page 26 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 6th to 8th June, 1991).

- 1.1.8(100) Where a Chartered Accountant had not replied to two letters which were sent to him and had conducted the Audits without communicating with the complainant in writing.

Held that the Member was guilty under the clause.

(V.K. Gupta vs. A.K. Jain - Page 49 of Vol.VII(2) of the Disciplinary Cases – Council's decision dated 16th September, 1991).

- 1.1.8(101) Where a Chartered Accountant had not communicated with the complainant before accepting the appointment as auditor of a school.

Held that he was guilty under the clause.

(J.S. Bhati vs. M.L. Aggarwal - Page 87 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 4th& 5th December, 1975 and Judgement dated 30th October, 1991 of Rajasthan High Court).

- 1.1.8(102) Where a Chartered Accountant had accepted the position as an auditor of two Companies previously held by the complainant without first communicating with him in writing.

Held that he was guilty under the clause.

(S.K. Kansal vs. S.L. Gupta - Page 131 & 141 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 16th to 18th July, 1992).

- 1.1.8(103) Where a Chartered Accountant had accepted the position as Tax

CASE LAWS REFERENCER

Auditor of a Company and as Statutory Auditor of another Company previously held by the Complainant without first communicating with him in writing.

Held that he was guilty under the clause.

(Naresh H. Kumbhani vs. P.V. Dalal - Page 272 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 24th to 26th November, 1993).

- 1.1.8(104) Where the Respondent had audited the accounts of a Company without first communications with the previous auditor of the Company.

Held guilty of professional misconduct falling within the meaning of Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Tarak Nath Datta (based on letter received) Re: Page 87 of Vol I Part I of Disciplinary Cases, Judgement delivered on 3rdFebruary 2011).

- 1.1.8(105) The Respondent had accepted Statutory Audit of a non-corporate entity without first communicating with the complainant in writing. It was observed that the Respondent adopted very casual approach in the case and even he was not aware of the fact that No Objection Certificate (NOC) from previous auditor which was required to be obtained for Audit.

The Respondent was held guilty of Professional Misconduct falling within the meaning of Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(Puneet Bhatia vs. Arvind Kumar Munka [PR/77/16-DD/125/2016/BOD/391/2017]).

Non-Communication where Audit Report signed Later

- 1.1.8(106) A Chartered Accountant accepted the Tax Audit work of a unit of a State Textile Corporation, for the Assessment Years 1986-87 and 1987-88 under Section 44AB of the Income-tax Act, 1961, without communicating with the complainant who had done the work for Assessment Year 1985-86. Although the Tax Audit Report of the

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Assessment Year 1985-86 was signed much later, yet there was no doubt that the Complainant was holding the position of the Tax Auditor of the said unit, on the date of appointment of the said Chartered Accountant for the next two years viz., 1986-87 and 1987-88. Accordingly, it was incumbent upon him to communicate with the Complainant before accepting the Tax Audit of the Corporation as a whole for the assessment years 1986-87 and 1987-88.

Therefore, he was held guilty under Clause (8).

(M.S. Padmanabhan Nair vs. R. Chidambaram - Page 501 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 5th to 6th December, 1996).

Non-Communication and not ascertaining compliance of provisions of Companies Act, 1956

- 1.1.8(107) Where a Chartered Accountant accepted the appointment as Auditor without first communicating with the previous auditor and without first ascertaining from the Company whether the requirement of Sections 224 & 225 of the Companies Act, 1956 had been duly complied with.

Held that he was guilty under the Clauses (8) & (9).

(Lalit K. Gupta of M/s Lalit K. Gupta & Co. vs. Ajay Bansal – Page 145 of Vol. VIII (2) of Disciplinary Cases – Council's decision dated 1st to 3rd August, 2001).

- 1.1.8(108) Where a Chartered Accountant accepted audit of three Companies without first communicating in writing with the previous auditor. He also accepted the audit without ascertaining whether the provisions of Section 225 of the Companies Act, 1956 had been complied with.

Held that he was guilty of professional misconduct under the Clauses (8) & (9).

(J.R. Kakadiya vs. M.S. Chokshi – Page 179 of Vol. VIII (2) of Disciplinary Cases – Decision of the Council dated 1st to 3rd August, 2001).

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- 1.1.8(109) Where a Chartered Accountant accepted the position as auditor without first ascertaining from the Company as to whether the provisions of Section 224 (7) of the Companies Act were complied with and without first communicating with the previous auditor of the Company. Held that he was inter alia guilty of professional misconduct under Clauses (8) & (9) of the First Schedule of the Chartered Accountants Act, 1949.

(M/s Jha & Associates vs. S. Dhar - Page 466 of Vol. VIII (2) of Disciplinary Cases – Council's decision dated 6th to 8th December, 2001).

- 1.1.8(110) Where a Chartered Accountant had accepted the position as the Statutory Auditor of a company without first communicating with the previous auditor in writing and without first ascertaining from it whether the requirement of section 225 of the Companies Act, 1956 in respect of such appointment had been properly complied with.

Held guilty of 'Professional Misconduct' falling within the meaning of Clauses (8) and (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(Gireesh Bhalla vs. Pradeep Kumar Sharma [PR-312/2014-DD/327/2014/BOD/256/2017] Judgement delivered on 28th June, 2018).

Non-Communication in case of Audit of Army Canteen

- 1.1.8(111) Where a Chartered Accountant accepted the position as Auditor of Army Canteen without prior communication in writing with the previous auditor.

Held that he was guilty of professional misconduct under the Clause.

(Jethanand Sharda vs. Deepak Mehta - Pages 403 of Vol. VIII (2) of Disciplinary Cases – Council's decision dated 1st to 3rd August, 2001. Also published in the December 2002 issue of Institute's journal at page 628).

Non-Communication and non-acceptance of letters from Previous Auditor

- 1.1.8(112) Where a Chartered Accountant accepted a position as auditor of a

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school without first communicating in writing with the previous auditor while the Respondent claimed to have sent the letter but no letter was received by the complainant. In spite of repeated efforts of postal authorities the Respondent did not accept the Registered A.D. letters from the complainant.

Held that he was guilty of professional misconduct under the Clause.

(D.R. Soni vs. H.L. Joshi – Page 101 Vol.IX-2B-21(4) of Disciplinary Cases – Council's decision dated 11th to 14th September, 2002).

Non-Communication in case of removal of Previous Auditor

- 1.1.8(113) While the audit was pending, the complainant came to know that the Respondent had signed the accounts of the Company for the two years. The Respondent never communicated with complainant. The complainant had never resigned from the Auditorship of the Company. No notice for the complainant's removal was sent by the Company. The provision of the Section 225 of the Companies Act, 1956 were not complied with properly by the Company and all this was ignored by the Respondent.

Held that the Respondent was guilty of professional misconduct within the meaning of Clauses (8) & (9) of the Part I of the First Schedule of the Chartered Accountants Act, 1949.

(J.P. Gupta vs. Charanjit Malhotra - Page 113 Vol.IX-2A-21(4)of Disciplinary Cases – Council's decision dated 11th to 13th November, 2002).

- 1.1.8(114) Even while another C.A. Firm was doing Audit of a Company and raised audit queries, the Respondent on being approached by the Company accepted the position of Statutory Auditor. The Respondent communicated with the previous Auditor after already signing the balance sheet. He did not bother to examine whether the provisions of Section 224 and 225 have been duly complied with. Held that he was guilty of professional misconduct under Clause (8) & (9) of the First Schedule of the Chartered Accountants Act, 1949.

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(S.P. Khemka vs. T.G. Ramanathan – Page 387 Vol IX -2A -21(4) of Disciplinary Cases – Council's decision dated 26th to 28th December, 2002).

- 1.1.8(115) Where the Respondent omitted to communicate with the previous auditor before accepting the audit of Private Limited Company and also without first ascertaining whether requirements of Sections 224, 225 & 226 of the Companies Act, 1956 were complied with. Held that he was guilty of professional misconduct under Clause (8) & (9) of Part I of the First Schedule of the Chartered Accountants Act, 1949.

(V.K. Wadhwa vs. G.P. Makkar – Page 451 Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 26th to 28th December, 2002).

- 1.1.8(116) The Complainant was appointed Statutory Auditor of a Private Limited Company but the Company did not get their Accounts Audited by the complainant. Later the Company produced a Balance Sheet and Profit and Loss Account before the complainant for Statutory Audit and report prepared by the Respondent's firm in the capacity as an Internal Auditor without any books of account, which the complainant refused to do. The Respondent was appointed as Internal Auditor, then as Branch Auditor and finally as Statutory Auditor without any knowledge of the complainant. The Respondent signed the unaudited financial statement as the Statutory Auditor and the same was filed with the Registrar of Companies under section 220 of the Companies Act, 1956. Held that the Chartered Accountant was guilty of professional misconduct within the meaning of Clauses (8) & (9) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Phool Chand Gupta vs. Parshu Ram Bhagat – Page 671 Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 16th to 18th September, 2003).

- 1.1.8(117) The Complainant was the Tax Auditor of a firm for three financial years under Section 44 AB of the Income Tax Act, 1961. On reminding the auditee firm for getting the accounts audited for subsequent years, the auditee firm informed the Complainant that

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the work had been entrusted to another Chartered Accountant and he had also completed the audit. Thus, the Respondent firm had not only accepted the said tax audit but also completed the same without first communicating with the Complainant.

Held that the Chartered Accountant was guilty of professional misconduct under the Clause.

(S.M. Momaya of M/s S.M. Momaya & Co. vs. Ashok Sharma of M/s Ashok K. & Co. – Page 199 Vol.IX-2B-21(4) of Disciplinary Cases – Council's decision dated 15th to 17th April, 2004).

1.1.8(118) The Complainant's firm (previous auditor) was appointed as auditors of a company at its Annual General Meeting and re-appointed for the subsequent year. In absence of any resignation from previous auditor or notice for removal and the change of auditors, the incoming auditor accepted the appointment without first communicating. The incoming auditor did not verify the compliance of Section 224 and 225 of the Companies Act, 1956. The Council held the incoming auditor guilty of professional misconduct under Clauses (8) and (9) of Part I of First Schedule read with Sections 21 and 22 of the Chartered Accountants Act, 1949.

(Rajeev Mittal of M/S. Mittal Rajeev & Associates vs. Rajeev Shah of M/s Bihani & Shah - Page 454 Vol.X-2A-21(4) of Disciplinary Cases – Council's decision dated 6th October, 2005).

1.1.8(119) The Complainant-firm was the Statutory Auditors of a company since its incorporation and Audited and certified the Company's Accounts up to 1994. They completed the routine audit of the Company's Accounts for the year ending 31st March, 1995 and the trial balance along with the schedules and draft accounts was handed over to the Company for approval of the Board of Directors. Later, the Incoming Auditor took up the Audit and certified the Accounts for the same year, without communicating and ascertaining the compliance of provisions of Section 225 of Companies Act, 1956. The Council held the incoming auditor guilty of professional misconduct under Clauses (8) and (9) of Part I of First Schedule to the Chartered Accountants Act, 1949.

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(Vinod Somani vs. M.L. Agarwal - Page 511 Vol.X-2A-21(4) of Disciplinary Cases – Council's decision dated 2nd August, 2006).

- 1.1.8(120) Where complainant audited the accounts of six Companies and seven Trusts up to the year ended 31st March, 2001 and was re-appointed as auditors of these Companies in their respective Annual General Meetings and also as auditors of these Trusts. The Complainant never tendered any resignation. Later, the Respondent (Incoming Auditor) informed the Complainant by letter, of their appointment as auditors of the above Companies and Trusts, to which the Complainant endorsed by mentioning their objection and gave the same to the bearer who brought the letter. The provisions of Section 225 of the Companies Act, 1956 were not complied with and the previous Auditor's Fee was also outstanding. The Council held the Incoming Auditor guilty of Professional Misconduct under Clauses (8) and (9) of Part I of the First Schedule and also guilty under Notification No. 1-CA(7)/46/99 dated 28th October, 1999 issued under Clause (ii) of Part II of the Second Schedule read with Sections 21 and 22 of the Chartered Accountants Act, 1949.

(Prakash Chand Surana of M/s. Prakash Surana & Associates vs. Pratap Singh Surana of M/s. Pratap Singh Surana & Co. - Page 466 Vol.X-2A-21(4) of Disciplinary Cases – Council's decision dated 6th October, 2005).

Non-Communication despite repeated follow Ups

- 1.1.8(121) Where a Chartered Accountant accepted the Tax Audit u/s 44AB of the Income-Tax Act without first communicating with the previous auditor. The complainant wrote a letter to the Respondent to bring the aforesaid default to his notice but did not receive any reply from the Respondent. The Respondent had telephonically talked to the complainant and said that the client explained him that the previous auditor had gone out of station and therefore he wanted him to audit his firm's account. The Respondent accepted the said explanation of the client without communicating with the complainant in writing. Held that he was guilty of professional misconduct under Clause (8) of Part I of the First Schedule of the Chartered Accountants Act, 1949.

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(H.M. Kataria vs. R.K. Malpani – Page467 Vol.IX-2A-21(4) of Disciplinary Cases – Council’s decision dated 26th to 28th December, 2002).

Where removal not informed to the Previous Auditor

- 1.1.8(122) The Complainant was the Statutory Auditor & Tax Auditor of five Companies/firms and part audit was done for two entities. The Complainant sent four letters to the management for commencement of remaining period/remaining firms. The complainant was then informed by the management that the audit statement had been already issued by the Respondent firm. Neither the firms/ Companies had sent any prior information/board/AGM resolution regarding the change of auditor nor the Respondent had sent any intimation regarding the acceptance of audit.

Held that he was guilty of professional misconduct under Clause (8) and (9) of Part I of the First Schedule of the Chartered Accountants Act, 1949.

(Sunil Kashyap of M/s P.C. Bafna & Co. vs. Deepak Batra – Page435 Vol.IX-2A-21(4) of Disciplinary Cases – Council’s decision dated 26th to 28th December 2002).

- 1.1.8(123) Where a Chartered Accountant had signed the Balance sheet of three Companies which had common Directors. The Balance Sheet was still subject to audit and was never signed by the previous Auditor. He had not even communicated with the outgoing Auditor for NOC before accepting the appointment of Statutory Auditor.

Held guilty of “professional and other misconduct” under Clauses (8) and (9) of Part I and Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

(Anil Kumar Goel vs.A. Anurag Nirbhaya Re : Page 356 of Vol II Part-I of Disciplinary Cases, Judgement delivered on 6th February, 2014).

Communication made after signing the Balance Sheet

- 1.1.8(124) Where a Chartered Accountant, even before informing the complainant who was the auditor of the Company and doing the

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audit, signed the balance sheet and informed the complainant after signing the balance sheet.

Held that he was inter alia guilty of professional misconduct under the Clause.

(Ashok Kumar Pathak of M/s A.K. Pathak & Associates vs. Yogesh Bansal of M/s Y.K.B. Associates – Page 564 Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 26th to 28th December, 2002).

- 1.1.8(125) Where the Respondent had accepted the position as Tax Auditor of his client without first communicating in writing with the previous auditor. Later, he had sent a letter to the previous auditor for seeking no objection and the letter was received by the previous auditor after 7 days of signing the Audit Report by the Respondent. Hence, no time was given to the previous auditor for raising any objection.

The Respondent was held guilty of professional misconduct falling within the meaning of Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Siddheshwar Vithal Mali in Re: Page 82 of Vol I Part I of Disciplinary Cases, Judgement Delivered on 3rd February, 2011).

- 1.1.8(126) A Chartered Accountant had accepted the Tax Audit assignment without any written communication to the previous auditor and at the behest of two directors, and one employee of the Company, despite the knowledge and information that the complainant had already completed the Audit. The Respondent not even cared to know the reasons for change of Tax Auditors by the Company. He despite full knowledge and information that the Complainant's legitimate professional fee was not paid by the said Company acted in collusion with the Directors and employee of the Company.

Held that he was guilty of professional misconduct under the Clause.

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(Suresh S. Thakkar vs. Virendra S. Nayyar – Page 759 Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 16th to 18th September, 2003).

Non-communication on the pretext of completing work on time

- 1.1.8(127) Where a Chartered Accountant accepted the Tax Audit of two mills without first communicating with the previous auditor. When the matter was taken up by the complainant with the Respondent, the latter replied that he had started the audit work without communicating with the former only in the interest of completing the work in time.

Held that he was guilty of professional misconduct under the Clause.

(M. Gopalasamy vs. N. Raja – Page 834 Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 16th to 18th September, 2003).

Communication sent through some other Modes

- 1.1.8(128) Where a Member carried out the Tax Audit of a firm and sent the communication through a letter and not by Registered Post Acknowledgement Due (RPAD).

The Council held the Member guilty of professional misconduct under Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(S. S. Ajmera vs. S. R. Ghatge of M/s S. R. Ghatge & Co. - Page 417 Vol.X-2A-21(4) of Disciplinary Cases – Council's decision dated 7th July, 2005).

- 1.1.8(129) A Member accepted the position of Tax Auditor without communicating with the previous auditor when the previous auditor was acting as Tax Auditor without having appointment letter for the same. The Council held him guilty of professional misconduct under Clause (8) of Part I of the First Schedule of the Chartered Accountants Act, 1949 but not under Notification No. 1 CA (7)/46/99 dated 28th October, 1999 as payment of fees

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outstanding towards internal audit does not fall the requirement of the notification.

(J.R. Shah of M/s J.R. Shah & Co. vs. Rajiv B. Pethkar of M/s Rajiv Pethkar & Associates - Page 380 Vol.X-2A-21(4) of Disciplinary Cases – Council's decision dated 29th August, 2005).

- 1.1.8(130) The Complainant conducted the Statutory Audit of a Company and issued the Auditor's Report. Subsequently, the Company conducted its AGM and requested the complainant to conduct Statutory Audit for the subsequent year. But, the Respondent-firm accepted and conducted the Statutory Audit, without first communicating with the previous auditor in writing and also without ascertaining whether the requirements of Section 224 and 225 of the Companies Act, 1956 had been complied with, and signed the accounts and audit report (through its partner) without knowledge of the Complainant. The Council held the incoming auditor guilty of professional misconduct under Clauses (8) and (9) of Part I of the First Schedule read with Sections 21 and 22 of the Chartered Accountants Act, 1949.

(Sanjay Kalra of M/s S. Kalra & Associates vs. B.M. Goel of M/s Kapoor Bhushan & Co. - Page 525 Vol.X-2A-21(4) of Disciplinary Cases – Council's decision dated 22nd June, 2006).

Non-communication & Non - Payment of pending undisputed Audit Fees of Previous Auditor

- 1.1.8(131) A Member accepted the position as Auditor without first communicating with the previous auditor. He accepted the appointment even before the undisputed fees payable to the Complainant was paid. The compliance with Section 224 and 225 of the Companies Act, 1956 were not complied with by the Incoming Auditor.

The Council held the Incoming Auditor:

- (a) guilty of professional misconduct falling within the meaning of Clauses (8) and (9) of Part I of First Schedule to the Chartered Accountants Act, 1949 and also
- (b) guilty within the meaning of Notification No.1-CA(7)/46/99 dated 28th October, 1999 under Clause (ii) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

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(D.G. Chandak vs. S.D. Chauhan of M/s. S.D. Chauhan & Co., Mumbai - Page 492 Vol.X-2A-21(4) of Disciplinary Cases – Council's decision dated 5th January, 2006).

1.1.8(132) A Member accepted Tax Audit, without communicating with the previous auditor. Also, he was negligent while auditing as he was required to check as to how and by what mode the fees had been finally paid to the previous auditor, which was earlier appearing under the list of sundry creditors. He further failed to check the facts and look into the documentary details before signing the report. The Council held him guilty of:

- (a) professional misconduct under Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
- (b) professional misconduct under Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Bhushan Khot of M/s. Bhushan Khot & Co. vs. Mahesh M. Bhatt - Page 424 Vol.X-2A-21(4) of Disciplinary Cases – Council's decision dated 7th July, 2005).

1.1.8(133) A Member without communicating with the previous auditor and without ascertaining that the undisputed fees payable to the previous auditor was duly paid, was held by the Council, as guilty of:

- (a) professional misconduct under Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 and
- (b) under Notification No.1-CA(7)/46/99 dated 28th October, 1999 issued under Clause (ii) of Part II of the Second Schedule read with Sections 21 and 22 of the Chartered Accountants Act, 1949.

(Jugal Kishore Soni of M/s J. K. Soni & Associates vs. Abhijit Matilal - Page 323 Vol.X-2A-21(4) of Disciplinary Cases – Council's decision dated 7th July, 2006).

1.1.8(134) A Chartered Accountant accepted Tax Audit of firm without communicating with the complainant, who was the previous auditor in writing. The Respondent accepted the aforesaid assignment inspite of audit fee remaining outstanding.

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It was held that the Chartered Accountant was guilty under clause (8) of Part I of First Schedule and not under Notification No. 1–CA (7) 46/99 read with Section 21 & 22 of The Chartered Accountants Act, 1949.

(Har Narayan Rathi vs. Deepak Mehta (25-CA(107)/2004). - to be published later under Disciplinary Cases Volume X-2B-21(4). Council decision of 277th Meeting held in March – April 2008).

- 1.1.8(135) Where a Chartered Accountant accepted the audit of three companies for three consecutive F.Y.s without any information to the previous auditor and without first ascertaining whether the outstanding audit fees of Rs. 15,640/- had been paid to the previous firm.

Held guilty of professional misconduct falling under Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Ram Pyare Pandey vs. Praveen Anand Singh Re: Page 122 of Vol I Part I of Disciplinary Cases, Judgement delivered on 1st August, 2011).

- 1.1.8(136) The Respondent failed to make a written communication with the Complainant and accepted audit even though the Complainant's outstanding balance/fees of Rs. 3,57,963/- was due. It was noted that the Complainant was given a postdated cheque by the Company whereas, the Respondent had signed the audit report before the date of cheque which clearly proved that the audit fee of the Complainant was due on the date of accepting the audit by the Respondent and the same remained unpaid on the date of signing of the audit report. Thus, the Respondent has contravened the Council Guidelines, 2008 as undisputed audit fees of the previous auditor was outstanding on the date of accepting the audit and signing the audit report.

The Respondent was held guilty of professional misconduct falling within the meaning of Clause (8) Part I of the First Schedule and Clause (1) Part II of Second Schedule to the Chartered Accountants Act, 1949.

(Ajay Kumar Singhal vs. Anil Kumar, - Page 517 of Vol. II of Part I of the Disciplinary Cases of April, 2015 judgement delivered on 21th August, 2014).

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- 1.1.8(137) Where the Respondent had accepted the Tax Audit of a company for the Financial Year 2009-10 relevant to the assessment year 2010-11 without communicating and taking no objection certificate from the previous Auditor. The huge amount of audit fees and other professional charges were also pending as payable to the Complainant.

Held guilty of professional misconduct falling within the meaning of Clause (8) of Part I of the First Schedule and Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949

(Jatinder Kumar Jain vs. Sundeep Kumar Re: [PR-65/2011-DD/62/11/DC/328/14] Judgement delivered on 25th July, 2016).

- 1.1.8(138) Where a Chartered Accountant had accepted the position as an auditor of a company without communicating with the previous auditor in writing and could not produce any documentary evidence of that. Further he had not paid the professional fees of the outgoing Auditor.

Held guilty of professional misconduct falling under Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949. Further, he was not guilty of professional misconduct with respect to second charge falling under Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

(B. L. Goyal vs. Suresh Advani Re: Page 12 of Vol I Part I of Disciplinary Cases, Judgement delivered on 3rd February, 2011).

Partner of Firm subsequently accepting the work in Individual Capacity

- 1.1.8(139) The Respondent being a partner of a Firm, had left the Firm and subsequently influenced the clients to switch over to his personal practice. Moreover, he did not communicate with the previous auditor while accepting the appointment of the Companies.

Held guilty of “professional misconduct” falling under Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Manindra Chandra Poddar vs. Manas Ghosh - Page 21 of Vol. II Part I of Disciplinary Cases, Judgement delivered on 11th September, 2013).

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Non-Communication in case of Audit of a Private Bank

- 1.1.8(140) Where a Chartered Accountant had accepted appointment as a Statutory Auditor of a Private Limited company without communicating in writing with the previous auditor.

Held guilty of professional misconduct falling under Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Dinesh Gupta vs. Amit Gupta - Page 32 of Vol.II Part I of Disciplinary Cases, Judgement delivered on 11th September 2013).

Non-Communication and Collusion with the Client in irregularities

- 1.1.8(141) Where a Chartered Accountant was appointed as a Statutory Auditor of a housing society where the Committee Members beside doctoring and fabricating records, committed innumerable illegalities in accounts of the Society to manipulate the huge funds and was also hand in glove with the Committee. Beside this he accepted the appointment of the auditor without any communication with the previous Government Certified Auditor.

Held guilty of professional misconduct falling under Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Gautam R. Patel vs. Bharat Kumar Haridas Mehta - Page 80 of Vol.II Part I of Disciplinary Cases, Judgement delivered on 4th October 2013).

Non-Communication & giving different opinion in respect of a same set of transaction

- 1.1.8(142) Where the Respondent had failed to communicate with the previous auditor before accepting the position of Statutory Auditor of the Company and he certified the financial statements of two companies which gave different opinion in respect of a same set of transaction relating to waiving off loan amount:

- (i) In case of one company, the Respondent gave his opinion based on legal opinion given by the Complainant, and

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- (ii) In case of another company, the Respondent expressed his inability to express an opinion which was substantial amount in the financial statement as required by AS -28.

The Respondent was held guilty of professional misconduct falling within the meaning of Clause (8) of Part I of First Schedule and Clauses (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(H.N. Motiwalla vs. Nanalal Vishanji Parmar- Page 273 of Vol. II of the Disciplinary Cases of April, 2015 judgement delivered on 15th October, 2013).

Communication through Courier

- 1.1.8(143) Where a Chartered Accountant had couriered the letter to seek the NOC from the previous auditor but failed to produce the POD of the said courier as a documentary evidence before the Board.

Held guilty of “professional misconduct” falling under Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Sunil Prakash Goyal vs. Balraj Kalia - Page 1 of Vol. II Part I of Disciplinary Cases, Judgement delivered on 8th August, 2013).

- 1.1.8(144) Where a Chartered Accountant failed to communicate with the previous auditor and conducted the audit of certain client without obtaining the NOC. Though he submitted that the letter was couriered but could not produce any documentary evidence.

Held guilty of “professional misconduct” falling under Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Sudhanshu Sharma vs. Pankaj Kumar Goyal - Page 307 of Vol. II Part I of Disciplinary Cases, Judgement delivered on 31st January, 2014).

Acknowledgement Proof not preserved

- 1.1.8(145) The Respondent had been appointed by the client as Statutory Auditor. Although, the Respondent sent some letters to the Complainant seeking his ‘no objection certificate’, but the Respondent had neither preserved nor produced any proof of acknowledgement towards receipt of such letter(s) by the

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Complainant. Hence, it was clear that there was no proper communication by the Respondent with the Complainant before accepting the position of the Statutory Auditor.

The Respondent was held guilty of professional misconduct falling within the meaning of Clause (8) of Part I of the First Schedule to the Chartered Accountants Act 1949.

(Vasant Gopiram Torka vs. Piyush H. Baxi Re: [PR-216/13-DD/214 /2013/BOD /180/ 2014]).

Personal visit not material as a Proof

1.1.8(146) The Respondent had accepted the appointment as an auditor of the proprietorship firm and had sent a letter to the Complainant for seeking No Objection Certificate by the ordinary post but the letter did not reach the Complainant's office. For the same, the Respondent apologized to the Complainant both on phone as well as personally by visiting his office and assured him that in future such kind of mistakes will not be repeated. In the opinion of the Council, communication by a letter sent through "Registered Acknowledgement due" or by hand against a written acknowledgement would, in normal course provide such evidence.

The Respondent was guilty of "Professional Misconduct" falling within the meaning of Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(Atul Jindal vs. Vivek Gupta Re: [PR-79/2015-DD/81/2015/BOD /266/2017])

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- 1.1.9 Clause (9)** *Accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of the Companies Act, in respect of such appointment have been duly complied with;*

Some Decisions of the Council and High Courts :-

Failure to ascertain the requirements of Companies Act

- 1.1.9(147) Where a Chartered Accountant applied in response to an advertisement in a newspaper for appointment as auditor and was appointed by the Directors and failed to communicate with the previous auditor and ascertain from the Company whether the requirements of the Companies Act as regards the appointment of the auditors were duly complied with.

Held the Respondent, was guilty on both the counts under clauses (8) and (9).

(B.N. Mohan vs. K.C.J. Satyawadi - Page 11 of Vol. II of the Disciplinary Cases and page 494 of May, 1955 issue of the Institute's Journal-Judgement delivered on 10th March, 1955).

- 1.1.9(148) A Chartered Accountant accepted the appointment as Statutory Auditor of the Company on the basis of resolution of Board of Directors. There was no compliance with the requirement of Section 224 of the Companies Act, 1956 which in the present case required the appointment by the Central Government as the Company did not make appointment in the general meeting.

Held that the Chartered Accountant was guilty of professional misconduct under the Act.

(M.K. Biswas in Re:- Page 979 of Vol.IV of the Disciplinary Cases - decided on 11th September, 1962).

- 1.1.9(149) A Chartered Accountant accepted the appointment as auditor of the Company without first ascertaining whether the requirement of the Companies Act, 1956 in respect of such appointment have been complied with. The Central Government agreed to the removal of previous auditor and the appointment of the Chartered Accountant as auditor in his place subject to the approval of the

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shareholders in the general meeting. However, the Chartered Accountant accepted the audit on the basis of the resolution of the Board of Directors and before the General Meeting ratified the resolution of the Board of Directors.

Held he was guilty of professional misconduct under the clause.

(D.L. Sukhadia in Re: - Page 279 of Vol. V of the Disciplinary Cases - decided on 22nd & 23rd December, 1976).

- 1.1.9(150) A Member had been appointed the First Auditor of a Company within 30 days of the incorporation as required by Section 224(5) of the Companies Act. Later another Member was appointed as the joint auditor nearly after 8 months of the incorporation of the Company, by a resolution of the Board of Directors. It was found that the appointment of the second Member was not valid in terms of Section 224(5) of the Companies Act. It was also found that the second Member did not ascertain whether there was compliance with the provisions of Sections 224(5) and 225 of the Companies Act. The second Member was therefore found guilty in terms of this Clause. It was also found that Respondent had not communicated with the complainant as required by Clause (8) and in so far as he had not done so, he was guilty.

(C.L. Tomson vs. K.A. Chandrasekhara Menon - Page 357 of Vol. VI(2) of Disciplinary Cases - Decided on 18th, 19th and 20th December, 1989).

- 1.1.9(151) A Chartered Accountant had accepted the appointment as Auditor of a Private Limited Company without communicating with the previous auditor. He accepted the audit and surprisingly completed the audit on the same day and signed the balance sheet on the very next day. He did not ensure that the client Company had complied with the provisions of Section 225, or 224(6) of the Companies Act, 1956, in changing its auditor.

He was held guilty under Clauses (8) & (9).

(S.I. Majumdar vs. Vinod Rana - Page 484 of Vol VII(2) of Disciplinary Cases – Council's decision dated 5th to 6th December 1996).

PART I OF FIRST SCHEDULE – CLAUSE (9)

1.1.9(152) A Chartered Accountant had accepted the appointment of a Company to carry out the Statutory Audit for the FY 2006-07 as decided in the AGM of the Company. The previous Auditor was appointed in the AGM of 2006 to carry out the Audit of the Company for the FY 2006-07. To remove the duly appointed Auditor before the expiry of the next AGM, the Company needs to follow the provisions under Section 224(7) of Companies Act, 1956. He failed to ensure that the provisions of Sections 224/225 of the Companies Act, 1956 had been duly complied with. However, he did communicate with the previous Auditor through registered post with AD and signed the Balance Sheet after one month of sending the letter.

Held guilty of “professional misconduct” falling under Clause (9) of Part I of First Schedule to the Chartered Accountants Act, 1949. He was however held not guilty of professional misconduct falling within the meaning of Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Dipak Kumar Mitra in Re:- Page 128 of Vol I Part I of Disciplinary Cases, Judgement delivered on 1st August, 2011).

1.1.9(153) The Respondent has not ensured the compliance of the provisions of Section 224, 224A & 225 of Companies Act, 1956 before accepting the appointment as Statutory Auditor of the Company. Moreover, the letters/correspondence with the existing Statutory Auditor showed that they had neither resigned nor had given any NOC to the Respondent and had never shown unwillingness to act as auditor of these Companies.

On the other hand, the Respondent conducted the audit without carrying out detailed checks and did not give a reasonable period for obtaining the necessary information before expression of his opinion. Also, the Respondent did not collect necessary documents which were the basic requirements for carrying out the audit (i.e. details of funds transferred from banks, sales of Investments, Investments made etc.), were in possession of the Complainant. In these respects, the Respondent ought to have qualified his audit report or draw the attention to the management. Instead, he only mentioned in the Notes to Accounts the transactions which were unknown to him.

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The Respondent was held guilty of 'Professional Misconduct' falling within the meaning of Clauses (8) & (9) of Part I of First Schedule and also under Clauses (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(B.B. Singhal vs. Rajesh Kumar – Page 321- of Vol. II of the Disciplinary Cases of April, 2015 judgement delivered on 7th October, 2013).

- 1.1.9(154) A Chartered Accountant did not communicate with the previous auditor and failed to ensure the compliance with the provisions of Section 224 and 225 of the Companies Act, 1956 before accepting the appointment as a statutory auditor of the Company.

Held guilty of "Professional Misconduct" falling within the meaning of Clauses (8) and (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(Bomkesh Sett & Pratha Pratim Sett vs. Pradip Kumar Agrawal Re: [PR-226/14/DD/238/2014/BOD/355/2017]- Judgement delivered on 19th April, 2018).

Acting as Auditor in spite of disqualification under Co. Act

- 1.1.9(155) A Chartered Accountant who was indebted to the Company towards a loan for a sum exceeding Rs. 1000/- taken for the purchase of a car, in the ordinary course of financing business of the Company against the hire purchase agreement and thus was disqualified under Section 226(3) of the Companies Act, 1956 to be appointed as auditor of the Company, acted as the Auditor of the Company.

Held on borrowing loan, he would be deemed to have vacated his office as auditor but inspite of that he acted as the auditor of the Company. The Chartered Accountant was guilty of professional misconduct under the clause. The word 'indebted' occurring in Section 226(3) means the obligation to pay.

(Ram Parshad Handa & Hari Krishan Khosla vs. B.K. Choudhury - Page 1013 of Vol. IV of the Disciplinary Cases - decided on 14th September, 1968).

PART I OF FIRST SCHEDULE – CLAUSE (9)

1.1.9(156) A Chartered Accountant accepted the position as auditor of a private limited Company for a year which was previously and continuously held by the Complainant without communicating with him in writing. He had accepted the appointment as auditor of the above Company without ascertaining whether the requirements of Sections 224 and 225 of the Companies Act, 1956 had been complied with. It was also charged against him that while accepting the said appointment, he had been grossly negligent in the conduct of his professional duties. The Council found that this charge had been misconstrued by the Complainant. This clause would apply only where it is found that the auditor has been negligent in the conduct of his professional duties while discharging his obligations as an auditor and the same would not be applicable in the matter of failure to communicate with the previous auditor or failure to ascertain compliance with Sections 224 and 225 of the Companies Act, 1956 which are covered by different Clauses of the Schedule to the Act. The Complainant had not brought out any material to establish the charge of gross negligence.

Therefore, he was held guilty under Clauses (8) and (9). The charge of gross negligence in the conduct of professional duties was not established.

(V.K. Gupta vs. Rajiv Savara - Page 517 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 5th to 6th December, 1996).

1.1.9(157) A Chartered Accountant had accepted the appointment as auditor of a Company without first ascertaining whether the requirements of Section 225 of the Companies Act, 1956 had been duly complied with. Neither the notice for original annual general meeting nor the notice for adjourned annual general meeting was received by the Complainant and even the purported special notice under Section 190(1) for removal/ replacement of the Complainant's firm was received by the Company after the original Annual General Meeting was adjourned without appointing an auditor.

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As per Code of Conduct, adjourned meeting is in continuation of the original meeting. The Company cannot act on the special notice received by it in between the period of original meeting and the adjourned meeting. The Company had not received special notice before 14 days of the original meeting. It was held that he had not properly verified the procedure to be followed under Sections 224 and 225 of the Companies Act, 1956 and hence was guilty under Clause (9).

(V.K. Dhingra vs. Satish Tandon - Page 541 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 5th to 6th December, 1996).

- 1.1.9(158) The Respondent by letter dated 19th January, 1987 had informed the Complainant that at the adjourned General Meeting of a Company held on 28th February, 1986, he had been appointed as Statutory Auditor of the Company for the year ended 31st December, 1985. The Complainant had received the notice for holding the Annual General Meeting of the said Company which was fixed for 28th September, 1985. The meeting was adjourned and the adjourned Annual General Meeting was held on 28th February, 1986. The Complainant had received the notice for the adjourned Annual General Meeting also. In both the notices, there was no mention of any proposed change in the auditors of the Company for the year ended 31st December, 1985. In response to the Respondent's letter dated 19th January, 1987, the Complainant informed the Respondent about his continuance as Statutory Auditor because neither he had resigned nor the Company had issued any notice for the intended change.

The Respondent was held guilty of violation of Clauses (8) & (9). The Council felt that in view of the facts and circumstances of the case, and the repentant attitude of the Respondent, there was insufficient justification for imposing any penalty on him.

(T. Ravindra vs. K.F. Jetsey - Page 762 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 8th to 10th December, 1997).

PART I OF FIRST SCHEDULE – CLAUSE (9)

1.1.9(159) While the audit was pending, the complainant came to know that the Respondent had signed the accounts of the Company for the two years. The Respondent never communicated with that complainant. The complainant had never resigned from the Auditorship of the Company. No notice for the complainant's removal was sent by the Company. The provision of the Section 225 of the Companies Act, 1956 were not complied with properly by the Company and all this was ignored by the Respondent.

Held that the Respondent was guilty of professional misconduct within the meaning of Clauses (8) & (9) of the Part I of the First Schedule of the Chartered Accountants Act, 1949.

(J.P. Gupta vs. Charanjit Malhotra - Page 113 of Vol. IX-2A – 21(4) of Disciplinary Cases – Council's decision dated 11th to 13th November, 2002).

1.1.9(160) Wherein the complainant's firm was appointed as auditors of a company at its Annual General Meeting and re-appointed for the subsequent year, in absence of any resignation from previous auditor or notice for removal and the change of auditors, the incoming auditor accepted the appointment without first communicating. The incoming auditor did not verify the compliance of Section 224 and 225 of the Companies Act, 1956.

The Council held the incoming auditor guilty of professional misconduct under Clauses (8) and (9) of Part I of First Schedule read with Sections 21 and 22 of the Chartered Accountants Act, 1949.

(Rajeev Mittal of M/s Mittal Rajeev & Associates vs. Rajeev Shah of M/s Bihani & Shah - Page 454 of Vol. X-2A-21(4) of Disciplinary Cases – Council's decision dated 6th October, 2005).

1.1.9(161) The Complainant-firm was the statutory auditors of a company since its incorporation and audited and certified the Company's Accounts up to 1994. They completed the routine audit of the Company's Accounts for the year ending 31st March, 1995 and the trial balance along with the schedules and draft accounts was handed over to the Company for approval of the Board of Directors. Later, the incoming auditor took up the audit and

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certified the accounts for the same year, without communicating and ascertaining the compliance of provisions of Section 225 of Companies Act, 1956.

The Council held the incoming auditor guilty of professional misconduct under Clauses (8) and (9) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Vinod Somani vs. M.L. Agarwal - Page 511 of Vol. X-2A – 21(4) of Disciplinary Cases – Council's decision dated 2nd August, 2006).

- 1.1.9(162) Where a Chartered Accountant did not communicate with the previous Auditor before accepting the appointment as Statutory Auditor and signed the Balance Sheet of that company. In this case, the previous auditor had not resigned. The incoming Auditor claimed that he was appointed in the EGM. However, the permission of the Central Government had not been obtained for this purpose.

Held guilty of “professional misconduct” under Clauses (8) and (9) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Rajeev Nathwani vs. Rajan Sharma - Page 240 of Vol. II Part I of Disciplinary Cases, Judgement delivered on 13th January 2014).

- 1.1.9(163) Where a Chartered Accountant had carried out the audit of several companies without first communicating with the previous Auditor. She accepted the appointment as Auditor in those Companies without first ascertaining from it whether the requirements of Section 225 of the Companies Act, 1956 in respect of such appointment has been duly complied with. She could not produce any documentary evidence in her defence.

Held guilty of “professional misconduct” falling under Clauses (8) and (9) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Rinku Shaw Kesharwani In (on the basis of letter received) Re : Page 42 of Vol I Part I of Disciplinary Cases, Judgement delivered on 3rd February, 2011).

PART I OF FIRST SCHEDULE – CLAUSE (9)

1.1.9(164) Where a Chartered Accountant had not communicated with the previous auditor before accepting the audit of a company and had not taken note of his undisputed outstanding dues. He accepted the appointment without first ascertaining whether the requirement of Section 225 of the Companies Act, 1956 in respect of the appointments have been duly complied with.

Held guilty of professional misconduct falling within the meaning of Clauses (8) and (9) of Part I of the First Schedule and Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

(Narendra Kumar Shah vs. Amrit Kumar Chakrabarty - Page 191 of Vol II Part I of Disciplinary Cases, Judgement delivered on 1st October, 2013).

1.1.9(165) The Respondent claimed to have been appointed as the Statutory Auditors of the Company in the AGM and thereafter reappointed for next years and signed the reports with ante dates. Further, it is obligatory on the incoming auditor, before accepting appointment, to obtain a copy of such communication sent by previous auditor that establishes professional reasons connected with his resignation or not offering himself for re-appointment. The incoming Auditor ought to obtain this from the Board of Directors and consider the same before accepting the appointment.

The Respondent had also failed to produce any such letter from the previous Auditor that establishes previous Auditor's unwillingness. Hence, it was clear that the Respondent had failed to check that the Company had ensured compliance of Section 225 of the Companies Act, 1956.

The Respondent was held guilty of professional and/or other misconduct falling within the meaning of Clauses (9) of Part I and Clause (2) of part IV of the First Schedule to the Chartered Accountants Act, 1949.

(D. Srinivasa Rao & Others, Hyderabad vs. K. Ranganathan of M/s. P. Srinivasan & Co., Chartered Accountants, Hyderabad [PR-161/09-DD/195/2009 /DC/149/2011]).

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1.1.9(166) The Respondent had accepted Statutory Audit of a Private Limited Company without first communicating in writing with the Complainant. As per Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 an incoming auditor should communicate with the outgoing Auditor in writing first before accepting the position of an Auditor which was not complied by the Respondent.

As a incoming Auditor of a Company, the Respondent had to ensure the compliances with the provisions of Section 224 and 225 of the Companies Act, 1956 (or Section 139 and 140 of the Companies Act, 2013) before accepting the said appointment but the Respondent failed to comply with the same.

The Respondent was held guilty of Professional Misconduct falling within the meaning of Clauses (8) and (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(Shekhar A Parkhi vs. Harshal Govind Jethale PPR-17/15-DD/33/2015/BOD /330/2017).

PART I OF FIRST SCHEDULE – CLAUSE (10)

1.1.10 Clause (10): *charges or offers to charge, accepts or offers to accept in respect of any professional employment, fees which are based on a percentage of profits or which are contingent upon the findings, or results of such employment, except as permitted under any regulation made under this Act;*

1.1.10(167) Where a Chartered Accountant had charged fees at certain percentage of the expected relief.

Held, he was guilty of the charges.

(R.B. Basu vs. P.K. Mukherji - Page 137 of Vol.III of the Disciplinary Cases and pages 184-194 of October, 1956 issue of the Institute's Journal - Judgement delivered on 17th July, 1956).

1.1.10(168) A Chartered Accountant had arranged accounting bills raised by 16 parties amounting to Rs.14.09 Crores and made entries which were not genuine. He had charged commission @ 0.25% to 1% of the transactions for arranging accounting entries. He had been involved in arranging bogus bills, accommodation entries and circular transactions for trading in coal through bank LC limits for various other parties.

Held guilty of Professional and Other Misconduct falling within the meaning of Clause (10) of Part I and Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

(S S S B Ray, Commissioner of Income Tax (Central), Nagpur vs. Durga Prasad Sarda, Nagpur [PR-142/2013-DD/260/2013/ BOD /197/2016] Judgement delivered on 18th August, 2017).

CASE LAWS REFERENCER

1.1.11 Clause (11): *engages in any business or occupation other than the profession of chartered accountants unless permitted by the Council so to engage:*

Engaged in Business

1.1.11(169) A Chartered Accountant engaged himself in carrying on a business known as Shivaji Engineering Works.

Held, he was guilty of professional misconduct under the clause.

(D.S. Sadri vs. B.M. Pithawalla - Page 300 of Vol.V of the Disciplinary Cases - decided on 14th, 15th, 16th & 17th September, 1977).

1.1.11(170) A Chartered Accountant in practice entered into Partnership with persons who were not the Members of the Institute, for the purpose of carrying on business. The share of the Chartered Accountant in the profit and losses was 25%. He was to take part in the business and was entitled to represent the firm before Govt. Authorities also. He was operating the Bank account of the firm, was receiving moneys from the customers and was also looking after the affairs of the Partnership

Held he was guilty of professional misconduct under the clause, as he was engaged in the business, without the permission of the Council.

(K.S. Dugar in Re: - Page 1 of Vol. VI(2) of the Disciplinary Cases - decided on 2nd, 3rd and 4th April, 1980).

1.1.11(171) The Respondent entered into a partnership with the Complainant for running the business of manufacturing readymade garments.

He was held guilty for violation of Clause (11).

(D. Hemalatha vs. P.N. Malolan – Council's decision dated 15th to 17th December, 1999 – Page 87 of Volume VIII(2) of Disciplinary Cases).

1.1.11(172) A Chartered Accountant who was enrolled as a fellow Member of the Institute disclosed in the form "entry of record" that he was engaged as partner of "M/s X Group of Magazines". He was also

PART I OF FIRST SCHEDULE – CLAUSE (11)

working as a Director of “M/s. A & Co.”. On enquiry, the Respondent informed the Institute that he was engaged as a partner of the said M/s. X Group of Magazines since 1978. The Respondent had never disclosed about this even while he was holding Certificate of Practice in all these years and nor did he seek permission from the Institute to engage himself as a partner in any other occupation.

Held that the Chartered Accountant was guilty of professional misconduct under Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(Rajkumar H. Advani in Re: - Pages 373 of Volume VIII (2) of Disciplinary Cases – Council’s decision dated 1st to 3rd August, 2001. Also published in the December 2002 issue of Institute’s journal at page 627).

1.1.11(173) Where a Chartered Accountant was engaged in business other than the profession of Chartered Accountancy without taking prior permission of the Institute.

Held that he was guilty of professional misconduct within the meaning of Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Sri Nath Prasad vs. Vineet Aggarwal – Page 23 of Vol. IX – 2B – 21(4) of Disciplinary Cases – Council’s decision dated 2nd to 4th February, 2004).

Substantial Interest and seeking permission subsequent to engagement in Business

1.1.11(174) A Member in practice was authorised by a resolution of the Board of directors of a Company held on 4.9.81 to look after the day to day affairs of the Company and other Directors were requested to give maximum co-operation to him. Also the Member held more than 51% of the shares of the said Company. Later on 8.5.82, he applied to the Council for permission to hold the office of the Executive Chairman of the said Company.

It was held on the basis of facts and circumstances of the case that during the period 4.9.81 to 8.5.82 the Member had engaged himself in “other occupation” without the permission of the Council and was found guilty in terms of this Clause.

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(M.K. Abrol and S.S. Bawa vs. V.P. Vijn - Page 256 of Vol. VI(2) of Disciplinary Cases - Decided on 11th, 12th and 13th February, 1988).

- 1.1.11(175) A Chartered Accountant had helped private Financial Services Company through his friends in Mumbai to investment in equity and they had invested to the tune of Rs. 30 Lakhs for a limited company. The Financial Services Company which was a consultancy firm was run by his wife.

Held that he was guilty of professional misconduct under Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(M. Hariharan in Re: - Page 1 of Vol. IX-2A-21(4) of Disciplinary Cases – Council's decision dated 2nd to 4th July, 2002).

- 1.1.11(176) Where a Chartered Accountant was engaged in business of purchase and sale of imported glasses other than profession of Chartered Accountant without taking prior permission of the Institute.

Held that he was inter alia guilty of professional misconduct within the meaning of Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Chintamany Abhyankar in Re: – Page 53 of Vol. IX – 2B – 21(4) of Disciplinary Cases– Council's decision dated 2nd to 4th February, 2004).

In Employment alongwith COP without permission of Council

- 1.1.11(177) A Member having a certificate of practice and having 2 Articled Clerks with him was simultaneously working as a Financial Controller of a Company without the permission of the Council. He was held to be guilty in terms of this Clause in so far as he was engaged in other occupation without the permission of the Council.

(S.K. Kaul vs. S.C. Mangal - Page 132 of Vol. VI(2) of Disciplinary Cases - Decided on 9th and 10th August, 1988).

PART I OF FIRST SCHEDULE – CLAUSE (11)

1.1.11(178) A Chartered Accountant had been in full-time employment in a Company besides holding Certificate of Practice without obtaining Institute's permission and in the Bank Empanelment Form, he had given declaration to the effect that he was not devoting any time to any occupation/vocation/business etc. other than the profession of Chartered Accountant.

He was held guilty for violation of Clause (11)

(N.K. Gupta in Re: - Council's decision dated 1st to 4th July, 1998 - Page 1 of Volume VIII(2) of Disciplinary Cases).

1.1.11(179) Two Members, while holding Certificate of Practice, had been in full time employment with an Insurance Company without obtaining the Institute's permission to be so engaged. They also did not disclose the particulars of their full time salaried employment at the time of furnishing particulars in the prescribed Form for registration of the articulated clerks.

They were held inter alia guilty for violation of Clause (11) of Part I and Clause (1) of Part III of the First Schedule.

(C.M. Mehrotra in Re: - Council's decision dated 11th to 13th October, 1999, Page 76 of Volume VIII(2) of Disciplinary Cases and A.P. Gupta in Re:- Council's decision dated 15th to 17th December, 1999, Page 134 of Volume VIII(2) of Disciplinary Cases).

1.1.11(180) Where a Chartered Accountant was in full time employment with a Company and had continued his services even after intimating the Institute that he had resigned from service. He had shown himself in full time practice while applying for bank empanelment for 3 years.

Held that he was inter alia guilty of professional misconduct under Clause (11) and Regulation 190A of Chartered Accountant Regulations 1988.

(S.C. Srivastava in Re: – Page 194 of Volume VIII(2) of the Disciplinary Cases – Council's decision dated 1st to 3rd August, 2001).

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1.1.11(181) The Respondent, while in employment with a Company, passed Chartered Accountancy Examination and sought permission in the year 1987 to do practice, on a part time basis from the complainant Company. While still in employment, he wrote a letter to the Institute that he had resigned, which was false and misleading.

Held that the Respondent was inter alia guilty of professional misconduct under the Clause.

(Managing Director, A.P. Handicrafts Dev. Corpn. Ltd. vs. A. Bhimeswara Swamy – Page 590 of Vol. IX – 2A – 21(4) of Disciplinary Cases – Council's decision dated 7th to 8th & 24th to 25th April, 2003).

1.1.11(182) Where a Chartered Accountant besides being in practice acted in the capacity as Manager in the Company without informing the Institute.

He was also the Signatory of the the Financial Statements of the Company.

Held guilty of “professional misconduct” falling within the meaning of Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Ajush Kumar Kalra vs. Kapil Agarwal - Page 313 of Vol. II Part I of Disciplinary Cases, Judgement delivered on 31st January 2014).

1.1.11(183) Where a Chartered Accountant took up an assignment with a Private Limited Company out of dire necessity as a part time job and he continued his professional practice on part time basis and had two articled clerks under him without intimating the Institute. It was noted that the same cannot be termed as a part time engagement, more so, when he was on the payroll of the Company since beginning, deriving other benefit viz. Insurance and was subjected to all statutory deductions from his remuneration which can only be the case of full-time employment.

PART I OF FIRST SCHEDULE – CLAUSE (11)

Held guilty of “professional misconduct” falling under Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(Soumen Sanyal vs. Paramjeet Singh Sethi - Page 319 of Vol. II Part I of Disciplinary Cases, Judgement delivered on 31st January, 2014).

- 1.1.11(184) Where a Chartered Accountant was appointed as Chief Municipal Accountant of a Municipal Corporation.

Despite the rules of the Corporation that the full time worker of the Corporation cannot do any other job where as he was appointed as the Chief Auditor of the said Corporation

Held guilty of “Professional Misconduct” falling within the meaning of Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Ambarish Ratikant Galinde (based on e-mail received) - Page 117 of Vol I Part I of Disciplinary Cases, Judgement delivered on 3rd February, 2011).

- 1.1.11(185) Where a Chartered Accountant while holding his full time COP was working in a company as an Accounts Officer.

Although he had surrendered his COP before the Institute a long time after joining the Company.

Held guilty of Professional Misconduct falling within the meaning of Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(Anil Kumar Dixit vs. Sourabh Kumar Shukla - Page 272 of Vol. II Part I of disciplinary Cases, Judgement delivered on 31st January 2014).

- 1.1.11(186) Where a Chartered Accountant while in service holding full time COP and conducted Bank Audit. He was also charged with running a business but after verification of Balance Sheet, Profit & Loss Account, Tax Audit Report and Income Tax Return of that company it was found in the name of his wife who was the proprietor.

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Held guilty of 'professional misconduct' falling under Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949. Further, he was not guilty of professional misconduct with respect to the charge of running a business.

(Arun Kumar Agarwal (on the basis of received letter) - Page 27 of Vol I Part I of Disciplinary Cases, Judgement delivered on 3rd February, 2011).

- 1.1.11(187) The Respondent had carried out the audit of the Company and signed his Audit Report when he was holding full time COP and was also in full time employment.

Further, the Respondent did not seek permission from the Council of the Institute.

The Respondent was held guilty of professional misconduct falling within the meaning of Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(J. K. Teotia vs. Mahendra Kumar Hingar Re: [PR/171G/2010-DD/172/ 2010-BOD /161/2014]).

- 1.1.11(188) The Respondent was that besides holding Certificate of Practice (COP), he was employed in company as the Deputy General Manager, Finance of a Limited Company without seeking the specific permission of the Council in this regard.

Held, the Respondent violated the Chartered Accountants Regulations, 1988, and held guilty of professional misconduct falling within the meaning of Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Viplove Kaushik in Re: [PPR/35/C/13/DD/28/C/INF/13/ BOD/222 /2016]).

- 1.1.11(189) Where a Chartered Accountant had been in full time employment and held certificate of practice as well. He was appointed as General Manager (Finance) on 1st November, 2007 by the Complainant Company and was subsequently elevated as Chief Financial Officer "CFO" of the Company and thereafter he submitted his resignation in May 2012. It has also been noted on perusal of his membership records with ICAI that he had been

PART I OF FIRST SCHEDULE – CLAUSE (11)

holding COP without any cancellation for a period between 19/01/2001 and 12/12/2012.

Held guilty of professional misconduct falling within the meaning of clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(Dr. Kesab Nandy, Director, Tilak Nagar Industries Limited, Mumbai vs. Lalit Sethi Re: [PR-170/2012-DD/186/2012/DC/277/2013] Judgement delivered on 19th October, 2015).

- 1.1.11(190) Where a Chartered Accountant had designated himself as the Manager of the School/Society whereas he was just appointed as Consultant/Advisor and he along with his accomplice, forged and fabricated the documents and took charge of the affairs of the Society & School.

Held guilty of other misconduct falling within the meaning of Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949. He was also guilty of professional misconduct falling within the meaning of Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Dr. Renu Sharma vs. Surya Prakash Jalan - Page 104 of Vol I Part I of Disciplinary Cases, Judgement delivered on 3rd October, 2011).

Practising CA as Karta of Hindu Undivided Family

- 1.1.11(191) A Member as a Karta of his Hindu Undivided Family entered into partnership business for a short period with non-Chartered Accountants for engaging in business other than the profession of Chartered Accountants, without prior permission of the Council.

Therefore, he was found guilty in terms of clauses (4) and (11).

(R.D. Bhatt vs. K.B. Parikh - Page 191 of Vol. VI(2) of Disciplinary Cases - Decided on 15th, 16th and 17th December, 1988).

- 1.1.11(192) Where a Chartered Accountant was Karta of the HUF and was engaged in the business of a firm without permission of the

CASE LAWS REFERENCER

Council. Held that he was guilty of professional misconduct under the Clause.

(V. Krishnamoorthy vs. T.T. Krishnaswami - Page 192 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 27th to 29th September, 1992).

- 1.1.11(193) Where a Chartered Accountant acted as Karta of a Hindu Undivided Family (HUF) without taking prior permission of the Council.

Held that he was inter alia guilty of professional misconduct under the clause.

(B.L. Asawa, Chief Manager, Punjab National Bank, Delhi vs. P.K. Garg – Page 728 of Vol. IX – 2A – 21(4) of Disciplinary Cases – Council's decision dated 16th to 18th September, 2003).

Clause (4) be read with Authority of the Council as contained in Clause (11)

- 1.1.11(194) The Bombay High Court in WP No. 4906 of 1985 dt. 9th February, 1989 has held that:-

The prohibition to enter into any partnership with any person other than a Chartered Accountant under Clause (4) of Part I of the First Schedule is absolute but not so under Clause (11). According to the Court, Clause (11) enables the Chartered Accountant to engage in any business or any occupation other than the profession of Chartered Accountancy provided the Council grants permission to engage in such business or occupation.

According to the Court, it is obvious that the Council desired to retain the power to permit a Chartered Accountant to engage in any business or occupation which may be incidental or would be useful for carrying on the profession of chartered accountancy.

In pursuance of Regulation 166, the Council of the Institute has resolved that permission would be granted to the Chartered Accountants engaged in any business or occupation other than the profession of Chartered Accountancy in the cases set out in the Appendix 9. Clause (4) and (11) contemplate two distinct and

PART I OF FIRST SCHEDULE – CLAUSE (11)

separate contingencies and Clause (4) cannot be so read as to make Clause (11) and the power retained by the Council to grant permission redundant.

(Nalin S. Sualy vs. Institute of Chartered Accountants of India - Bombay High Court WP No. 4906 of 1985 dated 9th February, 1989).

Reasonableness of restrictions under Clause (11)

1.1.11(195) Allahabad High Court in CWP No. 1823 of 1988 has decided on 10th July, 1990 that;

It is always open to place reasonable restriction or to regulate any professional activity. Such restrictions are not new; they are to be found in many fields where it is provided that a person practising any particular profession shall not be engaged in any other business.

According to the Court, it may be necessary to have such regulatory provision so that proper and undivided attention of the person practising a profession is available to those to whom they are supposed to render their services. Such professional services should be available to the needy with full and proper care and attention. The profession also requires to maintain certain standard of efficiency which it may not be possible to acquire if a person has his interest somewhere else.

(Iqbal Hamid vs. Institute of Chartered Accountants of India- Allahabad High Court - W.P. No. 1823 of 1988 dated 10th July, 1990).

Working as Partner/Proprietor of Non-CA Firm without permission of the Council

1.1.11(196) Where a Chartered Accountant had not disclosed to the Institute at any time about his engagement as a Proprietor of a non-Chartered Accountant's firm while holding certificate of practice and had not furnished particulars of his engagement as a Director of a Company despite various letters of the Institute which remained unreplied.

Held that he was guilty under clause (11) of Part I and clauses (1) and (3) of Part III of the First Schedule.

CASE LAWS REFERENCER

(P.S. Rao in Re: - Page 110 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 9th to 11th April, 1992).

- 1.1.11(197) Where a Chartered Accountant was a partner in a business firm without disclosing his interest and obtaining permission from the Council of the Institute. Held that he was inter alia guilty of professional misconduct under the Clause.

(R.K. Gupta of M/s Gupta Rajendra & Co. vs. M.G. Baig – Page 158 of Vol. VIII(2) of Disciplinary Cases decided by the Council on 1st to 3rd August, 2001).

- 1.1.11(198) A Chartered Accountant had engaged himself as a partner in two business firms and Managing Director in two Companies and was also holding Certificate of Practice without obtaining permission of the Institute.

Held that he was inter alia guilty of professional misconduct under Clauses (4) and (11).

(Harish Kumar in Re: – Pages 286 of Vol. VIII (2) of Disciplinary Cases – Council's decision dated 1st to 3rd August, 2001).

Involvement in Share Business /Transfers of Shares

- 1.1.11(199) Where a Chartered Accountant had offered to help the Complainant in disposing of odd lot shareholding, sold the shares of the Complainant at much lower rates than the prevailing market rates, had sent to the Complainant contract notes etc. and the said Chartered Accountant was personally involved in the share transfers and broker's business besides his professional activities.

Held that he was guilty under the clause.

(Pradeep R. Ghatge vs. Ashvin Bajarai - Page 423 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 13th to 15th June, 1996).

- 1.1.11(200) The Souvenir published on the occasion of "Navaratrotsav" by 'Parel Paschim Vibhag Va Tata Mills Welfare Centre 1991' contained an advertisement with a caption;

"With best compliments from Abhiraj R. Ranawat B.Com., A.C.A. (Chartered Accountant) Share and Stock Sub-Broker.

PART I OF FIRST SCHEDULE – CLAUSE (11)

The said advertisement also contained office timing 8 A.M. to 10 A.M., telephone nos. of market and residence and addresses of office and market. Arising out of the above, the Respondent inter alia held guilty in not taking Institute's permission for engaging in other occupation i.e. share and stock sub-broker while holding certificate of practice in violation of Clause (11) of Part I of Chartered Accountants Act, 1949.

(A.R. Ranawat in Re: - Pages 414 of Vol. VIII(2) of Disciplinary Cases – Council's decision dated 26th to 28th August, 2001).

- 1.1.11(201) Where a Chartered Accountant was doing the brokering of shares apart from holding Certificate of Practice without taking permission from the Council.

Held that he was inter alia guilty of Professional Misconduct under Clause (11) of Part I of the First Schedule of the Chartered Accountants Act, 1949.

(A.C. Sharma & Mrs. Indu Sharma, Proprietor, M/s Sharma Share Trading Co. vs. Sandeep Abbot – Page 22 of Vol. IX – 2A – 21(4) of Disciplinary Cases – Council's decision dated 11th to 14th September, 2002).

- 1.1.11(202) The Respondent was engaged in business of Share Dealer and Financial Advisor in which he was Sole Proprietor and was also Practicing as CA from the same address.

Held that the Chartered Accountant was inter alia guilty of professional misconduct within the meaning of Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Chatar Lal Mantri vs. Vinod Kumar Agarwal – Page 869 of Vol. IX – 2A – 21(4) of Disciplinary Cases – Council's decision dated 16th to 18th September, 2003).

- 1.1.11(203) Where a Chartered Accountant had been carrying on business on "Share Market" at the Calcutta Stock Exchange being a Member of the said exchange and was also holding Certificate of Practice without taking prior permission of the Institute.

Held that he was guilty of professional misconduct within the meaning of Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

CASE LAWS REFERENCER

(S.K. Sharma vs. V.K. Kandoi – Page 122 of Vol. IX – 2B – 21(4) of Disciplinary Cases – Council's decision dated 2nd to 4th February, 2004).

- 1.1.11(204) The Respondent, apart from being a full time practicing Chartered Accountant, also conducted Business of Finance and the Business of Brokerage through a Company. It was observed that he was the only person who looked after the Company and he did not take prior approval of the Council for engaging in other occupation apart from being in practice.

The Respondent was held guilty of 'Professional Misconduct' falling within the meaning of Clause (11) of Part I of the First schedule to the Chartered Accountants Act, 1949 for not obtaining specific and prior approval of the Council in terms of the requirements of Part-B of Regulation 190A of the Chartered Accountants Regulations, 1988.

(Shiv Kumar Ramnarain Sharma in Re: PPR-4/W/13-DD/7/W /INF/2013/BOD/276/2017)

- 1.1.11(205) Where a Chartered Accountant had done arbitrage activity in National Stock Exchange of India through another person and he incurred a loss of Rs. 10,00,713/-. That person had taken Rs. 1,15,000/- as security deposit from him but the balance of Rs. 8,50,713/- had not been paid by him. He explained this income as fees of an advisor but could not produce any documentary evidence.

Held guilty of professional misconduct falling under Clause (11) of Part I and Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949.

(Harish L. Sampat in Re: Page 71 of Vol I Part I of Disciplinary Cases, Judgement delivered on 3rd February 2011).

Practising CA involved as LIC Agent

- 1.1.11(206) Where a Chartered Accountant in practice had engaged himself in other occupation as an LIC Agent without obtaining permission of the Council.

Held that he was held guilty under the clause.

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(Chief Commissioner (Admn.) & Commissioner of Income-tax, Karnataka-I, Bangalore vs. H. Mohanlal Giriya - Page 443 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 13th to 15th June, 1996).

Holding Substantial Interest in a Company

1.1.11(207) The charge against a Chartered Accountant, inter alia, was that he had more than 20% shareholdings in a finance and Management Consultancy Private Company and he could not enter into the business of brokering. It was held that he had to be considered to be a Managing Director or a whole-time Director under the provisions of Section 2(26) of the Companies Act, 1956, since he was entrusted with the whole or substantially the whole of the management of the affairs of the Company.

Since he failed to obtain specific and prior approval of the Council for the above, he was held guilty under the Clause.

(J.P. Gupta vs. T.C. Garg - Page 670 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 21st to 23rd July, 1997).

Looking after General Administration

1.1.11(208) A Chartered Accountant had entered into partnership in a firm with the husband of the Complainant and others and agreed to look after general administration, appointment of office staff, finance and legal matters of civil and taxation nature. He was held guilty of violation of Clause (11).

(Satwant Kaur vs. Rakshit Khosla - Page 696 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 21st to 23rd July, 1997).

Consultancy services applied for but not approved by Institute

1.1.11(209) The Complainant alleged that the Respondent had engaged in business and occupation other than the profession of Chartered Accountancy and carried on consultancy services under a name which though applied for by him was not approved by the Institute.

CASE LAWS REFERENCER

Thus, he was guilty under the Clause.

(Amalendu Gupta vs. R.N. Kapur - Page 726 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 8th to 10th December, 1997).

Working as Managing Director/Whole Time Director/Director

1.1.11(210) The Respondent accepted the position of Director and of Auditor of a Company for the year 1992 from May 1992 till March 1993. It was argued that the Respondent audited the accounts of the Company only after March 1993 when he was not the Director of the Company. However, the appointment of the auditor, having been made when he was director of the Company, the Respondent was disqualified under Section 226(3)(b) of the Companies Act and that he should not have accepted the position as auditor being the Director of the Company.

Held that the Respondent was guilty under the Clause for not having obtained the prior permission of the Council for engaging himself in other occupation as director of the Company despite of the fact that he was interested in the Company as auditor and has also contravened the provisions of section 224-A read with section 226 of the Companies Act, 1956.

(A.V. Deshmukh vs. J.D. Sanghvi – Page 491 of Vol. IX – 2A – 21(4) of Disciplinary Cases – Council's decision dated 26th to 28th December 2002).

1.1.11(211) Where a Chartered Accountant continued to remain as a Director of a Company when one of his partners was interested in that Company as an Auditor.

Held that he was guilty of professional misconduct by continuing to hold office as a Director of the Company,

(Registrar of Companies, West Bengal vs. K.C. Lunawat – Page 819 of Vol. IX-2A-21(4) of Disciplinary Cases – Council's decision dated 16th to 18th September, 2003).

1.1.11(212) A Chartered Accountant was Whole Time Director of a Company and managing day to day affairs of Company along with another person. Respondent was having Certificate of Practice. In equity

PART I OF FIRST SCHEDULE – CLAUSE (11)

issue, the respondent along with another person siphoned out the money leaving the shareholders valueless and also, solicited clients by advertisements.

Held, the Respondent was guilty under Clause (11) of Part I of First Schedule and was not guilty of remaining charges.

(Dr. Abhijit Sen, Alliance Credit & Investment Ltd. vs. Parmanand Tiwari of M/s Tiwari & Co. –Page 83 of Volume X -2B–21(4) of Disciplinary Cases -Council decision of 278th Meeting held in May, 2008).

1.1.11(213) Where a Chartered Accountant was appointed as the retainer in AGI India to carry out the task of preparing and filing Income Tax Returns, TDS Returns and Service Tax Returns, handling of scrutiny cases relating to Income Tax, TDS, Service Tax and advised the Company on the aforesaid matters.

Further, he was appointed as the director of AGI India for the limited purpose of authenticating the financial statements of the Company in the absence of the other directors of the Company. He along with other fellow associates took advantage of the corporate name, trademark, goodwill and business connections of AGI India in performing certain illegal and unlawful activities with intent to transfer the existing business of AGI India in the name of AG Freight Carriers Private Limited.

He was appointed as the Executive Director of the Company in the capacity of the Chartered Accountant in full-time practice. For which he did not inform the Institute. The Member was associated with the said companies in a dual capacity i.e. both as a Director and as a Retainer. Said position should have been ratified by way of passing of a special resolution as contemplated in Section 314 of the Companies Act, 1956 which was not done. Directors of the Company AG Freight work in a fiduciary capacity and Section 211 of the Companies Act, 1956 clearly bestows the responsibility of preparation of accounts on the Directors of the Company. Further, there is no provision in the company law for the appointment of a conditional Director.

CASE LAWS REFERENCER

In spite of the objections raised by ROC to his appointment as conditional Director, he continued his acts and went on to sign the Balance Sheet of AGI India for further financial years as a Director of the Company.

Held guilty of 'Professional Misconduct' falling within the meaning of Clause (11) of Part I of First Schedule and 'Other Misconduct' falling under Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

(Agi Logistic Inc. vs. Sher Jang Bahadur - Page 343 of Vol. II Part I of Disciplinary Cases, Judgement delivered on 6th February, 2014).

- 1.1.11(214) Where a Chartered Accountant was one of the Promoters and a Whole Time Director of Private Limited Company, drawing remuneration besides practicing on a full time basis and besides holding full time COP.

Held guilty of professional misconduct falling under Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Rohit B. Jain vs. Kishore Kumar Poddar - Page 22 of Vol I Part I of Disciplinary Cases, Judgement delivered on 3rd February, 2011).

- 1.1.11(215) Where a Chartered Accountant entered into partnership for profit with non-Chartered Accountants and was its 'Managing Director' whilst continuing being in full time practice as a Chartered Accountant. Further, even after cessation of status as 'Director' from the Company, the Respondent continued misrepresentation of status as 'Director', wrongly continues retention of all the books and records of said Company at a place other than the registered office, continued to operate the bank accounts and indulged in fraudulent acts for personal gain as the Director of the Company.

Held guilty of Professional Misconduct falling within the meaning of Clause (11) of Part I of the First Schedule to the Chartered Accountants Act 1949.

PART I OF FIRST SCHEDULE – CLAUSE (11)

(Ashok Nanda, Jalandhar vs. Gurcharan Singh Syal Re:- [PR-96/2012-DD/113/2012/BOD/182/2014] Judgement delivered on 9thFebruary, 2016).

- 1.1.11(216) Where a Chartered Accountant had floated various Companies/Firms and availed huge limits from various Banks in the name of the said Companies/firms. The limits were availed fraudulently by him against factory, land & building, machineries and other fixed assets in his name and others were already mortgaged with a Bank. Furthermore, besides holding full time COP he was also the Proprietor/Directors of Firms/Companies for which he did not inform the Institute.

Held guilty of 'Other Misconduct' falling under Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949, and 'Professional Misconduct' falling under Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Deputy General Manager, Canara Bank vs. Prasanta Kumar Roy Burman - Page 47 of Vol I Part I of Disciplinary Cases, Judgement delivered on 3rd February, 2011).

- 1.1.11(217) The Respondent was the Promoter Director and Chairman of the Company as well as was holding COP and Partner in M/s Kumar Mahajan & Co., Chartered Accountant. However, the Respondent had not sought any prior approval of the Council before engaging in other business.

The Respondent was held guilty of professional misconduct as per Clause (11) of Part I of First Schedule & Clause (4) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(Anil Kosha vs. Mahendra Kumar Mahajan - Page 421 of Vol. II of Part I of the Disciplinary Cases of April, 2015 judgement delivered on 1st February, 2012).

- 1.1.11(218) Where a Chartered Accountant being the Statutory Auditor of a company had been corresponding with outsiders as Director-Finance of the Company even prior to his appointment as management consultant thus using this designation before the said appointment and before resigning from the firm as Statutory Auditor.

CASE LAWS REFERENCER

Held guilty of 'professional misconduct' falling within the meaning of Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Vemuri Krishna Prasad vs. Chigurupati Tirupathaiah Chowdary - Page 121 of Vol. II Part I of Disciplinary Cases Judgement delivered on 9th October 2013).

Engaged as Lecturer without permission of Council

- 1.1.11(219) A Member, without surrendering her Certificate of Practice, and without obtaining prior permission from the Council of the ICAI, accepted the job of a full time lecturer and as HOD (18 hrs per week) in a College.

The Council held that the Member guilty of professional misconduct under Clause (11) of Part I of the First Schedule read with Sections 21 and 22 of the Chartered Accountants Act, 1949.

(Saraswati Gurunath Joshi vs. Himangi S. Prabhu - Page 555 of Vol. X – 2A – 21(4) as decided on 21st June, 2006)

- 1.1.11(220) Where it was established that a Chartered Accountant had deceived a person by assuring that he can sanction a loan to him for business purpose. He had taken a sum of Rs 15,000/- for doing the same and thereafter, started avoiding that person. Apart from that he was in full time employment with a University in spite of holding full time COP and never disclosed about his employment to the Institute.

He surrendered his COP only after issuance of information letter from the Institute. He represented this as a mistake.

Held guilty of professional misconduct falling under Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Shivaputra Mohan Jotawar in Re: [DD/2/S/INF/11/Bod/113/13] Information letter received from Shri Anant K. Kshirsagar Re: Page 136 of Vol. II Part I of Disciplinary Cases, Judgement delivered on 9th October, 2013).

CA Firm and Company operating from same premises

- 1.1.11(221) A Chartered Accountant's was made Chairperson of a Company

PART I OF FIRST SCHEDULE – CLAUSE (11)

and the Company and the respondent firm operated from same premises.

The respondent as MD of Company, executed an agreement for appointment of the Complainant as a stockist and accepted deposit as security money.

Respondent was held guilty under clause (11) of Part I of First Schedule.

(Atul K. Gupta vs. Swadesh C. Srivastava (25-CA(57)/99). – Page 69 of Volume X -2B-21(4) of Disciplinary Cases -Council decision of 277th Meeting held in March – April 2008).

Working as Recovery Agent without permission

1.1.11(222) A Chartered Accountant firm was working as Recovery Agent for Housing Finance Company without taking any permission from the Council to engage in any work other than the profession of Chartered Accountancy. The Respondent had written a letter to the Complainant for recovery of money wherein he represented himself as an agent of LIC housing Finance Ltd. He intimidated the Complainant with harsh and coercive method of recovery.

Held that the Respondent was guilty under clauses (7) & (11) of Part I of First Schedule.

(Yogesh Kumar Sharma vs. O. P. Maheshwari of M/s O. P. Maheshwari & Co. (25-CA(212)/2003) - to be published later under Disciplinary Cases Volume X-2B-21(4). Council decision of 281st Meeting held in October, 2008).

Business relationship with the Auditee

1.1.11(223) Where a Chartered Accountant as Auditor of the related concern, had taken undue advantage of his position and entered into a business relation with partners/relatives of partners and formed a Company. He neglected in performing his duties resulting in loss to the Company and also carried away the original records. He signed MOA and AOA of the said Company as subscriber with his occupation as Business, Audited Financial Statements of the Company also signed by the him on behalf of the Directors of the Company

CASE LAWS REFERENCER

Held guilty of professional misconduct falling under Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(Ashish S. Kulkarni vs. Mahen J. Dholam - Page 154 of Vol I Part I of Disciplinary Cases, Judgement delivered on 3rd February, 2011, further Judgement delivered on 28th January 2012 By Appellate Authority).

- 1.1.11(224) Where a Chartered Accountant maintained the accounts and also acted as the Tax Auditor of a firm. Besides holding the COP, he was also in active business association with a company being a Director of the company without taking the permission of the Council.

Held guilty of professional misconduct falling within the meaning of Clause (11) of Part I of the First Schedule and Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Sharadchandra M. Kulkarni vs. Mahen J. Dholam - Page 1 of Vol I Part I of Disciplinary Cases, Judgement delivered on 12th September, 2011).

PART I OF FIRST SCHEDULE – CLAUSE (12)

1.1.12 **Clause (12):** *allows a person not being a member of the Institute in practice, or a member not being his partner to sign on his behalf or on behalf of his firm, any balance-sheet, profit and loss account, report or financial statements.*

PART II OF THE FIRST SCHEDULE

Professional Misconduct in Relation to Members of the Institute in Service.

- 1.2.1** **Clause (1):** *pays or allows or agrees to pay directly or indirectly to any person any share in the emoluments of the employment undertaken by him;*

PART II OF THE FIRST SCHEDULE – CLAUSE (2)

1.2.2 **Clause (2):** *accepts or agrees to accept any part of fees, profits or gains from a lawyer, a chartered accountant or broker engaged by such Company, firm or person or agent or customer of such Company, firm or person by way of commission or gratification;*

PART III OF THE FIRST SCHEDULE

Professional Misconduct in Relation to Members of the Institute Generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he:-

- 1.3.1 Clause (1):** *not being a fellow of the Institute, acts as a fellow of the Institute.*

PART III OF THE FIRST SCHEDULE – CLAUSE (2)

1.3.2 Clause (2): *does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority;*

Not Supplying Information sought by the Institute

1.3.2(225) Where a Chartered Accountant had not disclosed to the Institute at any time about his engagement as a proprietor of a non-Chartered Accountants' firm while holding certificate of practice and had not furnished particulars of his engagement as a Director of a Company despite various letters of the Institute which remained unreplied.

Held that he was guilty under clause (11) of Part I and clauses (1) and (3) of Part III of the First Schedule.

(P.S. Rao in Re:- Page 110 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 9th to 11th April, 1992).

1.3.2(226) Where a Chartered Accountant had continued to train an articled clerk even though his name was removed from the Membership of the Institute and he had failed to send any reply to the Institute asking him to send his explanation as to how he was training as his articled clerk when he was not a Member of the Institute.

Held that he was guilty under clause (3) of Part III of the First Schedule.

(S.M. Vohra in Re:- Page 151 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 16th to 18th July, 1992).

CASE LAWS REFERENCER

- 1.3.3** **Clause (3):** *While inviting professional work from another chartered accountant or while responding to tenders or enquiries or while advertising through a write up, or anything as provided for in items (6) and (7) of Part I of this Schedule, gives information knowing it to be false.*

PART IV OF THE FIRST SCHEDULE

Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he —

- 1.4.1 Clause (1):** *is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months.*

CASE LAWS REFERENCER

- 1.4.2 Clause (2):** *in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.*

Floating Companies and Firms for availing credit limits

- 1.4.2(227) Where a Chartered Accountant had floated various Companies/Firms and availed huge limits from various Banks in the name of the said Companies/Firms. The limits were availed fraudulently by him against factory, land & building, machineries and other fixed assets in his name and others were already mortgaged with a Bank. Furthermore, besides holding full time COP he was also the Proprietor/Director of Firms/Private Limited Company for which he did not inform the Institute.

Held, guilty of 'Other Misconduct' falling under Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949 with respect to the charge of being Proprietors of other Firms he was guilty of 'Professional Misconduct' falling under Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Deputy General Manager, Canara Bank vs. Prasanta Kumar Roy Burman - Page 47 of Vol I Part I of Disciplinary Cases, Judgement delivered on 3rd February, 2011).

Nexus with Chairman of the Company

- 1.4.2(228) Where a Chartered Accountant had not acted merely as an Auditor of a Company, but it seemed that he was acting in nexus with the Chairman of the company and thus aiding and abetting in the rigging and creation of artificial market in the shares of the Company.

Held guilty of 'Other Misconduct' falling within the meaning of Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949.

(Rajiv Sharma in Re:- Page 76 of Vol II Part I of Disciplinary Cases, Judgement delivered on 12th September, 2011).

PART IV OF THE FIRST SCHEDULE – CLAUSE (2)

Engagement in same business by using business Information of Ex -Client

- 1.4.2(229) Where a Chartered Accountant being in practice, engaged himself with a partnership concern dealing in electrical contracting without seeking prior permission of the Council for the same besides holding Certificate of Practice. He used the business information of his ex-client to promote his own business.

Held, guilty under the Clause (11) of Part I of First Schedule & 'Other Misconduct' falling under clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

(Vikas B. Pathakar vs. Atul Chandrakant Vaishali Ghorpade - Page 292 of Vol. II Part I of Disciplinary Cases, Judgement delivered on 31st January, 2014).

Signing Balance Sheets being subject to Audit

- 1.4.2(230) A Chartered Accountant had signed the Balance Sheet of three Companies which had common Directors. The Balance Sheet was still subject to Audit and was never signed by the previous Auditor. He had not even communicated with the previous Auditor for NOC before accepting the appointment of Statutory Auditor.

Held, guilty of 'professional and other misconduct' under Clauses (8) and (9) of Part I and Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

(Anil Kumar Goel vs. A. Anurag Nirbhaya -- Page 356 of Vol II Part I of Disciplinary Cases, Judgement delivered on 6th February, 2014).

Inaccurate reporting and hiding material Facts

- 1.4.2(231) The Respondent as the Statutory Auditor of the associate companies did not carry out the due diligence exercise instead, he reported inaccurate particulars and hid material facts without disclosing the transactions between the associate companies.

He did not carry the audit of the companies with the responsibility of ensuring that the audit was conducted in an independent, fair and unbiased manner taking necessary steps for verifying of accounts before certifying the accounts are true and fair.

CASE LAWS REFERENCER

Moreover, he filed information with the ROC wrongly and thereafter rectified it without any basis.

The Respondent was guilty of professional misconduct falling within the meaning of Clauses (7) and (8) of Part I of the Second Schedule and Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

(Col. S.K. Ahuja vs. Dinesh Gupta -- Page 355 of Vol. II of Part I of the Disciplinary Cases of April, 2015 judgement delivered on 7th October, 2013).

Endorsing Signature of a dead Person and issuing experience certificate on its basis

1.4.2(232) The Respondent had issued an experience certificate on behalf of a person without proper evidence & verifying the facts. Moreover, he had endorsed the signature of a person who already expired which was forged by the person on whose behalf the Respondent had issued certificate. Here, it was observed that the Respondent has also failed to carry out his duties in a diligent manner and failed to obtain necessary information/documents before issuing the certificate dated and the same had brought disrepute to the profession of Chartered Accountancy.

Held, guilty of 'Other Misconduct' falling within the meaning of Clause (2) of Part IV of First Schedule and also guilty of professional misconduct falling within the meaning of Clauses (7) and (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(Vivek Priyadarshi, Addl. Supdt. of Police, New Delhi vs. Kamal Kumar Grover -- Page 383 of Vol. I of Part I of the Disciplinary Cases of April, 2015 judgement delivered on 12th October, 2011).

Wrongful use of Proprietorship/Partnership of a Firm to carry out Audit

1.4.2(233) The Respondent had conducted the audit of a Housing Society for the different Financial Years and signed the Audit Reports as a Proprietor as well as a Partner of two different firms where the Respondent neither was the Proprietor/Partner nor was authorized

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by the CA Firm to carry out the said audit on its behalf. Further, the Respondent had earlier worked as Administrative Officer in National Insurance Company during the period of audit of the Housing Society.

The Respondent was held guilty of 'Other Misconduct' falling within the meaning of Clause (2) of Part IV of First Schedule and Clause (1) of the Part II of the Second Schedule to the Chartered Accountants Act, 1949.

(Anand Prakash Gupta in Re:- Page 471 of Vol. II of Part I of the Disciplinary Cases of April, 2015 judgement delivered on 21st August, 2014).

Continued to practice after removal of name from Register

1.4.2(234) Where a Chartered Accountant did not reveal the important information that his name has been removed from the Register of Members w.e.f. 01.10.2005 due to non payment of fees and he was not authorised to practice as a Chartered Accountant but he continued to sign the audit report and conducted audit of the firm.

Held, guilty of professional and other misconduct falling within the meaning of Clause (2) of Part IV of First Schedule, and Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

(Naresh Mohan Mittal vs. Gulshan Kumar -- Page 20 of Vol I Part I of Disciplinary Cases, Judgement delivered on 12th September, 2011).

Signing documents on behalf of the Firm even after resignation from the Firm

1.4.2(235) Where a Chartered Accountant had signed several official documents on behalf of the Firm even after his resignation from the firm. He had also conducted the Statutory Audit of M/s Ordinance Cable Factory by using the name and stamp of the firm even after the dissolution of their partnership and got the Audit fees cheque in his personal name.

Held guilty of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

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(Manoj Kumar in Re: Page 37 of Vol I Part I of Disciplinary Cases, Judgement delivered on 12th September, 2011).

Procured Audits in the name of Firm without the knowledge of the Firm

1.4.2(236) Where a Chartered Accountant had obtained Tax Audit assignment in the name of another firm without knowledge of the that firm. He prepared letter head and seal of the firm and stamped on Audit Reports and annexures with the affixed signatures of other partners. He raised invoice under his signature and managed to obtain the payment.

Held, guilty of other misconduct falling within the meaning of Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949.

(Yogesh Mishra vs. Om Prakash Prajapati - Page 89 of Vol I Part I of Disciplinary Cases, Judgement delivered on 3rd October, 2011).

Submission of wrong Tax Return

1.4.2(237) Where a Chartered Accountant had submitted a wrong Tax Return prepared by him to the Tax Authorities without the approval of the Director(s) of the client company. He was in the possession the important documents and information of the Company and was not returning the same.

Held, guilty of professional and other misconduct falling within the meaning of Clause (2) of Part IV of First Schedule, Clause (7) of Part I and Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

(Kired Mahadew Singh, Director, Viramah Real Estate India Pvt. LTD. vs. Shiv Chandra Shrestha - Page 135 of Vol I Part I of Disciplinary Cases, Judgement delivered on 3rd October, 2011).

Taking Bribe from Bank Customers

1.4.2(238) Where a Chartered Accountant was demanding and taking bribe from the borrower customers of the Bank in return of maintaining the 'Standard Category' of the borrower accounts.

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Held, guilty of Other Misconduct falling within the meaning of Clauses (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

(K. Ravichandran, Deputy General Manager, Indian Bank, New Delhi vs. Raj K. Aggarwal, M/s Raj K. Aggarwal & Associates, New Delhi [PR-239/2013-DD/262/ 2013/BOD/210/2016]).

Submission of wrong information with ROC

- 1.4.2(239) Where a Chartered Accountant had filed Form No. 32 with ROC showing removal of the Complainant from Directorship of the Company without any acknowledgement and consent of the Complainant and said Forms were certified by the Respondent.

Held, guilty of Other Misconduct falling within the meaning of Clauses (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

(Jairam Mandal, New Delhi vs. Chinmoy Ghatak, Kolkata [PR-119/12/DD/135/12/BOD/203/2016] Judgement delivered on 2nd December, 2017).

- 1.4.2(240) Where a Chartered Accountant had falsely verified Form No.32 filed with ROC in respect of appointment of Directors of a company. He also had affixed fraudulently obtained digital signature in his name.

Held, guilty of 'Other Misconduct' falling within the meaning of Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949.

(Ashish Pradeep Deora, Mumbai vs. Jawahar Lal Beriwal, Delhi [PR-171/13-DD/165/2013/BOD/198/2016] Judgement delivered on 13thDecember, 2018).

Accepting Bribe in respect of Penalty Matter

- 1.4.2(241) Where a Chartered Accountant was caught red-handed by the Anti Corruption Bureau (ACB) Ahmedabad Police while accepting bribe of Rs.1.5 lakhs from the complainant in respect of penalty matter of Complainant Company.

Held, guilty of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949

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(Dilip C. Patel vs. Ronak S. Dawda [PR-112/12-DD/155/12/BOD/186/2014] Judgement delivered on 10th December, 2016).

Acting as Middleman for arranging Accommodation Entries

1.4.2(242) Where a Chartered Accountant had acted as a middleman for arranging accommodation entries of share application money and had issued bogus bills to certain entities in and outside Mumbai and for the same he got a fixed percentage of commission.

Held guilty of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

(The Director of Income Tax (Inv.) Nagpur vs. Anand Shyamsunder Daga Re:- [PR65/13-DD/91/13/BOD/183/2015] Judgement delivered on 10th December, 2016).

Non-return of Cheques held as Escrow Agent

1.4.2(243) Where a Chartered Accountant was appointed as an Escrow Agent whereby the complainant issued 10 numbers of cheques amounting to Rs.12,05,56,314/- drawn on Standard Chartered Bank on the condition that those cheques would be held by the Respondent in Escrow as security until the conditions given are fulfilled. However, the said cheques were not returned by the Respondent and he issued a false notice by making claims on the said cheques. The Respondent also filed a suit claiming a sum of Rs.10,37,502/- to be his escrow fees without substantiating the said claims by producing any agreement in that regard.

Held guilty of "Other Misconduct" falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

(Aditya Raheja, Bangalore vs. H V Gowthama, Bangalore [PR-113/2011-DD/111/2013/BOD/163/2016] Judgement delivered on 21st August 2017).

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Censuring order by PCAOB

1.4.2(244) Where PCAOB (Public Company Accounting Oversight Board) had passed an order censuring a Chartered Accountant and barring him from being an Associated Person of a registered Public Accounting Firm and also imposed a penalty of \$10,000 on the Respondent's firm. PCAOB in its report held that M/s Parikh & Associates (firm registered with ICAI) was also registered with PCAOB pursuant to Section 102 of the Act and PCAOB Rules.

By virtue of their registration, the Respondent firm was allotted audit of Mahanagar Telephone Nigam Limited (MTNL) for the years ending March, 2006 to March, 2012. PCAOB in the said order held that the staff and partners of the firm M/s Parikh & Associates had no formal training and experience as per PCAOB Standards. US-GAAP Principles relating to quality control policy and procedure to provide reasonable assurance that the work performed by engagement of personnel, meet applicable professional standards. That being the case, the firm/Respondent Member failed to check the Assets balances during Audit period.

Held, guilty of 'Other Misconduct' falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act.

(Sandeep P S G Nair in Re:- [PPR/20/W/13-DD/17/W/INF/13-BOD/302/2017] Judgement delivered on 22nd May, 2018).

Wrongfully obtaining the Service Charges

1.4.2(245) Where a Chartered Accountant despite there had been no reduction/refund of wharfage charges and the Complainant-Company has paid the full sum of INR 61 Million as wharfage charges to Enmore Port Limited, the Respondent in contrary to the terms of agreement sought and obtained his full payment of Service Charges as well as Service Tax thereon.

Held guilty of 'Other Misconduct' falling within the meaning of Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

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(Simon Tiptet vs. Ashok A Jain [PR-110/2015-DD/139/2015/BOD /270 /2017] Judgement delivered on 12th January, 2019).

Wrongful refusal to work, handover of Books and change of Password of Client

- 1.4.2(246) The accounts of the Complainant were maintained and audited by a Chartered Accountant. Even after the full payment of fees he refused to complete the work and to file the Income Tax Returns. The Respondent Firm was in the possession of all the original accounts and refused to hand over the same. Further on seeking for the payments against the work done for the interior of the new office of the Firm, the Complainant was abused and threatened. The Password of Income Tax account was also changed by him without knowledge of the Complainant. The Respondent refused to accept the payment made by cheque.

Held, guilty of 'Other Misconduct' falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Acts, 1949 read with section 22 of the said Act.

(Kanchan Bhagchandani vs. Vaibhav Kumar Mehta. [PR-263/2014-DD/319/2014/BOD/251/2017] Judgement delivered on 12th January, 2019).

Dealing in Conversion of Black Money on Commission Basis

- 1.4.2(247) As per sting operation carried out by News India 18 Channel published and aired on 17th November, 2016, it had been observed that a Chartered Accountant had been shown as talking about conversion of black money and advising use of Jan Dhan Accounts and Gold to convert old high denomination currency notes on commission basis. The manner in which the conversation had taken place, it was clear that the Respondent was advising the person about the various illegal means to convert black money into white.

Held, guilty of 'Other Misconduct' falling within the meaning of Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949

(Vinodray Vithaldas Donga in Re:- [PPR/412/2016/DD/141/INF /2016/BOD/242/17] Judgement delivered on 30th May, 2017).

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- 1.4.2(248) Where a Chartered Accountant allegedly propagating his services subsequent to demonetization, an objective of Government of eradicating black money, through mass SMS alongwith his mobile number offering his services towards conversion of cash with minimum tax liability.

Held guilty of Professional Misconduct falling within the meaning of Clauses (6) & (7) of Part I and 'Other Misconduct' falling within the meaning of Clause (2) of Part IV of First Schedule read with section 22 of the Chartered Accountants Act, 1949.

(Kailash Shankarlal Mantry in Re:- [PPR/392/2016/DD/135/INF/2016/BOD/240/17] Judgement delivered on 30th May, 2017).

Circulating Mass emails of Professional services even after surrender of COP

- 1.4.2(249) Where a Chartered Accountant had surrendered his Certificate of Practice and conveyed his intention to take up spiritual ideology yet, he had circulated the mass e-mails offering therein various professional services such as preparation of financial statements, ITRs, etc, and quoting fees for the same.

Held, guilty of 'Other Misconduct' falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of said Act.

(Manish Kumar Neemain in Re:- [PPR-18/16/DD/9/INF /16/BOD /232/2016] Judgement delivered on 22nd May, 2018).

Creating false documents to evade Tax

- 1.4.2(250) Where a Chartered Accountant was involved in creating false documents showing gifts of various amounts of money by various persons in the name of a person and his wife.

Held, guilty of 'Other Misconduct' falling within the meaning of Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

(Nagendra Prasad, Superintendent of Police, Kolkata vs. Umesh Kumar Dokania, [PR-243/2013-DD/240/2013/BOD/217/2016] Judgement delivered on 2nd February, 2019).

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Seeking Bribe from other Chartered Accountant

1.4.2(251) It came to the knowledge of the Institute from newspaper reports that a First Information Report (FIR) was registered by the Central Bureau of Investigation (CBI) against the Respondent alleging that he had demanded Rs. 37.5 lakhs from another Chartered Accountant and an amount of Rs. 30 lakhs was delivered to the Respondent for getting undue favour in the matter of M/s. Lavasa.

Held, guilty of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

(Maninder Singh Johar in Re:- [PPR/11/N/10/DD/6/INF/10/BOD/117/13] Judgement delivered on 30th June, 2015).

Cheating and Ransom

1.4.2(252) A charge against a Chartered Accountant was noticed from the newspaper report and news item aired on a News Channel where in it was reported that the Respondent alongwith his associates had cheated an American National, who wanted to exchange his old currency into the new one amounting to Rs. 1 Crore on payment of commission of 27% to 30%. He was advised to approach the Respondent. According to the Police, the Respondent alongwith 4 others, took Rs. 1 crore from the American National in cash and disappeared. Thereafter, they reported to the American National that the Police had seized the money and hence they are unable to pay him. The American National reported the matter to the Police who took the concerned persons to the Police Station. The Police confiscated the money under the provisions of Section 102 of Cr.P.C and the matter was informed to the Income Tax Department.

Held, guilty of 'Other Misconduct' falling within the meaning of Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

(Vinit Kumar Mantri in Re:- [PPR/P/121/16/DD/136/INF/16/BOD/241/2017] Judgement delivered on 8th January, 2019).

1.4.2(253) Where a Chartered Accountant held his Partnership Firm to ransom and demanded for increase in Share of Profit. He

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manipulated the arbitration process and Hon'ble Mumbai High Court passed strictures and levied cost of Rs. 2 lakhs against him. Further, he refused to sign the cheques for making salary payments to employees and other payments as per Consent Order passed by Hon'ble High Court, Bombay. He also while holding Certificate of Practice was engaged in other Business as a Director and had signed the Balance Sheet of the said Company.

Held, guilty of Professional and Other Misconduct falling within the meaning of Clause (11) of Part I and Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

(Vinay Dattatray Balse vs. Yogendra N. Thakkar Re:- [PR-208/14-DD/242/14/BOD/229/16] Judgement delivered on 12th January, 2019).

Failure to refund the amount for the flat as Partner of Construction Firm

- 1.4.2(254) Where a Chartered Accountant being one of the Partners of the Construction Firm had failed to refund the amount to the Complainant which was paid by him as the booking amount for the flat. Later, due to financial problem the Complainant was unable to pay the remaining amount so he decided to cancel the bookings of the flat. The partners of the Construction Firm however, failed to pay money back to the Complainant.

Held, guilty of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act.

(Manohar G Bhujbal vs. Atish Vikas Phulphagar Re:- [PR-151/2013-DD/153/2013/BOD/226/2016] Judgement delivered on 12th January, 2019).

Prepared Two Balance Sheets from same Data

- 1.4.2(255) Where a Chartered Accountant had prepared two Balance Sheets of the Company one for submitting to the Bank and another for submitting to Income Tax Department. Both the sets of Accounts had been audited and signed by him as the Statutory Auditor of

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the Company. Moreover, he had submitted forged and fabricated documents with an intention to avail enhanced credit facility from the Bank.

Held, guilty of professional misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule and Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Mool Chand vs. Kamal Bhushan Jhamb Re:- [PR-93/10-DD/92/2010/DC/151/2011] Judgement delivered on 14th September, 2014).

Non-verification of Details and tampering of Documents

1.4.2(256) The Respondent had been appointed to carry out the audit, Income Tax and ROC related work viz preparation and filing of various Forms like Form No. 32, Form 18, 23 AC and 23 ACA, DIN 3 and 20B. The Respondent did not verify any other document, contract, etc. to filing e-forms with the ROC which had certain incorrectness on account of the same being filed on the basis of tampered and forged documents which resulted in bringing disrepute to the Chartered Accountancy Profession.

The Respondent was held guilty of 'Other Misconduct' falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said act.

(Gopal Bhatler in Re:PPR/7/W/13/DD/10/W/INF/13/BOD/225/2016).

Filing of Director details with ROC without Board Resolution

1.4.2(257) The Respondent had certified Form 32 filed with ROC regarding the appointment of two Directors of Company without attaching the copy of any resolution appointing as Directors of the Company. It had been observed that the persons who had been certified as the Directors of the Company were not the legal shareholders of the Company. There had never been any Board Resolution to induct these fraudulent shareholders as Directors and hence the Respondent had brought disrepute to the

PART IV OF THE FIRST SCHEDULE – CLAUSE (2)

profession of Chartered Accountancy.

The Respondent was held guilty of 'Other Misconduct' falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of said Act.

(Kamal Banerjee vs. Chinmoy Ghatak Re: [PR-151/14-DD/167 /2014/BOD/329/2017]).

Preparation and Certification of Fake Documents

- 1.4.2(258) The Respondent prepared and certified Fake Financial Statements and other documents of certain persons to whom loans had been sanctioned through a Branch of Bank of Maharashtra, Mumbai. In addition to above, the Respondent availed vehicle loan from the same Branch of the above Bank and it was found that assets had not been purchased, mis-utilised Bank funds and account became Non Performing Assets.

Held, guilty of Professional Misconduct falling within the meaning of Clauses (6), (7) and (8) of Part I of the Second Schedule and also of 'Other Misconduct' falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act 1949.

(Shashank V. Kamath, Deputy Regional Manager, Bank of Maharashtra, Mumbai vs. Rishi Anmol Sekhri Re: [PR-153/2011-DD /169/2011/DC/276/2013] Judgement delivered on 6th January, 2016).

- 1.4.2(259) Where the Respondent as a General Manager Commercial of a private limited Company had purchased raw materials at exorbitant prices, taken unauthorised loans at usurious interest rates, manipulated the MIS(Management Information System) Report, pressurised fellow employees to prepare bogus invoices and misguided the Statutory Auditor of the Company.

The Respondent as a Member of the Institute certainly owed a duty to the Statutory Auditors of the Company and to the shareholders and creditors at large to present a true and fair view of the financial statements and he should not have been a party to any attempt on falsification of accounts whether at the instance of

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the Complainant or otherwise.

Held, guilty of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

(Cyrus Maneck Bahadurji, Chairman, M/s Tytan Organics Pvt. Ltd., Mumbai vs. Mustafa Abdulla Surka Re: [PR-157/09-DD/185/09/DC/148/11] Judgement delivered on 7th November, 2017).

- 1.4.2(260) The Respondent had defrauded the Complainant by showing different figure in Returns of Income for the Assessment Year 2009-10 of his late father. Moreover, the Respondent had failed to claim the tax advantage of Double Taxation Avoidance Treaty between India and Canada in the said Return of Income and the Complainant was forced to pay excess tax. It was noted that the Respondent did not exercise due care and diligence while carrying out professional duties as a Chartered Accountant even after so many reminders from the Complainant.

Held, guilty of professional misconduct falling within the meaning of Clause (2) of Part IV of First Schedule and Clause (7) of Part-I of the Second Schedule to the Chartered Accountants Act, 1949.

(Sunil Kaplash, Canada vs. Balraj Kalia, New Delhi Re: [PR/209/12/DD/227/12/DC/340/2014] Judgement delivered on 18th September, 2018).

Manipulation of Financial Statements/Returns/Reports

- 1.4.2(261) The Respondent had manipulated the financial statement of the Assessee for the Financial Year 2005-06, 2006-07 and 2007-08 by certifying a second set of the financial statements which were submitted by the Assessee to the Service Tax Department and had resulted in evasion of Service Tax to the tune of Rs.2.13 Crores. During the course of audit by the Service Tax Department, it was revealed that the same were different from the sets submitted earlier by the Assessee to the Service Tax Department. The Respondent also certified worksheet prepared by the assessee, wherein the Service Tax liability worked out by the Assessee in the said worksheet and certified by the Respondent was found to

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be much lower than the actual liability.

Held, guilty of professional and/or other misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule and Clauses (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Madhu Mohan Damodhar, Commissioner, Central Excise, Pune-1 vs. Likhesh Vasanji Shah Re: [PR-179/11-DD/01/2012/DC/368/14] Judgement delivered on 7th November, 2017).

- 1.4.2(262) Where a Chartered Accountant certified a Return of Income in the name of his client which was filed with the Income Tax Office, Meerut with his official stamp where a TDS certificate has been issued fraudulently with forged documents and later issued the confirmatory letter on behalf of the company also to execute his plan of claiming the TDS as a refund fraudulently. He personally collected the refund amount on behalf of his client from the Income Tax Department.

Held, guilty of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule and guilty of Professional Misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(The Commissioner of Income-Tax, Meerut vs. Sanjay Sud - Page 41 of Vol II Part I of Disciplinary Cases, Judgement delivered on 2nd August, 2011).

PART I OF THE SECOND SCHEDULE

Professional Misconduct in relation to Chartered Accountants in Practice:

A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he –

- 2.1.1 Clause (1):** *discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client or otherwise than as required by any law for the time being in force;*

Disclosure of Information without Client consent

- 2.1.1(263) Disclosure of information where a Chartered Accountant disclosed to the Income-Tax Officer information acquired in the course of his professional engagement without the consent of his clients.

Held, he was guilty under clause (1).

(Jamnadas Harakchand and Others vs. P.C. Parekh - Page 492 of Vol. IV of the Disciplinary Cases and pages 26-44 of July, 1967 issue of the Institute's Journal, Judgement delivered on 12/16th January, 1967).

- 2.1.1(264) Where a Chartered Accountant had disclosed information acquired by him in the course of his professional engagement to persons other than his clients without the consent of his client and without requirement in any law.

It was held that he was guilty of professional misconduct under Clause (1) of Part I of the Second Schedule to the Chartered Accountants Act.

(Bank of India vs. Ved Prakash - Page 458 of Vol.VI(1) of Disciplinary Cases - Judgement dated 13th July, 1989).

- 2.1.1(265) Where a Chartered Accountant discloses to the Registrar of Companies (ROC) information acquired during the course of his professional engagement without the consent of the Client and without there being any requirement in Law to disclose the same.

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The Court rejected the contention of the respondent that the voluntary disclosure made by him to the ROC was in public interest and that the same was done with a view to bring home the circumstances under which he was wrongfully removed from the auditorship.

The Court observed that:

“From the facts on record it is evident that the respondent was aggrieved by the action of the company in removing him from the Auditorship and there were disputes regarding non-payment of his professional fees and in these circumstances the letter was written more out of vengeance rather than public interest.

If the public interest was the paramount consideration, then the respondent would have made a report disclosing all such information to the shareholders/creditors. The fact that no such report was made and the fact that after his removal from the Auditorship on 14.12.1982, the respondent chose to write a letter on 28.12.1982 to the ROC without there being such obligation, clearly shows that the plea of public interest raised is only a ruse and not a bonafide action on the part of the respondent.

It cannot also be stated that the letter was written with a view to protect his own interest. No action was contemplated by the ROC against the respondent and hence there was no question of addressing a letter to protect his own interest. Therefore, addressing a letter to the ROC was neither in public interest nor with a view to protect his own interest.”

Held that the respondent had committed gross professional misconduct under Clause 1 of Part I of the Second Schedule of the Chartered Accountants Act, 1949.

(Director, M/s Shree Industrial Rubber Works Pvt. Ltd. vs. S.R. Khanna - Page 437 of Vol. VIII-1-21(6) of Disciplinary Cases-Judgement dated 5th August, 2004).

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- 2.1.2 Clause (2):** *certifies or submits in his name, or in the name of his firm, a report of an examination of financial statements unless the examination of such statements and the related records has been made by him or by a partner or an employee in his firm or by another chartered accountant in practice;*

False Certificates/Due Diligence

- 2.1.2(266) Where a Chartered Accountant issued false certificates to several parties for past exports for monetary consideration without verifying any supporting records or documents. On the strength of these false certificates, certain unscrupulous importers were able to obtain import license, effect imports and clear these free of duty, perpetuating a fraud on Government revenue and depriving the Government of its legitimate revenue to the tune of several Crores of Rupees.

On his statements to the Department he confessed the above fact and disclosed that he had issued these certificates for monetary consideration and without verification of supporting documents on record.

Held that the respondent was guilty of professional misconduct within the meaning of clauses (2), (7) & (8) of Part I of the second schedule of the Chartered Accountants Act, 1949 in terms of section 21 & 22 of the said Act.

(P.N. Vittal Dass, Addl. Collector of Customs, Mumbai vs. P.U. Patil -Page 827 of Vol. VIII – 1 – 21(6) of Disciplinary Cases - Judgement dated 13th August, 2004).

- 2.1.2(267) The Respondent had issued a clean report in respect of the his client Company which involved in shipping services who had been enjoying working capital facilities from the Complainant Bank and subsequent to the submission of the original report, the Respondent submitted a revised Audit Report and provided a copy of the same to the Institute and stated that he had directed the Company also to revise the Financial Statement.

The account of the Company turned to NPA in due course of time and the Complainant Bank decided to carry out a Due Diligence

PART I OF THE SECOND SCHEDULE – CLAUSE (2)

Audit of the accounts of the Company pertaining to that period in which the irregularities were happened.

The major differences observed from Due Diligence Review Report as against the Clean Audit Report issued by the Respondent which had a material effect on the decisions taken by the Bank as under:

- (a) The Company had granted and taken loan which was against his earlier view as revealed from the register maintained u/s 301 of the Companies Act, 1956.
- (b) The Company did not have an internal audit system, which was a negation of his earlier view.
- (c) The Company had accumulated losses of Rs. 67.38 crores whereas the original Financial Statement showed a reasonably good profit and it was observed that the loss arose due to exclusion of proceeds of bill discounted
- (d) The Company had defaulted regarding payment to the banks/financial Institutions.
- (e) The Company had given guarantee to another Company which was earlier not brought out in the original Audit Report.
- (f) The short-term funds had been used for meeting longterm investment and the opinion was contrary to his original opinion.
- (g) The Company had discounted a lots of accommodation bills for meeting its financial needs which was not stated earlier.

Other than above, it was also observed in the original report that a wrong age-wise classification & disclosure was made in the Financial Statement as far as Sundry Debtors were concerned and the Insurance Premium on the life of the Directors was debited to the Company.

Thus, it was enough to prove that the Respondent did not exercise due diligence while carrying out the initial audit and issued a revised audit report to cover up the transactions carried out by the

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entity.

The Respondent was held guilty of Professional Misconduct falling within the meaning of Clause (2),(5),(6),(7),(8) and (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(K. George Varghese vs. K.J. Thomas, Kochi Re: [PR/81/10/DD/89/10 /DC/260/2013] Judgement delivered on 9th September, 2014).

PART I OF THE SECOND SCHEDULE – CLAUSE (3)

2.1.3 Clause (3): *permits his name or the name of his firm to be used in connection with an estimate of earnings contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;*

2.1.3(268) A Chartered Accountant issued 97 Projection Statements for certain Individuals without verifying the basic documents and on the basis of which the Bank had extended the loan amount. Afterwards, the Bank revealed that persons for whom the Respondent had issued Financial Statements did not have any business/source for repayment of loan.

Held, guilty of professional misconduct falling within the meaning of Clauses (3), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(The DGM (Inspection), Tamilnad Mercantile Bank Ltd. vs. R. B. K. Samuel - Page 126 of Vol I Part I of Disciplinary Cases, Judgement delivered on 3rd October, 2011).

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- 2.1.4 Clause (4):** *expresses his opinion on financial statements of any business or enterprise in which he, his firm or a partner in his firm has a substantial interest;*

Lecturer conducting the Audit

- 2.1.4(269) Where a Chartered Accountant conducted the Audit of Accounts of an evening college in Mangalore besides working in the same college as Lecturer/Vice-Principal.

Held that he was guilty of Professional Misconduct under the Clause.

(H.R. Shetty in Re: – Page 402 of Vol. VIII–1–21(6) of Disciplinary Cases– Judgement delivered dated 17th December, 2003 and published in the April, 2004 issue of Institute’s Journal at page 1122).

Director in Company also its Auditor

- 2.1.4(270) Where a Chartered Accountant was Auditor of a private limited Company in Ambala City since its inception, while his wife held 65 per cent of the shares in the said Company and was the Director of the Company.

Held that the Respondent was inter alia guilty of Professional Misconduct under Clause (4) of Part I of the Second Schedule.

(Promila Jain vs. Hardesh Kant – Page 416 of Vol. VIII – 1 – 21(6) of Disciplinary Cases – Judgement delivered dated 6th May, 2004).

- 2.1.4(271) Where a Chartered Accountant accepted the Audit of a company inspite of the fact that his wife was the Director of the company and also holding substantial interest in that Company. He had also not disclosed such interest in his report while expressing his opinion on the Financial Statements of such Company.

Held that the respondent was guilty of professional misconduct within the meaning of clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 in terms of section 21 read with section 22 of the said Act.

PART I OF THE SECOND SCHEDULE – CLAUSE (4)

(Bharat D. Bhatia vs. Vijay R. Ashar - Page 807 of Vol. VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 13th August, 2004).

2.1.4(272) The Respondent along with his family as on 30.09.1997 was holding 21.85% shares in the Company where he continued to be the Director and also one of the partners of the firm which was carrying the Statutory Audit of the Company. The said conduct of the Respondent was unbecoming of a Chartered Accountant and against the provisions of the Companies Act, 1956 and the Chartered Accountants Act.

The Respondent was held guilty of Professional Misconduct falling within the meaning of Clause (4) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(Anil Kosha vs. Mahendra Kumar Mahajan –Page 421 of Vol. II of Part I of the Disciplinary Cases of April, 2015 Judgement delivered on 1st February, 2012).

Tax Audit and Maintenance of Accounts simultaneously

2.1.4(273) Where a Chartered Accountant maintained the accounts and also acted as the Tax Auditor of a firm. Besides holding the COP, he was also in active business association with a company being a Director of the company without taking the permission of the Council.

Held guilty of professional misconduct falling within the meaning of Clause (11) of Part I of the First Schedule and Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Sharadchandra M. Kulkarni vs. Mahen J. Dholam - Page 1 of Vol I Part I of Disciplinary Cases, Judgement delivered on 12th September, 2011).

2.1.4(274) Where a Chartered Accountant was the Statutory Auditor of a Bank and he being the Statutory Auditor also conducted the Revenue Audit of the same Bank. In the Bank Empanelment Form submitted by the Firm he had provided wrong information to the Institute, as the firm was already closed.

Held guilty of professional misconduct falling within the meaning of Clause (4) of Part I and Clause (3) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

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(Manish Jajoo in Re:- Page 14 of Vol I Part I of Disciplinary Cases, Judgement delivered on 12th September, 2011).

2.1.4(275) The two Respondents had been practicing in their Individual names and the Respondent No.1 had been appointed to be the Treasurer for a period of two years i.e. 2007-2009. Previously he had worked as a Treasurer of the Complainant Church for 2003-2005 as well.

The Respondent No. 2 signed the Balance Sheets as Auditor from 2003-2004 to 2010-2011 including the periods when the Respondent No. 1 signed as Treasurer, in his personal name. Their appointment was on honorary basis and hence, no appointment letter was issued to them.

Further, the Respondents had mentioned that the Pastor of the Church was aware that both the Respondents were partners in the CA Firm and neither of the Respondents declared their partnership to the Church members orally or in writing.

Respondent No. 2 was held guilty of professional misconduct falling within the meaning of Clause (4) of Part I of the Second Schedule and the Respondent No. 1 was guilty of other misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

(Brig. George Mathew and Others, Chennai vs. Livingstone J Nallathambi and M. H. Selvaraj of M/s Selvaraj & Livingstone, Chennai - [PR-92/2012-DD/105/2012/DC/341/2014] Judgement delivered on 6th September, 2015).

PART I OF THE SECOND SCHEDULE – CLAUSE (5)

- 2.1.5 Clause (5):** *fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity;*

Failed to disclose non-creation of a Sinking Fund

- 2.1.5(276) Where a Chartered Accountant failed to report to the shareholders of a Company about the non-creation of a Sinking Fund in accordance with the Debenture Trust Deed and did not make clear that the amounts shown as towards Sinking Fund were borrowed from the Managing Agents of the Company.

Held, that the Chartered Accountant was in duty bound to see that the nature and subject matter of the charge over a security and the nature and mode of valuation of the Sinking Fund Investments were disclosed in the Balance Sheet in accordance with Form F and he was found guilty of misconduct.

(Davar & Sons Ltd. vs. M.S. Krishnaswamy - Page 120 of Vol.I of the Disciplinary Cases and pages 33-40 of June, 1952 issue of the Institute's bulletin - Judgement delivered on 3rd October, 1952).

False Certification of circulation figures of Newspaper

- 2.1.5(277) Where a Chartered Accountant had falsely certified the circulation figures of a newspaper by stating that he had checked inter alia the newsprint sheets and machine room returns when they had not at all been maintained by the publisher.

Held he was guilty under Clauses (5) and (9).

(Audit Bureau of Circulations Ltd. vs. K.L. Agarwal - Page 616 of Vol.IV of the Disciplinary Cases and Page 438 of February, 1968 issue of the Institute's Journal - Judgement delivered on 24th July, 1967).

Failure of disclosure of irregularities in Audit even though disclosed to Company

- 2.1.5(278) Where a Chartered Accountant had not disclosed the fact that a large amount of loan had been given out of the funds of an Employees Provident Fund to the Employer Company in

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contravention of the Rules of the Provident Fund and had failed to report on the default in clearing the cheques received in repayment of the loan.

Held by the High Court that he was not guilty of any non-disclosure to the individual subscribers of the Provident Fund because he owed no duty to disclose to them and he was well within his rights to have disclosed the irregularities to the Trustees themselves and to the Company which had appointed him.

Held by the Supreme Court on appeal that it was no defence for the Chartered Accountant to say that he had disclosed the irregularities to the Company as it was his duty to have made a disclosure thereof to the beneficiaries of the Provident Fund in the statement of accounts signed by him as the legal position of the Auditor in the present case was similar to that of the auditor appointed under the Companies Act. He was therefore guilty of professional misconduct under Clause (5).

(Kishori Lal Dutta vs. P.K. Mukherjee - Page 646 of Vol. IV of the Disciplinary Cases and page 573 of April, 1968 issue of the Institute's Journal -Judgement delivered on 26th February, 1968).

Failure to bring attention to Heavy Cash Transaction

2.1.5(279) Where a Chartered Accountant failed to bring attention to the heavy cash transaction entered into by the assessee in his audit report submitted in Form 3CD in terms of section 44AB of the Income Tax Act, 1961 for the Assessment year 1988-89.

Held that the respondent was guilty of professional misconduct within the meaning of Clauses (5), (6), (7) and (8) of part I of the second schedule to the Chartered Accountants Act, 1949 in terms of section 21 read with section 22 of the said Act.

(V.C. Agarwal in Re:- Page 768 of Vol. VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 13th August, 2004).

Concealing known Material Facts

2.1.5(280) A Chartered Accountant failed to disclose the fact that a significant amount had been spent by the client (on the digging of a new tube-well) and which had not been capitalized in their books of accounts. Also, the Respondent, audited the accounts of the

PART I OF THE SECOND SCHEDULE – CLAUSE (5)

Society for four financial years altogether but Financial Statements were prepared separately for each year and he signed undated audit reports for the four consecutive financial years.

Moreover, the Respondent failed to prepare audit memorandum for each year audited by him. Respondent not only had worked negligently but also failed to disclose the said material fact known to him which was not disclosed in the financial statement.

Held that the Respondent was guilty of professional misconduct falling within the meaning of Clauses (5) & (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(A.N. Iyer & R.N. Iyer vs. Satish Chandra K. Parikh Page 299 of Vol. II of the Disciplinary Cases of April, 2015 Judgement delivered on 5th October, 2013).

- 2.1.5(281) The Respondent carried out the Statutory Audit of a Co-Operative Credit Society Ltd. but did not perform his duties judicially against the interest of Society members and depositors and compliance of Maharashtra Co-operative Societies Act, 1960, Rules 1961, bye-law of the Society and Standard Accounting Practice. The Respondent did not mention anything about non-members deposits, liquidity compliance by the Society, Credit-Deposit (CD) ratio and huge NPA.

The Respondent did not submit any remark about the fact that the Society had not submitted Audit rectification report as required u/s 82 of the Maharashtra Co-operative Societies Act, 1960. The Respondent awarded wrong audit classification to the Society as required under the circular of Commissioner for Co-operation & Registrar of Co-operative Societies, Maharashtra State.

In view of the above, with respect to charge relating to Credit-Deposit (CD) ratio, the Respondent was guilty of professional misconduct under Clauses (5) & (8) of Part I of the Second Schedule, and with respect to charge relating to grade assigned to the Society, the Respondent was guilty of professional misconduct falling within the meaning of Clauses (6), (7) & (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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(Divisional Joint Registrar, Co-op. Societies (Audit), vs. K.S. Ambardekar- Page 237 of Vol. II of the Disciplinary Cases of April, 2015 Judgement delivered on 5th October, 2013).

2.1.5(282) Where a Chartered Accountant had signed two sets of Financial Statements of a Company for Financial Year 2010-2011 and both the audited Financial Statement reflects different Assets and Liabilities, Profit & Loss Account with different figures.

Further, the liability to the Complainant Bank was not reflected in the Balance Sheet submitted to Syndicate Bank. Likewise, the liability to Syndicate Bank was not reflected in the Balance Sheet submitted to the Complainant Bank. He failed to disclose the material fact which was well known to him and also failed to exercise due diligence and was grossly negligent in the conduct of his professional duties.

Held guilty of professional misconduct falling within the meaning of Clause (5) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(The DGM, State Bank of India (Stressed Assets Management Branch), Chennai vs. A. D. K. Manoharan - [PR-91/2012-DD/118/12/DC/349/14] Judgement delivered on 4th July, 2016).

2.1.5(283) Where the Respondent failed to:

- (a) verify the appointment as an auditor as per Rules and Regulation of an Association.
- (b) point out in his audit report discrepancies relating to payment against Corpus Fund, Cash-in-hand and previous year figures for comparison. Moreover, applicability of Accounting Standards/Principles along with its non-compliance, were not reported.
- (c) reconcile cash balance between Receipt & Payment A/c and Balance Sheet of the Association
- (d) fail to report un-reconciled amount in the Subscription Account in the Auditors' Report.

PART I OF THE SECOND SCHEDULE – CLAUSE (5)

Held guilty of professional misconduct falling within the meaning of Clauses (5), (6) & (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Surajit Datta vs. Deb Kumar Dwibedi Re: [PR/16/13-DD/25/13-DC/404 /2014] Judgement delivered on 8th November, 2015).

2.1.5(284) Where the Respondent as Statutory Auditor of a company had done the following mistakes:

- (a) failure to point out that turnover was not shown net of excise duty on the face of Profit & Loss Account as required as per provision of para 10 of AS-9.
- (b) failure to disclose the accumulated depreciation amount separately for each category of asset and failed to follow the format of fixed assets as prescribed in the Act.
- (c) violation of disclosure requirement of turnover in Profit and Loss account.
- (d) non-disclosure of loan, term loan and salary, fringe benefit etc. to directors number in the Balance Sheet and in the Profit and Loss Account and non-adherence to format of schedule VI of the Companies Act, 1956.
- (e) failure to point out irregularity in payment of statutory dues such as Provident Fund, ESI, Sales Tax.

Held guilty of professional misconduct falling within the meaning of Clauses (5), (6), (7) and (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(N. Thirumurthy, Chennai vs. S.V. Sredharan Re: [PR-199-2012-DD-218-2012-DC-378-2014] Judgement delivered on 4th July, 2016).

2.1.5(285) Where the Respondent issued the Turnover Certificates for the years 2007-08 and 2008-09 to the Company presented before the South Central Railway, showing figures, which were not matching with the Profit & Loss Account of the Company.

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It was observed that the Respondent did not mention that the certificates were issued on the basis of sample checking & unaudited figures and did not give an appropriate disclaimer in the said certificate.

In view of the same, the Respondent had issued a misleading certificate and held guilty of professional misconduct falling within the meaning of Clauses (5), (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(M. Sivaiahin in Re:- [PPR/2/W/13/DD/5/W/INF/13/DC/421/2014] Judgement delivered on 20th January, 2017).

2.1.5(286) The Respondent had attested in a very casual manner the two sets of Financial Statements with Form No. 3CB & 3CD for the Financial Years 2009-2010, 2010-2011 and 2011-2012 which enabled the partners of the firm to avail credit facilities from Syndicate Bank, Ambur Branch as well as SBI, Vellore Branch and both the sets neither the place nor the date had been mentioned.

On further perusal and comparison of the Income Tax Return, Balance Sheet & Profit and Loss Account, Form 3CB & 3CD filed with the Banks, it was observed that the Respondent had intentionally suppressed the facts in the Income Tax Returns which were different from the ones submitted to Syndicate Bank, Ambur and SBI, Vellore Branch.

Moreover, the Respondent could not produce any working papers related to certification of Financial Statements of the firm. Hence, it was clear that the Respondent had been grossly negligent in discharging his duties in the conduct of his professional assignment by signing different balance sheets with different figures of assets and liabilities, and Profit & Loss Account.

The Respondent was held guilty of Professional and Other Misconduct falling within the meaning of Clause (2) Part IV of First Schedule and Clauses (5) and (7) of Part I of the Second Schedule to the *Chartered* Accountants Act, 1949.

PART I OF THE SECOND SCHEDULE – CLAUSE (5)

(The Superintendent of Police, CBI– ACB, Chennai vs. D. K. Manoharan Re: [PR-226/2013-DD/221/13/DC/408/14] 8th February, 2016).

- 2.1.5(287) The Respondent failed to report on the significant value of land sold by the Company(client) and did not exercise due care in reporting the outstanding amount of sale of the land to Directors & their relatives which had been duly reflected in the Accounts under the head 'Advance for Plots'.

Moreover, the Respondent did not mention that the Company had been consistently followed the practice of recording all transactions of plot of sales in one consolidated account without maintaining separate individual accounts of parties and the practice of netting off the debit and the credits balance in the name of the different parties in the 'Advance for Plots A/c' which was not consistent with the basic principle of accounting even though the Company.

The Respondent was held guilty of professional misconduct falling within the meaning of Clauses (5), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act 1949.

(Ramesh Chand Jain vs. Giriraj Khandelwal - Page 482 of Vol. II of Part I of the Disciplinary Cases of April, 2015 Judgement delivered on 21st August, 2014).

- 2.1.5(288) The Respondent being an auditor of a Project which owed an amount of Rs.8,48,640/- to the Complainant Company against the goods supplied to them in June 2006 and they issued cheque twice to clear the outstanding but with a fraudulent intent avoided payment of these cheques and the said amount was still to be recovered by the Complainant Company.

It was noted that said amount was shown in the Balance Sheet of the company as Sundry Creditors as on 31.03.2009 and Nil as on 31.03.2010. Moreover, the Respondent further had not checked as to whether the material was taken back by the creditor or not and failed to reconcile the same from the concerned creditor. Thus, the Respondent failed in discharging his professional duties of certifying the true and fair view of the affairs of the company for the relevant financial year.

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Held guilty of professional misconduct falling within the meaning of Clauses (5), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Accounts Manager, M/s STP Limited, New Delhi vs. J. Keerthivasan Re: [PR-13-2011-DD-10-2011-DC- 345-2014] Judgement delivered on 4th July, 2016).

PART I OF THE SECOND SCHEDULE – CLAUSE (6)

2.1.6 Clause (6): *fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity;*

Did not Disclose Material Facts known to him

2.1.6(289) A Company did not provide for depreciation as required by Section 205 and Section 250 of the Companies Act, 1956 and although the Chartered Accountant was aware that the Company had under-provided depreciation, he did not bring out this fact in his report.

Held the Chartered Accountant was guilty of professional misconduct under the clause. He had failed to disclose a material fact known to him but disclosure of which was necessary to make the financial statement not misleading.

A Chartered Accountant was charged under Clauses (5) and (6) for failure to report that there was a reduction of capital with corresponding reduction in the loans and advances on the assets side, which contravened Section 59 of the Travancore Companies Act and Form F prescribed under the Act. There was also a failure on his part to report on the non-disclosure of the forfeiture and cancellation of share.

Held the Respondents conduct was not proper.

(Registrar of Joint Stock Companies vs. S.S. Iyer - Page 94 of Vol. IV of the Disciplinary Cases and pages 405-408 of April, 1960 issue of the Institute's Journal - Judgement delivered on 25th January, 1960).

Heavy Cash transactions not reported

2.1.6(290) Where a Chartered Accountant failed to bring attention to the heavy cash transaction entered into by the assessee in his audit report submitted in Form 3CD in terms of section 44AB of the Income Tax Act, 1961 for the Assessment year 1988-89.

Held that the respondent was guilty of professional misconduct within the meaning of Clauses (5), (6), (7) and (8) of part I of the second schedule to the Chartered Accountants Act, 1949 in terms of section 21 read with section 22 of the said Act.

CASE LAWS REFERENCER

(V.C. Agarwal in Re:- Page 768 of Vol. VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 13th August, 2004).

Accountant Cum Auditor and improper Audit

2.1.6(291) A Chartered Accountant wrote the books of account of the Complainant Association apart from conducting the audit. While preparing and auditing the accounts, he did not comply with the decision of the Complainant Association taken in its Annual General Body Meeting, thereby being grossly negligent in his conduct.

He neither ensured nor qualified his report regarding non-provision of various liabilities in the accounts such as salaries and wages, electricity charges, water charges etc., which again shows that he was grossly negligent in the discharge of his duties as Chartered Accountant and Auditor. None of the figures in the Balance Sheet and Income & Expenditure Account of the Complainant-Association for the year 1998-99 certified by him tallied with the balances in the unauthenticated Cash Book and Ledger.

Further, he did not prove the accuracy of the accounts prepared and audited by him nor furnished details of various items appearing in the statements certified by him.

The Council held him guilty under Clauses (6), (7), (8) & (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and also guilty of 'Other Misconduct' under Section 22 read with Section 21 of the Chartered Accountants Act, 1949.

The High Court also accepted the decision of the Council.

(Hon. General Secretary, Rohit House Occupants Welfare Association, New Delhi vs. K.K. Gupta - Page 299 of Vol. IX – 1 – 21(6), Decision of the Council dated 22nd July, 2004, 244th Meeting of the Council and Judgement of High Court dated 25th September, 2007).

Incorrect Figure of Share Capital

2.1.6(292) The Respondent, being the Statutory Auditor of a Company wrongly mentioned in his audit report the amount of Authorised

PART I OF THE SECOND SCHEDULE – CLAUSE (6)

Capital of Rs. 5,00,000/- in place of Rs.50,00,000/-and also failed to report that the allotment of 72,660 equity shares of Rs.10/- each on 31st March, 2009. It was observed that the allotment had been done beyond the Authorised Capital as on that date.

Moreover, the Authorised Capital was increased by the Company only on 17th June, 2009. He did not check as to when resolution for increase in Authorized Share Capital of the Company was passed and when a form to this effect was filed with ROC. This led to the Respondent filing an incorrect Share Capital details of the Company in the Balance Sheet.

The Respondent was held guilty of professional misconduct falling within the meaning of Clause (6) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(Rajev M. Bhingarde vs. Gouri Shanker Chitlangia [PR-47/11-DD/46/11-DC /354/2014]).

Improper Appointment not disclosed

2.1.6(293) The Respondent had signed the accounts of a Co-operative Society for the Financial Years 2002-2003 to 2009-2010 without being validly appointed at the Annual General Body Meeting of the Members of the Society for the years under reference.

Under the Rules and Regulations of the Co-operative Societies of Maharashtra only those Chartered Accountants of the Institute who passed the relevant examinations and approved by the Registrar of Co-operative Societies and further who were on the panel of the Registrar/Housing Federation, alone could be appointed as the Auditors of the Co-operative Societies.

The Respondent was not on the panel of the Auditors of the Registrar/Housing Federation Co-operative Societies and eventually he was not competent to Audit and certify the Accounts of Co-operative societies, yet he had put his signature on all the accounts of the Society for the years under reference.

Moreover, the said Audited Accounts had also been filed with the Registrar of Co-operative Societies, by the Society.

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Held guilty of Professional Misconduct falling within the meaning of Clauses (6) (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(S. S. Marwah and Stanislaus Fernandes vs. Vipul Amodwala Re: [PR-45/ 2011-DD/38/2011/DC/327/2014] Judgement delivered on 6th January 2017).

2.1.6(294) Where the Respondent had been found negligent in discharging of professional duties in the following matters:

- (a) failed to disclose the correct particulars in the Balance Sheet and Profit and Loss Accounts for the Financial Years 2008-2009, 2009-2010, 2010-2011 and 2011-2012;
- (b) failed to appear before the Income Tax Department for the A.Y.2009-2010 in spite of being duly authorised for the same which caused severe financial loss to the Complainant;
- (c) failed to file Income Tax Returns, Financial Statements and Audit Reports with the Income Tax Department; and
- (d) failed to handover all the financial records to the Complainant.

Held, the Respondent was guilty of professional misconduct falling within the meaning of Clause (2) of Part-IV of First Schedule and Clauses (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Dr. Narendra M Rege, Mumbai vs. Hiteshkumar Kishorbhai Joshi, Mumbai Re: [PR-222/13-DD/211/2013/DC/475/2016] Judgement delivered on 6th February, 2017).

False Certification in connivance with Management

2.1.6(295) The Respondent had shown an amount of Rs. 19,20,690/- as deposit received under the head, Current Liabilities & Provision in the Financial Statements of M/s Patel Holdings Limited for the Financial Year 2008-2009 and as nil in its Financial Statements for the next F.Y i.e. 2009-2010.

It was observed that the Respondent had deliberately in connivance with the management falsely certified the Financials of

PART I OF THE SECOND SCHEDULE – CLAUSE (6)

the Company with an intention to wriggle the said Company out of its payment obligation. It was further observed that the Respondent was aware as an auditor of the fact that the amount outstanding was towards one of the related parties, yet he failed to seek third party confirmation which was required in those circumstances.

Hence, it was clear that he could not invite attention to the material departure from the generally accepted procedure of audit applicable in the said circumstances.

The Respondent was held guilty of professional misconduct falling within the meaning of Clauses (6), (7) & (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Ms. Vandita R. Agarwal, Company Secretary, M/s Wall Street Finance Ltd, Mumbai vs. M.S. Parikh, M/s MSP & Co., Mumbai [PR-14/2012-DD/49/2012-DC/405 /2014] Judgement delivered on 7th November,2017).

Share Capital received in Cash not reported

2.1.6(296) A Chartered Accountant had failed to point out the irregularity with regard to details of the contributories to the Share Capital as the amount had been received in cash. The Committee on perusal of the Respondent's limited reply is of the opinion that he had totally disregarded the importance of working papers and had not prepared them as such.

Further his casual approach in defending the charges makes it clear that he had not taken the matter seriously. In this charge, it had been alleged that Rs. 5,00,000/- was received in cash against equity share capital without any details of contributors or entries in equity share capital account, cash Book or any receipt voucher.

The Respondent failed to report that the transaction of sale of land was recorded in the books of accounts after showing the same as transfer from 'Advance against Land Account' to 'Sales Account' by way of a journal entry and failed to exercise due diligence as Statutory Auditor in conducting his duties.

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An amount of interest on deposits collected had been wrongly shown as transfer from 'MIS Account' to 'Lease Rent Against Land' so as to show the said amount as an expense, the Committee noted that the Respondent in this regard had failed to give any satisfactory response and such facts would have been easily verified.

A credit balance of Rs. 7.74 crores in 'Advance Against Land' account was adjusted by transferring Rs.5.25 crores to 'Sales account' without narration and by withdrawing Cash of Rs.1.03 crores on 31.03.2009, leaving a closing balance of Rs.1.34 crores (Approx) in the said account which the Respondent failed to report in his audit report.

Held, guilty of Professional Misconduct falling within the meaning of Clauses (5),(6),(7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(KS Kaushik, Deputy Director, SFIO, Ministry of Corporate Affairs Government of India vs. Sunil Kumar Gupta Ray Re: [PR-364/2014-DD/07/15/DC/643/2017] Judgement delivered on 30th November, 2018).

Contingent Liabilities not Reported

2.1.6(297) The Respondent had failed to give disclosure of Contingent Liabilities in the Financial Statements for the period ending in 2012 against the Corporate Guarantee given in favour of a Group Company. In this context, the Respondent should have verified the charges created on the basis of material available with the Company and Registrar of Companies.

Further, the charge of Rs.4.35 crores against the Balance Sheet size of Rs.26.12 crores was significant. Hence, omission of such information from the Financial Statements makes them misleading and thereby reflects gross negligence on the part of the Respondent in conducting audit and failing to report material misstatement in the financial statements of the said period.

PART I OF THE SECOND SCHEDULE – CLAUSE (6)

Held guilty of professional misconduct falling within the meaning Clauses (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Registrar of Companies, Ministry of Corporate Affairs vs. Jitendra Nath Dhar Re: [PR-18/2014-DD/54/2014/DC/648/2017] Judgement decided on 28th December, 2018).

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2.1.7 Clause (7): *does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;*

Furnishing wrong Certificates

2.1.7(298) Where a Chartered Accountant furnished a certificate under Section 27 of the Insurance Act that there was no charge on the securities held as investments by way of loan or overdraft while, as a fact, one of the securities had been sold and the proceeds thereof utilised for the discharge of a loan. -Held he was guilty of misconduct.

(G.M. Oka in Re: - Page 35 of Vol. 1 of the Disciplinary Cases and pages 40-42 of July, 1952 issue of the Institute's Journal-Judgement delivered on 19th March, 1952).

2.1.7(299) A Chartered Accountant, without examination of Stock Register of the firm and without examining other relevant matters connected with the certificate, issued wrong consumption certificate in respect of raw material and components on the basis of which, licence of higher value, for which the unit was not entitled, was issued by the Deputy Controller of Imports and Exports

Held, the Chartered Accountant was guilty of gross negligence under the Clause (7).

(T.S. Vaidyanatha Iyer in Re:- Page 153 of Vol. V of the Disciplinary Cases and pages 211-212 of April, 1977 issue of the Institute's Newsletter - Judgement delivered on 27th January, 1977).

2.1.7(300) Where a Chartered Accountant wrongly certified the increase in Paid-up Share Capital of a Private Limited Company in the Balance Sheet without proper evidence.

Held guilty of professional misconduct falling within the meaning of Clauses (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(Ajit Singh Ahuja vs. Dinesh Kumar Goyal - Page 26 of Vol II Part I of Disciplinary Cases, Judgement delivered on 1st February, 2012).

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Failure to indicate the mode of Valuation of Investments

2.1.7(301) Where a Chartered Accountant failed to indicate the mode of Valuation of Investments in Shares as required by the Companies Act and also to draw attention to the inclusion of uniforms in the depreciation account.

Held that he was guilty under Clause (7).

(M.C. Poddar vs. P.S. Sodhbans - Page 259 of Vol. I of the Disciplinary Cases and page 554 of May, 1954 issue of the Institute's Journal -Judgement delivered on 1st April, 1954).

Non-verification of Cash Balance

2.1.7(302) Where a Chartered Accountant, in a Bank Audit reported to the shareholders that he had not verified the cash on hand and that he had also signed the balance sheet in anticipation of the receipt of confirmation letters from the banks in respect of the cash said to be lying with them and failed to report on the weakness of the banks financial position.

Held, that he was guilty of the first and third charges falling under Clause (7).

Verification of cash was an essential duty of an auditor which he failed to discharge and in signing the report in anticipation of receiving the confirmation letters from banks, he had failed to perform his duties with the requisite skill and diligence.

(S.N.Das Gupta in Re:- Page 57 of Vol.II of the Disciplinary Cases and pages 80-92 of September, 1955 issue of the Institute's Journal -Judgement delivered on 1st August, 1955).

Failure to Report important information

2.1.7(303) Where a Chartered Accountant, appointed as Auditor of the Madras Branch of a limited Company at Bombay, was charged with failure to report to the Bombay Office that some entries in the bank pass book had not been passed through the cash book of the branch.

Held that he was guilty of gross negligence.

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The High Court observed that a small fee paid to the Respondent should not come in the way of his doing his duty without fear or favour, although it involved unpleasant consequences, namely, he might not be appointed again.

(The Fairdeal Corporation Ltd. Bombay vs. K.Gopalakrishna Rao - Page 361 of Vol. III of the Disciplinary Cases and pages 196-203 of Oct. 1957 issue of the Institute's Journal - Judgement delivered on 23rd August, 1957).

Opening and Closing Stock not tallied

2.1.7(304) The Opening and Closing stock of Tea as well as Turnover of Tea were not correctly reflected in the Profit and Loss Account and/or Notes on Accounts of a tea Company for the years 1982, 1983 and 1984.

It was alleged that the Respondent had failed to bring out these material discrepancies in his reports in the relevant years accounts.

The Council found him guilty under Clauses (7) & (8) and decided to recommend to the High Court that he be reprimanded. After analysing facts of the case and various judicial pronouncements in detail, the High Court was of the opinion that it was not a fit case where the alleged misconduct on the Respondent demanded imposition of any punishment.

(The Regional Director, Ministry of Industry, Department of Consumer Affairs, Calcutta vs. Inderjit Roy – Page 218 of Vol. VII(1) of the Disciplinary Cases - Judgement dated 19th March, 1999).

Failure to point out discrepancies

2.1.7(305) A Chartered Accountant was found guilty of professional misconduct under Clauses (5), (6), (7) & (9) of Part I of the Second Schedule on the following grounds:

- (a) that he failed to point out the contravention of Note (C) to Schedule VI of the Companies Act, that is, the requirement in the case of a subsidiary Company that the number of

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shares held by the holding Company as well as by the ultimate holding Company and its subsidiaries must be separately stated;

- (b) that he failed to point out the contravention of Part I Form of Balance Sheet Schedule VI, that is share capital issued in pursuance of a contract without payment being received in cash and shares allotted as fully paid up by way of bonus shares should have been shown separately;
- (c) that he failed to point out, in his report, that the Company, of which he was the auditor, was a public limited Company or deemed to be a public limited Company by virtue of Section 43A of the Companies Act;
- (d) that he failed to comment in his report on the debit balance in the current account with managing agents, in accordance with Section 369 of the Companies Act;
- (e) that he failed to report the non-maintenance of the contract register required to be maintained under Section 360(3); and
- (f) that he failed to report the money value of the contract for the supply of service with the associates of managing agents as required under Schedule VI Part I.

(Registrar of Companies, West Bengal vs. V.V. Bapat - Page 8 of Vol. V of Disciplinary Cases and Page 281 of December, 1974 issue of the Institute's Journal - Judgement delivered on 21st August, 1974).

2.1.7(306) A Member was found guilty under this Clause (7) in the following circumstances:-

- (a) That he had indicated in his audit report that there was inadequate provision for depreciation but had not disclosed in his audit report the extent of arrears of depreciation.
- (b) He had not dealt with in his audit report, the facts of arrears of depreciation and the dividend recommended in the context of the provisions of Section 205 of the Companies Act.

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- (c) He had not dealt with in the audit report, the implications of the provisions of the Companies (Temporary Restrictions on dividends) Act, of 1974 which was then in force at the time.
- (d) The above omissions represented significant defects of substance and the Member has failed to act in the discharging of his duties reasonably though his honesty was not in question.

(Registrar of Companies, West Bengal vs. R.K. Gangopadhyay - Page 202 of the Vol.VI(1) of Disciplinary Cases - Judgement dated 7th January, 1981).

Discrepancy in Concurrent Auditor's Report

- 2.1.7(307) Where a Chartered Accountant being the Concurrent Auditor did not mention in his Audit Report as to the documentation defects of non-compliance of KYC norms/AML Standards and irregularities in cheque purchased portfolio of a Company.

Held guilty of professional misconduct falling within the meaning of Clauses (7), (8) & (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(The Deputy General Manager (Inspection), The Dhanalakshmi Bank Ltd., vs. S. Sathivageeswaran - Page 198 of Vol II Part I of Disciplinary Cases, Judgement delivered on 3rd October, 2013).

NBFC Auditor did not report Non-Compliances

- 2.1.7(308) Where a Chartered Accountant was the Auditor of the Company and he failed to report that the Company had carried on the business of Non-Banking Finance Company without obtaining Certificate of Registration from the RBI.

Held guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Ajay Chhaya (based on information received from Deputy General Manager, Reserve Bank of India) in Re:- Page 8 of Vol I Part I of Disciplinary Cases, Judgement delivered on 12th September, 2011).

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Wrong reporting about Stock

2.1.7(309) Where a Chartered Accountant had not made a separate disclosure regarding writing down of value of Stock of a company as per AS-5. The Company had written off the Stock as scrap, the same should have been disclosed in the Profit & Loss A/c as per the requirement of AS-5, which the Respondent failed to do.

AS-22 requires that Deferred Tax should be recognized for all the timing differences, subject to the consideration of prudence in respect of deferred tax assets, the Respondent also failed to do so.

Held guilty of Professional Misconduct falling within the meaning of Clauses (5) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(The Deputy General Manager, State Bank of India, Stressed Assets Management Branch, Ahmedabad vs. Mansukhlal Bachubhai Thummar Re: [PR/124/2010/DD/127/2010/DC/215 /2012] Judgement delivered on 27th July, 2016).

Wrong Information about Pricing

2.1.7(310) The Respondent provided wrong information as to the price of goods in the market and the quantity to be purchased from the vendor company wherein he had been auditor of which he did not disclose the fact as required by Section 184 of the Companies Act, 2013. The said transaction was not at prevailing market price and was not entered into the Register maintained under Section 189 of the Companies Act, 2013.

The Respondent also violated the provisions of Section 143 of the Companies Act, 2013 by giving wrong information about Internal Control System of the Company.

Held that the Respondent was guilty within the meaning of Clauses (7), (8) & (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Srinivas Rao, Vapi vs. Nikhil D. Sabharanjak-Page 288 of Vol. II of the Disciplinary Cases of April, 2015 Judgement delivered on 15th October, 2013).

CASE LAWS REFERENCER

Dependency on Staff/Article Assistant

- 2.1.7(311) A Certificate issued by a Chartered Accountant to a Proprietor of a Firm in respect of the turnover of betelnuts to enable the firm, which was not dealing in betel nuts, to obtain import licence without checking the books and documents himself, but relying on his articulated clerk for its correctness.

Held he was guilty of gross negligence.

(Sunderlal Fatehpuria in Re:- Page 591 of Vol.III of the Disciplinary Cases and page 224 of January, 1959 issue of the Institute's Journal - Judgement delivered on 14th November, 1958).

Failure to check the Bank Balances

- 2.1.7(312) Where a Chartered Accountant failed in his duty to check the Bank Balances with the Pass Books of the banks and failed to obtain certificates of balances from the bankers in respect of those balances, the Council found him guilty of misconduct under Clauses (7) and (8) of Part I of the Second Schedule

Held there being no proof of dishonesty or malafide on the part of the Chartered Accountant and in view of the circumstances of the case, the High Court took no more serious view of the matter than to express disapprobation of the conduct of the Chartered Accountant in the form of an admonition.

(Deptt. of Economic Affairs vs. D.B. Kulkarni - Page 185 of Vol.IV of the Disciplinary Cases and pages 410-412 of April, 1960 issue of the Institute's Journal - Judgement delivered on 1st March, 1960).

Gross Negligence and failure to obtain sufficient Information

- 2.1.7(313) The Disciplinary Committee having found that the main charges as set out in the information letter were not substantiated if proceeded with two new charges and found the Respondent guilty under clauses (7) and (8) and for failure

- (a) to invite attention to omission in the balance sheet about information relating to the maximum amount due from the

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directors and from the Companies under the same management and

- (b) to carry out the statutory duty to obtain sufficient information before making his report inspite of it having been brought to his notice by his assistants that there was difference in the Trial Balance prepared by the Company.

Held in a matter like this brought out during the proceedings in examination of the Respondent without it having been made the subject matter of a clear and specific charge to the knowledge of the Respondent with an opportunity to meet the same and to disprove the same, cannot be, either according to the provisions of the statute or having regard to the principals of natural justice, the basis for an adverse finding against the Respondent.

(V.K. Verma in Re:- Page 425 of Vol.IV of the Disciplinary Cases and pages 465-471 of February, 1966 issue of the Institute's Journal - Judgement delivered on 21st September, 1964).

- 2.1.7(314) Where a Chartered Accountant failed to exercise sufficient care and diligence in the discharge of his professional responsibilities in not checking the cash memos and not verifying the alterations in the trial balance with the original books in respect of one Company and in not checking the journal entries and the final figures of the balance sheet with the general ledger in respect of another Company.

Held, he was guilty under Clause (7).

(Messrs. O.M. Agency Private Ltd. & Messrs. Oriental Mercantile Distributors Private Ltd. vs. M. Surendra Sastry - Page 891 of Vol. IV of the Disciplinary Cases and pages 452-455 of November, 1971 issue of the Institute's Journal - Judgement delivered on 21st April, 1971).

Delay in Completion of Audit

- 2.1.7(315) Where a Chartered Accountant had not completed his work relating to the audit of the accounts of a Company and had not submitted his audit report in due time to enable the Company to comply with the statutory requirements in this regard.

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Held, he was guilty of professional misconduct under Clause (7).

(Qaroon Trading & Finance Pvt. Ltd. vs. Laxmi Narain Saxena and Jitendra Mohan Chadha - Page 828 of Vol. IV of the Disciplinary Cases and pages 47-49 of July, 1969 issue of the Institute's Journal - Judgement delivered on 12th February, 1969).

- 2.1.7(316) Where a Chartered Accountant firm failed to complete the audit of a Bank without any justification and being a grossly negligent.

Held that, Respondent firm was guilty of professional misconduct within the meaning of clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(R.K. Goswami, Administrator, Delhi Nagrik Sehkari Bank Ltd. vs. M/s. Dayal Singh & Co. – Pg.288 of Vol. IX (1) of the Disciplinary Cases- Judgement of Hon'ble High Court dated 7th August, 2008.)

Failure to point out Irregularities

- 2.1.7 (317) Where a Chartered Accountant being the Concurrent Auditor of a Bank did not comment on the fraudulent transactions in his Audit Report where the Bank allowed huge amount of loan without any actual deposit.

Held guilty of professional misconduct falling within the meaning of Clauses (7), (8) and (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(Tamilnad Mercantile Bank Ltd. vs. V.U. Gangolli - Page 1 of Vol II Part I of Disciplinary Cases, Judgement delivered on 1st February, 2012).

- 2.1.7(318) A Member had issued Certificates in regard to consumption of materials and book value of production in connection with an application for import which was later found to be false.

He was found guilty of gross negligence by the Council which finding was confirmed by High Court with the following observations:-

- (a) The Member was unable to produce any working papers or any evidence of the work done by him.

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- (b) Evidence showed that he had not himself examined the records. Even if he had examined the records, he could not confirm the accuracy of the figures.
- (c) He had not examined the Exchange Control copy of the licence without the examination of which the certificates could not have been issued.
- (d) There need not be element of dishonesty on the part of a Member in case of gross negligence.

(C.S. Hariharan page 265 Vol.-VI-1-21(6) and S.B. Pathak in Re. page 272 Vol.-VI-21(6)).

2.1.7(319) A Member in Practice, while Auditing the Accounts of a Hospital committed the following mistakes:-

- (a) Repayment of loan of Rs.2,940/- to the Trustees had not been entered in the Receipts and Payment Accounts though shown in the Cash Book and Ledger. This was explained as an inadvertent omission.
- (b) Professional fee of Rs.450/- paid to an Advocate was found to be bogus and no voucher was available. The Member had not verified the vouchers and no explanation was given by the Member.
- (c) Stock of medicines as on 31.3.73 and 31.3.74 was shown as identical figures and no verification of the stock of medicine or stock register or other records had been made.
- (d) The cash balance in cash book was different from that shown by the balance-sheet. The cash balance was not admittedly verified during audit nor any written confirmation regarding cash had been obtained.
- (e) The figures of the amount of grant as shown by the books and the Income and Expenditure Statement differed and the explanation given by the Member was found neither true nor reasonable.
- (f) The High Court held that the Member was guilty of gross

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negligence in so far as he has not exercised due care and caution which is expected of a Chartered Accountant.

(P.D.J. Solomon vs. L.A. Patnaik - Page 334 of Vol.VI(1) of Disciplinary cases - Judgement dated 23rd January, 1984).

Auditor taking part in Management of society

2.1.7(320) Where a Chartered Accountant was appointed Auditor of a Co-Operative Society, it was alleged that he took active part in the Management of the Society and issued false certificates regarding the verification of cash on hand.

Held that there was nothing unprofessional in helping the administration of the Society by rendering occasional services. As regards the issue of the false certificate, he was found guilty of misconduct.

(Paradise Co-operative Housing Society Ltd., Bombay vs. R. Viraswami - Page 1 of Vol. III of the Disciplinary Cases and pages 87-88 of August, 1956 issue of the Institute's Journal - Judgement delivered on 24th November, 1955).

Disbursed Loan on Proforma Balance Sheet certified by CA

2.1.7(321) Where the Complainant had sanctioned an additional loan to a Company on the basis of a Proforma Balance Sheet duly certified by a Chartered Accountant while the Audited Balance Sheet of the Company for the same period duly certified by the statutory auditors revealed a completely different picture.

Held that the Chartered Accountant was guilty under clauses (7) & (8).

(Assam Financial Corporation vs. S.K. Beria – Page 17 of Vol.VII (1) of Disciplinary Cases - Judgement dated 10th July, 1992).

Material and Substantial Amount wrongly reported

2.1.7(322) The Respondent had certified a profit and loss account wherein the total expenditure was shown at Rs. 3,19,163/- but the correct amount of total expenditure worked out to Rs. 2,19,163/- only. Accordingly, the total expenditure had been over-stated by

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Rupees one lakh and instead of a profit, a loss of Rs. 153.38 appeared in the said profit and loss account. The correct position was that there was a net profit of Rs. 99,846.62/- (Rs. 1,00,000/- minus Rs.153.38).

The Council took into consideration two reports of the Disciplinary Committee viz. Majority Report and Dissenting Report by one Member. Agreeing with the Majority report, the Council was satisfied that on the facts of the case, the aforesaid difference was a very material difference. The Council also noted the admitted position that no reconciliation of Capital Account was made by the Respondent which could have enabled him to discover the error.

The Respondent had taken the plea that he did not conduct the audit and his certificate only stated that the said profit and loss account was prepared from the books of account.

The Council was of the view that when a Chartered Accountant prepares a Profit and Loss Account from the books of account and signs the certificate to that effect, he was expected to verify the accuracy of the figures appearing in the profit and loss account with reference to the relevant books of account and he cannot escape the responsibility in this behalf by pleading that he did not conduct the audit.

The Council also found that though the Chartered Accountant was entitled to place reliance upon the work of his assistants, he had a professional duty and responsibility for the certificate signed by him and he must take reasonable steps to satisfy himself that the work has been carried out in a proper and efficient manner. Considering the facts of the case, the Council found that the mistake of Rs. 1 lakh in total figure of Rs. 3,19,163/- was not only material but also very substantial.

He was held guilty under this clause.

(Commissioner of Agricultural Income Tax vs. T.S. Ranganathan – Page 266 of Vol. VII(1) of Disciplinary Cases - Judgement dated 9th February, 2000).

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2.1.7(323) The Respondent had certified an application by a Company in accordance with the requirements of Import and Export Policy, certifying the F.O.B. value of exports at Rs.4,44,77,996/- instead of the correct figure of Rs.4,14,69,925/-.

It was held that the Respondent had not exercised due care and skill which he should have done while discharging his professional duties and should have indicated the correct figure.

He was held guilty under this clause.

(B.L. Khanna in Re:- Page 372 of Vol. VII(1) of Disciplinary Cases – Council's decision dated 8th, 9th and 10th April, 1987 - Judgement dated 5th September, 2000).

2.1.7(324) A Chartered Accountant issued certificates certifying the utilization of funds by the Company for the amount granted and disbursed by a bank without verifying the records properly before issuing the aforesaid certificates.

Also, the said certificate did not reflect the end use of the funds. He was grossly negligent in issuing the said certificate(s).

The auditor knowingly certified the end use of money received by the auditee incorrectly and improperly which is undoubtedly an unpardonable act on the part of the Respondent and thus was held guilty by the Council under Clauses (5), (6), (7) and (8) of Part I of the Second Schedule which was accepted by the High Court.

(Thampy Mathews, Dy. General Manager, IIBI vs. R.K. Tayal, Delhi – Page 254 Vol. IX – 1 – 21(6) Decision of the Council on 25th June, 2004, 243rd Meeting of the Council and Judgement of High Court dated 23rd July, 2007).

2.1.7(325) The charge against the Respondent was that he while conducting the Statutory Audit of the Complainant Bank (SBI), had certified the consolidated claim statement pertaining to Agricultural Debt Waiver & Debt Relief Scheme, 2008 as true and correct in respect of Bhubaneswar Old Town Branch which formed the basis of amount being claimed as reimbursement from the Govt. of India.

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During re-verification exercise to ascertain the correctness of the said consolidated claim statement of ADW & DRS, 2008, it was found that excess benefit amounting to Rs.4,44,683/- had been extended in eighteen (18) Accounts under Debt Waiver Scheme.

The Branch Manager had prepared the certificate for 1535 Accounts and the claim was of Rs.95.72 lakhs and during short period of audit, the Respondent had checked nearly about 750 accounts and found correct. It appears that he had issued the purported certificate without proper and reasonable verification of all the accounts and the approach followed by the Respondent also appears to be casual as it was felt he while carrying out his professional assignment.

Held guilty of Professional Misconduct falling within the meaning of Clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Shri V.G. Hegde, Dy. General Manager (Agri Business), State Bank of India, Local Head Office, Bhubaneswar vs. Brahmananda Sahu, Cuttack Re: [PR-85/14-D/114/2014/DC/547/17] Judgement delivered on 6th April 2018).

NBFC Company Registration not verified by Auditor

2.1.7(326) The Respondent had not scrutinized the relative records/ documents of the Company before issuing the certificate to the effect that the Company was registered with RBI as a Non-Banking Financial Company (NBFC) whereas no Company by said name had been issued a Certificate of Registration as NBFC from any of the offices of the RBI.

The Respondent had not been able to corroborate his contention that the Company was in fact registered with the RBI and moreover, he stated that the Company was listed as a NBFC Company in the list of the ROC and the records of the MCA which was verified by him during the issue of the report to the Company.

The Respondent was held guilty of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1948.

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(Shakti Kumar in Re:- Page 535 of Vol. I of Part I of the Disciplinary Cases of April, 2015 Judgement delivered on 21th August, 2014).

Stock were reported without examination by Auditor

2.1.7(327) Where a Chartered accountant in his audit report had clearly stated the Company was maintaining proper records of inventory and they had examined it. But the Company during the course of investigation had failed to produce any books of accounts relating to stock and manufacturing and had stated that no such books of accounts were being maintained.

Held guilty of professional misconduct falling within the meaning of Clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Tapan Sarkar, Assistant Commissioner of Sales Tax, Kolkata, vs. O.P. Banka - Page 172 of Vol II Part I of Disciplinary Cases, Judgement delivered on 1st October, 2013).

Certificates issued by Auditor not based on Audited Financial Statements

2.1.7(328) A Company had submitted two different certificates of Analysis of Cost / Pricing structure based on the audited final accounts of the financial year 2013-14 duly certified by two different Chartered Accountants showing different value addition figures.

The Complainant has raised a question regarding how a Company can have two separate value addition calculations just because there are two separate Chartered Accountants and not following the prescribed guidelines of Tripura Industrial Investment Promotion Scheme (TIIP Scheme), 2012.

One of the aforesaid certificates had been issued by the Respondent.

It was observed that the date of issue of the certificate in question was on 25th April, 2014 and the date of issuance of Audit Report by M/s S Basu Thakur & Co. for the financial year 2013-14 was 2nd June, 2014 which was much beyond the date of issuance of the certificate by the Respondent. Therefore, it was clear that the

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Certificate issued by the Respondent could not be based on the Audited Accounts of the Company for the financial year 2013-14.

The Respondent was held guilty of professional misconduct falling within the meaning Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Chief Operating Officer, Vishal Pipes Ltd., New Delhi vs. Tapan Kumar Saha Re: [PR-50/15-DD/56/2015/DC/626/17] Judgement delivered on 6th April 2018).

Auditor wrongly reported that NBFC Company complied with RBI Guidelines

2.1.7(329) Where the Respondent had wrongly certified in respect of an Investment Company. In terms of letter received, with reference from RBI, it was alleged that the Respondent vide his certificate dated 27th November, 2014 certified that the Company had complied with the prudential norms and provisions of the RBI Act, 1934 for the financial year 2013-14 although as per audited financial statements of the Company which were also certified by the Respondent, NBF (Non-deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007 were not complied by the company due to non-provision against diminution in value of investments and doubtful loans and advances.

RBI alleged that in view of the above, the Respondent had violated “Non-Banking Financial Companies Auditor’s Report (Reserve Bank) Directions, 2008.

Held guilty of Professional Misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Kedar Laddha, Ahmedabad in Re:- PR/P/42/16/DD/45/INF/2016/DC/654/2017 Judgement delivered on 20th November, 2018).

Certified Two Sets of Balance Sheet

2.1.7(330) The Respondent had certified two sets of Balance Sheet and Profit and Loss Account for the financial year 2001-02 of M/s Modern Enterprise.

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One set of Balance Sheet and Profit and Loss Account for the Financial year 2001-02 was submitted before the Income Tax Authority wherein the turnover as Rs.71,00,380/- and another set of Profit and Loss Account and Balance Sheet was deposited in connection with the tender, wherein the Respondent certified an inflated turnover of Rs.91,00,380/-which contained the signatures of the Respondent for the same financial year i.e. 2001-02.

Subsequently, it was observed that the figure mentioned in the Balance Sheet and Profit and Loss A/c was different by significant amount and the Respondent could not properly explain why he had certified the same.

The Respondent was held guilty of Professional Misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(S. K. Kalimuddin, Distt. Birbhum, West Bengal vs. Subrata Tapadar Re: [PR-177/11-DD/29/2012/DC/446/2016] Judgement delivered on 15th September, 2017).

2.1.7(331) Where a Chartered Accountant had mentioned different amount of term deposit in his two Audit Reports. It was observed that he had signed two different Assets and Liability Statement.

In the first Report, deposits were shown as Rs. 2,47,530/- and fixed deposit was shown as Rs. 30,000/-. In the 2nd revised Report the term deposit was shown as Rs.2,47,530/- which includes the fixed deposit amount of Rs. 30,000/- which was inadvertently shown as separate head under fixed deposits in the first report. The same was rectified in the 2nd revised Audit Report.

It was observed that amount shown was a Fixed Deposit and for the certification of the same the Respondent was required to verify basic documents such as (i) name of bank where said deposit was made (ii) terms of maturity and (iii) interest accrued etc., but Respondent failed to check these basic documents. Hence, he was grossly negligent in performing his professional duties.

Held guilty of Professional Misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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(Jayanta Basu vs. Sumit Dasgupta Re: [PR-03/14-DD/29/2014/DC/525 /17] Judgement delivered on 6th April, 2018).

Not attended Income Tax Proceedings

2.1.7(332) The Respondent failed to appear before the ITO in response to the notice under Section 143(2) and 142(1) of the Income Tax Act for A.Y. 1988-89 on behalf of the client despite adjournments granted/postponements of dates of hearing made by the Department, resulting in the assessment being made ex parte under Section 144 of Income Tax Act, 1961.

The Respondent failed to appear before the CIT (Appeals) before whom an appeal against the said ex parte order of ITO had been filed, resulting in the dismissal of the appeal.

The Respondent confirmed to the Complainant by informing her that stay of demand applied for had been granted whereas the fact was that the Complainant was served with a demand notice for payment, failing which recovery proceedings would be initiated. An appeal to be filed before the Tribunal against the order of CIT (Appeals) was got signed from the complainant. Later on, it was found and admitted by the Respondent that no such appeal was filed. Even the amount paid as appeal fee was not refunded.

Respondent had not done the needful in spite of repeated requests for collecting Income-Tax records for the subsequent years and an explanation of the basis of the return filed by him for the assessment year 1988-89. In spite of receiving amount from the Complainant, the Respondent did not pay the Income Tax to the Income Tax Department, for the assessment year 1989-90.

The Complainant who received the notice for payment from the Income Tax Department, handed over the notice to the Respondent, but despite his repeated assurances, no receipts had been shown or whether the amounts were deposited with the Income Tax Department and even if paid, the dates were not intimated.

CASE LAWS REFERENCER

False assurances, gross negligence and lapses on the part of the Respondent had resulted in the attachment of the Complainant's property and bank account, a heavy demand of additional tax, which might be further increased due to the levy of penalties so heavy as to beyond her capacity to pay even after liquidating her total assets. Thus, the Respondent had been grossly negligent in the conduct of his professional duties.

Held that the Respondent was guilty of professional misconduct within the meaning of Sections 21 and 22 of the Chartered Accountants Act, 1949 read with Clause (7) of Part I of the Second Schedule.

(Smt. Sushma Shourie vs. Mahesh Taneja – Page 39 of Vol. VIII – 1 – 21(6) of Disciplinary Cases – Judgement delivered on 21st December 2001 and published in the March, 2002 issue of Institute's Journal at pages 1126 to 1128).

- 2.1.7(333) A Chartered Accountant was held guilty under Clause (7) of Part I of the Second Schedule and "other misconduct as being a tax consultant and a tax auditor he failed to appear before the Income Tax Authorities for his client even after having instructions from his client.

In spite of being fully paid for his professional services and provided all the books of account and other documents, he failed to satisfy the Income Tax Officer because of his negligence and careless attitude. There were several anomalies in the books of account. The opening and closing balances as per the bank statements and pass-books were not re-produced correctly in the cash book.

(R.C.Dutta vs. Kailash C.Mishra - Page 143 of Vol. IX – 1 – 21(6) Council's decision dated 5th January, 2005, 247th Meeting of the Council and Judgement of High Court dated 1st March, 2007).

Manipulations in Audit Report

- 2.1.7(334) The Respondent had been making glaring manipulations in the Balance Sheet and P & L account of the Company such as;
- (i) He has signed the balance Sheet for the year ended on 31-

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3-1993 without the same being authenticated by the Directors of the Company under Section 215 of the Companies Act, 1956.

- (ii) The Balance Sheet as at 29.11.1993 and 30.11.1993 prepared and certified by the Respondent shows glaring inconsistencies unmatched by the books of account
- (iii) (As per the Balance Sheet ended on 31.3.1993 and 29.11.1993 Term Loans amounting to Rs. 50,000/- which although were not paid off by the Company but in the subsequent Balance Sheet this figure was not shown by the Respondent.

Held that the Respondent was inter alia guilty of professional misconduct under Clauses (7) and (8) of Part I of the Second Schedule.

(Promila Jain vs. Hardesh Kant – Page 416 of Vol. VIII – 1 – 21(6) of Disciplinary Cases – Judgement delivered dated 6th May, 2004).

Wrong Reporting in Audit Report

- 2.1.7(335) Where a Chartered Accountant had given report in Form No. 3CD stating that he disclaimed to report on Balance Sheet and compiled the Financial Statements from the information given by contractor for the purpose of estimation of profit & loss, assets and liabilities.

He had mentioned that the books of accounts were maintained in Mercantile System knowing fully well that no regular books of accounts were maintained. He did not disclose that the account was not in conformity with the guidelines issued for auditing Under Section 44AB.

Held guilty of professional misconduct falling within the meaning of Clauses (7), (8) and (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(T N C Sridhar, DY. Commissioner of Income Tax, Tumkur vs. C.S. Prahallada - Page 214 of Vol II Part I of Disciplinary Cases, Judgement delivered on 3rd October, 2013).

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2.1.7(336) In 'Auditor's Report' of a Charitable Trust, a Chartered Accountant had mentioned that Tenders for repairs or construction involving expenditure exceeding Rs.5,000/- were not invited as there were no repairing or construction done by Trust during previous year. But, in Form 16A, it was clear that the Trust had paid Rs.2,86,241/-to the contractor for construction work.

Held guilty of professional mis-conduct falling under Clauses (7) & (8) Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Pritesh B. Shah Ahmedabad vs. Ashvin Dashrathlal Panchal Ahmedabad [PR/18/09/DD/40/09/DC/146/2011] Judgement delivered on 6th January, 2016).

Audit not done as per GAAP / AS

2.1.7(337) Where the Respondent failed to point out that the client had not followed accrual assumptions of accounting in respect of interest income and lease rental payable to the party which was mandatory for the Company as per requirement of AS-1.

The Committee further noted that the Respondent had failed to quantify the quantum of effect of not taking into account the provision for interest on loan lent and lease rental payable on the financial statements of the Company in his Audit Report.

Accordingly, in the view of the Committee, the Respondent had failed to perform his professional duties as per Generally Accepted Accounting Practices.

The Respondent was held guilty of professional misconduct falling within the meaning of Clauses (7) and (9) Part I of Second Schedule to the Chartered Accountants Act, 1949.

(M. Gandhi in Re:- [PPR/08/S/2009/DD/07/S/INF/2009/DC/240/2012]).

2.1.7(338) The Respondent had enabled the Managing Director of the Company(client) to secure Trade Finance Limit from M/s. Global Trade Finance Limited (or M/s GTFL) by dishonestly certifying the false and bogus audited financial statements in respect of the Company certifying huge turnover and net profits, whereas the

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Company had no such business transactions and thus facilitated the Managing Director of the Company in perpetrating the fraud.

It was observed that the Respondent failed to comply the requirements of AAS-3 and as per that Standard, the working papers are the property of the Auditor and he ought to have retained the same for a period of time sufficient to meet the needs of his practice which the Respondent failed to do so.

The Committee also noted that the Respondent also failed to bring on record any action taken by him in respect of non-returning of documents by Mr. E. Mathan who was supposed to be mere Accountant of the concerned Company.

The Respondent was held guilty of professional misconduct falling within the meaning of Clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(V. Ajay in Re:- [PPR/P/6/S/12/DD/5/S/INF/12/DC/296/13] Judgement delivered on 20th January, 2017).

- 2.1.7(339) The Respondent certified the Receipt & Payment Account, Income Expenditure Account along with the Balance Sheet of a company as true and correct without examining the related records.

Subsequently, it was observed that he had failed not only to report the known material mis-statement appearing in the Receipt & Payment Account, Income Expenditure Account and the Balance Sheet after audit of the above financial statement but also to invite attention to any material departure from the generally accepted procedure of audit. Hence, he seemed to have failed to exercise due diligence while discharging his duties as statutory auditor.

Held guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949

(Pujari Sudhakar Bachu Channa vs. Purushottam Ramesh Narayanapethkar Re: [PR/139/12-DD/158/12-DC/338/2014] Judgement delivered on 27th July, 2016).

- 2.1.7(340) Where a Chartered Accountant being the Auditor of a firm for two consecutive financial years had shown taxable security service

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income under head 'Other Income' instead of showing the same under head Security Charges as shown in the previous Financial Years.

Further, the said Security Income had been shown as net of expenses and hence, he had changed the method of presentation of financial statements of the firm from the previous years with an intention to avoid taxable Security Services Income.

Held guilty of professional misconduct for not exercising due diligence within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(The Asstt. Commissioner of Central, Excise & Customs Surat-I vs. Noshir Pestanji Bharucha Re: [PR/36-G/2011/DD/34/2011/DC/324/2014] Judgement delivered on 6th January, 2016).

Original B/S had major differences with Provisional B/S

2.1.7(341) A Chartered Accountant being the Statutory Auditor of the Society for the Financial Year 2009-10 had signed the Balance Sheet on 14.05.2010 and thereafter signed the Provisional Balance Sheet of the Society for the Financial Year 2009-10 on 10.08.2010. It was observed that the previous Balance Sheets were having lot of differences and provisional Balance Sheet was not authenticated by the Management.

Held guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(John Mathew in Re:- [PPR/12/S/12/12/DD/5/S/INF/13/DC/423/2014] Judgement delivered on 20th January, 2017).

Revision of Audit Report without due Procedure

2.1.7(342) The Respondent had wrongly claimed the exemption u/s 10A of the Income Tax Act, 1961 for the A.Y. 2004-05 and 2005-06.

The Committee noted that the deduction u/s 10A was restricted from 100% to 90% only for the one Assessment Year A.Y. 2003-04.

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The Respondent gave the Audit Report(s) u/s 92E of the Income Tax Act, 1961 for the Assessment Years 2004-05 and 2005-06 wherein he had certified that the amount of deduction u/s 92E was 90% only and calculated the deduction accordingly.

All the audit reports were undated. The Respondent did not check as to whether the export done by the entity was entitled to exemption and to what extent. The Respondent was unable to offer any satisfactory explanations as to why the amount of deduction was restricted to 90%. The Company filed the revised Income tax returns for both the aforesaid assessment years claiming the deductions at 100% u/s 10A of the Income Tax Act, 1961.

The Respondent was held guilty of professional misconduct, with respect to this charge, falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(V. Ayyadurai vs. M. Rajkumar- Page 408 of Vol. II of Part I of the Disciplinary Cases of April, 2015 Judgement delivered on 10th December, 2013).

2.1.7(343) The Respondents certified the Accounts of a Trust for financial years 2004-05 to 2010-11 and also certified the revised accounts of the Trust for the same year.

Subsequently, it was observed that the Respondent had not followed the ICAI guidelines on "Revision of the Audit Reports" and failed to state not only the reasons for revising the audit report issued by him but also failed to inform the Charity Commissioner of Trust that his earlier report should not longer be relied upon.

Moreover, the Respondent could not bring on record any documentary evidence including working papers to establish that before signing the revised financial statements he had verified the relevant records and documents relating to assets and liabilities of the Trust.

The Respondent was held guilty of Professional Misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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(Shekhar Purushottamrao Kannao vs. Sanjay S. Khandekar Re: [PR-125/13-DD/121/2013/DC /428/2014] Judgement delivered on 7th November, 2017).

Failure to obtain sufficient information for Audit

- 2.1.7(344) Where a Chartered Accountant had not exercised due diligence while auditing the accounts of the Firm and had accepted the retirement of the Complainant from the Firm without verifying the relevant documents. He failed to obtain sufficient information which was necessary while making statement on Form No. 3CB on 30th in respect of the Firm.

Held guilty of professional misconduct falling within the meaning of Clauses (5) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Krishnendu Ghosh vs. Rakesh Kumar Agarwal - Page 181 of Vol II Part I of Disciplinary Cases, Judgement delivered on 1st October, 2013).

Failed to disclose requirements of applicable Standards

- 2.1.7(345) Where the Respondent being the Statutory Auditor of the Company failed to qualify his opinion in the Auditor's Report as regards to related party transactions in the Company's accounts as per the requirements of Companies Act 1956 and AS-18 i.e. a number of Company's transactions with its group/associate companies had been shown under the head 'Sundry Debtors' and a number of associate companies under the head 'Advances recoverable in Cash or kind or for the value to be received'.

Moreover, the Respondent did not follow the requirement of AAS-3 which was applicable on his client and also failed to qualify his opinion in the Auditors' Report. As per AAS-3, working papers are the property of the auditor who ought to retain the same for a period of time sufficient to meet the needs of his practice which the Respondent had failed to do so and further he failed to retain a copy of the same for his future requirement.

The Respondent was held guilty of professional misconduct falling under Clauses (7) & (9) of part I of the Second Schedule to the Chartered Accountants Act, 1949.

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(Addl. Director (Tax-II) Serious Fraud Investigation Office, Ministry of Corporate Affairs, New Delhi, vs. V. Subramanian, Re: [PR/61/09/DD/71/2009 /DC/119/2010]).

- 2.1.7(346) The Respondent had included the deferred income in free reserves in calculation of net-worth, where the Respondent failed to disclose the net-worth inclusive of deferred income of Rs. 216,10,81,142/- and on account of that treatment, the accumulated losses at the end of 31st March, 2008 become more than 50% of its net-worth.

Accordingly, it was observed that the Respondent did not comply the requirement of Companies (Auditor's Report) Order, 2003 and the Respondent wrongly mentioned in his Audit Report that the accumulated losses of the Company had not exceeded fifty percent of its net-worth as at the end of financial year.

The Respondent was held guilty of professional misconduct falling within the meaning of Clauses (6), (8) and (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(A.S. Ramanathan in Re:- [PPR/9/S/11/DD/6/S/INF/11/DC/283 /13] Judgement delivered dated 5th January, 2016).

- 2.1.7(347) Where a Company had been carrying on the business of housing finance by granting housing loans etc. without registration under the National Housing Bank Act, 1987 and the Respondent had failed to provide information relating to public deposit as a part of his report to the National Housing Bank (NHB).

He also failed to give satisfactory explanation that report sent to Board of Directors as per Directions to the Auditor of the Housing Finance Company (NHB) Director, 2010 was duly sent to the NHB by the Company. It was also observed that the Respondent failed to comply with the requirements of AAS-28, CARO, 2003 and Accounting Standards.

The Respondent was guilty of professional misconduct falling within the meaning of Clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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(Shri G. N. Somdeve, Assistant General Manager, National Housing Bank, New Delhi vs. S.K. Gupta Re: [PR-105/13-DD/126/2013/DC/429/2014] Judgement delivered dated:15th December, 2016).

- 2.1.7(348) Where value of stock in respect of fabrics had been taken at cost which was in violation of requirements of AS-2. The Chartered Accountant had mentioned that Company adopted cost of goods for its valuation as it was lower and for various reasons the net realizable value could not measure.

On perusal of balance sheets, it was observed that the stocks were valued at cost and the Respondent had also not mentioned in the financial records that the valuation of stock at cost or net realizable value whichever was lower.

Hence, he failed in his duties to qualify his report appropriately so as to make the readers/users of the Financial Statements to understand the exact implication.

Held guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act 1949.

(B.L. Sinha, Joint Director (Inspection), Office of the Regional Director, Kolkata vs. Jitendra Prasad Re: [PR-80/09-DD/90/09/DC/201/2012] Judgement delivered on 23rdDecember, 2015).

Certifying Fake / Forged Financial Statements & Documents

- 2.1.7(349) It had been noticed that a Company claimed to have exported textile fabrics and readymade garments, with a declared value of Rs. 287.53 Crores whereas the actual value of the goods exported appeared to be Rs. 8.66 Crores.

The inflation of export value was done to avail ineligible export incentives like duty drawback and DEPB licenses. It was found that the Company was involved in over-invoicing of their export, so, it was called and asked to produce the purchase invoices, in support of the value of the goods which it failed to produce stating the non- availability of the purchase invoices.

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Thereafter, when the Balance Sheet was perused, it was found that the same had been audited by a Chartered Accountant.

Held guilty of professional misconduct within meaning of Clauses (6), (7) and (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(Tilak Devji Dedhia in Re: [PPR-P-2-W-11-DD-3-W-INF-11-DC-242-2012] Judgement delivered on 27th July, 2016).

- 2.1.7(350) Where a Chartered Accountant falsely certified inflated Balance Sheet and Profit & Loss of a company. On the basis of the false audit report of the Respondent, the company was technically qualified in a tender and was finally awarded the contract work although the company was ineligible.

Held guilty of Professional Misconduct falling under Clauses (7) & (8) of part I of the Second Schedule to the Chartered Accountants Act 1949.

(The Superintendent of Police, CBI, Anti-Corruption Branch, Kolkata vs. S.K. Kalimuddin [PR-22/09-DD/30/09/DC/167/2011] Judgement delivered on 15th December, 2016).

- 2.1.7(351) Where a Chartered Accountant had certified the copies of forged retirement deed wherein Complainant's father was shown as retired from partnership.

His father had never signed any retirement deed and never made any mention of the same in his lifetime. The deed had been filed with the Registrar of Companies after the death of the partner. Just as an Advocate certifies the copies in High Court, the Respondent certifies the copies of retirement deed with the Registrar of Companies and gives it the bonafide it requires.

His father had never signed in the presence of the Respondent and all the documents had been prepared after the death of his father.

The Respondent certified the retirement deed after a period of 30 years and had given authenticity to a forged document.

Held guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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(Kailash Kalantri, USA vs. Pankaj Prataprai Sanghvi Re: [PR-112/10-DD/117/10/DC/206/12] Judgement delivered on 18th December, 2015).

2.1.7(352) A Chartered Accountant being the Statutory Auditor of the Air Force Canteen since 2003-2004 to 2009-2010 had failed to detect the cash fraud played by the staff members of the Unit Canteen.

He certified false Balance Sheets, false Trial Balance and Audit Reports. It was observed that the Respondent did not verify the basic documents of the Auditee like Cash Book, Bank Statement and Bank Reconciliation Statement even he had not resorted to any third party confirmation from the bank independently.

Thus, by not relying on the Bank Statements and merely accepting the financials produced by the concerned officers and rubber-stamping them in acceptance, he failed in his duties and the same was not expected of a prudent professional.

Held guilty of professional misconduct falling within the meaning of Clauses (7) and (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(Captain, Chief Admin Officer, Air Force Station, Bapatla vs. J. Venkateswara Rao [PR-09/11-DD/25/12/DC/333/14] Judgement delivered on 4th July, 2016)

2.1.7(353) The Respondent prepared and certified fake financial statements and other documents of certain persons to whom loans had been sanctioned through a Branch of Bank of Maharashtra, Mumbai.

In addition to above, the Respondent availed vehicle loan from the same Branch of the above Bank and it was found that assets had not been purchased, mis-utilised Bank funds and account became Non Performing Assets.

Held guilty of Professional Misconduct falling within the meaning of Clauses (6), (7) and (8) of Part I of the Second Schedule and also of 'Other Misconduct' falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act 1949.

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(Shashank V. Kamath, Deputy Regional Manager, Bank of Maharashtra, Mumbai vs. Rishi Anmol Sekhri. Re: [PR-153/2011-DD/169/2011/DC/276/2013] Judgement delivered on 6th January, 2016).

- 2.1.7(354) Where the Respondent had certified the details of the source of funds of Rs. 275 lakhs and the Bank had disbursed a sum of Rs. 275 lakhs in the Month of April, 1998 to the Company.

Moreover, the Promoters had infused Rs. 294.27 lakhs into the Company by way of Share Capital and Share Application Money which was certified by the Respondent. Subsequently, it was observed that the Promoters had not infused the requisite funds before seeking disbursement from IDBI in place of that they had provided false certificate to IDBI regarding infusion of Promoters' contribution towards the Project.

As per the Statement obtained from UTI Bank, total deposits in the said account as on date of the Respondent's certificate was only Rs. 14.27 lakhs as against Rs. 294.27 lakhs certified by the Respondent as funds infused by the promoters. Thus, it was alleged that the Respondent had not exercised due diligence while verifying the records and documents of the Company before submitting the above certificate and incidentally, the said advance to the Company had gone bad.

Held guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(General Manager, Industrial Development Bank of India, Kolkata vs. Surendra Kumar Surana Re: [25CA(07)/2007/NEW DC/281/2013] Judgement delivered on 26th September, 2014).

- 2.1.7(355) Where a Chartered Accountant who was the Statutory Auditor of a Private Limited Company had prepared false and fabricated Financial Statements, CMA Datas, Provisional Balance Sheet etc in connection with application of credit limits from the Complainant Bank and also conducted the Stocks and Receivable Audit for the Company during March, 2011. Based on aforesaid documents, the Complainant bank released the cash credit limits to the Company.

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In addition to above, the Respondent also certified the quarterly stocks and books debts statement which were submitted by the Company to the bank for the quarters ending June, September, and December, 2011. When the Complainant bank conducted the audit in January, 2012, it came to light that the books debts certified by the Respondent were fictitious and were required to be verified.

It was observed that the Respondent in collusion with the Company had prepared manipulated Balance Sheets for the past few years to defraud the Bank by inflating the sales figure to avail enhanced working capital and also showing profits earned continuously year on year basis, showing healthy financial position of the Company to avail finance from Bank.

Held guilty of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(Sr. Manager, Indian Overseas Bank, Pune vs. Nalin Ramesh Chavan Re: [PR-125/2012-DD/164/12-DC/389/2014] Judgement delivered on 7th November, 2017).

2.1.7(356) While preparing the Balance Sheet as on 31st March 2009, the Respondent had directly taken the balance as on 31st March 2007 of various Assets as the closing balances as on 31st March 2009 and had done wrong calculations. The Financial Statements for the subsequent financial years were also prepared by carrying forward wrong balance which resulted into Income Tax Demands for the Assessment year 2009-2010 and 2010-2011.

The Respondent had failed to provide requisite details to the Income Tax Department and had made various additions to the income which resulted into 'Unexplained Investments' under Section 69 of the Income Tax Act, 1961 in the assessment orders.

It was further observed that the Respondent was negligent in attending the hearings before the Income Tax Department as at many places moreover, he did not provide the relevant details before the Income Tax Officer on behalf of the Complainant being the assessee. As a consequence, the Income Tax Officer had

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passed an Order raising a Tax Demand of Rs. 63,39,440/-. Besides that penalty proceedings u/s 271(1)(c) were initiated separately for furnishing inaccurate particulars.

The Respondent was held guilty of professional misconduct falling within the meaning of Clause (2) of Part-IV of First Schedule and Clauses (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Dr. Meera N Rege, Mumbai vs. Hiteshkumar Kishorbhai Joshi Re: [PR 223/13-DD/212/2013/DC/462/16] Judgement delivered dated 6th February, 2017).

Forgery in Signature

- 2.1.7(357) Where the resignation letter of the Complainant, being the Director of a Private Limited Company, was forged as the signature of the Complainant was simply copied & pasted and the Respondent had certified Form 32 on the Complainant's forged resignation letter which had been filed with the ROC. It was observed that based on his forged resignation letter, the resignation of the Complainant from Directorship of the said Company had been occurred.

It was noted that the Respondent had not taken any step to verify forged signature on resignation letter which anyone would have taken in normal circumstances.

The Respondent was held guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule of the Chartered Accountants Act, 1949.

(Shri Gunwant Singh Saluja, Director, M/s Mongia Steel Ltd. vs. Bijay Kumar Sah Re: [DC/ 474-2016] Judgement delivered dated: 22nd August, 2017).

- 2.1.7(358) Where a Chartered Accountant had certified Form No. 32 wherein Mr. Milan Biswas and Mr. Saroj Thakur were shown as having been appointed as Directors of the Company and the Complainant and Mr. Sanjay Ramesh Kaul (being the existing Directors) were removed from the Directorship of the Company. On perusal of Form 32, it was observed that the said Form was digitally signed by the Complainant and was verified by the Respondent.

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The Complainant for the same had lodged complaint with TCSSA to have the name of the person who got the digital certificate issued in the name of the Complainant.

It was noted that the digital signatures of the Respondent were used without his knowledge and the person who had used his signature had accepted this fact before the Court and in the Police Station to misuse the signature of him. He further submitted that his digital signatures were used from a computer system on which he earlier used his digital signatures.

The Respondent also produced copy of letter dated 18.12.2013 written by another person to him wherein he had accepted that he, by mistake, had used the digital signature of the Respondent. But the Respondent could not produce any evidence of acceptance of his fault by that person before the Court and Police authority.

The case of that other person could have been only an after-thought and seems to have been procured to hide the negligence on the part of the Respondent.

Held guilty of Professional Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule and Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act.

(Mahesh Khemsingh Rawat, Director, M/s. Max Cot Merchants Pvt. Ltd., Ulhasnagar vs. Vikash Kumar Agarwal, Lluah Re: [PR-328/13-DD/48/2014 /DC/597/17] Judgement delivered on 6th April, 2018).

False Statement of Current Account

2.1.7(359) Where the Respondent had submitted a false Statement of Current Account maintained with KCCB for the period 1st April 2010 to 31st March 2011 and failed to report that the balance confirmation of 4 Bank Accounts. The Respondent as an auditor did not bring the same to the knowledge of the users of the financial statements through his audit report that sufficient audit evidence and appropriate information could not be obtained by him despite writing letters to the Bank. Hence, it was apparent that the Respondent failed to exercise due diligence and gather sufficient information for expression of opinion.

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The Respondent was held of professional misconduct falling within the meaning of Clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Relationship Manager, State Bank of India, Mumbai vs. Mahavir Jain, Mumbai Re: [PR-126/2012-DD/171/2012/DC/441/2016] Judgement delivered on 6th February, 2017).

Handed over Password of Digital Signature of Director

- 2.1.7(360) The Respondent was assigned by the Complainant with the task of verification of the data relating to the retirement of the existing directors, appointment of new directors, increase in the authorized share capital of the company and allotment of shares, in his professional capacity.

In this regard, the Respondent in good faith had handed over of the password of his digital signature to his old client for e-filing the documents with the ROC. Once the Respondent had passed the password of his digital signature to his client, he was accountable for the misuse of the same, if any and cannot plead ignorance or negligence.

Here, the Respondent should have diligent enough not to have passed the password of his digital signature to his client.

The Respondent was held guilty of Professional Misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(M/s Anjaneya Bisanpur Agro Industries Pvt. Ltd., vs. Narender Kumar Kaushik - Page 524 of Vol. II of Part I of the Disciplinary Cases of April, 2015 Judgement delivered on 21th August, 2014).

Not supplying requisite information timely to RBI

- 2.1.7(361) The Respondent had furnished details to RBI vide his letter dated 12.10.2006 showing the unsecured loan for Rs.48.97 lakhs whereas as per financial statement audited by him for the year ended 31st March, 2005, the amount of unsecured loans was shown as Rs.64.30 lakhs.

As per RBI Guidelines, the Respondent was required to furnish requisite information to the RBI within 15 days and ought to have reconciled unsecured loan with the figures appearing in the

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financial statement before submitting it to the RBI which he failed to do.

Held guilty of Professional Misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act 1949.

(Gora Chand Mukherjee in Re:- [PPR/P/10/E/2007/DD/6/E/8INF/08/DC/94/2010] Judgement delivered on 15th December, 2016).

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- 2.1.8 Clause (8):** *fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;*

Relying on Internal Auditor Report without own due diligence

- 2.1.8(362) Where a Chartered Accountant relying on the work of the internal auditor of a Company qualified his report that the books of account and the supporting vouchers had been examined by the internal auditor of the Company, the Council taking the view that the qualification amounted to an exception sufficiently material to negate the expression of an opinion, found him guilty of misconduct under the latter part of Clause (8). As a general rule, a statutory auditor would be guilty under this Clause, if he performed his work so recklessly as to give his report without looking into the books of account of a Company, on the basis of the work of the internal auditor whose opinion turned out to be false.

(J.C. Chandiok in Re:- Page 367 of Vol. IV of the Disciplinary Cases and pages 681-683 of June, 1964 issue of the Institute's Journal - Judgement delivered on 31st January, 1964).

- 2.1.8(363) Where the Respondent had failed to report on the significant value of land sold by the Company(client) and did not exercise due care in reporting the outstanding amount of sale of the land to Directors & their relatives which had been duly reflected in the Accounts under the head 'Advance for Plots'. Moreover, the Respondent did not mention that the Company had been consistently followed the practice of recording all transactions of plot of sales in one consolidated account without maintaining separate individual accounts of parties and the practice of netting off the debit and the credits balance in the name of the different parties in the 'Advance for Plots A/c' which was not consistent with the basic principle of accounting even though the Company.

The Respondent was held guilty of Professional Misconduct falling within the meaning of Clauses (5), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act 1949.

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(Ramesh Chand Jain vs. Giriraj Khandelwal – Page 482 of Vol. II of Part I of the Disciplinary Cases of April, 2015 judgement delivered on 21st August, 2014).

Issued Presumptive Certificate without any Disclaimer

2.1.8(364) The Respondent had issued a false and concocted Certificate before the Court for increase in the interim maintenance amount to the Complainant's wife in respect of proceedings being conducted under Domestic Violence Act, 2005. In the said Certificate, the Respondent had mentioned that the same had been prepared as per the records produced before him by the wife of the Complainant.

It was further, observed that the entire certificate had been prepared on the basis of normal earning capacity of the company in steel sector applied upon bank receipts. He had issued a certificate which was considered to be written confirmation of the accuracy of facts stated therein.

Hence, it was incumbent upon him to mention suitable disclaimer to the effect that the certification is based on estimated income and not the actual. It was imperative on the part of the Respondent especially when he was certifying as a professional to clearly mention that the same was a presumption based certification.

The Respondent was held guilty of Professional Misconduct falling within the meaning of Clauses (7) & (8) of Part-I of the Second Schedule to the Chartered Accountants Act, 1949.

(Vijay Prakash Gupta, Bangalore vs. Nati Panwar Re: [PR/35/14/DD/64/14/DC/520/2017] Judgement dated: 10th February, 2018).

False Certification without Due Diligence

2.1.8(365) Where a Chartered Accountant issued a certificate of circulation of a periodical without going into the most elementary details of how the circulation of a periodical was being maintained i.e. by not looking into the financial records, bank statements or bank pass

PART I OF THE SECOND SCHEDULE – CLAUSE (8)

books, by not examining evidence of actual payment of printers bills and by not caring to ascertain how many copies were sold and paid for.

Held, he was guilty under Clause (8).

(Registrar of Newspapers for India vs. K. Rajinder Singh - Page 920 of Vol. IV of the Disciplinary Cases and pages 77-82 of July, 1971 issue of the Institute's Journal - Judgement delivered on 7th May, 1971).

2.1.8(366) Where the Complainant had sanctioned an additional loan to a Company on the basis of a proforma balance sheet duly certified by a Chartered Accountant while the Audited Balance Sheet of the Company for the same period duly certified by the Statutory Auditors revealed a completely different picture.

Held that the Chartered Accountant was guilty under clauses (7) & (8).

(Assam Financial Corporation vs. S.K. Beria - Page 17 of Vol.VII (1) of Disciplinary Cases - Judgement dated 10th July, 1992).

Failed to detect Financial Leakages

2.1.8(367) Where the Respondent had conducted the Statutory Audit of various schemes of Sarva Siksha Abhiyan and failed to detect embezzlement to the extent of Rs.14.98 crores leading to the loss to the exchequer.

If he had done reconciliation with the Statements of the District Collectors office because money was spent through the District Collectors at the various villages. If the reconciliation had taken place with the State Head Office Account, the Respondent would have noticed Rs.15 crores misappropriation.

Held guilty of professional misconduct falling under Clauses (5), (7) & (8) of part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Mohd. Ali Rafath, I.A.S., State Project Director, Sarva Siksha Abhiyan, Hyderabad vs. Moparthy Sessa Rao [PR-194/08-

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DD/226/08/DC/158/2011] Judgement delivered on 30th August, 2014).

- 2.1.8(368) Where the Respondent had issued three certifications of a MNC Singapore based viz., Internal Resource Generation (IRG) Computation Sheet, Net Worth Computation and Turnover Computation Sheet of a MNC which were required to be submitted by the said MNC relating to global tender bid.

It was observed that the figure per the Audited Financial Statement filed by the MNC with Accounting and Corporate Regulatory Authority, Singapore, were differed by huge margin. Further, the Respondent had no working papers in that regard and he did not mention that he certified the above on the basis of unaudited figures.

Thus, the Respondent had not exercised due diligence in issuing the certificate and held guilty of professional misconduct falling within the meaning of Clauses (7), and (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(D. Ravi, Executive Director, M/s Power Finance Corporation Limited, New Delhi vs. A. K. Vijaya Srinivas Re: [PR-87/11-DD/83/2011/DC/364/14] Judgement delivered on 20th January 2017).

- 2.1.8(369) Where the Respondent failed to disclose of the details of secured loan and did not care to verify all records & documents before signing the balance sheet of the Company.

Hence, it was clear that the Respondent was negligent in performing his professional duties as an Auditor of the Company and held guilty of professional misconduct falling within the meaning of Clause (7) & (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Dipti Gosavi, Authorized Representative of M/s R. S. Mittal Consultants Pvt. Ltd, Thane vs. Nikhil Chandra H. Vyas Re: [PR-45/13-DD/44/13/DC/394/2014] Judgement delivered on 6th January 2016).

Not disclosing relevant Fact in Financial Statements

- 2.1.8(370) The Company being the Complainant had taken a loan of Rs.248

PART I OF THE SECOND SCHEDULE – CLAUSE (8)

crores from Axis Bank Limited which become NPA as on 31.03.2011. The Axis Bank under SARFAESI Act, 2002 (Securitization And Reconstruction of Financial Assets and Enforcement of Securities Interest Act) entered into an agreement with IARC for assignment of loan and pursuant to which amount of Rs.10.48 crores were credited to the loan account of the Company as on 31.3.2011.

The Respondent had shown the said amount due to IARC in the Audited Balance Sheet as on 31.03.2011 under the category of secured loan in place of Rs 248 crores. It was observed that the Respondent was aware about the transaction of agreement and further, no disclosure had been made in financial statements in this regard. The Respondent failed to disclose the proper facts in the Audited Balance Sheet.

The Respondent was held of professional misconduct falling within the meaning of Clause (7) and (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(Satish K. Arora, President & Chief Operating Officer, M/s International Asset Reconstruction Co. (P) Ltd vs. Ramchandra Yashwant Kulkarni Re: [PR-277/13-DD/270/13-DC/488/16] Judgement dated 6th February, 2017).

2.1.8(371) Where a Chartered Accountant being the Statutory Auditor of a Company for F.Y. 2011-12 which had raised a fund of Rs.30 crores only by issuing the Preferential Shares.

It was alleged that there was false disclosures in the Balance Sheet suggesting utilization of proceeds of Preferential Allotment of Rs. 30 crores for purchase of land and also suppressed thematerial fact with regard to the financial transactions wherein the money had been circulated by it through one Smt Manjulaben Shah.

Further, on information being sought by SEBI, the Respondent did not provide any explanation as regards the aforesaid disclosure in the Financial Statement of the Company.Thus he as a Statutory Auditor had failed to exercise due diligence in performance of his duties.

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Held guilty of Professional and Other Misconduct falling within the meaning of Clause (2) of Part IV of First Schedule and Clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Debashis Bandyopadhyay, Securities and Exchange Board of India (SEBI), Mumbai vs. Ashit Kumar Thomas Macwan Re: [PR-6/2014-DD/30/14-DC/646/2017] Judgement delivered on 20th November, 2018).

- 2.1.8(372) A Chartered Accountant issued certificates certifying the utilization of funds by the Company for the amount granted and disbursed by a bank without verifying the records properly before issuing the aforesaid certificates. Also, the said certificate did not reflect the end use of the funds.

He was grossly negligent in issuing the said certificate(s). The auditor knowingly certified the end use of money received by the auditee incorrectly and improperly which is undoubtedly an unpardonable act on the part of the Respondent.

He was held guilty by the Council under Clauses (5), (6), (7) and (8) of Part I of the Second Schedule which was accepted by the High Court.

(Thampy Mathews, Dy. General Manager, IIBI vs. R.K. Tayal, Delhi - Page 254 of Vol. IX – 1 – 21(6) Decision of the Council on 25th June, 2004, 243rd Meeting of the Council and Judgement of High Court dated 23rd July, 2007).

- 2.1.8(373) The Respondent failed to point out in Audit Report about housing loan given in the name of two persons which had been shown as Secured Loans in the Books of Accounts of the client, a Proprietary Concern.

The second charge was that the Respondent failed to point out in the Audit Report that a payment of Rs.12,51,000/- made to a party which was a partnership concern but that payment was shown in the books of client, the Proprietary Concern. Therefore, this clearly indicated the negligence on the part of the Respondent.

The Respondent was held guilty of professional misconduct falling

PART I OF THE SECOND SCHEDULE – CLAUSE (8)

within the meaning of Clauses (6), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Mukesh M. Kelawala vs. Sukhdev Manilal Soni-page 265 of Vol. II of the Disciplinary Cases of April, 2015 Judgement delivered on 5th October, 2013).

Non-Verification of Huge Cash Balances

- 2.1.8(374) In spite of having huge cash-in-hand balance of a Company in different locations for two consecutive financial years, the Respondent physically verified the only at one location and for other locations he accepted only the management certification. It was reported in the Auditors Report on the Balance Sheet that the Balance Sheet and Profit & Loss Account was drawn up in accordance with Accounting Standards but was not reported that the company did not follow Accounting Standard-18.

The Respondent was held guilty of Professional Misconduct falling within the meaning of Clause (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Deputy Registrar of Companies, Ministry of Corporate Affairs, Kolkata vs. Gopal Agarwal Re: [PR-189/14-DD/212/2014/DC/522/2017] Judgement delivered on 30th November, 2018).

Unqualified Report inspite of non-Compliances of AS / CARO

- 2.1.8(375) Where the Respondent had Audited the Financial Statements of the Company for financial year 2007-2008. However, the Respondent had given unqualified opinion in his Audit Report despite the fact that there was a non-compliance with the requirements of certain Accounting Standards notified viz, AS 1, AS 2, AS 5, AS 9, AS 15, AS 17, AS 18 and AS 20.

Held guilty of Professional Misconduct falling within the meaning of Clauses (7), (8) and (9) Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Chiranjive Lall Khanna in Re: [PPR/7/W/11/DD/2/W/INF/11/DC/286/13] Judgement delivered on 5th November, 2014).

- 2.1.8(376) Where a Chartered Accountant failed to qualify his report as regard the non- disclosure of the nature of security against each

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secured loan either under relevant schedule or in notes to accounts as to which asset was put on charge as security against the reported secured loan by the Company. Moreover, the Respondent failed to value the inventory of the Company(i.e. client) as required under AS-2.

Held guilty of Professional Misconduct falling within the meaning of Clauses (5), (7) and (9) of Part I of Second Schedule, to the Chartered Accountants Act, 1949.

(David Jones in Re: [PPR/23/N/09/DD/14/N/INF/09/DC/294/2013] Judgement delivered on 19th October, 2015).

2.1.8(377) Where the Respondent certified the Balance Sheet and mentioned that all records given to him showing a true and fair picture of the state of affairs of the Company.

The Respondent also did not qualify his report as required under CARO, 2003 on the Balance Sheet for the aforesaid years thus violating provision of Para 4 (iii) (b) of CARO, 2003.

He could not produce working papers, Trial Balance, certificate of confirmation obtained from the management with respect to loan and advance, sundry debtors, sundry creditors and verification of fixed assets of the Company when asked for.

Held guilty of Professional Misconduct falling within the meaning of Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949 and also Clauses (7) and (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(J. K. Teotia, Additional Director (FA), Govt. of India Serious Fraud Investigation Office, Ministry of Corporate Affairs vs. Mahendra Kumar Hingar Re: [PR-173G/2010- D/174 /2010 /DC/ 320).

2.1.8 (378) Where the Respondent being an Auditor of a Company failed to point out in his report the following:

- (a) non-disclosure of the date of redemption of 15 lakhs 9% cumulative preference shares together with earliest date of redemption in the published Balance Sheets as per Part I of Schedule VI read with Section 211,

PART I OF THE SECOND SCHEDULE – CLAUSE (8)

- (b) amount of TDS was shown on the assets side under Loans & Advances and details of TDS on interest income were omitted in bracket, and
- (c) non-disclosure of Inter Corporate Deposit and Balance amount outstanding by a Related Party as required by Schedule VI and Accounting Standard-18 were not complied with by the Company.

Held guilty of Professional Misconduct falling within the meaning of Clauses (5), (7) & (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

[Prakash J. Apte in Re:- [PPR/P/35/W/13/DD/27/W/INF/13 /DC/424/14] Judgement delivered on 27th June, 2016).

Non Reporting on misuse of Bank Account

2.1.8(379) Where the Respondent had failed to report on the Bank Account which was opened by the client in the capacity as a proprietor which included lot of variations, i.e., Account Number was different and the capacity in which Account was opened was also different.

As a Professional, the Respondent ought to have copies of Bank Account which could easily establish the fact that the Bank Account was opened and operated proprietary name but he could not do that.

Hence, it was observed that the Respondent was not only negligent in his duties in respect of auditing of bank transactions but also, failed to obtain sufficient information for expressing an opinion.

The Respondent was held guilty of professional misconduct falling within the meaning of Clauses (7) & (8) of Part I of the Second Schedule to the Chartered Accountants Act 1949.

(P. Arun vs. N. Raja Ganesh Re: [PR-179/2008-DD/217/2008/DC/77/2010] Judgement delivered on 9th September, 2014).

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2.1.9 Clause (9): *fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances;*

Not adopted Sample Checking

2.1.9(380) Where a Chartered Accountant did not conduct sample checking of the bank accounts in relation to the accounts of the Company and did not carry out vouching with respect to the transactions reflected in the accounts of the Company and depended upon his assistant who was a Chartered Accountant and experienced clerk who were entrusted with the auditing work.

Held, he was guilty under Clauses (7) (8) and (9).

(M.S. Ramanathan vs. A. Umanath Rao- Page 750 of Vol. IV of the Disciplinary cases and page 165 of September, 1968 issue of Institute's Journal - Judgement delivered on 24th June, 1968).

Not Reporting as per GAAP

2.1.9(381) Where a Chartered Accountant failed to verify the actual disbursement of the amount by examining the various items of purchases and insisting for the bills to be produced in respect of the various items before issuing his certificate as mere payment would not constitute utilisation of the amount for the purpose for which it was meant.

Held, he was guilty under Clauses (7), (8) and (9).

(Punjab State Govt. vs. K.N. Chandla - Page 946 of Vol. IV of the Disciplinary Cases and pages 140-142 of August, 1972 issue of the Institute's Journal - Judgement delivered on 15th June, 1972).

2.1.9 (382) A Chartered Accountant had checked the Cash Book totals but not the Bank Column totals, had verified all the transactions in the Bank Columns but not the contra-entries, had taken the casting only of personal ledger and that too not of all accounts, had resorted to test check when there was no system of internal check, had not seen the pay-in-slips, had not checked the bank reconciliation statements for all the months.

Held, he was guilty of professional misconduct under Clauses (7), (8) and (9).

PART I OF THE SECOND SCHEDULE - CLAUSE (9)

(Air Commodore Dilbagh Singh vs. E.S. Venkataraman - Page 100 of Vol. V of the Disciplinary Cases and page 224 of September, 76 issue of Institute's Journal - Judgement delivered on 5th July, 1976).

- 2.1.9(383) Where a Chartered Accountant had not followed the provisions of Auditing and Assurance Standards (AAS) 28 in the Auditors Report on Financial Statements while discharging the attest function. Moreover, he did not disclose that the Balance Sheet and Audit Reports were prepared for limited purpose and was not a general purpose Financial Statement.

Held guilty of professional misconduct falling within the meaning of Clauses (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(Rajwade Pratap Ramchandra (On the basis of information) Re: Page 67 of Vol I Part I of Disciplinary Cases, Judgement delivered on 12th September, 2011).

- 2.1.9(384) The Respondent carried out the Statutory Audit of a Co-operative Credit Society Ltd. but did not perform his duties judicially against the interest of Society Members and Depositors and compliance of Maharashtra Co-operative Societies Act, 1960, Rules 1961, bye-laws of the Society and Standard Accounting Practice.

The Respondent did not mention anything about non-members deposits, liquidity compliance by the Society, Credit-Deposit (CD) ratio and huge NPA. The Respondent did not submit any remark about the fact that the Society had not submitted Audit rectification report as required u/s 82 of the Maharashtra Co-operative Societies Act, 1960. The Respondent awarded wrong audit classification to the Society as required under the circular of Commissioner for Co-operation & Registrar of Co-operative Societies, Maharashtra State.

In view of the above, with respect to charge relating to Credit-Deposit (CD) ratio, the Respondent was guilty of professional misconduct under Clauses (5) & (8) of Part I of the Second Schedule, and with respect to charge relating to grade assigned to

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the Society, the Respondent was guilty of Professional Misconduct falling within the meaning of Clauses (6), (7) & (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Divisional Joint Registrar, Co-operative Societies (Audit) vs. K.S. Ambardekar-Page 237 of Vol. II of the Disciplinary Cases of April, 2015 Judgement delivered on 5th October, 2013).

PART I OF THE SECOND SCHEDULE - CLAUSE (10)

2.1.10 **Clause (10):** *fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time.*

What constitutes Clients' Money

2.1.10(385) The expression "Moneys of his Client" has to be understood as moneys placed in the hands of a Chartered Accountant in connection with the discharge of his duties as Chartered Accountant and for the purposes connected therewith.

(National Insurance Co. Ltd. vs. B. Mukherjee - Page 288 of Vol.III of the Disciplinary Cases and pages 150-155 of the September, 1957 issue of the Institute's Journal-Judgement delivered on 4th July, 1957).

Failure to keep moneys in a separate Banking Account

2.1.10(386) Where a Chartered Accountant appointed as Liquidator of a Company had wrongfully and without the knowledge and consent of the complainants disposed of a machine which was duly charged in their favour.

The Council had found the Respondent guilty under Clauses (7) and (10).

Held by the High Court that Clause (7) was gross negligence in the conduct of professional duties. The liquidator in this case was not an Auditor of the Company in liquidation and was not therefore practising his Professional duties.

Similarly, Clause (10) was failure to keep moneys of his client in a separate banking account. The Company in liquidation was not a client of the complainants. Referring to the Respondents failure to keep moneys in a separate banking account, the High Court considered the evidence of the Respondent which did not give a clear picture in order to come to a final and definite conclusion. Setting aside the order of the Council, the Court reprimanded the Respondent.

CASE LAWS REFERENCER

(Sunderdas Thakersey & Bros. vs. P.K. Mukherji - Page 452 of Vol. IV of the Disciplinary Cases and pages 150-155 of September, 1965 issue of the Institute's Journal -Judgement delivered on 22nd April, 1965).

2.1.10(387) A Chartered Accountant had received large sums of money from his client for making investments and depositing Income Tax on behalf of the client. He neither made investments nor deposited the Income Tax or deposited the money in a separate Bank Account.

The Council held him guilty under this clause and also for other misconduct which was accepted by High Court.

(S. Seshadri vs. R. Srinivasan - Page 167 of Vol. VII(1) of Disciplinary Cases Council's decision dated 7th to 9th June, 1990 and High Court Judgement dated 20th January, 1998).

2.1.10(388) A Member while working as a Financial Advisor misappropriated the funds of his client by way of converting a Savings Bank account in his individual name to that of joint account with the client without his consent and fraudulently discharged 3 FDRs in the client's name.

The Council held him guilty under Clause (10) of Part I of the Second Schedule and "Other Misconduct" under Section 22 read with Section 21, which was accepted by the High court.

(Tara Pada Banerjee, Dy. General Manager, Bank of Baroda vs. B.K. Sarker - Page 15 of Vol. IX – 1 – 21(6), Council's decision dated 1st September, 2004 (245th Meeting of The Council) and High Court Judgement dated 5th May, 2006).

2.1.10(389) Where a Chartered Accountant had submitted a bogus challan of bank to prove that he had paid an amount of Rs. 6,91,323/- by cheque which was issued earlier in his favour by the client towards payment of his Long Term Capital Gain Tax.

On perusal of a certificate issued by the bank it was noted that only Rs. 91,323/- was deposited towards the Income Tax.

PART I OF THE SECOND SCHEDULE - CLAUSE (10)

Held guilty of professional misconduct falling within the meaning of Clause (10) of Part I of the Second Schedule to Chartered Accountants Act, 1949.

(T. N. Swaminathan vs. V. Kannan Re: Page 28 of Vol I Part I of Disciplinary Cases, Judgement delivered on 12th September, 2011).

PART-II OF THE SECOND SCHEDULE

Professional Misconduct in relation to Members of the Institute generally.

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he:-

2.2.1 Clause (1): *contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council:*

Services of Article Assistants / Stipend

2.2.1(390) Where a Chartered Accountant entered into an improper arrangement to permit his articled clerk to serve his articles under another Chartered Accountant in another place without disclosing those facts to the Institute and got the Articles registered knowing that the declaration and the Deed are false.

Held, he was guilty of misconduct.

(Lawrence Tellis vs. Dr. S.G. Mandre - Page 1 of Vol. I of the Disciplinary Cases and pages 25-28 of January, 1952 issue of Bulletin - Judgement delivered on 10th October, 1951).

2.2.1(391) Where a Chartered Accountant took into Articles a person who was employed in Government service and failed to inform the Council of the same and granted him a certificate of completion of service under Articles, while he did not receive adequate training.

Held that the Chartered Accountant was aware of the employment of the articled clerk and held him guilty of the charge, viz., failure to inform the Council, but on the other charge of inadequacy of training and issue of the certificate of completion, the High Court was not satisfied that he did not receive the required training.

(M. Rajamany in Re:- Page 51 of Vol. I of the Disciplinary Cases and pages 40-43 of June, 1952 issue of Bulletin - Judgement delivered on 4th April, 1952).

PART II OF THE SECOND SCHEDULE - CLAUSE (1)

2.2.1(392) Where a Chartered Accountant after signing the Form for Articleship failed to forward the same for registration as required by Regulation 64 inspite of repeated enquiries from the articed clerk and even failed to take notice of communications addressed to him in that behalf and having two other articed clerks along with the present one whose articles were not sent for registration took up a fourth articed Clerk without being entitled to do so.

Held, he was guilty for breach of Regulation 46.

(Mohan Sehvani vs. Sunderlal Fatehpuria - Page 704 of Vol.IV of the Disciplinary Cases and page 629 of May, 1968 issue of the Institute's Journal - Judgement delivered on 23rd February, 1968).

2.2.1(393) Where a Chartered Accountant, who was entitled to take three articed clerks, had already taken three such clerks, represented to a person that he had still a vacancy and induced him to enter into articles. A formal deed was executed and the premium was paid.

He subsequently cancelled the articles of the third articed clerk for irregular attendance without reference to the Institute.

Held that he had contravened the provisions of Regulation 58 and was guilty of grave misconduct.

(J.K. Ghosh in Re:- Page 106 of Vol.II of the Disciplinary Cases and pages 278-280 of January, 1956 issue of the Institute's Journal - Judgement delivered on 6th December, 1955).

2.2.1(394) Where a Chartered Accountant agreed to take a person as an articed clerk in a vacancy shortly to arise and received the premium for the purpose and made him believe, when he executed the deed of articles that he was taking him in that vacancy, while, in fact, the vacancy had been filled up by the Chartered Accountant earlier by taking another audit clerk.

The audit clerk came to know from the Institute that the deed of articles was not registered as that was forwarded with a request for entertaining an extra articed clerk.

Held that the Chartered Accountant was guilty of serious misconduct for having contravened Regulation 58.

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(A.K. Basu vs. P.K. Mukherji - Page 9 of Vol.III of the Disciplinary Cases and pages 40-43 of July, 1956 issue of the Institute's Journal Judgement delivered on 16th April, 1956).

2.2.1(395) Where a Chartered Accountant

- (i) issued false certificates to two articled clerks stating that he had refunded the entire premium, while a part of it was claimed as a set off against food and halting allowances given to them while they were working in out- stations,
- (ii) violated Regulation 62 by not refunding the premium within the time specified in the Regulation, and
- (iii) the refund of premium in installments in one case was not as specified in the certificate.

Held, he was guilty of dishonest behaviour both as regards his clients and articled clerks.

(M.N. Bhargava in Re:- Page 512 of Vol.III of the Disciplinary Cases and pages 671-673 of June, 1958 issue of the Institute's Journal - Judgement delivered on 1st May, 1958).

2.2.1(396) A Chartered Accountant took loan from a firm in which the articled clerk and his father were both interested, against the provisions of the Chartered Accountants Regulations, 1988 which prohibit taking of loan or deposit etc. from the articled clerk.

Held, the Chartered Accountant was guilty of professional misconduct under the Clause.

(M.K. Tripathi in Re:- Published at page 36 of Vol.VI(1) of Disciplinary Cases and in the May, 1980 issue of the Institute's Journal at page 1014- Judgement delivered on 26th October, 1979).

2.2.1(397) The Chartered Accountant received Rs.2,000/- by way of Security from the Complainant's father as a consideration for taking him as an articled clerk.

Held that he was guilty under the provision.

PART II OF THE SECOND SCHEDULE - CLAUSE (1)

(Virender Kumar vs. K.B. Madan - Published at page 108 of Vol.VI(1) of Disciplinary Cases - decided on 26th August, 1980).

- 2.2.1(398) A Chartered Accountant did not pay stipend to his articled clerk, in accordance with Regulation 48 of the Chartered Accountants Regulations, 1988 while to another articled clerk he was paying stipend every month.

The stipend was paid only after the articled clerk left him after working for a few months and a complaint was lodged with the Institute. The plea of the Chartered Accountant that he had an agreement with the articled clerk to pay stipend on annual basis was found to be misconceived as the same should be against the provisions of Regulation, 48.

(Radhey Mohan in Re:- Published at page 47 of Vol.VI(1) of Disciplinary Cases and in the March, 1980 issue of the Institute's Journal at pages 849-852 - Judgement delivered on 9th November, 1979).

- 2.2.1(399) A Chartered Accountant failed to pay the stipend to his articled clerk in accordance with Regulation 48 which requires that the payment should be made every month. The payment was made long after the matter was brought to the notice of the Institute.

The Chartered Accountant pleaded that Regulation 48 did not prescribe the periodicity of payment but only the rate at which stipend had to be paid and further the payment was not made in view of a letter written by an Advocate who introduced the articled clerk to the effect that the payment should not be made directly to the articled clerk but to his father whenever he desired. To other articled clerks, the payments were made in lump sum.

Held, the Chartered Accountant had contravened Regulation 48 by not making payments of stipend on a month to month basis.

(B.B. Rohatgi in Re:- Published at page 69 of Vol.VI(1) of Disciplinary Cases and in July 1980 issue of the Institute's Journal at pages 51-55 and 59 - Judgement delivered on 17th April, 1980).

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2.2.1(400) Three articled clerks of a Chartered Accountant informed the Institute that the Chartered Accountant had failed to make the payments of stipend to them every month in accordance with Regulation 48.

Held, the Chartered Accountant was guilty of professional misconduct under the Clause as he contravened Regulation 48 by not making the payment every month.

The Court rejected the two contentions put forward by the Chartered Accountant, viz.,

- (1) that the declaration filed by the articled clerks could not be regarded as information in order to justify the commencement of disciplinary proceedings
- (2) that under Regulation 48 the payments had to be made at a monthly rate and not that the payments had to be made every month.

The third contention that the payments could not be made every month or regularly because of financial stringency was also rejected particularly in view of the fact that the Chartered Accountant during the relevant period had purchased a plot of land and constructed a house at the cost of more than 1 lakh of rupees and he had in his employment throughout the relevant period a Chartered Accountant at a salary of Rs. 500/- per month.

(R.C. Gupta in Re:- Published at page 94 of Vol.VI(1) of Disciplinary Cases and pages 241-242 of the September, 1980 issue of the Institute's Journal - Judgement delivered on 21st July, 1980).

2.2.1(401) A Chartered Accountant did not pay stipend to the Articled Clerk in accordance with Regulation 32B of the Chartered Accountants Regulations, 1964 for the period during which the Article Clerk worked with him. Also the Article Clerk was asked to work in excess of the prescribed working hours in violation of Regulation 45 of the Chartered Accountants Regulations, 1964.

Held that he was guilty of professional misconduct under Clause (i) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

PART II OF THE SECOND SCHEDULE - CLAUSE (1)

(U.V. Benadikar vs. N.G. Kulkarni - Page 473 of Vol VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 6th August, 2004).

Failure to pay Stipend

2.2.1(402) In the following cases also, the Chartered Accountants were held guilty for failure to pay the monthly stipend.

C.R. Lakhia in Re:- Page 146 of Vol.VI(1) of Disciplinary cases - Judgement dated 11thMarch, 1980 of High Court and Judgement dated 10thDecember, 1980 of Supreme Court

S.C. Bhatia in Re:- Page 289 of Vol.VI(1) of Disciplinary cases - decided on 3rdMay, 1982

U.S.Lekhi in Re:- Page 304 of Vol.VI(1) of Disciplinary cases - decided on 26thJuly, 1982

M.C. Jain in Re:- Page 306 of Vol.VI(1) of Disciplinary cases - Judgement dated 22ndSeptember, 1982.

K.L. Singhee in Re:- Page 324 of Vol.VI(1) of Disciplinary cases - Judgement dated 8thOctober, 1982

B.Mohanty in Re:- Page 375 of Vol.VI(1) of Disciplinary cases - decided on April 4, 1984

G.V. Ramanaiah in Re:- Page 384 of Vol.VI(1) of Disciplinary cases - decided on 23rdOctober, 1984

R.L.P. Sinha in Re:- Page 406 of Vol.VI(1) of Disciplinary cases - Judgement dated 23rdSeptember, 1985

M.L. Surana in Re:- Page 415 of Vol.VI(1) of Disciplinary cases - decided on 1stOctober, 1985

D.K. Bohara in Re:- Page 420 of Vol.VI(1) of Disciplinary cases - decided on 1stOctober, 1985

G.S. Punjawat in Re:- Page 427 of Vol.VI(1) of Disciplinary cases - decided on 1stOctober, 1985

B.P. Waghela in Re:- Page 445 of Vol.VI(1) of Disciplinary cases - Judgement dated 20thApril, 1989

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Sharat Sekhri in Re:- Page 506 of Vol.VI(1) of the Disciplinary cases - Judgement dated 7thNovember, 1989

H.S. Venkata Rao in Re:- Page 663 of Vol.VI(1) of Disciplinary cases - Judgement dated 5thMarch, 1991

Dinesh Kumar in Re:- Page 1 of Vol. VII(1) of Disciplinary cases - Judgement dated 1stMay, 1992

P. Vishwanadham in Re:- Page 38 of Vol. VII(1) of Disciplinary cases - Judgement dated 28thAugust, 1992

K.C. Koshal in Re:- Page 195 of Vol. VII(1) of Disciplinary cases - Judgement dated 16thNovember, 1998

J.K. Batra in Re:- Page 309 of Vol. VII(1) of Disciplinary cases - Judgement dated 20thJuly, 2000 and published in June 2001 issue of the Institute's Journal at Page 66

P.D. Aggarwal in Re:- Page 320 of Vol. VII(1) of Disciplinary cases - Judgement dated 20thJuly, 2000 and published in June 2001 issue of the Institute's Journal at Page 66

J.K. Gupta in Re:- Page 406 of Vol. VII(1) of Disciplinary cases - Judgement dated 5thSeptember, 2000

I.C. Gupta in Re:- Page 395 of Vol. VII(1) of Disciplinary cases - Judgement dated 5thSeptember, 2000.

P.B. Kapoor in Re:- Page 414 of Vol. VII(1) of Disciplinary cases - Judgement dated 5th September, 2000

P.L.Tapdiya in Re:- Page 508 of Volume VIII (1) of Disciplinary Cases- Judgement dated 6thAugust, 2004

Yogesh J. Patel vs. Arvindl. Patel - Page 521 of Volume VIII (1) of Disciplinary Cases- Judgement dated 6thAugust, 2004

Signed the Financial Statement without Certificate of practice

2.2.1(403) The Respondent had signed the Balance Sheet, Profit & Loss Account and Audit Report for the Financial Year 2009-10 of the Firm without holding the Certificate of Practice (COP).

PART II OF THE SECOND SCHEDULE - CLAUSE (1)

The provision of Section 6 (1) of Chartered Accountants Act, 1949 states that “no member of the Institute shall be entitled to practice (whether in India or elsewhere) unless he had obtained from the Council a Certificate of Practice”. Thus, the Respondent had clearly violated the provisions of the Act and was prima facie guilty as admitted by him.

Held guilty of professional misconduct falling within the meaning of Clause (1) Part II of the Second Schedule to the Chartered Accountants Act, 1949.

(Sunil Grover in Re:- [PPR/100/15/DD/81/INF/15/DC/572/2017] Judgement delivered on 18th September, 2018).

Wrong Attestation for Undue Advantage

2.2.1(404) The Respondent had certified different sets of Financial Statements for four entities showing totally different financial position in every such Certified Financial Statement for facilitating the entities to obtain loan facility from the bank and for the purpose of filing Tax Returns with the Income Tax Department.

In view of the Certified Financial Statements of the assesses/auditees, it was noted that amount of opening stock, sales, closing stock, gross profit and even amount of items shown in Balance Sheets were altogether different and/ or had huge differences and he failed to clarify these huge differences.

Further, these Certified Financial Statements signed by the Respondent had no date and place etc. which was the basic requirement of SA 700 (AAS 28) “Auditor’s Report on Financial Statements”.

The Respondent was held guilty of Professional Misconduct falling within the meaning of Clauses (3) & (7) of Part I and Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

(D. Sundararajanin in Re:- [PPR/P/3/S/11/DD/ 3/S/INF/11/DC/232/ 2012]).

CASE LAWS REFERENCER

Accepted appointment in contravention of Guidelines

2.2.1(405) Where the Respondent had accepted audit while the amount of undisputed audit fee of Rs.38,606.00/- was not paid to the Complainant till date of signing of report.

As per Council Guidelines No.1-CA(7)/02/2008, dated 8th August, 2008, "A member of the Institute in practice shall not accept the appointment as auditor of an entity in case the undisputed audit fee of another Chartered Accountant for carrying out the statutory audit under the Companies Act, 1956 or various other statutes had not been paid."

Thus, the Respondent was expected not to accept the Audit of the Company till the outstanding audit fees was cleared by the Company.

Hence, the Respondent was held guilty of professional misconduct falling within the meaning of Clause (1) of Part-II of Second Schedule to the Chartered Accountants Act, 1949.

(Shyam Lal Gupta vs. Manoj Bansal Re: [PR/10/13/DD/15/13/DC/427/2014] Judgement delivered on 10th February, 2018).

2.2.1(406) Where the Respondent had accepted the Tax Audit of a Company for the Financial Year 2009-10 relevant to the Assessment Year 2010-11 without communicating and taking no objection certificate from the previous Auditor. The huge amount of audit fees and other professional charges were also pending as payable to the Complainant.

Held guilty of professional misconduct falling within the meaning of Clause (8) of Part I of the First Schedule and Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949

(Jatinder Kumar Jain vs. Sundeep Kumar Re: [PR-65/2011-DD/62/11/DC /328/14] Judgement delivered on 25th July 2016).

Description as CA and Investment Consultant / Advisor

2.2.1(407) A Chartered Accountant issued a confidential and private circular to clients where, in addition to describing himself as Chartered Accountant he also described himself as Investment Consultant

PART II OF THE SECOND SCHEDULE - CLAUSE (1)

and Public Accountant. By this circular he introduced himself to the public and private limited Companies which were accepting fixed deposits and loans through him.

Held, he was guilty of professional misconduct under Clause (1) of Part II of the Second Schedule.

(B.M. Lala in Re:- Page 95 of Vol.V of the Disciplinary Cases and page 224 of September, 1976 issue of the Institute's Journal - Judgement delivered on 5th July, 1976).

Audit vis-à-vis Indebtedness

2.2.1(408) When a Housing Loan was taken by a HUF wherein the Respondent was Karta and also a loan taken by the Respondent in joint name. Thereafter, the Respondent firm got the appointment as Central Statutory Auditors of the Complainant Bank wherein the Respondent and his family members were having indebtedness.

The Respondent gave a false declaration that neither he was a borrower nor guarantor for any loan from SBI.

He further declared that neither he nor any of his family members dependent on him or firm/company (in which he was Partner/Director) was declared wilful defaulter by any Banks or Financial institutions.

A Member of the Institute in practice shall be deemed to be guilty of professional misconduct, if he accepts appointment as auditor of a concern while he was indebted to the concern or had given any guarantee or provided any security in connection with the indebtedness of any third person to the concern, for limits fixed in the statute and in other cases for amount exceeding the prescribed limit.

The Respondent was held guilty of 'Professional Misconduct' falling within the meaning of Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

(The Chief General Manager (FRC&T) State Bank of India vs. Radhesham N. Bhattad -Page 226 of Vol. II of the Disciplinary Cases of April, 2015 Judgement delivered on 4th October, 2013).

CASE LAWS REFERENCER

2.2.1(409) The Respondent was the Statutory Auditor of various Branches of Punjab and Sind Bank in Jalandhar for the Financial Years 2008-2009 and 2009-2010 while availing credit facilities in his name and also in the name of a firm, namely, M/s. Marigold Industries, Prop. Smt. Pragati w/o the Respondent where the Respondent was a guarantor thereby violating the provisions laid down under Chapter X of the Council Guidelines, 2008.

The Guidelines provided that a Member in practice or a partner of a firm in practice or a firm shall not accept appointment as Auditor of a concern while indebted to the concern or given guarantee or provided any security in connection with the indebtedness of any third party to the concern for limits fixed in the statute and in other cases for an amount exceeding Rs. 10,000/-.

It was observed that the total Loan/Credit facilities availed by the Respondent as on the date of audit was more than Rupees seventy five lakhs.

The Respondent was held guilty of professional misconduct falling within the meaning of Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

(The Asstt. General Manager (Accounts), Punjab & Sind Bank vs. Pawan Kumar Gulati [PR-51/11-DD/50/11/DC/263/2013] Judgement delivered on 14th September, 2014).

Audit Limit Exceeded

2.2.1(410) A Chartered Accountant had conducted 468 Tax Audits U/s 44AB of the Income Tax Act i.e. more than the limit prescribed by the Council of the ICAI (Guidelines No. 1 – CA (7)/02/2008, dated 8th August, 2008, “Tax Audit Assignments under Section 44AB of the Income Tax Act, 1961).

The said Council Guidelines state that a Member of the Institute in practice shall not accept, in a Financial Year, more than the “specified number” (i.e.45) of Tax Audit Assignments under Section 44AB of the Income Tax Act 1961.

The Respondent was held guilty of professional misconduct falling

PART II OF THE SECOND SCHEDULE - CLAUSE (1)

within the meaning of Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

(Harsh Jain & others vs. Radhakanta Das Re: [PR-309/13-DD/33/2014 IDC/415/2014] Judgement delivered on 13th June 2016).

- 2.2.1(411) The Respondent had signed Tax Audit Reports for Financial Year 2012-2013 more than the limit as prescribed by the ICAI through Council Guidelines No. 1 – CA (7)/02/2008, dated 8th August, 2008, in chapter VI 'Tax Audit Assignments' under Section 44AB of the Income Tax Act, 1961.

Here, the Respondent had conducted the Tax Audit as above and signed more than 45 TARs which was in violation of Code of Ethics.

The Respondent was held guilty of Professional Misconduct falling within the meaning of Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

(Harsh Jain vs. Dharendra Nath Misra Re: [PR-308/13-DD/08/2014 /DC/414 /2014] Judgement delivered on 28th June 2017).

Auditor while engaged in business

- 2.2.1(412) Where the Respondent being an Auditor of a Company who was also a Member of Bombay Stock Exchange & National Stock Exchange and registered with SEBI for very long period. The Respondent was dealing in shares through the Complainant in his own name and also in the name of family Members.

There arose disputes between the Complainant and the Respondent about money due & payable towards such share transactions.

In the back ground of such disputes and in retaliation thereto, the Respondent adopted non-cooperative attitude towards the Complainant in respect of Audit work.

The Audit of next FY was kept incomplete by the Respondent on the false & frivolous pretext of and/or in the guise of alleged non furnishing of relevant information by the Complainant.

CASE LAWS REFERENCER

Held guilty of Professional Misconduct falling within the meaning of Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

(Varsha G. Vaidya, Director, M/s. Harsh Chandra Gutt & Co. Pvt. Ltd. vs. Shekhar K Dandekar, M/s Kolatkar & Dandekar Re: [PR-56/2011-DD/53 /2011/DC/355/2014]).

PART-II OF THE SECOND SCHEDULE - CLAUSE (2)

2.2.2 **Clause (2):** *being an employee of any company, firm or person, discloses confidential information acquired in the course of his employment except as and when required by any law for the time being in force or except as permitted by the employer;*

CASE LAWS REFERENCER

- 2.2.3 Clause (3):** *I ncludes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false;*

Supplying wrong information to the Institute

- 2.2.3(413) Where a Chartered Accountant who was employed as a manager of a firm of Registered Accountants, applied for admission as Fellow of the Institute stating that he was a partner, while he was not.

Held that the Chartered Accountant was guilty of misconduct as he had made the statement that he was a partner knowing it to be false.

(J.R. Chatrath in Re:- Page 96 of Vol.I of the Disciplinary Cases and pages 44-47 of June, 1952 issue of the Institute's Bulletin - Judgement delivered on 14thApril, 1952).

- 2.2.3(414) A Member had during the course of the hearing before Disciplinary Committee given a wrong statement duly verified and also a statement on oath knowing it to be false.

He was found guilty in terms of this clause.

(K.S. Dugar in Re:- Page 52 of Vol. VI(2) of Disciplinary Cases - Decided on 29th, 30thand 31st December, 1987).

- 2.2.3(415) There was nothing wrong in a Member being associated with a cultural or religious organisation but to use this association and facilities connected with it as a vehicle to gain professional work is not permissible.

It is undesirable on the part of a Member to pressurise for reappointment even in cases when he feels that he has been wrongly removed.

A Member had in his letter-head printed several places as branches though factually he had none and Form No. 27 filed by him had also not referred to the "offices".

PART-II OF THE SECOND SCHEDULE - CLAUSE (3)

The Member was found guilty in terms of this Clause.

(K. Bhattacharjee vs. B.K. Chakraborty - Page 482 of Vol.VII(2) - Council's decision dated 11th, 12th and 13th February, 1988).

- 2.2.3(416) Where a Chartered Accountant in his application for empanelment as auditor of branches of Public Sector Banks submitted to the Institute included the name of another Member as one of partners of his firm though in fact the said Member was not a partner of the said firm on the date of the said application.

Held that the Chartered Accountant had contravened clause (1) of Part III of the First Schedule in having submitted the application containing the particulars to the Council knowing them to be false.

(L.N. Gupta in Re:- Page 1 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 6th to 8th June, 1991).

- 2.2.3(417) Where a Chartered Accountant had submitted an application of his firm for empanelment as auditor of branches of Public Sector Banks and Statutory Central Audit and Branch Audit of Regional Rural Banks mentioning under the head "Details of disciplinary proceedings pending against any partner/proprietor" as "NIL", whereas a prima facie case against the Member existed.

Held that he had violated the provisions of clause by deliberately furnishing false information when he was fully aware that disciplinary proceedings were pending against him.

(A.K. Mehra in Re:- Page 39 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 6th to 8th June, 1991).

Wrong Information by an elected Member

- 2.2.3(418) The Respondent who was an Elected Member of a Branch of ICAI, had given a wrong declaration to the effect that he was not associated with the Institute as an Elected Member of the Council/ Regional Council / Managing Committee of the Branches of ICAI and acted as an Examiner for May 2013, November, 2013, May 2014 and November, 2014 Examinations and evaluated the answer books of Inter-mediate (IPC) Examination –Group1- Paper 4 Taxation.

CASE LAWS REFERENCER

The Respondent was held guilty of professional misconduct falling within the meaning of Clause (3) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

(Bimal Kumar Agarwalla in Re: [PPR/ 63/15/DD/57/ INF/15/DC /496/2016] Judgement delivered on 28th April, 2017).

Conflict while acting as Observer in CA Examination

2.2.3(419) On the basis of an application to empanel as an Observer of the CA Examinations, the Respondent had been assigned the task of acting as an Observer for May, 2012 as well as May, 2013 CA Examinations at an Examination Centre at Jaipur.

It was noted that the Respondent was having conflict of interest as his brother had also appeared in the stated Examination although in different centres in Jaipur. Accepting the assignment as an observer in CA Examination in such circumstances was in contravention of the Guidelines issued by the Institute for acting as an observer.

The Respondent was held guilty of professional misconduct falling within the meaning Clauses (1) & (3) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

(Pulkit Goyal in Re:- [PPR/36/C/13/DD/47/INF/14/DC/531/2017] Judgement delivered on 7th January, 2019).

2.2.3(420) In spite of repeated reminders a Chartered Accountant failed to reply to the letters of the Institute asking him to confirm the date of leaving the services by the Paid Assistant.

Held, the Chartered Accountant was guilty of professional misconduct under the Clause.

(A. Umanath Rao in Re:- Page 998 of Vol.IV of the Disciplinary Cases - decided on 11th and 12th January, 1965).

CA being Proprietor / Director / Manager in Business Firm

2.2.3(421) Where a Chartered Accountant had not disclosed to the Institute at any time about his engagement as a Proprietor of a non-Chartered Accountants' firm while holding Certificate of Practice.

PART-II OF THE SECOND SCHEDULE - CLAUSE (3)

He had also not furnished particulars of his engagement as a Director of a Company despite various letters of the Institute which remained unreplied.

Held that he was guilty under clause (11) of Part I and clauses (1) and (3) of Part III of the First Schedule.

(P.S. Rao in Re:- Page 110 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 9th to 11th April, 1992).

- 2.2.3(422) A Chartered Accountant had been in full-time employment in a Company besides holding Certificate of Practice without obtaining Institute's permission and in the bank empanelment form, he had given declaration to the effect that he was not devoting any time to any occupation/vocation/business etc. other than the profession of Chartered Accountants.

He was held guilty for violation of Clause (11) of Part I and Clause (1) of Part III of the First Schedule. The Council ordered that his name be removed from the Register of Members for a period of six months.

(N.K. Gupta in Re:- Page 1 of Volume VIII(2) of Disciplinary Cases Council's decision dated 1st to 4th July, 1998).

- 2.2.3(423) Two Members, while holding Certificate of Practice, had been in full time employment with an Insurance Company without obtaining the Institute's permission to be so engaged. They also did not disclose the particulars of their full-time salaried employment at the time of furnishing particulars in the prescribed Form for Registration of the Atitled Assistant.

They were held guilty for violation of Clause (11) of Part I and Clause (1) of Part III of the First Schedule.

(C.M. Mehrotra in Re:- Council's decision dated 11th to 13th October, 1999, Page 76 of Volume VIII(2) of Disciplinary Cases and A.P. Gupta in Re:- Council's decision dated 15th to 17th December, 1999, Page 134 of Volume VIII(2) of Disciplinary Cases).

CASE LAWS REFERENCER

2.2.3(424) A Chartered Accountant claimed to be in full-time practice while applying for empanelment as bank branch auditor while he was in part-time employment with a private limited Company.

Since he had submitted the particulars to the Council knowing them to be false, the Council held him guilty under Clause (1) of Part III and decided that his name be removed from the Register of Members for a period of 15 days.

(R.K. Seth in Re:- Page 660 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 16th to 18th January, 1997).

2.2.3(425) A Chartered Accountant, inspite of his being in employment as Manager (F&A) with a Company from 9 A.M. to 2 P.M. and devoting 30 hours per week in the said employment, had shown his main occupation to be in full-time practice, in the Employment Form for bank branch audits.

He was held guilty for violation of Clause (1) of Part III of the First Schedule for not giving the full particulars truthfully in his application.

(H.K. Gupta in Re:- Council's decision dated 15th to 17th December, 1999 - Page 110 of Volume VIII(2) of Disciplinary Cases).

2.2.3(426) The charges against the Respondent were that

- (i) while being in full-time service, he had falsely informed the Institute that he had left the service,
- (ii) had offered the Complainant the articleship which was not accepted by the Institute, since he was not entitled to train any Articled Assistant, in having not completed three years of continuous service, resulting in the Complainant spoiling about four months of articleship training, and
- (iii) he did not pay any stipend to the Complainant for training which was not recognised by the Institute.

The Council held him guilty for violation of Clause (1) of Part III of the First Schedule and ordered that his name be removed from the Register of Members for a period of three months.

PART-II OF THE SECOND SCHEDULE - CLAUSE (3)

(Sunil Patni vs. B.L. Gujar – Council's decision dated 1st to 4th July, 1998 - Page 11 of Volume VIII(2) of Disciplinary Cases).

2.2.3(427) The Respondent, while in employment with a Company wrote a letter to the Institute that he had resigned from the Company, which was false and misleading.

Held that the Respondent was inter alia guilty of professional misconduct under the Clause.

(Managing Director, A.P. Handicrafts Dev. Corpn. Ltd. vs. A. Bhimeswara Swamy – Page 590 of Vol. IX – 2A – 21(4) of Disciplinary Cases – Council's decision dated 7th to 8th & 24th to 25th April, 2003).

CASE LAWS REFERENCER

2.2.4 Clause(4): *defalcates or embezzles moneys received in his professional capacity.*

2.2.4(428) The following case has been decided under clause (10) of part I of the second Schedule. However, also incorporated here since appearing to be relevant for this clause also.

A Member while working as a financial advisor misappropriated the funds of his client by way of converting a Savings Bank account in his individual name to that of joint account with the client without his consent and fraudulently discharged 3 FDRs in the client's name.

The Council held him guilty under Clause (10) of Part I of the Second Schedule and "Other Misconduct" under Section 22 read with Section 21, which was accepted by the High court.

(Tara Pada Banerjee, Dy. General Manager, Bank of Baroda vs. B.K. Sarker - Page 15 of Vol. IX – 1 – 21(6), Council's decision dated 1st September, 2004 (245th Meeting of the Council) and High Court Judgement dated 5th May, 2006).

PART III OF SECOND SCHEDULE

Other Misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months.

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