Judgement In Disciplinary Matter

In the High Court of Gujarat, Ahmedabad
R.K. Abichandani, and A.L. Dave, JJ.

Chartered Accountant Reference No. 1 of 1991/DOD14.2.2003

In the matter of the Council of the Institute of Chartered Accountants of India New Delhi

Vs.

Shri. P.C. Parekh, Chartered Accountant

R.K. Abichandani, J.

1. This Reference is made under Section 21(5) of the Chartered Accountants Act, 1949, by which the Council has forwarded the case to this Court after finding the respondent, who is a member of the Institute of Chartered Accountants of India, guilty of misconduct other than the misconduct as is referred to in sub-section (4) of Section 21 of the Act, and recommended removal of the respondent's name from the Register of members of the Institute of Chartered Accountants of India for a period of six months.

2. The Charge levelled against the respondent in respect of the alleged misconduct reads as under:

> "The Respondent had, authored a book entitled '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 the Chartered Accountants are experts in helping in 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. It appears that the conduct of the respondent in writing such a book was unbecoming of a chartered accountants. Thus, the respondent had committed professional and/or other misconduct under Sections 21 and 22 of the Chartered Accountants Act, 1949."

3. The matter was placed before the Disciplinary Committee for holding an inquiry against the respondent, and the Disciplinary Committee, after giving an opportunity of hearing to the respondent, found that the respondent's argument that he had only described practices followed in the generation of unaccounted money cannot be accepted. The Committee observed that a Chartered Accountant as a member of the institute, has a role to play in the society and is required to observe high standards of integrity and professional ethics and is expected to discharge his professional obligation to discourage tax evasion and not to publicise methods of tax evasion which have the effect of educating the public. It was found that, despite the respondent's professed intention, the actual effect of the book authored by him was to educate the public as to how to evade tax and create unaccounted money. It was found that the respondent's conduct in publicising methods of tax evasion as narrated in the said book was unbecoming of a member of the Institute. The Committee negatived the argument that the Council

cannot sit in judgement over the merits and demerits of the contents of the book authored by a member. It was held by the Committee that the matter was referred to the respondent on 28th October 1985 and therefore, there was no delay on the part of the Institution in initiating the proceedings. The Committee concluded that, in its opinion, the respondent was guilty of "other misconduct" under Section 21 read with Section 22 of the Chartered Accountants Act, 1949. The Committee consisted of a President and two members.

4. The report of the Disciplinary Committee placed before the Council, which consisted of seventeen members (excluding the members of the Committee), was taken up for consideration in its 144th meeting on 8th June, 1990. The Council, after considering the written submissions of the respondent and the report of the Disciplinary Committee, reached the conclusion that the report of the Disciplinary Committee was based on correct and cogent reasons and deserved to accepted. The Council rejected the contention that the Disciplinary Committee, in its interpretation of misconduct, had gone beyond the scope of its inquiry. Taking note of the earlier order made by the Court on 11.11.1987 about the fact that there was no question of violation of the petitioner's right to freedom of speech and expression, the Council rejected that contention.

5. The proceedings that took place before the Disciplinary Committee which were minuted are on record. The book authored by the respondent and the relevant edition of the Code of Conduct have been supplied to the Court by the learned counsel for the respondent and xerox copies thereof are also placed on record. We have been taken through the book in detail by both the sides and also the material brought on record during the inquiry. The stand taken by the respondent including his answers to the questions and material put to him during the inquiry were referred to in great detail by both the sides.

6. There is no dispute about the fact that the book entitled "Tax - Planning for Secret Income (Black Money)" was authored by the respondent, who is a Chartered Accountant and a member of the Institute. The book was first published in January 1982 and its second edition was published in October 1982. Copyright was reserved with the respondent. The book was published by Shri H.P. Parekh, who is the son of the respondent. It was printed by Shri B.P. Parekh, who is also the son of the respondent. These facts appear from the book and are not disputed. On the very first page, it is announced that it is: "A Book indispensable to every Businessman, Industrialist, Government Servant, Private employee, Contractor & Engineer, Government Minister, Politician, Limited Company, Partnership, Doctor, Lawyer, Actor, Film Wallahs, Tax Practitioner Chartered Accountant and Indian or Foreign citizen – IN NON-TECHNICAL & EASILY UNDERSTANDABLE ENGLISH – (Income-tax; Wealth-tax; Gift-tax: Estate Duty)". The book is entitled "Tax-Planning for Secret Income (Black Money)", below which, it is written, "Tax Management of Black Money" on the first page, where the contents of the book are shown in brief. Below that page, the name of the respondent is written, with his degrees and designation of Chartered Accountant.

7. The learned Senior Counsel appearing for the Institute contended that the Council has found the respondent guilty of misconduct other than the professional misconduct on the basis of the material on record gathered during the inquiry conducted by the Disciplinary Committee, which has been statutorily constituted. The Council has upheld the finding of the Disciplinary Committee that, in publicising methods of tax evasion as narrated in the book, the respondent's conduct was unbecoming of a member of the Institute. It also upheld the finding of the Committee that the argument of the respondent that he had only described the practices followed in the generation of unaccounted money, could not be accepted, and that the effect of the book was to educate the public as to how to evade tax and create unaccounted money. The learned Senior Counsel argued that, on reading the book, it becomes clear that these findings against the respondent are justified and that the book was not intended merely to expose the wrongs of tax evaders but it provided direct and indirect suggestions as to the manner in which taxes could be evaded. If the book was intended only to expose the wrong doers, it would not have given details of the methods that can be

employed for the purpose of tax evasion with illustrations and drafts of documents which were to be fabricated and the false entries that were to be made for the purpose of effective tax evasion. It was contended that the professional body was entitled to take disciplinary action against the member who acted against professional ethics violating the principle of integrity and truthfulness. He referred to the Code of Conduct issued by the Institute of Chartered Accountants of India (relevant edition), pointing out that the members of the Institute were required to maintain high standards of integrity and professional behaviour. He also referred to the universally recognised principles of ethics which were adopted in the profession of accountancy, including by the Institute, and submitted that the expression "other misconduct" appearing in Section 21(1) would embrace every conceivable misconduct which may not have been scheduled as a professional misconduct. It was also submitted that there was no unrestricted fundamental right of speech or expression, and that, if a member wanted to remain a member of the Institute, he was bound to abide by the behavioural rules laid down for such members. It was submitted that the disciplinary action was not meant to curb the fundamental right of speech and expression. It was submitted that the Institute and the Council were statutory bodies and the Council was invested with statutory powers of taking disciplinary action against the members also in respect of "other misconduct" and the conduct of the respondent in writing a book which had the effect of teaching the tax payers (who were willing to adopt unfair means) and methods of evading taxes in various fields and such a conduct which was not in consonance with the Code of Conduct issued by the Institute and the universally recognised principle of ethics of integrity and truthfulness was clearly "other misconduct", which warranted disciplinary proceedings against the respondent.

7.1 In support of his contentions, the learned Senior Counsel relied upon the following decisions:

(a) The decision of the Supreme Court in Council of the Institute of Chartered Accountants v. B. Mukherjea, reported in AIR 1958 SC 72, which was rendered in the context of the provisions of Sections 21 and 22 of the said Act, was cited for the proposition that the misconduct alleged on the part of the Chartered Accountants may not attract any of the provisions in the Schedule and may not, therefore, be regarded as falling within the first part of Section 22; but if the definition given by Section 22 itself purports to be an inclusive definition and as the section itself in its latter portion specifically preserves the larger powers and jurisdiction conferred upon the Council to hold inquiries by Section 21 sub-section (1), it would not be right to hold that such disciplinary jurisdiction can be invoked only in respect of conduct falling specifically and expressly within the inclusive definition given by section 22. Section 8 sub-section (v) and (vi) support the argument that the disciplinary jurisdiction can be exercised against Chartered Accountants even in respect of conduct which may not fall expressly within the inclusive definition contained in Section 22. It was held that if a member of the Institute was found, *prima facie*, guilty of conduct which, in the opinion of the Council, renders him unfit to be a member of the Institute, even though such conduct may not attract any of the provisions of the Schedule, it would still be open to the Council to hold an inquiry against the member in respect of such conduct and a finding against him in such an inquiry would justify appropriate action being taken by the High Court under Section 21(3), (emphasis added). (See paragraph 5 of the judgement).

(b) The decision of the Supreme Court in the matter of Mr. "P", an Advocate, reported in AIR 1963 SC 1313, which was rendered in context of misconduct of an advocate was cited to point out that the Supreme Court, in paragraphs 7 and 8 of its judgement, held that wherever conduct proved against an Advocate is contrary to honesty, or opposed to good morals, or is unethical, it may be safely be held that it involves moral turpitude. The Supreme Court observed that, in dealing with the matter of professional propriety, we cannot ignore the fact that the pro-

fession of law is an honourable profession and it occupies a place of pride in the liberal professions of the country. Any conduct which makes a person unworthy to belong to the noble fraternity of lawyers or makes an advocate unfit to be entrusted with the responsible task of looking after the interests of the litigant must be regarded as conduct involving moral turpitude. It was held that: "An Advocate invites disciplinary orders not only if he is guilty of professional misconduct; but also if he is guilty of other misconduct; and this other misconduct which may not be directly concerned with his professional activity, as such, may nevertheless be of such a dishonourable or infamous character as to invite the punishment due to professional misconduct itself". It was held that the advocate on record acted with gross negligence in the matter of taxation of costs of his client in the appeal filed in the Supreme Court and such conduct amounted to professional or other misconduct within the meaning of that expression in the rules of Order IV-A of the Supreme Court Rules. The name of the advocate was ordered to be removed from roll for five years.

(c) The decision of the Supreme Court in N.G. Dastane v. Shrikant S. Shivde, reported in AIR 2001 SC 2028, which was rendered in context of the provisions of Section 35 of the Advocates Act, 1961, by which the State Bar Council was empowered to refer the case for disposal to its disciplinary committee when it had reason to believe that any advocate on its roll has been guilty of "professional or other misconduct", was cited to point out that, it was held by the Supreme Court; "The collocation of the words "guilty of professional or other misconduct" has been used for the purpose of conferring power on the disciplinary committee of the State Bar Council. It is for equipping the Bar Council with the binocular as well as whip to be on the qui vive for trading out delinquent advocates who transgress the norms or standards expected of them in the discharge of their professional duties. The central function of the legal profession is to help promotion of administration of justice. Any misdemeanor or misdeed or misbehaviour can become an act of delinquency, if it infringes such norms or standards, and it can be regarded as misconduct". The Supreme Court held that an advocate abusing the process of court is guilty of the misconduct.

(d) The decision of the Supreme Court in R.D. Saxena v. Balaram Prasad Sharma, reported in AIR 2000 SC 2912 was cited to pointed out that, it was held in paragraph 19 of the judgement that the word "misconduct" used in the expression "misconduct, professional or otherwise" in Section 35 of the Advocates Act was a relative term and it had to be considered with reference to the subject matter and context herein such term occurs. It literally means wrong conduct or improper conduct.

(e) The decision of the supreme Court in P. Balakotaiah v. Union of India, reported in AIR 1958 SC 232 was cited for the proposition that, even if a person had a right to form association under Article 19(1)(c), there would not be a fundamental right to continue in employment by the State and when their (i.e. members of the association) services are terminated by the State, they cannot complain of the infringement of any of their constitutional right when no question of violation of Article 311 arises.

(f) The decision of the Supreme Court in M.H. Devendrappa v. The Karnataka State Small Industries Development Corporation, reported in AIR 1998 SC 1064 was cited for the proposition that the Code of Conduct required to be observed with proper discharge of functions by a government servant cannot be flouted in the name of other freedoms. The Court was concerned with Rule 22 of the Service rules under which the employer was entitled to take disciplinary action. That rule was not meant to curtail freedom of speech or expression or the freedom to form association or union, but it was clearly meant to maintain discipline within the service to ensure efficient performance

of duty by the employees of the Corporation and to protect the interest and prestige of the Corporation. The Supreme Court held that, a rule which is not primarily designed to restrict any of the fundamental rights, cannot be called in question as violating Article 19(1)(a) or 19(1)(c) of the Constitution. (See paragraph 13 of the judgement).

(g) The decision of the Supreme Court in Jamuna Prasad Mukhariya v. Lachhi Ram, reported in AIR 1954 SC 686, which was rendered in context of the provisions of Sections 123(5) and 124(5) of the Representation of the Peoples Act and Articles 245(1) of the Constitution, was cited to point out that, in paragraph 5 of the judgement, the Supreme Court negative the contention that Article 245(1) prohibited the making of laws which violate the Constitution, and that the impugned sections interfered with a citizen's fundamental right to freedom of speech. It was held that the provisions did not stop a man from speaking, but they merely prescribe conditions which must be observed, if he wanted to enter the Parliament. The Court held: "The right to stand as a candidate and contest an election is not a common law right. It is a special right created by the statute and can only be exercised on the conditions laid down by the statute. The Fundamental Rights chapter has no bearing on a right like this created by statute. The appellants have no fundamental right to be elected members of Parliament. If they want that they must observe the rules. If they prefer to exercise their right of free speech outside these rules, the impugned sections do not stop them. We hold that these sections are '*intra vires*".

(h) The decision of the Supreme Court in Sakhawant Ali v. State of Orissa, reported in AIR 1955 SC 166, was cited for the proposition that there is no fundamental right for any person to stand as a candidate for election to the Municipality and that the only fundamental right which is guaranteed is that of practising any profession or carrying on any occupation, trade or business. The Court held; "if he wants to stand as a candidate for election, then it is but proper that he should divest himself of his paid brief on behalf of the municipality or the brief against the municipality in which event there will be certainly no bar to his candidature. Even if it be taken as a restriction on his right to practice his profession of law, such restriction would be a reasonable one and well within the ambit of Article 19 Clause 5. Such restriction would be a reasonable one to impose in the interests of the general public for the preservation of purity in public life."

(i) The decision of the Supreme Court in Railway Board v. Niranjan Singh, reported in AIR 1969 SC 966 was cited for the proposition that there is no fundamental right for anyone to hold meetings in government premises. The Court held in paragraph 13 of the judgement; "The fact that the citizens of this country have freedom of speech, freedom to assembly peaceably and freedom to form associations or unions does not mean that they can exercise those freedoms in whatever place they please. The exercise of those freedoms will come to an end as soon as the right of someone else to hold his property intervenes. Such a limitation is inherent in the exercise of those rights. The validity of that limitation is not to be judged by the tests prescribed by Sub-Articles (2) and (3) of Article 19. In other words, the contents of the freedoms guaranteed under Clauses (a), (b) and (c), the only freedoms with which we are concerned in this appeal, do not include the right to exercise them in the properties belonging to others."

(j) The decision of the Pepsu High Court in Jang Bahadur Sant Lal v. The Principal, Mohindra College, reported in AIR 1951 SC 59 was cited for the proposition that, apart from the qualifications enumerated in Clauses 2 to 6 of Article 19, the rights guaranteed by Clause (1) are also subject to the qualification that the exercise of these rights by a citizen should not infringe the rights of others. The Court held that where a student of a college issued a handbill and therein tried to make out that the authorities

were not only antinationals, but selfish, evil-minded, morally degenerate and given to intrigue, subversive and heinous activities and victimization of innocent students etc. etc., the writing not only offended against the discipline but against the ordinary law of the land.

(k) The decision of the Bombay High Court in Indulal K. Yagnik v. State, reported in AIR 1960 BOM. 399 was cited for the proposition that, inducing a police officer of whatever grade, including a constable, to withhold his services or to commit breach of the rules of discipline would be incitement to commit an offence, and therefore, the restrictions imposed against the right of freedom of speech from inciting an offence spoken of in section 145 of the Bombay Police Act, 1951 would be well protected by clause (2) of Article 19 of the Constitution. (See paragraph 20 of the judgement).

(l) The decision of the Mysore High Court in H.A.K. Rao v. Council of the Institute of Chartered Accountants of India, reported in AIR 1965 MYSORE 112 was cited for the proposition that, failure to conform to the statutory requirements may lead to disciplinary action being taken against the concerned member, and that may result in interference with his right to carry on as a Chartered Accountant; but this result is merely incidental to his being a member of the institute. If a member does not wish to conform to the requirements of the institute, it would be open to him to relinquish his membership of the institute. The Court relied upon the decision of the Supreme Court in Jamuna Prasad Mukhariya (supra) and Sakhawant Ali (supra), while coming to this conclusion.

8. The learned counsel appearing for the respondent argued that the misconduct alleged against the respondent was not a professional misconduct as enumerated in the Schedules to the Act, but it amounted to "other misconduct" which was required to be notified under Part II (2)(b) of the Schedule. It was submitted that there was no embargo against writing books and therefore, mere writing of such a book was not a misconduct. Moreover, there was no notification issued by the Council under Part II(2)(b) of the Schedule declaring writing of any particular type of book as a misconduct. It was submitted that disciplinary proceedings under the Act were of a quasi-criminal nature and therefore, unless the misconduct was notified, a member cannot be charged for such misconduct. It was further contended that the intention of the respondent in writing the book was only to inform the public about things which were happening in the society so that they become aware of such instances and understand the consequences thereof. It was argued that there was nothing in the book which was likely to create an impression that the Chartered Accountants were expert in creating black money, nor was there anything in it which would lower the image of the profession. It was, therefore, submitted that there was no basis for proceeding against the respondent on these charges. The learned counsel further contended that the disciplinary authority had gone beyond the charges levelled against the respondent by stating that, the effect of this writing was to educate the public as to how to evade the tax and how to create black money. It was submitted that the respondent had done nothing which could be termed as educating the public. He then argued that the respondent had a fundamental right of speech and expression to inform the public about the things that were happening in the society, even if the writing may not have been palatable to a section of the public. He submitted that the tenor of the book does not go to suggest that the Chartered Accountants were helping to create black money, nor was any advice given by the author in that regard. He quoted various portions of the book (pages 48, 50, 60, 70, 80 etc.) for pointing out that the author had referred to the legal provisions and stated that the tax evasion was illegal. It was submitted that there was nothing in the book that would show that he advocated tax evasion. It was further argued that the Council had not given any detailed reasons for its findings and had merely agreed with the reasoning of the Disciplinary Committee and therefore, the impugned action was vitiated. It was also submitted that there was delay in initiation of the proceedings against the respondent which showed that the authority was biased against

the respondent. On the issue of punishment, the learned counsel submitted that the proposed penalty of removing the name of the respondent from the register for a period of six months was excessive and even if the respondent was found to be guilty, "reprimand" would serve the interest of justice in the facts and circumstances of the case, particularly when a long time of about twenty years has elapsed since the book was published.

8.1 In support of his submissions, the learned counsel relied upon the following decisions:

(a) The decision of the Supreme Court in A.L. Kalra v. The Project and Equipment Corporation of India Ltd., reported in AIR 1984 SC 1361 was cited to point out that the Supreme Court, in context of Rules 4 and 5 of the Project and equipment Corporation of India Ltd. Employees' (Conduct, Discipline and Appeal) Rules (1975), held that it cannot be left to the vagaries of the management to say ex post facto that some act of omission or commission nowhere found to be enumerated as misconduct in the relevant standing order is nonetheless a misconduct for the purpose of imposing a penalty. Rule 4(1) of those Rules provided that every employee shall at all times maintain absolute integrity and do nothing which is unbecoming of a public servant. Rule 5 prescribed various misconducts for which action can be taken against an employee governed by those rules. The Supreme Court held that, what in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct. It will be noticed that the decision is rendered in context of the statutory requirement that the misconduct should be enumerated.

(b) The decision of the supreme court in M/s Glaxo Laboratories (I) Ltd. v. Presiding Officer, Labour Court, Meerut, reported in AIR 1984 SC 505, to point out that the Supreme Court negatived the contention that the expression "misconduct" prescribed in Standing Order 23 would comprehend any misconduct irrespective of the fact whether it is enumerated in Standing Order 22 or not. It noted that Section 3(2) of the Industrial Employment (Standing Orders) Act (20 of 1946) requires the employers in an industrial establishment while preparing draft standing orders to make provision in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and that therefore, the statutory obligation upon the employer to draw up with precision those acts of omission and commission which in his industrial establishment would constitute misconduct. In this context, it was held that, in the face of the statutory provision, it would be difficult to entertain the submission that some other act of omission which may be misconduct though not provided for in the standing order would be punishable under standing order 23.

(c) The decision of the Supreme Court in Rasiklal Vaghajibhai Patel v. Ahmedabad Municipal Corporation, reported in AIR 1985 SC 504 was cited for the proposition that, it is a well settled canon of penal jurisprudence that removal or dismissal from service on account of the misconduct constitutes penalty in law – that the workman sought to be charged for misconduct must have adequate advance notice of what action or what conduct would constitute misconduct. The Supreme Court followed its earlier decision in M/s Glaxo Laboratories (I) Ltd. (supra) for this proposition.

(d) The decision of the Supreme Court in Life Insurance Corporation of India v. Prof. Manubhai D. Shah, reported in AIR 1993 SC 171 was cited for the proposition that it was manifest, from Article 19(2) that the right conferred by Article 19(1)(a) was subject to imposition of reasonable restrictions in the

interest of, amongst others, public order, decency or morality or in relation to defamation or incitement to an offence. The Supreme Court held that it had always placed a broad interpretation on the value and content of Article 19(1)(a), making it subject only to the restrictions permissible under Article 19(2). Efforts by intolerant authorities to curb or suffocate this freedom have always been firmly repelled. More so when public authorities have betrayed autocratic tendencies. (See paragraph 10 of the judgement).

(e) The decision of the Supreme Court in Institute of Chartered Accountants of India v. L.K. Ratna, reported in AIR 1987 SC 71 was cited for the proposition that the Council must state the reasons for its finding that a member is guilty of misconduct. (See paragraph 30 of the judgement).

(f) The decision of the Supreme Court in Institute of Chartered Accountants of India v. P.K. Mukherjee, reported in AIR 1968 SC 1104 was cited to point out that, in a case where a Chartered Accountant was found guilty of misconduct, the Supreme Court, while observing that, in its opinion, the conduct of the member was wholly unworthy of a Chartered Accountant who was expected to maintain a high standard of professional conduct, and that proper punishment would have been to remove his name from the Register for a limited period, awarded punishment of severe reprimand for his misconduct under Section 21(2) of the Act on the ground that the proceedings had been pending against him for a long time.

(g) The decision of the Supreme Court in H.V. Panchaksharappa v. K.G. Eshwar, reported in AIR 2000 SC 3344 was cited for the proposition that a charge of professional misconduct is in the nature of a quasi-criminal charge, and that such a charge required to be proved in the manner of proving a criminal charge and the nature of proof required to prove it, is that of beyond a reasonable doubt.

(h) The decision of the Calcutta High Court, in Pramatha Nath v. The State, reported in AIR 1951 Cal. 581 was cited to point out that, it was held by the Calcutta High Court that an advice was not necessarily abetment. In order that there may be abetment, there must be either instigation or intentional aiding or engaging in a conspiracy as laid down in Section 107 of the Penal Code. General advice is far too vague an expression to prove abetment under the Penal Code. On facts, it was held that there was no evidence what the advice was.

(i) The decision of the Allahabad High Court in Nazir Ahmad v. Emperor, reported in AIR 1927 Alh. 730(2) was cited to point out that, in a case where there is nothing to show, that when he uttered the remarks noted in the judgement, he ever intended thereby to induce applicant and others to further beat the complainant, the Court held that the sentence of one month's rigorous imprisonment would meet the ends of justice.

(j) The decision of the Patna High Court in Raghunath Dass v. Emperor, reported in AIR 1920 Patna 502 was cited for the proposition that instigation necessarily indicates some active suggestion, or support or stimulation to the commission of the act itself, and advice can become an instigation only if it is found that it was an advice which was meant actively to suggest or stimulate the commission of an offence. Advice per se cannot necessarily be instigation within the meaning of Section 107 Clause (1)-IPC.

(k) The decision of the Supreme Court in L.D. Jai Shinghani v. Naraindas M. Punjabi, reported in AIR 1976 SC 373 was cited for the proposition that, in a case involving possible disbarring of the Advocate concerned, the evidence should be of a character which should leave no reasonable doubt about his guilt.

9. The historical development of the organized profession of Chartered Accountants shows that, having regard to the functions of the public accountants which were of great and increasing importance, a number of societies came to be constituted of accountants aiming at "the elevation of the profes-

sion of public accountants as a whole and the promotion of their efficiency and usefulness by compelling observance of strict rules of conduct as a condition of membership and by setting up a high standard of professional and general education and knowledge and otherwise". (See Royal chartered of the 11th may 1880 incorporating the Institute of Chartered Accountants in England and Wales having regard to its laudable intention).

9.1 The International Federation of Accountants, of which Institute of Chartered Accountants of India and Institute of Cost & Works Accountants of India are members, "recognizing the responsibilities of the accountancy profession as such, and considering its own role to be that providing guidance, encouraging continuity of efforts, and prompting harmonization, has deemed it essential to establish an international Code of Ethics for Professional Accountants to be the basis on which the ethical requirements (code of ethics, detailed rules, standards of conduct, etc.), for professional accountants in each country should be founded". The International Code is intended to serve as a model on which to base the national ethical guidance. It sets standards of conduct for professional accountants and states the fundamental principles that should be observed by them. The International Code of Ethics for professional accountants is established on the basis of that the objectives and fundamental principles are equally valid for all professional accountants, whether they be in public practice, industry, commerce, public sector or education.

9.2 A hallmark of any noble profession is adherence by its members to a common code of values and conduct established by its administrative body, including maintaining an outlook which is essentially objective and acceptance of a duty to the society as a whole. Acceptance of its responsibility to public is a distinguishing mark of a procession. A large section of public relies on the objectivity and integrity of professional accountants to maintain the orderly functioning of commerce. Such reliance imposes a public interest responsibility on the accounting profession. Professional accountants have an important role to play in the society. Investors, creditors, employees and other sectors of the business community as well as the government and the public at large rely on professional accountants for sound financial accounting and reporting, effective financial management and competent advice on a variety of business and taxation matters. The attitude and behaviour of the professional accountants in providing such services have an impact on the economic well being of their community and the country.

9.3 It is in the best interest of the worldwide accountancy profession to make known to the users of the services provided by the professional accountants that they are executed at the highest level of performance and in accordance with the ethical requirements that strive to ensure such performance. This is why the code of ethics keeps in mind the public service and user expectations of ethical standards of professional accountants, to keep up to the expected standards.

9.4 Thus, the universally recognized objectives of accountancy profession are to work to the highest standards of professionalism, to attain the highest levels of performance and generally to meet the public interest requirement. These objectives require four basic needs to be met, namely, (i) credibility in information and information systems, (ii) professionalism, (iii) quality of services and confidence of users of professional service of professional accountants; and, (iv) a framework of professional ethics which governs the provision of those services.

10. In order to achieve the objectives of the accountancy profession, professional accountants have to observe a number of prerequisites of fundamental principles, which are, integrity, objectivity, professional competence and due care, respect confidentiality of information, good professional behaviour and observance of high technical and professional standards. Professional integrity implies not mere honesty but fair dealing and truthfulness. The principle of objectivity imposes an obligation on all professional accountant to be fair, intellectually honest and free of conflicts of interest. Professional

accountants should therefore protect the integrity of their professional services and maintain objectivity in their judgement. A professional accountant should act in a manner consistent with the good reputation of the profession and refrain from any conduct which might bring discredit to the profession.

10.1 A professional accountant rendering professional tax services is entitled to put forward the best position in favour of a client, or an employer, provided the service is rendered with professional competence, does not in any way impair integrity and objectivity, and is in the opinion of the professional accountant consistent with the law. The professional accountant is under an obligation to take necessary steps to ensure that the tax return is properly prepared on the basis of the information received. He should not be associated with any return or communication in which there is a reason to believe that it contains a false or misleading statement, contains statements or information furnished recklessly or without any real knowledge of whether they are true or false, or omits or obscures information required to be submitted and such omission or obscurity would mislead the revenue authorities. These professional standards are imperative and arise from the fundamental principle that a professional accountant should be straight forward and honest in performing professional services. [See Part A. Section 1 Clause (1) and Section 5 Clauses (5.1) and (5.5) of the Code of Ethics for Professional Accountants (IFAC)].

10.2 Even the terms of employment of the employed members cannot require them to be implicated in any dishonest transaction. If they are instructed or encouraged to engage in any activity which is unlawful they are entitled and required to decline. They should not be party to falsification of any record or knowingly or recklessly supply any information or make any statement which is misleading, false or deceptive in any material particular.

11. Professional accountants may encounter in the course of their work offences, such as, theft, obtaining undue gain by deception, false accounting and suppression of documents; fraud, forgery and offences in relation to companies; perjury and offences under the Prevention of Corruption Act; bankrupancy or insolvency offences, frauds on creditors or customers, false trade decriptions, and offences arising out of relations between employers and employees; conspiracy, soliciting or inciting to commit crime and attempting to commit crime; offences in relation to direct and indirect taxation (including value added tax and excise duties). A professional accountant cannot be an accessory to the commission of such offences nor can he incite the taxpayers to adopt illegal means to evade taxes when it is his professional duty to make clear to the person engaging him, the effect of his professional obligation of integrity which requires that if there is no full disclosure, he should indicate this in any accounts or reports that he prepares.

11.1 The Chartered Accountant himself commits criminal offence - (a) if he incites anyone to commit a criminal offence whether or not his advice is accepted, or (b) if he helps of encourages anyone in the planning or execution of a criminal offence which is committed, or (c) if he agrees with anyone to prevent or obstruct the course of justice by concealing, destroying or fabricating evidence or by misleading the authorities by a statement which he knows to be untrue, or (d) if with a view to obtaining property or to obtaining for himself or another pecuniary advantage he deceives any person, either making a statement which he knows to be false or, in certain circumstances, by making a statement but suppressing matters relevant to a proper appreciation of its significance.

12. The Code of Conduct issued by the Institute of Chartered Accountants of India records that it is necessary for the Institute "to guide and compel the members to live upto these high standards. The prestige and confidence enjoyed by a profession, to a great extent, is dependent on strictness and scrupulosity with which such a Code is interpreted and not necessarily by legislation or regulations as much by self-discipline". It is also stated that the Council in addition to "professional misconduct" as defined in Section 22 of the Act has been given power to inquire into the conduct of any member of the institution under circumstances other than those specified in the

Schedules to the Act. The Council is not debarred from inquiring into the conduct of any member of the institute under any other circumstances, as asserted in the Code. This aspect is fully borne out by the expression "professional or other misconduct" occurring in Section 21. The power of the Council to inquire into "other misconduct" which is not mentioned in the Schedules is placed beyond any pale of controversy by the decision of the Supreme Court in Institute of Chartered Accountants v. B. Mukharajea (supra) in which the Supreme Court has, in terms, held that, if a member of the Institute is found, prima facie, guilty of conduct which, in the opinion of the Council, renders him unfit to be a member of the Institute, even though such conduct may not attract any of the provisions of the schedule, it would still be open to the Council to hold an inquiry against the member in respect of such conduct and a finding against him in such an inquiry would justify appropriate action being taken by the High Court. It was held that though the definition of the material expression used in Section 21(1) refers to the acts and omissions specified in the schedule, the list of the said acts and omissions is not exhaustive; and in any event, the said list does not purport to limit the powers of the Council under Section 21(1), which may otherwise flow from the words used in the said sub-section itself. It was held that it would not be right to hold that such disciplinary jurisdiction can be invoked only in respect of conduct falling specifically and expressly within the inclusive definition given by Section 22.

12.1 Members of the Institute are bound to act in a manner consistent with the good reputation of the profession. They should refrain from any conduct which might bring discredit to the Institute. Members should be guided not merely by the terms, but also by the spirit of the code of conduct and the fact that particular conduct does not receive mention does not prevent it from being unacceptable or discreditable conduct, thus making a member liable to disciplinary action. After all, code of ethics draws community ethics and moral principles into the professional institutions. There is a need to arrive at a balance between the interests of the members as a citizen in expressing views in the matters of public concern and the interest of the institution in preserving the status and dignity of the professionals rendering service as Chartered Accountants.

13. The contention canvassed on behalf of the respondent that such "other conduct" should be a conduct notified in the gazette of India under Part II(2) of the Schedule, runs counter to the express provisions of Section 22 which, in terms, provides that, nothing in Section 22 shall be construed to limit or abridge in any way the power conferred or duty cast on the Council under Sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances. If the Council specifies any other act or omission by notification in the gazette under Part II(2), that would be deemed to be a professional misconduct, because, as provided in the opening words of Part II of the Second Schedule, "A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he is guilty of such other act or omission as may be specified by the Council in this behalf, by notification in the Gazette of India under Clause (2) of Part II. It is not possible to encompass within a statutory enactment all myriad situations that arise in the course of profession that would amount to misconduct. Thus, "other misconduct will be any misconduct which is not specified in the Schedule or notified thereunder.

13.1 Under Section 8 of the said Act, a person shall not be entitled to have his name entered in or borne on the Register if he has been removed from membership of the Institute on being found on inquiry to have been guilty of professional or other misconduct. Thus, not only for the professional misconduct specified in the Schedule but also for any other misconduct not so specified, the member guilty or such other misconduct can be removed by the Institute after due inquiry.

13.2In the Code of Conduct of the Institute, it has been clarified that the use of the words "or other" in Section 21 is important inasmuch as the Council thereby is empowered to inquire into any misconduct of a member even if it does not arise within his professional work. This is considered necessary, for "a Chartered Accountant is expected to maintain the highest

standards of integrity in his professional conduct and any deviation from this high standards even in personal (not professional) affairs, would expose a Chartered Accountant to a disciplinary inquiry e.g. if a Chartered Accountant is found to have forged membership of the institute, even though this was not done in the course of his duties". (emphasis added).

13.3 Appendix to the Code of Conduct deals with role of Chartered Accountants in relation to unlawful acts by their clients, pointing out that the Income Tax Act, 1961 contains a number of provisions intended to prevent and/or to punish the tax frauds by an assessee. While considering the extent of Chartered Accountants direct liability in respect of such frauds by his clients and also what his professional conduct should be in cases where there is no question of his clients' involvement, it is pointed out that Sections 277 and 278 of the Act involve a member into direct liability, in respect of tax frauds by his client. Under Section 277, any person who delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, is liable to prosecution, and on conviction, may be sentenced to simple imprisonment for a term upto six months, and/or with fine upto Rs. 1,000.00. The information furnished under Rule 12A of the Income-tax Rules, 1962, by a Chartered Accountant will be a "statement" within the meaning of Section 277. If this contains anything which is false and which the member knows or believes to be false or does not believe to be true, he would be rendering himself liable to prosecution. Section 278 makes punishable the abatement of false returns. To sustain charge of abatement, it is not necessary that the act abetted should be committed. The offence is complete as soon as the abettor has incited another to commit a crime, whether the latter consents or not or having consented, he commits the crime or not. Willful attempt to evade tax is a serious offence punishable under Section 276C. Making of false entry or statement in books of account or other documents or omissions of relevant entry or statement in such books of account or other documents would amount to willful attempt to evade any tax, penalty or interest.

13.4 Apart from the offences under Sections 277 and 278 of the Act, tax frauds may entail liability for non-compoundable offences under various provisions of the Indian Penal Code. A given conduct may amount to falsification of accounts under Section 477A of the IPC, punishable upto seven years' rigorous imprisonment; forgery for the purpose of cheating punishable upto seven years' rigorous imprisonment under Section 468 of the IPC; forgery of valuable security etc. punishable under Section 467 of the IPC upto ten years' rigorous imprisonment; destroying valuable security or secreting it punishable under Section 477 punishable for life imprisonment or upto ten years' rigorous imprisonment.

13.5 Since the proceeding before an Income-tax Authority is a judicial proceeding under Section 136 of the Income tax Act within the meaning of Section 193 and 196 of the IPC, false evidence and use of evidence known to be false will be offences punishable under those provisions besides the offences under Sections 177, 188 and 199 of the IPC, relating to false information, false statement on oath etc. and false statement in declaration to which pointed attention has been drawn in the Code of Conduct issued by the Institution.

13.6 Section "B" of the Appendix to the Code emphasizes in para 16(c) that it is not the duty of a member to shield a client from the consequences of his tax frauds; "on the contrary it is a guiding principle of professional conduct to discourage tax evasion".

14. It is a fundamental duty of every citizen "to strive towards excellence in all spheres of individual and collective activity". The profession of Chartered Accountant is a noble profession and is regulated by the norms of behaviour of its members which are universally recognized. Though "professional misconduct" is enumerated in the Schedule, the statute clearly takes into account "other misconduct" by such professionals which may warrant removal of a delinquent member by the Council. The Council is under a duty to ensure that the members keep up to

the high standards that govern the profession. The words "professional or other misconduct" in Section 21 confers wide power on the Council by which it can take disciplinary action not only in respect of the professional misconduct specified in the Schedule or notified by it, but any other misconduct of a Chartered Accountant which is such that he must be regarded unworthy to remain a member of the noble profession to which he has been admitted and unfit to be entrusted with the responsible duties attached to his calling. The word "misconduct" in the context of Section 21, having regard to the scope of the said Act, would be conduct that is wrong, improper, unlawful or a transgression of an established and definite rule or Code of Conduct. The ambit of "misconduct" has to be construed with reference to the subject matter and the context where the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve, as held by the Supreme Court in State of Punjab v. Ram Singh, Ex-Constable, reported in 1992(4) SCC 54. The word "misconduct" receives its connotation from the context, the delinquency in its performance, its effect on the discipline, and the nature of the duty.

15. The High Court has been entrusted important function in context of the behaviour of the members of this noble profession in the disciplinary matters which come up before it. It has wide powers extending to removal from membership of the institute either permanently or for a specified period. It may direct the proceedings to be filed or dismiss the complaint. This enables the court to examine the nature of misconduct alleged and the facts and circumstances brought on record in connection therewith against the delinquent. There is a serious responsibility on the Court – a duty to itself, to the profession, and to the whole of the community to be careful not to accredit any person as worthy of the public confidence who cannot establish his right to that credential. However, when an important statutory body like the council finds a member of the institute guilty of the misconduct and forwards the case to the High Court with its recommendation under Section 21(5) of the Act, its findings based on the material on record would ordinarily not be disturbed unless found to be unjust, unwarranted or contrary to law.

16. The plea of the respondent, that his intent behind writing this book, exposing the ways in which black money was generated and how the tax was evaded, was just to inform the public the things which were happening in the society so that they become aware of the consequences thereof, is a sheer exercise in hypocrisy. There are scores of places in the book which clearly indicate that the intention of the author was not just to expose the evils of generation of "black money" and evasion of taxes, but to lay down in an easy "do it yourself", way the methods in which the "black money" that can be generated is turned "white" or the ways by which taxes can be evaded by the tax payers in different fields. This is abundantly clear from the following illustrative excerpts of this book, which were referred to during the hearing:

> "As noted above, on the first page of the book, it is described as "A Book Indispensable to every Businessman, Industrialist, Government Servant, etc." In the preface of the second edition, it is stated "Dishonesty has become a national habit and corruption has become a way of life."
>
> xxx xxx xxx xxx
>
> "We have developed a tax system which requires a boy (or girl) while introducing in business to be taught the lessons in dishonesty, tax-evasion, maintenance of double set of books of account, tactics of bribing the officers and political parties and all the vices including the supplying of the call girls to officers and ministers."
>
> xxx xxx xxx xxx

"Note":

> xxx xxx xxx xxx

"xxx however there is no change in the principles of income-tax or schemes for reducing income-tax given in this book which may kindly be noted."

> xxx xxx xxx xxx

P. 2:

> "Thus black money has remained not only a part of commerce but it has become an art as well as science-as much precise as the laws of nature. Thus when the black money has become a system, why any one should remain behind in rate-race to amass the wealth? This is the question being asked by

every person in every strata of the society!"

"It is not the intention of this book to encourage the creation of black money. However, every wise and not-so-wise person in society should know how his neighbour and competitor in business is prospering by raising the black money finance to run his business and industry and thereby stimulating the growth of the Indian commerce and industry which are starved by the government controlled financial institutions!"

xxx xxx xxx xxx

"xxx it is the purpose of this book to acquaint in national interest every citizen of India as well as a foreigner about the illegal methods of creation of black money, its "rolling" on, its legal as well as illegal conversion into white and the fruitful conversion of white money into black!"

P. 7:

"Thus there is scope for tax-planning from individual angle for both creation of black money as well as converting it into white which keeps the Indian democratic system and socialist society going!"

xxx xxx xxx xxx

"xxx And in that attempt, either he suppresses (or conceals) his income or furnishes inaccurate particulars of income which schemes often fails leading to unbearable tax liability and penalties as well as costly and time-consuming legal battles which often swallow not only the whole of the income but also erode the health and wealth of the tax-payer. Therefore, it is necessary to know how to avoid such a situation and yet to use certain standard as well as indigenous legal as well as illegal methods which in some cases though immoral yet are practically effective if well-planned which are adopted by many to create the black money without attracting tax liability as well as the legal and illegal methods adopted by your neighbour and competitor in business, profession, service (colleague or "comrade"), politics and social field to convert the black money into white."

xxx xxx xxx xxx

P. 11

"However, in spite of these provisions there are ways, methods and schemes to create the black money to meet the needs of the situation of business, employment or status and retain the same as black money which though illegal and immoral, are found to be effective in many cases and there are also ways, methods and schemes to convert the black money into white official money by legal planning and otherwise. Before discussing how black money is created, retained and converted into white money in the light of the above provisions and other Acts of the Government we must have clear and detailed idea about various provisions and principles of assessment of "black money" and treatment of the same under Income-tax, Wealth-tax, Gift-tax and Estate-duty Acts."

P. 86:

"Thus, in view of the very nature of the subject of black money which offers thousands of ways of its creation, it is not possible to detail and expose all the methods which are individualistic and peculiar to a person. An attempt is made in the subsequent Chapters to detail and expose those methods which are more prevalent in the society but while detailing them some steps have been skipped due to the very nature of subject which the reader may fill up if found necessary."

xxx xxx xxx xxx

"We shall now discuss briefly, the ways and methods adopted by various persons in different fields to create the black money."

P. 102

"It is hardly necessary to teach businessmen, the methods of creation of black money. The methods adopted by them are very simple. They may take any of the following forms or may use more than one or all simultaneously:

(a) Suppression of sales,
(b) Inflation of purchases,
(c) Under-valuation of stocks,
(d) Inflation of expenses.

We shall discuss all the above methods briefly with illustrations."

P.107

"In view of the above discussion, it can be seen that the manipulation stocks affords a good scope of

arriving at gross profit at the desired level which can be done as under."

xxx xxx xxx xxx

"Thus out of the above three methods, this method is most easy and convenient."

P. 110

"However certain problems arise from such manipulations which are tackled by the "clever" assessees as under:"

P. 111

"While "manipulating" the accounts, the assessee mostly takes proper care of not being caught by the official and he also takes "care" of the Officer and "settles" the case on a sum of Rs. 1,000 to Rs. 5,000 which the co-operative officer willingly does on the principle that every person has his price."

P. 114

"The simplest method of creating black money by a doctor is simply to omit the issue of receipt and also omit the entry of the same in the books of account. They also evade the tax by inflating the allowable expenses as in the case of businessmen. They either prepare fresh receipt books and books of account at the end of the year according to their requirement or use their skill in day-to-day manipulation of books of account and bank accounts. Such original income and expenditure account as well as manipulated income and expenditure account may be on the following lines as given in the following illustration."

P. 120

"The simplest method of creating black money by lawyers, engineers etc. professionals is to omit the issue of receipt and also to omit the entry in the books of account, or use receipts for a small amount, or for the payments by cheques and partly omit the issue of receipts and entries in the books of account. They also evade the tax by inflating the allowable expenses as in the case of doctors and businessmen. They either prepare fresh receipt books and books of account at the end of the year according to their requirements or use their skill in receipts and payments."

xxx xxx xxx xxx

"Following is the genuine income and expenditure account of a lawyer, engineer, architects etc. (omitting the technical details of the respective profession."

P. 121

"The manipulated profit and loss account (by omitting the receipts as well as inflating the expenses if necessary) may be as under:"

P. 127

"If a genuine income statement is prepared for such actor, it may be on the following lines:"

P. 128

"The revised statement based on manipulated accounts, bills, vouchers and receipts may be on the following lines:"

P. 151

"Thus, all of the above persons can create, circulate and hold black money."

P. 158

"Thus, the agricultural income affords a great scope for evading the income-tax on black money by introducing the black money as agricultural income."

P. 164

"From above discussion, it can be seen that for the purpose of introducing black money as agricultural income in a big way, the best course adopted by black money hoards seems to be "agricultural income" proper i.e. the sale of agricultural produce raised or received as rent in kind of sale of such produce."

P. 165

"The above propositions are widely used to convert the black money into white by introducing the black money as agricultural income. For this purpose, the black money holder normally takes the following procedure and precautions."

P. 168

"It may be noted that in introducing the black money under the cover of agricultural income. Sometimes the co-operation of the Officer is nec-

essary and such co-operation is willingly coming in many cases on "settlement" of, say, Rs. 1,000 to any more amount. Sometimes the tax payer introduces the agricultural income in small amount in the first year so that source of such income is initially established and that makes the way clear for introducing big dozens of black money in the later years."

P. 170

"In the subsequent chapters, we shall discuss these method adopted by the black money holders but in such discussion, certain steps may be missed due to the very nature of the subject or to avoid the repetition."

P. 171

"However, as in other cases, a wise black money holder takes resort to first deposit in the bank and then to withdraw by cheque the amount in the next year to "skip" the assessment if possible even in earlier year by "assessment and forget" method."

P. 173

"The explanations prepared beforehand for cash credit by the black money holder may be any one of the following:"

P. 174

"Planning before deposit of black money in the books of the black money holder: To avoid the inclusion of deposit in black money owner's income, the following pre-planning is done in case of each depositor when there are numerous deposits during a year."

P. 178

"The black money holder while taking statement at the time of deposit in bank account often keeps the date of statement blank. He will also take the repayment receipt from the "depositor" (if the depositor is not the family member but an "outsider" i.e. other than wife or husband or some other person who is not under his control or on whom the control is likely to be lost with the passage of time). The repayment receipt may be on the following lines."

P. 182

"The explanation of the deposit may be prepared on the following lines:"

P. 185

"The above statement as well as affidavit, if necessary, on the lines given at page 178 with necessary modification of facts is taken beforehand at the time of deposit and blank receipt of repayment is also obtained beforehand when the depositor is an outsider or unreliable."

P. 187

"In such a case, he mostly remains at the mercy of the Officer where the money becomes a commodity to be exchanged against "mercy" as money can purchase almost anything and the transaction goes through."

P. 203

"When black money is received through arranged gifts, the black money holder always insists on regular documents like agreement of gift or delivery letter accompanied by affidavit and proper passing or receipt of gift-amounts for certain reasons, chief of which are:"

P. 240

"Smugglers have lot of black money inside India and they utilise the import export trade – the above methods to convert their black money into white money."

P. 247

"Once the fictitious investment is established to be genuine (which happens on a wide scale by "settlement" with officer and "assessment and forget file" method as detailed earlier) or when the assessment or re-assessment of such deposit becomes time-barred, the same is easily transferred to the name of the black money holder or his family member by any of the methods, either by "personal" responsibility or "gift" method, as detailed earlier."

xxx xxx xxx xxx

"As stated earlier, "gifts" of foreign exchange from aboard plays a very important role in black money economy."

P. 249

"Most of the smugglers, businessmen and highly placed government servants and ministers get their unofficial foreign money transferred in the form of "gifts" to either against compensatory payments abroad or in India as discussed above and in earlier Chapter dealing with "gifts from abroad".

P. 250

"Legacy of the cash amounts or ornaments and jewellery and subsequent credit of its sale-proceeds is one of the patent explanations given for "cash credit" introduction or investment whether recorded or not. For this purpose, the black money holder arranges to make out a will of some of the near relatives or acquaintances who had expired in the near past, say, within last six months to three years and files estate-duty return for the same, manages to keep the estate-duty proceedings "dormant" for a few years (of course, after paying up the estate-duty which is a small amount compared to income-tax."

xxx xxx xxx xxx

"To substantiate his claim the black money holder (Mr. X manages to get the Will of the deceased on the following lines:"

P. 254

xxx xxx xxx xxx

"Now we shall discuss some special methods of conversion of white money into black.

Conversion of white money into black, as stated earlier, is very easy not acquiring any lessons or guidance on the same."

xxx xxx xxx xxx

"However, there are certain aspects of such suppression, inflation and under-valuation which require a brief discussion chief of which are (i) Bogus donations to charitable trust by cheque and refund of the said amount with receipt, (ii) Inflating the cost of assets without making payments and (iii) Commission entries in the books without payments.

P. 256-257

"One of the methods adopted by the businessmen to inflate the expenses and reduce net profits is by way of payment of "commission" to employees or other persons under their control. For such commission, the planning is done on the following lines:"

xxx xxx xxx xxx

"Thus, the fool-proof arrangement is made so that the officer cannot refuse the deduction. The agreement is mostly on the following lines with modifications as may be necessary:"

P. 259

"Both these "commission" methods convert one black money holder's white money into black, and another black money holder's black money is converted into white."

"Even a "gift chit" (prepared on the lines give on page 206) may possibly serve the purpose to explain the source in corruption charge, as no source is to be inquired in the case of the donor or the person who has sent for custody."

17. The findings of the Council in the present case are based on the nature of the writings contained in the book authored by the respondent and printed and published by his sons. Excerpts from the book with which the respondent was confronted are not mere academic exercise, but a systematic effort to educate and train the reader to arrange his affairs in a manner that would make him successfully evade taxes. It is a "treatise" on dubious ways of dodging the taxes by preparing false accounts, secreting books of accounts, filing false statements and returns, bribing the officials, forging wills, agreements, receipts and other documents. We have gone through such writings from the book supplied to us by the learned counsel and are amazed at the audacity of the delinquent to justify such putrid performance of inciting criminal acts by tax payers by emboldening them into a belief that they can get away by adopting the manipulative tactics suggested in the book and by corrupting the officials. The author is confident that every public officer can be bought and no harm will be done if the methods of evasion that he has suggested for "planning" are adopted. The book has been written with a total disregard of the high standards that the profession has proclaimed nationally and internationally. The material compiled in the book if followed would put the profession to shame, throwing to the winds the laudable norms of integrity and truthfulness expected of its members. Far from preventing tax payers from adopting such unfair tactics he exhorts them to adopt methods which would result in serious offences being committed under the Income-tax Act and the Indian Penal Code. The delinquent has overlooked that he is advocating commission of economic offences.

(The Income Tax Act, the Wealth Tax Act, the Gift Tax Act and FERA are included in the Schedule of the Economic Offences Inapplicability of Limitation Act, 1974). The book assumes that all tax payers and officials – virtually everybody is a crook and easily evades the law for selfish purposes and emphasizes that no one shall be left behind his neighbour in the race of tax evasion. Unfortunately, the writer has no idea of the extent of good that surrounds him in the society which has prompted the Code of Conduct. All that we can say is we pity the cynicism displayed by the author. A cynical public view about the ethics of individual professionals spills over into a strong suspicion against the integrity of the entire profession. If the professions do not take strong steps to not only policing their members but also to ensure that the public believes that they are doing so, it would call for increasing governmental policing.

18. The manner in which the book is written and its tenor clearly indicate that the author intends to pander to the evil designs of those who want to safely generate "black money" and get away with it by "planning" for tax evasion as per the methods shown differently for different professions by laboriously preparing illustrations showing how genuine accounts can be manipulated and fake documents such as wills, agreements, receipts, custody chits can be drafted. The book is a clear venture on the part of this professional to reach out with such guile assistance to the generators of "black money" and tax evaders to educate them through this writing how they can evade the law and reduce their tax liability. There cannot be a professional misconduct more grave than this on the part of a member of the noble profession of Chartered Accountants. The Council therefore rightly found him to be guilty of a conduct unbecoming of a member of the profession who should have been shown the door long back, having regard to the damage that can be done to the interest of general public by rendering such assistance to generation of "black money" and evasion of taxes by adopting unlawful means and committing acts which are offences under the law.

19. It was argued that the disciplinary committee had gone beyond the charges levelled against the respondent when it held that in its opinion the fact of writing the book in this manner "is to educate public as to how to evade tax and how to create black money". The Committee held that the member of the noble profession of Chartered Accountants ought not to have resorted to such means and thereby lower the image of the profession. The word "educate" in the context of the charges levelled against the respondent would mean to give training and/or information on a particular field. The methods of tax evasion detailed in the book with meticulously worked out steps that can be taken for evading the taxes are aimed at various sections of the general public. They are told what is to be done to create secret income and how to evade tax in different fields. The findings reached by the disciplinary committee and the Council cannot be said to be going beyond the scope of the charges levelled against the respondent in which it was in terms alleged that the author had explained in detail various methods of creation of black money and the methods, legal or illegal, generally adopted to convert it into "white" and further that, it appeared that the title of the book, its preface and in totality the book was likely to create an impression in the eyes of the common man that the Chartered Accountants are experts in creation of "black money" and its conversion into "white money". It was in terms alleged that the conduct of the respondent in writing such a book was unbecoming of a Chartered Accountant. There is, therefore, no substance in the contention that the findings reached by the disciplinary body are beyond the charges levelled against the respondent.

20. It is urged that, in exercise of his fundamental rights, the respondent was entitled to point out in his writings the methods which were widely adopted by different sections of the community to generate and manage "black money". It was submitted that no disciplinary action can be taken by the Council in respect of the said work of the respondent even if the writing was not palatable to any particular reader.

    20.1 The Chartered Accountants Act was enacted to make provision for the regulation of the profession of Chartered Accountants and for that purpose, to establish an Institute of Chartered Accountants. A Council of the Institute for management of the affairs of the institute is constituted by Section 9. The functions of the Council

are enumerated in Section 15 which include removal of names from the Register and restoration of names which have been removed, the regulation and maintenance of the status of the members and standards of the professional qualifications, and, the exercise of disciplinary powers conferred by the Act, as provided by clauses (h), (i) and (k) of Sub-section (2) of Section 15. The disciplinary committee is to be one of the standing committees of the Council to be constituted by it from amongst its members. Under Section 20(2), the Council shall remove the name of any member in respect of whom the order is passed under the Act removing him from membership of the institute. Section 21 provides for the procedure in inquiries relating to professional or other misconduct of members of the institute. Section 22 which defines "professional misconduct" reads as under:

"22. Professional misconduct defined:-

For the purposes of this Act, the expression "professional misconduct" shall be deemed to include any act or omission specified 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 Council under Sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances."

20.2 Thus, the Council has wide powers to regulate the conduct of its members and take disciplinary action. In exercise of its power and duty to carry out the objects of the Act, the Council can make regulations under Section 30, inter alia, providing for the exercise of disciplinary powers conferred by the Act. In respect of the professional misconduct of a member, the Council can make order under Section 21(4) of reprimanding the member or removing his name for a period not exceeding five years and in case it appears to the Council that the name of such member should be removed for more than five years or permanently, the Council will forward the recommendation to the High Court. In cases of misconduct other than professional misconduct, which is specified in the Schedules, the cases of the members found guilty will be forwarded to the High Court by it with recommendations as contemplated by Sub-section (5) of Section 21 of the Act.

20.3 The Council in exercise of its wide powers as a custodian of the interests of the profession and its members has issued a Code of Conduct. The highest norm universally accepted by the profession is of maintaining integrity which implies not merely honesty but fair dealing and truthfulness. Any member who encourages untruthfulness and fabrication of false evidence in the taxation procedure will obviously be acting in a manner unbecoming of a member of such noble profession, which would be a misconduct. Violation of the ethical norms by a member which has an effect of encouraging tax evasion would be against public interest and can rightly be treated as "other misconduct" when not falling in the instances of professional misconduct specified in the Schedules or notified thereunder.

20.4 A Code of Ethics is a legally binding statement of conduct. The Code of Conduct issued by the Institute proclaimed as follows:

"*Code of Conduct:*

xxx xxx xxx xxx

A client, before engaging the services of a professional man, requires to be assured: (i) that he has the required competence and (ii) that he is a man of character and integrity. As regards the first, evidence is available to the client in the form of a certificate that the accountant has undergone the training and passed the examination, and as regards the second, he would have an assurance only if the professional body to which he belongs has adopted a code of professional conduct. The noble traditions set up by the learned professions, such as, Ecclesiastics, Medicine and Law, have been followed by others, with a view to instil public trust and confidence. The over-riding motto has been, "pride of service in preference to personal gain'. A code of professional conduct may have the force of law, as is the case in this country in some matters, as well as the result of discipline and

established conventions voluntarily undertaken by the members, any breach whereof would result in the person being disentitled to continue as a member of the professional body. In any event, it has a great deal of practical value in so far as it proclaims to the public that the members of the profession will carry on their duties and responsibilities, having regard to the public interest. This, in turn, will give an assurance to the public that in the event of a member straying away from the path of duty, he would be suitably dealt with by the professional body.

Human nature being what it is, a man can be selfish – to place his personal gain above service. Therefore, persons who as individuals and as a class, are willing to place public good above their personal gain deserve praise and honour. This is the main reason why professional men have enjoyed prestige and honour. But such a relationship can be maintained or enhanced only if the professional body would interpret the concept of public interest and the necessity for the professional man to watch it as broadly as possible. It is also necessary for it to guide and compel the members to live up to these high standard."

21. By the provisions of Section 15(2)(e) read with Section 6 of the Act, a certificate of practice may be granted or refused by the Council under the Act. The Act recognizes that the profession itself is the best judge of what constitutes an ethical behaviour in its ranks and therefore, gives wide powers to the Council to take action not only in respect of the specified and/or notified misconduct, which is deemed to be professional misconduct, but also for "other misconduct". It is a great compliment to the profession that its own duly adopted standards are given the force and effect of law. This is possible, because, the members of the profession have accepted the responsibility of their professional practices. This is what distinguish a true professional from a non-professional – a willingness to recognize need for standards, an ability to articulate what those standards should be, and commitment to maintaining those standards, not out of fear of non-compliance, but instead, out of a belief that the standards have intrinsic worth. The members should proudly follow the ethical principles, because, they represent a deep and thoughtful commitment to the professionalism in the accounting sphere.

21.1 The Code of Conduct clearly emphasizes the requirement that a professional man should be a man of character and integrity which is a fundamental norm universally recognized in this profession. The wordings of Section 22 that the expression "professional misconduct" shall be deemed to include any act or omission specified in any of the Schedules shows that the types of professional misconduct enumerated in the Schedules to the Act are only illustrative and no exhaustive definition of "professional misconduct" is intended. Therefore, there can be misconduct outside the specifically enumerated or notified acts of omissions or commissions deemed to be included in the expression "professional misconduct", which is a professional misconduct not so enumerated under the Schedule, as also misconduct other than any professional misconduct. The wide powers of the Council to cope up with professional and other misconduct which are not specified in the Schedules are kept intact. This is why, in the First Edition of the Code of Conduct, it was stated: "The booklet basically gives elaborate explanations, where necessary with illustrations, of the various items comprised in the Schedules to the Chartered Accountants Act, and is by no means meant to be exhaustive of all acts of omission and commission which may constitute "professional misconduct".

21.2 The Code of Conduct which is declared by the Council as a regulatory statutory body created to safeguard the interests of the profession, its members and the general public is nothing but an adoption of principles of decency and morality which the members are expected to follow. The duty to carry out the provisions of the Act including the duty to exercise disciplinary powers conferred by the Act vests in the Council. Therefore, when it takes disciplinary action against a member, who commits serious violation of ethical norms which, according to the Council, amounts to misconduct, it simply exercises statutory powers. The statutory provisions

empowering the Council to take disciplinary action against a member of the institute who violates ethical norms and encourages commission of serious economic and other offences, would clearly be a reasonable restriction on the exercise of the fundamental right to freedom of speech and expression in the interest of decency and morality and in relation to incitement to an offence. It is, however, pertinent to note that the disciplinary power is, in the present case, primarily exercised for removing the respondent from the membership of the institute after being found guilty of misconduct and does not directly prevent him from exercising right to freedom of speech and expression under Article 19(1)(a) of the Constitution. The provisions of the said Act enabling the disciplinary action being taken against a member committing misconduct which may include advocating tax evasion would clearly be a reasonable restriction imposed by law, in the interest of general public on the exercise of right to freedom of practising profession guaranteed by Article 19(1)(g) of the Constitution. When the restriction is justified under Article 19(6), membership of the profession cannot be claimed as a fundamental right for carrying on the profession. The position so lost cannot be retrieved by resorting to the fundamental right to freedom of speech and expression, because, the impugned action primarily has an impact on the membership of the professional body from which he could be removed for a professional or other misconduct as statutorily provided.

21.3 The statutory power to take action in respect of misconduct is not meant to curtail freedom of speech and expression, but to ensure proper conduct of the members of the institute and to protect the interest and prestige of the profession of Chartered Accountants. If the member commits misconduct by committing breach of the Code of Conduct and does anything detrimental to the interest and prestige of the profession, he is liable to disciplinary action under Section 21 which is not designed to restrict in any way the freedom of speech or expression. It is primarily designed to regulate the profession of the Chartered Accountants. It cannot, therefore, be called in question as violating of Article 19(1)(g) of the Constitution. Misconduct may consist of writing an offensive article or delivering a foul speech which are not in the interest of general public or are contrary to decency or morality or amount to inciting an offence or any other unlawful activity. Any action which is detrimental to the interest or prestige of the profession of Chartered Accountants, clearly undermines disciplinary standards set up by the norms of ethical conduct. The provisions of disciplinary action against the members can be better looked at from the point of view of the fundamental right guaranteed by Article 19(1)(g) read with restrictions that can be imposed under Clause (6) of Article 19 as reasonable restrictions in the interests of general public. The statutory provisions which are directly linked with and are essential for the regulation of the profession of the Chartered Accountants would be protected by Clause (6) of Article 19 of the Constitution as being in the interest of general public. If such provisions are alleged to violate other freedoms under Article 19(1) such as, freedom of speech or expression, the freedoms have to be read harmoniously so that the statutory provisions including the rules and regulations which are reasonably required in furtherance of one freedom are not struck down as violating the other freedoms (See M.H. Devendrappa v/s. Karnataka State Small Industries Corporation (1998) 3 SCC 732).

21.4 The statutory provisions enabling the Council to take disciplinary action against the members for misconduct do not in their pith and substance deal with their fundamental right under Article 19(1)(a) of freedom of speech and expression and do not have any direct or indirect effect to abridge or abrogate such rights. The mere fact that the disciplinary provisions enacted to regulate the profession may incidentally, remotely or collaterally have the effect on the right to freedom of speech and expression of the member, would not vitiate the disciplinary action in respect of a misconduct committed through the medium of writing. To put it

straight – a member of the profession of Chartered Accountants, behaving contrary to the Code of Conduct and therefore, found guilty of misconduct by the Council and facing removal from membership, that would affect his right to carry on his profession as Chartered Accountant cannot cry halt on a spacious plea that he has a freedom to commit such misconduct when it comes to be done through writing or speech. The answer to him would be if your speech and expression are foul, go ahead at your risk, but cease to be a member of this profession first. Everything we do has a consequence, that is a plain and simple matter of physics. The doer of a deed has a responsibility for the consequences of his thought, words and deeds. There is, thus, no substance in the contention raised on behalf of the respondent on the ground that his fundamental right to speech and expression would be violated by imposing punishment of removal of his name from the Register of members of the Institute which has a bearing on the freedom of profession rather than freedom of speech and expression.

22. The conduct of the respondent in associating with the methods of tax evasion rather than denouncing them, to say the least, is a gross misconduct on the part of a member of a noble profession which is worst than solitary lapses of the tax payers. It should have merited instant removal from the profession when the book was first published in 1982. The Council ought to be prompt in such cases and so should we be, and not let such serious matters linger on for decades and let such published material provide a ready guidance to evasion of taxes to those who would be prone to follow the patterns of tax evasion craftily displayed by the respondent. The delay has, however, worked in favour of the respondent, who has continued to remain a member of the institute for all these years. The respondent has proved himself to be capable of such infamous conduct by which he will be a constant danger to the public, as also to young men aspiring to enter the profession of Chartered Accountants. The recommended punishment of removal of his name for six months would, in our opinion, be a mockery of the proceedings in view of the serious nature of misconduct. Permanent removal of name from the Register would, in such cases, be clearly warranted. We, therefore, have heard the respondent who is present in the Court, on the question of punishment. He has stated before us that it was never his intention to prompt anyone for tax evasion. He says that he has written what was prevailing in the society at that time, and that even the government had announced many schemes for voluntary disclosure of black money from time to time. He states that he is still in the profession and is 73 years of age, having health problems, such as, blood pressure and teeth problem. He says that he very much regrets if there is any misconduct found on his part. He also states that he has sold away the copyright in the book in the year 1987. He further states that he is taking medicines for cardiac problem, though it is not very serious. He also states that he has not indulged in any such writing after the book was published and he sincerely regrets about it. He states that he regrets having written such a book and he will never write such things in future. In short, according to him, he feels repentant in respect of the writings in this book.

23. Having regard to the old age of the respondent, ailment 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 finding of the Council holding 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.

24. 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. ■

In the High Court of Karnataka, Bangalore
N.K. Jain, CJ. and V.G. Sabhahit, J.

Civil Petition No.328/1998/DOD 5.11.2003

In the matter of the Council of the Institute of Chartered Accountants of India New Delhi

Vs.

Shri. H. Mohan Lal Giriya, Chartered Accountant

ORDER

This reference under Section 21 (5) of the Chartered Accountants Act, 1949 (for short the 'CA Act') arises out of the following necessary facts in brief:

The respondent is practising as a Chartered Accountant and a Member of Council of the Institute of Chartered Accountants of India-the petitioner. On a complaint being received from the Chief Commissioner (Administration) and Commissioner of Income Tax, Karnataka-I, Bangalore, alleging that the respondent who was practising as a Chartered Accountant was engaged in other occupation as LIC Agent in the name of H.M. Jain, Agency No. 228613, had filed two separate returns of Income Tax in his individual capacity one for the Income from the profession as Chartered Accountant for the assessment years 1965-66 to 1986-87 and another for the income from LIC Commission for and from the assessment years 1967-68 to 1986-87 and he was also guilty of committing fraud by giving two separate names to evade payment of proper income tax. The said complaint was forwarded to the respondents by the petitioner with a request to submit his written statement and the statement was duly verified and was placed before the Council in its meeting held on 29/31.12.1987 at New Delhi. The council of the Institute was prima facie of the opinion that respondent was guilty of professional and other misconduct and accordingly referred the case to the Disciplinary Authority constituted under the Act for the enquiry. The Disciplinary Authority conducted the enquiry after affording opportunity to the respondent and submitted its report holding that having regard to the evidence that was tendered before the Committee it was of the opinion that the respondent was carrying on business of LIC Agency without obtaining permission from the Government and had violated clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949 and that the respondent had misconducted himself in a manner unbecoming of a Chartered Accountant in that he filed two returns of income for the income tax assessment for the income earned by him describing himself differently in these returns and the same constituted other misconduct within the meaning of Section 21 (5) r/w 22 of the Act. A copy of the report of the Disciplinary Committee was forwarded to the respondent and the respondent submitted his written submission and the Council in its meeting held on 17.1.1995 considered the representation and found that there was no merit in the contention of the respondent and accepted the representation of the Disciplinary Committee and found that the respondent was guilty of professional misconduct within the meaning of Sections 21 and 22 of the CA Act, 1949 r/w. Clause (11) of Part I of the First Schedule to the above Act and of 'other misconduct' under Section 21 read with Section 22 of the aforesaid Act. So far as the first charge which is proved, a separate order has been passed under Section 21 (4) of the Act by the Council at its meeting held in June, 1996 after giving opportunity to the respondent, the Council has decided that the respondent be reprimanded. In respect of the other misconduct under Section 21 (5) of the CA Act, 1949, a reference has been made to this Court with a recommendation that the respondent be removed from the Register of Members for a period of one year.

2. Notice was issued to the respondent and respondent appeared through learned counsel Sri. E.S. Kiresur.

3. Sri. Naganand, learned Counsel appearing for the petitioner submits that in view of Section 21 (4) of CA Act this Court Should give its concurrence to the sanction. Sri. E.S.Kiresur, learned counsel for the respondent submits that it is not appropriate to take action as the misconduct is independent and not arising out of the profession and therefore the reference is uncalled for. It is also submitted that once the respondent has compounded the offence, the initiation of proceedings is not called for. He has referred to the decision of the Full Bench in S.V. BAGI Vs. STATE OF KARNATAKA (1992 STC 138). Learned counsel appearing for the respondent also submitted that since he has already compounded the offences under the Income Tax Act and he has been reprimanded under the provisions of Section 21 (4) of the Act, no further punishment could be imposed under Section 21 (5) of the Act and even otherwise he was only acting as a trustee and filed returns as a trustee in respect of the Commission received from the LIC.

4. We have heard the learned counsel Sri Naganand appearing for the petitioner and Sri. E.S.Kiresur, learned counsel for the respondent and perused the material on record.

5. Admittedly, while enrolling himself as a Chartered

Accountant, the respondent has not informed that he was working as an LIC Agent and also a Member of the Trust. Section 22 itself clearly reveals that for the purpose of this Section, the expression 'professional misconduct' shall be deemed to include any act or omission specified 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 Council under sub-Section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances. The argument of the learned counsel for the respondent that he has not committed any misconduct arising out of the profession has no substance. More than this, the apex Court in the decision in INSTITUTE of C.A. vs. B.MUKERJEA (AIR 1958 SC 72) has stated that if a member of the Institute is found, prima facie, guilty of conduct which in the opinion of the Council, renders him unfit to be a member of the Institute, even though such conduct may not attract any of the provisions of the schedule, it would still be open to the Council to hold an inquiry against the member in respect of such conduct and a finding against him in such an inquiry would justify appropriate action being taken by the High Court under Section 21 (3) of the CA Act. There is also no merit in the contention of the learned counsel appearing for the respondent that the fact that he has compounded the offence under the provisions of Income Tax Act would absolve him of his liability as it is well settled that the object of notifying the provisions for proceeding against the violation of Income Tax Act and initiating disciplinary proceedings under the Act are entirely different and distinct and the Council is now concerned only with the professional misconduct and mere fact that he has compounded the offence under the Income Tax Act would not be of any avail to the respondent and the decision relied upon by him in S.V.BAGI vs. STATE OF KARNATAKA (1992 STC 138) is not helpful to him in the present case. The material on record also shows that there is no merit in the contention of the learned counsel appearing for the respondent that he was acting as a trustee of the trust established according to respondent in 1964 for receiving commission from the LIC and he had not committed any misconduct. The material on record clearly shows that while filing the returns in respect of professional income he described himself as H.Mohanlal Giriya, Chartered Accountant-individual and with respect to the other return he had styled himself as H.M. Jain, Commission Agent-Individual. The address given in both the returns was the same. However, he described himself in one return as son of Heerachandji, in another as son of F.H.Chandji and admittedly the signature on both the returns is of the respondent and respondent had no reply to offer for his said misconduct. However, the contention that he had received premium as a trustee is an after thought as the returns have not been filed as a trustee and returns have been filed by the respondent in different names and the deed which was produced is dated 1.4.1964 which refers to a LIC licence No. 613235 obtained on 11.7.1975 and wherefore the material on record clearly shows that the said contention is an afterthought. No other contention is urged. On overall consideration, we accept the recommendation of the Council of the Institute of Chartered Accountants of India while exercising the power under Section 21 (6) of the CA Act, 1949 and we direct that the name of the respondent-Sri.H.Mohanlal Giriya be removed from the register of Members for a period of one year from the date of receipt of a copy of this order. Civil Petition is disposed of accordingly. A copy of this order may be sent to the petitioner-Council of the Institute of Chartered Accountants of India.