

JUDGEMENT

Disciplinary case decided by the Council

Case I

Published below is an extract from a disciplinary case decided by the Council:-

1. The charges against the Respondent were as under:-
 - 1.1 The Respondent was enrolled as Fellow member of the Institute and in the Form of "Entry on record", the Respondent had mentioned that he was engaged as partner of "M/s. X Group of Magazines" and also he was working as a Director of "M/s. A & Co." On enquiry, the Respondent informed the Institute that he was engaged as a partner of the said M/s. X Group of Magazines since 1978. The Respondent had never disclosed about this even while he was holding Certificate of Practice all these years and nor did he seek permission from the Institute to engage himself as a partner in any other occupation.
 - 1.2 Based on the above, the Respondent was charged with professional misconduct under Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949 (read with Regulation 190A of the Chartered Accountants Regulations, 1988).
2. Upon the case being referred to the Disciplinary Committee for enquiry, the said Committee conducted an enquiry into the matter and submitted its Report wherein the Committee had opined as under:-
3. The Respondent after qualifying as a Chartered Accountant had been working as a paid assistant with a CA firm and after a few years, he had become a partner in the Respondent-firm of Chartered Accountants. All these information were available on the record of the Institute. However, the Respondent neither intimated the Institute nor had taken any permission to become a partner in M/s. X Group of Magazines which was a breach of the relevant provisions of the Chartered Accountants Act, 1949.
4. The Respondent during the hearing before the Disciplinary Committee had stated that while not seeking permission of the Institute could be a technical breach, however, according to him this was not a professional misconduct. While he had already intimated his partnership interest in M/s. X Group of Magazines to the Institute, he would not like sever his interest with the said Group and would rather surrender his Certificate of

Practice if the rules do not permit the same and Institute should allow him to continue his membership.

5. The Committee perused the record of the Respondent-firm as available with the Institute and it was noticed that while the Respondent was repeatedly shown as the In-charge of Regional Office of the firm at Chennai whereas he had by his own admission was residing in Mumbai and was devoting more time to the work of the X Group of Magazines. Further under column '9' of form '18' filed with Institute, the Respondent's interest in the CA firm as paid assistant was only disclosed and his engagement with the X Group of Magazines was never disclosed.
6. The Committee also noted from the deed of partnership of M/s. X Group of Magazines filed by the Respondent on record that the Respondent was engaged in the business of publication of magazines in partnership under the name and style of X. Earlier, his father was also the partner but after his retirement, his shareholding was changed and presently he was holding 24% share.
7. No evidence was produced by the Respondent for having sought the permission of the Council as required under Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949 to engage himself in any other business or occupation other than the profession of chartered accountants. Under the resolution of the Council passed under Regulation 190A, a member of the Institute in practice is permitted to engage in some business or occupation. Certain occupations are notified, where the permission from the Council is not necessary in individual case. However, a member in practice, for engaging in certain business or occupation, specific and prior approval of the Council is required. The permission is also being granted to a member on case to case basis to engage in family business concerns or concerns in which interest has been acquired as a result of relationship and in the management of which no active part is taken. The Respondent produced no evidence to show that the interest was acquired as a result of family relationship. Infact, the Committee observed that as per the statement of the Respondent, he had started taking more active part in the day to day business of the X Group as a result of which his share in professional firm was reduced. Such reduction in share of profit in a professional firm could have, by no stretch of imagination,

remained unknown or gone unnoticed by the Senior partners of the CA firm to which the Respondent belonged and who admittedly were preparing Form `18' for submission to the Institute.

8. The objective of Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949 is to restrain members from carrying on any other business in conjunction with the profession of accountancy, as combining and carrying on the profession while engaging in any other business, would provide an area of conflict of interest. Such conflict of interest would have an adverse bearing on the independence and integrity of the professional and would consequently adversely affect his ability to discharge the duties expected from him as a public practitioner, up to the levels and standards of excellence expected from the profession.
9. The Committee placed on record its displeasure and distress on the observation of the Respondent wherein he had commented that the rules of the Institute are outdated and are required to be changed. Further, the Respondent had submitted that if there is no appeal to the Institute, he would certainly not sever his relationship with the X Group of Magazines and would like to give up his Certificate of Practice.
10. The Committee took on record the statement of the Respondent that after becoming the partner of X Group, permission was sought from senior partners of his firm and they permitted him to devote more time to the X Group, pursuant to which the Respondent's share of profit in the firm was reduced despite of this fact, the particulars of offices and firms submitted in Form 18 by the said firm signed by all the partners, the Respondent's interest in X Group of magazines was not shown. Further, the Respondent, a partner of the CA firm was though residing at Mumbai and admittedly not devoting full time to the profession, was shown as In-charge of Chennai Office of the firm.
11. Thus, in conclusion, the Committee concluded that the Respondent was guilty of professional misconduct within the meaning of Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949 (read with Regulation 190A of the Chartered Accountants Regulations, 1988) in terms of Section 21 read with Section 22 of the said Act.
12. The Council accepted the Report of the Disciplinary Committee and after affording an opportunity of hearing under Section 21(4) of the Chartered Accountants Act, 1949 to the Respondent, the Council ordered that the name of the Respondent be removed from the Register of Members for a period of five years.

Case II

Published below is an extract from a disciplinary case decided by the Council:-

1. The Charges against the Respondent are as under:-
 - 1.1 The Respondent had accepted the position as auditor of army Canteen, without prior communication in writing with the Complainant. The Complainant had been auditor of the said Canteen for the past several years and had also audited the accounts of other units of the said Army entity.
 - 1.2 As per the complaint, the aforesaid act of the Respondent falls within the purview of Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
2. Upon the case being referred to the Disciplinary Committee for enquiry, the said Committee conducted an enquiry into the matter and submitted its Report wherein the Committee had opined as under:-
3. In the enquiry before the Disciplinary Committee, the Respondent pleaded guilty and requested for taking a lenient view in the matter. The Respondent submitted that the Canteen Manager had met him and asked him to conduct the audit of the Canteen. The Canteen Manager informed him that the audit was to be conducted for the first time. It was not brought to his notice that the Complainant had already commenced the audit for the year under reference. He unknowingly started the audit. He checked the opening balances from the Ledger which was not audited. At that time, he was not knowing as to whether the Canteen Manager was a competent authority or not to appoint an auditor.
4. Considering the admission of guilt by the Respondent, the Committee held the Respondent guilty of professional misconduct within the meaning of Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949, read with Sections 21 and 22 of the Chartered Accountants Act, 1949.
5. The Council accepted the Report of the Disciplinary Committee and after affording an opportunity of hearing under Section 21(4) of the Chartered Accountants Act, 1949 to the Respondent, the Council ordered that the name of the Respondent be removed from the Register of Members for the period of three months.

Case III

Published below is an extract from a disciplinary case decided by the Council:-

1. The Charges against the Respondent are as under:-
 - 1.1 The Respondent accepted the position as auditor

of M/s. ABC Pvt. Ltd. without first communicating with the Complainant as required under Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

- 1.2 The Respondent had accepted the said appointment as Auditor of the Company without first ascertaining from the above Company whether the requirements of Sections 224 and 225 of the Companies Act, 1956 had been duly complied with as required in Clause (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
2. Upon the case being referred to the Disciplinary Committee for enquiry, the said Committee conducted an enquiry into the matter and submitted its Report wherein the Committee had opined as under:-
3. The Respondent in his defence had stated before the Committee that the Director of the Company had approached him to take up the audit of the Company and according to him, the reason why the Company opted for a change in the auditor could probably be because he was a local person and it was convenient for the Company to deal with him. Further, the Respondent submitted that upon enquiry by him, the Director of the Company had informed him that the previous auditor had already resigned from the auditorship and handed over to him a copy of the resignation letter submitted by the Complainant. The Respondent stated that relying on the said resignation letter of the Complainant, he had accepted the audit of the Company, but had made it clear to the Company to produce before him the original letter of resignation.
4. The Complainant stated that he had never resigned from the auditorship of the Company. He also pointed out that the said resignation letter was on a plain paper and not on his letter head, which is a very unusual fact and the same should have alerted the Respondent of the possibility of the Company playing fraud with him.
5. While on the charge of not communicating with the previous auditor, the Respondent submitted that it was a lapse on his part and since it was his first year of audit, he was under an impression that in circumstances where the previous auditor had resigned, the communication as envisaged under the Clause (8) of Part I of the First Schedule was not necessary.
6. The Committee felt that irrespective of the fact whether the previous auditor had resigned or not, it was incumbent upon the incoming auditor to communicate with the previous auditor to seek the former's professional objections, if any, which the Respondent had admittedly failed to do.
7. In regard to the second charge falling under Clause (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949, the Committee was of the view that Section 225 of the Companies Act, 1956 expressly provides that in case of change of auditors, the Company has to receive a Special Notice which should be sent to the retiring auditor to enable him to make his representation. In this case, it appears that no such special resolution was at all received by the Company. The Respondent had, along with his written statement, forwarded a copy of Board resolution stating therein that the previous auditor had voluntarily resigned from the auditorship of the Company and the Respondent's firm was proposed to be appointed as auditors of the Company for the relevant financial year and till the conclusion of the Annual General Meeting.
8. The Committee noted that first of all, the Board resolution as produced is not dated at all. It also does not specify at which meeting such a resolution was proposed and adopted. Moreover, the Committee finds that this was not the case of first appointment of auditors, since the Company was in existence from 1986. Therefore, according to the provisions of the Companies Act, it was only the General Body which was competent to pass such a resolution and such power was not vested with the Board of Directors. According to the Committee, the Respondent should have been cautious in accepting the appointment when he was shown the alleged letter of resignation of the Complainant and the copy of Board resolution supplied to him by the Company's Director. It appears to the Committee that the Respondent, at the prime of his career, was more eager to get professional practice without caring for compliance with the requirements of the Chartered Accountants Act, 1949. The Committee, therefore, was of the opinion that the Respondent has not cared to verify compliance with the provisions of Section 225 of the Companies Act, 1956 by the Company before accepting the position as Auditor and thus is guilty under clause (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
9. In conclusion, the Committee was of the view that the Respondent was guilty of professional misconduct under Clauses (8) and (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949 in terms of Sections 21 and 22 of the said Act.
10. The Council accepted the Report of the Disciplinary Committee and after affording an opportunity of hearing under Section 21(4) of the Chartered Accountants Act, 1949 to the Respondent, the Council ordered that the name of the Respondent be removed from the Register of Members for a period of three months.