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Professional Ethics

Question 1

Comment on the following:

- (a) *A firm of Chartered Accountants was appointed by a company to evaluate the costs of the various products manufactured by it for their operation system. One of the partners of the firm of chartered accountants was a non-executive director of the company.*
- (b) *Mr. Z, a Chartered Accountant was invited by the Chamber of Commerce to present a paper in a symposium on the issues facing Indian Textile Industry. During the course of his presentation he shared some vital information of his client's business under the impression that it will help the Nation to compete with other countries at the international level.*
- (c) *M/s. ABC, a firm of Chartered Accountants received ₹ 2 lakhs in March, 2014 from a client to pay the Advance Tax. However, the firm has used that money for its own purpose and later on adjusted the same with the outstanding fee payable.*
- (d) *M/s. XYZ, a firm of Chartered Accountants has taken a loan for acquiring a home from a company whose Managing Director's son is an Articled Assistant with A, a partner of M/s. XYZ. The Articled Assistant had no direct interest in the Company and the loan was not related to his engagement.*

(4 Marks each, November, 2014)

Answer

- (a) Expression of Opinion on Financial Statements: Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, states that expressing an opinion on financial statements of any business or any enterprise in which the auditor, his firm or a partner in his firm has a substantial interest would constitute misconduct. Also, the Council of the Institute of Chartered Accountants of India has stated that in cases where a member of the Institute is a director of a company, or the firm in which the said member is a partner, should not express any opinion on its financial statements.

As per facts of the case, the firm has been retained to evaluate the cost of products manufactured by it for its information system. It is a part of management consultancy service of the firm and moreover its partner was on the Board.

Hence, the firm can perform this assignment and it will not constitute misconduct. However, the firm while accepting the position as auditor in future would have to consider

whether it would be possible to act in independent manner and express opinion on financial statements.

- (b) Disclosure of Client's Information: Clause (1) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 deals with the professional misconduct relating to the disclosure of information by a chartered accountant in practice relating to the business of his clients to any person other than his client without the consent of his client or otherwise than as required by any law for the time being in force would amount to breach of confidence. The Code of Ethics further clarifies that such a duty continues even after completion of the assignment. The Chartered Accountant may however, disclose the information in case it is required as a part of performance of his professional duties.

In the given case, Mr. Z, a Chartered Accountant, has disclosed vital information of his client's business without the consent of the client under the impression that it will help the nation to compete with other countries at International level.

Thus, it is a professional misconduct covered by Clause (1) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

- (c) Money of Clients to be Deposited in Separate Bank Account: Clause (10) of Part I of Second Schedule to the Chartered Accountants Act, 1949 states that a Chartered Accountant shall be deemed to be guilty of professional misconduct if "he fails to keep money of his clients in separate banking account or to use such money for the purpose for which they are intended".

In the given case, M/s. ABC received the money in March, 2014 for payment of the advance tax; hence it should be deposited in a separate bank account.

Since in this case M/s. ABC have failed to keep the sum of ₹ 2 lakhs received on behalf of their client in a separate Bank Account, it amounts to professional misconduct under Clause (10) of part I of Second Schedule.

- (d) Loan from a Company: As per Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949, a chartered accountant is deemed to be guilty of professional misconduct if he contravenes any of the provisions of Chartered Accountants Act, 1949 or Regulations made there under. Regulation 47 of the Chartered Accountant's Regulations, 1988, prohibits a member from accepting any premiums or loans or any deposit in any form from an articled clerk directly or indirectly. However, M/s XYZ has taken loan from a company whose Managing Director happens to be father of articled clerk with Mr. A, a partner of M/s XYZ.

In this case, the articled trainee has no direct interest in that company. There has been a case wherein a chartered accountant was held guilty of professional misconduct because he took a loan from a firm in which the articled clerk and his father were both interested. But, in this case as per the facts, the articled trainee has no direct interest in the company. However, if relationship, direct or indirect, can be established in view of relationship of articled trainee with MD of the company, Mr. A of M/s XYZ would be held liable for professional misconduct.

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Thus, M/s XYZ would be guilty of professional misconduct under this clause if it is proved that the loan was related to the engagement of the articled clerk.

Question 2

Write a short note on Importance of KYC requirements for a Chartered Accountant's practice.

(4 Marks, November, 2014)

Answer

Importance of KYC Requirements for a Chartered Accountant's Practice: The financial services industry globally is required to obtain information of their clients and comply with Know Your Client Norms (KYC norms). Keeping in mind the highest standards of Chartered Accountancy profession in India, the Council of ICAI recommended such norms to be observed by the members of the profession who are in practice. These Know Your Client (KYC) Norms are also important in order to ensure a healthy growth of the profession and an equitable flow of professional work among the members.

The self-regulatory measures are recommendatory. However, considering the spirit underlying these measures, it is expected that every Chartered Accountant carrying out attest function is encouraged to follow them and implementation of these measures would go a long way in ensuring equitable flow of work among the members and would also further enhance the prestige of the profession in the society.

Question 3

Give your comments with reference to Chartered Accountants Act, 1949 and Schedules thereof.

- (a) *Mr. 'E', a practicing Chartered Accountant, was requested by one of his client to prepare a projection for next five years and also a report on the same. Mr. 'E' after having prepared the same stated in his report 'The sources of information, the basis of forecasts and also the major assumptions made in arriving at the forecasts. He also stated that he does not vouch for the accuracy of the forecasts.* (4 Marks, May, 2014)
- (b) *Mr. 'A' is a practicing Chartered Accountant working as proprietor of M/s A & Co. He went abroad for 3 months. He delegated the authority to Mr. 'Y' a Chartered Accountant his employee for taking care of routine matters of his office. During his absence Mr. 'Y' has conducted the under mentioned jobs in the name of M/s A & Co.*
 - (i) *He issued the audit queries to client which were raised during the course of audit.*
 - (ii) *He issued production certificate to a client under Central Excise Act, 1944.*
 - (iii) *He attended the Income Tax proceedings for a client as authorized representative before Income Tax Authorities.*

Please comment on eligibility of Mr. 'Y' for conducting such jobs in name of M/s A & Co. and liability of Mr. 'A' under the Chartered Accountants Act, 1949. (5 Marks, May, 2014)

- (c) *Mr. 'G', while applying for a certificate of practice, did not fill in the columns which solicited information about his engagement in other occupation or business, while he was indeed engaged in a business.* (3 Marks, May, 2014)
- (d) *Mr. 'C', a Chartered Accountant holds a certificate of practice while in employment also, recommends a particular lawyer to his employer in respect of a case. The lawyer, out of the professional fee received from employer paid a particular sum as referral fee to Mr. 'C'.* (4 Marks, May, 2014)

Answer

- (a) **Certification of Financial Forecast:** As per Clause (3) of Part I of Second Schedule to the Chartered Accountants Act, 1949, a chartered accountant in practice is deemed to be guilty of professional misconduct if he permits his name or the name of his firm to be used in connection with an estimate of earnings contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast.

Further, SAE 3400 "The Examination of Prospective Financial Information", provides that the management is responsible for the preparation and presentation of the prospective financial information, including the identification and disclosure of the sources of information, the basis of forecasts and the underlying assumptions. The auditor may be asked to examine and report on the prospective financial information to enhance its credibility, whether it is intended for use by third parties or for internal purposes. Thus, while making report on projection, the auditor need to mention that his responsibility is to examine the evidence supporting the assumptions and other information in the prospective financial information, his responsibility does not include verification of the accuracy of the projections, therefore, he does not vouch for the accuracy of the same.

In the instant case, Mr. E after having prepared the projections for next five years stated in his report, "the sources of information, the basis of forecasts and also the major assumptions made in arriving at the forecasts." He also stated that he does not vouch for the accuracy of the forecasts. Therefore there is no violation of the Chartered Accountants Act, 1949 and its Regulations.

- (b) **Delegation of Authority to the Employee:** As per Clause (12) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct "if he allows a person not being a member of the Institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm, any balance sheet, profit and loss account, report or financial statements".

In this case CA 'A' proprietor of M/s A & Co., went to abroad and delegated the authority to another Chartered Accountant Mr. Y, his employee, for taking care of routine matters of his office who is not a partner but a member of the Institute of Chartered Accountants.

The Council has clarified that the power to sign routine documents on which a professional opinion or authentication is not required to be expressed may be delegated in the following instances and such delegation will not attract provisions of this clause like issue of audit queries during the course of audit, asking for information or issue of

questionnaire, attending to routing matters in tax practice, subject to provisions of Section 288 of Income Tax Act etc.

- (i) In the given case, Mr. 'Y', a chartered accountant being employee of M/s A & Co has issued audit queries which were raised during the course of audit. Here "Y" is right in issuing the query, since the same falls under routine work which can be delegated by the auditor. Therefore, there is no misconduct in this case as per Clause (12) of Part I of First schedule to the Act.
 - (ii) Further, issuance of production certificate to a client under Central Excise Act, 1944 by Mr. "Y" being an employee of M/s A & Co. (an audit firm), is not a routine work and it is outside his authorities. Thus, CA 'A' is guilty of professional misconduct under Clause (12) of Part I of First Schedule to the Chartered Accountants Act, 1949.
 - (iii) In this instance, Mr. "Y", CA employee of the audit firm M/s A & Co. has attended the Income tax proceedings for a client as authorized representative before Income Tax Authorities. Since the council has allowed the delegation of such work, the chartered accountant employee can attend to routine matter in tax practice as decided by the council, subject to provisions of Section 288 of the Income Tax Act. Therefore, there is no misconduct in this case as per Clause (12) of Part I of First schedule to the Act.
- (c) Disclosure of Information: As per Clause (2) of Part III of First Schedule to the Chartered Accountants Act, 1949 a member shall be held guilty if a Chartered Accountant, in practice or not, does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority.

In the given case, Mr. "G", a Chartered Accountant while applying for a certificate of practice, did not fill in the columns which solicit information about his engagement in other occupation or business, while he was indeed engaged in a business. Details of engagement in business need to be disclosed while applying for the certificate of practice as it was the information called for in the application, by the Institute.

Thus, Mr. G will be held guilty for professional misconduct under the Clause (2) of Part III of First Schedule to the Chartered Accountants Act, 1949.

- (d) Referral Fee from Lawyer: According to Clause (2) of Part II of First Schedule to the Chartered Accountant Act, 1949, a member of the Institute (other than a member in practice) shall be guilty of professional misconduct, if he being an employee of any company, firm or person accepts or agrees to accept any part of fee, profits or gains from a lawyer, a chartered accountant or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification.

In the present case, Mr. C who beside holding a certificate of practice, is also an employee and by referring a lawyer to the company in respect of a case, he receives a particular sum as referral fee from the lawyer out of his professional fee.

Therefore, Mr. C is guilty of professional misconduct by virtue of Clause (2) of Part II of First schedule.

Question 4

- (a) *Mr. X who passed his CA examination of ICAI on 18th July, 2013 and started his practice from August 15, 2013. On 16th August 2013, one female candidate approached him for articleship. In addition to monthly stipend, Mr. X also offered her 1 % profits of his CA firm. She agreed to take both 1 % profits of the CA firm and stipend as per the rate prescribed by the ICAI. The Institute of Chartered Accountants of India sent a letter to Mr. X objecting the payment of 1 % profits. Mr. X replies to the ICAI stating that he is paying 1 % profits of his firm over and above the stipend to help the articled clerk as the financial position of the articled clerk is very weak. Is Mr. X Liable to professional misconduct?*
- (b) *Mr. Honest, a Chartered Accountant in practice, wrote two letters to M/s XY Chartered Accountants a firm of CAs; requesting them to allot him some professional work. As he did not have a significant practice or clients he also wrote a letter to M/s ABC, a firm of Chartered Accountants for securing professional work. Mr. Clever, an another CA, informed ICAI regarding Mr. Honest's approach to secure the professional work. Is Mr. Honest wrong in soliciting professional work? (4 Marks each, November, 2013)*

Answer

- (a) **Sharing Fees with an Articled Clerk:** As per Clause (2) of Part I of First Schedule to the Chartered Accountants Act 1949, a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualification as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India.

In view of the above, the objections of the Institute of Chartered Accountants of India, as given in the case, are correct and reply of Mr. X, stating that he is paying 1 % profits of his firm over and above the stipend to help the articled clerk as the position of the articled clerk is weak is not tenable.

Hence, Mr. X is guilty of professional misconduct in terms of Clause (2) of Part I of First Schedule to the Chartered Accountants Act 1949.

- (b) **Securing Professional Work:** Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 states that a Chartered Accountant in practice shall be deemed to be guilty of misconduct if he solicits clients or professional work either directly or

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indirectly by a circular, advertisement, personal communication or interview or by any other means. Provided that nothing herein contained shall be construed as preventing or prohibiting any Chartered Accountant from applying or requesting for or inviting or securing professional work from another chartered accountant in practice.

Such a restraint has been put so that the members maintain their independence of judgment and may be able to command respect from their prospective clients.

In the given case, Mr. Honest wrote letters only to other Chartered Accountants, M/s XY and M/s ABC requesting them to allot some professional work to him, which is not prohibited under Clause (6) as explained above. Thus, Mr. Honest is not wrong in soliciting professional work.

Question 5

C.A. Prabhu is a leading income tax practitioner and consultant for derivative products. He resides in Mumbai near to the ABC commodity stock exchange and does trading in commodity derivatives. Every day, he invests nearly 50% of his time to settle the commodity transactions. Is C.A. Prabhu liable for professional misconduct? (4 Marks, November, 2013)

Answer

Engaging into a Business: As per Clause (11) of Part I of First Schedule of Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he engages in any business or occupation other than the profession of Chartered Accountant unless permitted by the Council so to engage.

However, the Council has granted general permission to the members to engage in certain specific occupation. In respect of all other occupations specific permission of the Institute is necessary.

In this case, CA Prabhu is engaged in the occupation of trading in commodity derivatives which is not covered under the general permission.

Hence, specific permission of the Institute has to be obtained otherwise he will be deemed to be guilty of professional misconduct under Clause (11) of Part I of First Schedule of Chartered Accountants Act, 1949.

Question 6

Mr. Nigal, a Chartered Accountant in practice, delivered a speech in the national conference organized by the Ministry of Textiles. While delivering the speech, he told to the audience that he is a management expert and his firm provides services of taxation and audit at reasonable rates. He also requested the audience to approach his firm of chartered accountants for these services and at the request of audience he also distributed his business cards and telephone number of his firm to those in the audience. Comment. (4 Marks, November, 2013)

Answer

Using Designation Other Than a CA and Providing Details of Services Offered: Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 states that a Chartered Accountant in practice shall be deemed to be guilty of misconduct if he solicits

clients or professional work either directly or indirectly by a circular, advertisement, personal communication or interview or by any other means. Such a restraint has been put so that the members maintain their independence of judgment and may be able to command respect from their prospective clients.

Section 7 of the Chartered Accountants Act, 1949 read with Clause (7) of Part I of the First Schedule to the said Act prohibits advertising of professional attainments or services of a member. It also restrains a member from using any designation or expression other than that of a chartered accountant in documents through which the professional attainments of the member would come to the notice of the public. Under the clause, use of any designation or expression other than chartered accountant for a chartered accountant in practice, on professional documents, visiting cards, etc. amounts to a misconduct unless it be a degree of a university or a title indicating membership of any other professional body recognised by the Central Government or the Council.

Member may appear on television and films and agree to broadcast in the Radio or give lectures at forums and may give their names and describe themselves as Chartered Accountants. Special qualifications or specialized knowledge directly relevant to the subject matter of the programme may also be given but no reference should be made, in the case of practicing member to the name and address or services of his firm. What he may say or write must not be promotional of his or his firm but must be an objective professional view of the topic under consideration.

Thus, it is improper to use designation "Management Expert" since neither it is a degree of a University established by law in India or recognised by the Central Government nor it is a recognised professional membership by the Central Government or the Council. Therefore, he is deemed to be guilty of professional misconduct under both Clause (6) and Clause (7) as he has used the designation "Management Expert" in his speech and also he has made reference to the services provided by his firm of Chartered Accountants at reasonable rates. Distribution of cards to audience is also a misconduct in terms of Clause (6).

Question 7

Give your comments with reference to Chartered Accountants Act, 1949 and Schedules thereto

- (a) *Mr. A, a practicing Chartered Accountant, failed to return the books of account and other documents of a client despite many reminders from the client. The client had settled his entire fees dues also.*
- (b) *Mr. B, a practicing Chartered Accountant as well as a qualified lawyer, was permitted by the bar council to practice as a lawyer also. He printed his visiting card where he mentioned his designation as Chartered Accountant and Advocate.*
- (c) *Mr. C, a practicing Chartered Accountant, in the course of the audit of a listed company discovered serious violations of the provisions of the Companies Act 1956, informed the Registrar of Companies out of public interest.*

- (d) *Mr. D, a practicing Chartered Accountant, did not complete his work relating to the audit of the accounts of a company and had not submitted his audit report in due time to enable the company to comply with the statutory requirements.* (4 Marks each, May, 2013)

Answer

- (a) **Bringing Disrepute to the Profession:** A member is liable to disciplinary action under Section 21 of the Chartered Accountants Act, 1949, if he is found guilty of any professional or "Other Misconduct". As per part IV of the First Schedule to the Chartered Accountants Act, a member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he-
- (1) is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months;
 - (2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.

A member may be found guilty of "Other Misconduct", as per Clause (2), under the aforesaid provisions rendering, himself unfit to be member if he retains the books of account and documents of the client and fails to return these to the client on request without a reasonable cause.

In the given case, Mr. A failed to return the books of accounts and other documents of his client without any reasonable cause, therefore, he would be guilty of other misconduct under the aforesaid provisions.

- (b) **Using Designation of CA and Advocate Simultaneously:** Under Clause (7) of Part I of First Schedule to the Chartered Accountants Act, 1949, a CA in practice is deemed to be guilty of professional misconduct if he (i) advertises his professional attainments or services or (ii) uses any designation or expressions other than 'Chartered Accountant' on professional documents, visiting cards, letter heads or sign boards unless it be a degree of a university established by law in India or recognized by the Central Government or a title indicating membership of the ICAI or of any other institution that has been recognized by the Central Government or may be recognized by the council.

This clause prohibits advertising of professional attainments or services of a member. It also restrains a member from using any designation or expression other than that of a Chartered Accountant in documents through which the professional attainments of the member would come to the notice of the public.

Members of the Institute in practice who are otherwise eligible may practice as advocates subject to the permission of the Bar Council but in such case, they should not use designation 'chartered accountant' in respect of the matters involving the practice as an advocate. In respect of other matters they should use the designation 'chartered accountant' but they should not use the designation 'chartered accountant' and 'advocate' simultaneously.

Since Mr. B has printed his visiting card where he mentioned his designation as Chartered Accountant and Advocate which is prohibited under the above clause and hence Mr. B is guilty of professional misconduct.

- (c) This question is redundant in view of the provisions of the Companies Act, 2013.
- (d) Not Exercising Due Diligence: According to Clause (7) of Part I of Second Schedule to Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he does not exercise due diligence or is grossly negligent in the conduct of his professional duties.

It is a vital clause which unusually gets attracted whenever it is necessary to judge whether the accountant has honestly and reasonably discharged his duties. The expression negligence covers a wide field and extends from the frontiers of fraud to collateral minor negligence.

Where a Chartered Accountant had not completed his work relating to the audit of the accounts a company and had not submitted his audit report in due time to enable the company to comply with the statutory requirement in this regard. He was guilty of professional misconduct under Clause (7).

Since Mr. D has not completed his audit work in time and consequently could not submit audit report in due time and consequently, company could not comply with the statutory requirements, therefore, the auditor is guilty of professional misconduct under Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Question 8

Give your comments with reference to the Companies Act, 1956 and the Chartered Accountants Act, 1949 and Schedules thereto:

- (a) A Chartered Accountant who was in practices since last 20 years died in a road accident. His widow sold the practice to another Chartered Accountant in practice for ₹ 30 lakhs. The price also included the right to use the firm name.
- (b) K, Chartered Accountant in practice as a sole proprietor at Chennai has an office in the suburbs of Chennai. Due to increase in the income tax assessment work, he opens another office near the income tax office. For running the new office, he has employed a retired Income Tax Commissioner.
- (c) Mr. A has been appointed statutory auditor of a private limited company where his spouses' sisters' husband is having 75% ownership.
- (d) Mr. E, proprietor of M/s. E & Co. is the statutory auditor of a Company which owns a store dealing in computer equipments. During the year 2011-12, E purchased a computer from the store costing ₹ 25,000 for his son. He did not make any payment for the same, but asked the company to adjust the same against the audit fees payable of ₹ 50,000.

(4 Marks each, November, 2012)

Answer

- (a) **Sale of Goodwill:** With reference to Clause (2) of Part I to the First Schedule to Chartered Accountants Act, 1949 the Council of the Institute of Chartered Accountants of India had an occasion to consider whether the goodwill of a proprietary concern of chartered accountant can be sold to another member who is otherwise eligible, after the death of the proprietor.

The Council resolved that the sale/transfer of goodwill in the case of a proprietary firm of chartered accountant to another eligible member of the Institute shall be permitted. It further laid down that in cases where the death of proprietor occurs after 30.08.1998, the goodwill of the deceased member's practice can be sold to another member and permission of the Institute has to be obtained within a year of the death of the proprietor concerned. It is even laid down that in such cases the name of the proprietary firm concerned would not be removed up to a period of one year from the death of the proprietor.

Thus, in the instant case, when the widow of the chartered accountant sold the practice to another member, it is nothing but goodwill sold to another member. The sale of the practice and the right to use the name is also allowed in terms of the above decision of the Council. Therefore, the above act of the widow of the Chartered Accountant is permissible.

- (b) **Maintenance of Branch Office in the Same City:** As per section 27 of the Chartered Accountants Act, 1949 if a chartered accountant in practice has more than one office in India, each one of these offices should be in the separate charge of a member of the Institute. However, a member can be in charge of two offices if the second office is located in the same premises or in the same city, in which the first office is located; or the second office is located within a distance of 50 Kilometres from the municipal limits of a city, in which the first office is located.

In the given case, Mr. K, Chartered Accountant in practice as a sole proprietor at Chennai has an office in suburbs of Chennai, and due to increase in the work he opened another branch near the income tax office. He also employed the income tax commissioner to run the new office.

Assuming that the second office is situated within a distance of 50 Kms from municipal limits, there will be no misconduct if Mr. K will be in charge of both the offices, however, he will be liable to declare which of the two offices is the main office.

Note: Alternative view is possible on the assumption that distance of both the office is more than 50 Km, Hence, Mr. K will be liable for misconduct under section 27 of the Chartered Accountant Act, 1949.

- (c) **Appointment of Auditor in case of Relative Holding Substantial Interest:** Clause (4) of Part I of Second Schedule to the Chartered Accountants Act, 1949 states that if an auditor expresses his opinion on the financial statements of any business or enterprises in which he, his firm or a partner in his firm has a substantial interest, he is committing professional misconduct.

Further as per Council General Guidelines, 2008, a member of the Institute shall not express his opinion on financial statements of any business or enterprise in which one or more persons, who are his "relatives" within the meaning of AS 18 have, either by themselves or in conjunction with such member, a substantial interest in the said business or enterprise. It may be noted that the spouses' sisters' husband does not fall within this definition.

In the given case, Mr. A, has been appointed as statutory auditor of a private limited company where his spouses' sisters' husband is having 75% ownership i.e. substantial interest. As per AS 18, spouses' sisters' husband is not covered in the definition of the term relative.

Therefore, appointment of Mr. A as statutory auditor in such company would not amount to professional misconduct as per Clause (4) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

- (d) **Independence of Auditor:** The guidance note on "Independence of Auditors" issued by the ICAI in this context recommends that "a question of indebtedness may also be raised where an auditor of a company purchases goods or services from the company audited by him. In such a case, if the amount outstanding exceeds ₹ 1,000, irrespective of the nature of the purchase or period of credit allowed to other customers, the provisions concerning disqualification of auditor as contained in sec 226(3) of the Companies Act, 1956 will be attracted." Now this limit has been increased from ₹ 1,000 to ₹ 5,00,000 as per the provisions of the Section 141(3)(d)(ii) of the Companies Act, 2013.

This provision will be applicable in the case of purchase of Computer for his son or for personal work by the auditor of a company on normal terms and conditions of the business of the company if the amount outstanding at the end of the year exceeded the prescribed limit which is ₹ 5,00,000.

In the instant case, Mr. E, Proprietor of M/s E & Co. is the statutory auditor of a company which owns a store dealing in computer equipments, purchased a computer from the store and adjusted the payment for the same against his audit fee.

Therefore, the contention of Mr. E that he does not incur disqualification is correct as he has purchased a computer of the value of ₹ 25,000 which is not exceeding the prescribed limit and asked the company to adjust the same against the audit fees payable of ₹ 50,000.

Accordingly, Mr. E is not disqualified to be appointed as auditor of the company as he is indebted to the company for an amount not exceeding ₹ 5,00,000. Thus, Mr. E will not be held liable for guilty of professional misconduct.

Question 9

Give your comments with reference to the Chartered Accountants Act, 1949 and Schedules thereto.

- (a) *Z, a practicing Chartered Accountant issued a certificate of circulation of a periodical without going into the most elementary details of how the circulation of a periodical was*

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being maintained i.e. by not looking into the financial records, bank statements or bank pass books, by not examining evidence of actual payment of printers bills and by not caring to ascertain how many copies were sold and paid for.

- (b) *X, a practicing Chartered Accountant in an application for permission to study submitted by his Articled Assistant to the council had confirmed that the normal working hours of his office were from 11 A.M. to 6 P.M. and the hours during which the Articled Assistant was required to attend classes were 7.00 A.M. to 9.30 A.M. According to the information from College, the Articled Assistant attended the College from 10 A.M. to 1.55 P.M. on all week days. About the Articled Assistant attending the classes even during office hours, X pleaded ignorance.*
- (c) *K, a practicing Chartered Accountant gave 50% of the audit fees received by him to L, who was not a Chartered Accountant, under the nomenclature of office allowance and such an arrangement continued for a number of years.*
- (d) *M, a practicing Chartered Accountant sent a letter to another firm of Chartered Accountants, claiming himself to be a pioneer in liaisoning with Central Government Ministries and its allied Departments for getting various Government clearances for which he had claimed to have expertise and had given a list of his existing clients and details of his staff etc.*

Answer

- (a) Failure to Obtain Information: Clause (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949 states that if a Chartered Accountant in practice fails to obtain sufficient information to warrant the expression of an opinion or his exceptions are sufficient material to negate the expression of an opinion, the chartered accountant shall be deemed to be guilty of a professional misconduct.

In the instant case Mr. Z, a practicing Chartered Accountant issued a certificate of circulation of a periodical without going into the most elementary details of how the circulation of a periodical was being maintained i.e., by not looking into the financial records, bank statements or bank pass books, by not examining evidence of actual payment of printers bills and by not caring to ascertain how many copies were sold and paid for.

The chartered accountant should not express his opinion before obtaining the required data and information. As an auditor, Mr. Z ought to have verified the basic records to ensure the correctness of circulation figures.

Thus, in the present case Mr. Z will be held guilty of professional misconduct as per Clause (8) of Part I of Second Schedule of Chartered Accountants Act, 1949.

Alternative Solution is possible on the basis of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

- (b) Failure to Observe the Regulations: As per Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949 a member shall be held guilty of professional

misconduct if he contravenes any of the provisions of the Act or the regulations made thereunder or any guidelines issued by the Council.

The chartered accountant, as per Regulations also, is expected to impart proper practical training. There is a specific circular issued which guides on timing for training for articleship.

In the instant case, the articled clerk must have not been attending office on a regular basis and the explanation of the Chartered Accountant cannot be accepted. It is also quite likely that the articled clerk would be availing leave quite often and coming late to the office.

Under the circumstances, the Chartered Accountant is guilty of misconduct for making a misstatement to the institute in regard to the discharge of his professional duties.

Note: Alternative Solution is possible as per Schedule II, Part II, Clause (3), a member is deemed to be guilty of professional misconduct if he includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false. In the instant case, X knew about the college timing of his articled assistant and he had given false information to the institute knowing them to be false and hence he will be deemed to be guilty of professional misconduct.

- (c) **Sharing of Audit Fees with Non-Member:** As per Clause (2) of Part I of First Schedule to the Chartered Accountants Act, 1949 a member shall be held guilty if a Chartered Accountant in practice pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualification as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India.

In the instant case, Mr. K, a practising Chartered Accountant gave 50% of the audit fees received by him to Mr. L, who was not a Chartered Accountant, under the nomenclature of office allowance and such an arrangement continued for a number of years. In this case, it is not the nomenclature to a transaction that is material but it is the substance of the transaction, which has to be looked into.

The Chartered Accountant had shared his profits and, therefore, Mr. K will be held guilty of professional misconduct under the Clause (2) of Part I of First Schedule to the Chartered Accountants Act, 1949.

- (d) **Soliciting Work Directly or Indirectly:** As per Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949, a member shall be held guilty if a Chartered Accountant in practice solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means.

Further, as per Central Council Guidelines for Advertisement for the members in practice, write up of the members should not claim superiority over any other Member(s)/Firm(s) and should also not include the names of the clients.

In the present case, Mr. M, a practicing Chartered Accountant sent the letter to another firm of Chartered Accountants, claiming himself to be a pioneer in liaisoning with Central Government Ministries and its allied Departments for getting various Government clearances for which he had claimed to have expertise and had also given a list of his existing clients and details of his staff etc. which seems to be indirect methods to adventure their professional practice with a view to gain publicity and thereby solicit clients or professional work.

Hence, Mr. M was guilty of professional misconduct as per Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949.

Question 10

Comment on the following:

- (a) *A Chartered Accountant in practice has been suspended from practice for a period of 6 months. During the said period, though he did not undertake the audit assignment since he had surrendered certificate of practice, he had appeared before Income Tax authorities in his capacity as a Chartered Accountant.*
- (b) *Mr. J, a Chartered Accountant has identified that ABC Ltd. has taken a loan of ₹ 15 lakhs from Provident Fund Account, during the course of audit. The said loan was not reflected in the books of accounts and statements were prepared ignoring the same.*
- (c) *Mr. K, a Chartered Accountant certified the circulation of a weekly magazine without examining the records and relevant documents.*
- (d) *Mr. R, a Chartered Accountant in practice approached Manager of a Nationalised Bank for a loan of ₹ 25 lakhs. He has also informed the Manager that if the loan is sanctioned, the Income Tax return of the Manager and staff will be filed without charging any fees, as quid Pro quo for the loan sanctioned.*

(4 Marks each, November, 2011)

Answer

- (a) **Undertaking Tax Representation Work:** A chartered accountant not holding certificate of practice cannot take up any other work because it would amount to violation of the relevant provisions of the Chartered Accountants Act, 1949.

In case a member is suspended and is not holding Certificate of Practice, he cannot in any other capacity take up any practice separable from his capacity to practice as a member of the Institute. This is because once a person becomes a member of the Institute, he is bound by the provisions of the Chartered Accountants Act, 1949 and its Regulations.

If he appears before the income tax authorities, he is only doing so in his capacity as a chartered accountant and a member of the Institute. Having bound himself by the said Act and its Regulations made there under, he cannot then set the Regulations at naught.

by contending that even though he continues to be a member and has been punished by suspension, he would be entitled to practice in some other capacity.

Thus, in the instant case, a chartered accountant would not be allowed to represent before the income tax authorities for the period he remains suspended. Accordingly, in the present case he is guilty of professional misconduct.

- (b) **Failure to Disclose Material Facts:** As per Clause (5) of Part I of Second Schedule to the Chartered Accountants Act, 1949, a chartered Accountant in practice will be held liable for misconduct if he fails to disclose a material fact known to him, which is not disclosed in the financial statements but disclosure of which is necessary to make the financial statements not misleading.

In the present case, Mr. J has come across information that a loan of ₹ 15 lakhs has been taken by the company from Provident Fund. This is contravention of rules and the said loan has not been reflected in the books of accounts. Further, this material fact has also to be disclosed in the financial statements.

Mr. J has failed to disclose this fact in his report. Therefore, he is attracted by the provisions of professional misconduct under Clause (5) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

- (c) **Failure to Obtain Information:** Clause (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949 states that if a Chartered Accountant in practice fails to obtain sufficient information to warrant the expression of an opinion or his exceptions are sufficient material to negate the expression of an opinion, the chartered accountant shall be deemed to be guilty of a professional misconduct.

Mr. K, a Chartered Accountant, certified the circulation of a weekly magazine without examination of records and other relevant documents. The chartered accountant should not express his opinion before obtaining the required data and information. As an auditor, Mr. K ought to have verified the basic records such as print order, printer's bill, number of copies sold and paid for, number of copies returned unsold to ensure the correctness of circulation figures.

Thus, in the present case, Mr. K will be held guilty of professional misconduct under Clause (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

- (d) **Bringing Disrepute to the Profession:** Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949 states that member of the Institute, whether in practice or not, shall be deemed guilty of other misconduct, if he in the opinion of the Council, brings disrepute to the profession or to the Institute as a result of his action whether or not related to his professional work".

Accordingly, a Chartered Accountant is also expected to maintain the highest standards and integrity even in his personal affairs and any deviation from these standards calls for disciplinary action.

In the present case, the action of Mr. R, a Chartered Accountant in practice offering free service in return to sanction of loan brings disrepute to the profession of a Chartered Accountant.

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Hence, Mr. R will be held guilty of other misconduct under Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

Question 11

Give your comments with reference to the Chartered Accountants Act, 1949 and schedules thereto:

- (a) *CA Smart, a practicing Chartered Accountant was on Europe tour between 15-9-10 and 25-9-10. On 18-9-10 a message was received from one of his clients requesting for a stock certificate to be produced to the bank on or before 20-9-10. Due to urgency, CA Smart directed his assistant, who is also a Chartered Accountant, to sign and issue the stock certificate after due verification, on his behalf.*
- (b) *Mr. Kishore, a practicing Chartered Accountant was appointed by the Central Government to carry out a special audit u/s 233A of the Companies Act, 1956. He accepted the appointment and proceeded with the work without communicating to the statutory auditor of the company.*
- (c) *Mr. Sodhi, a Chartered Accountant in practice, who is proposed to be removed as the auditor of a company makes unsubstantiated and derogatory remarks against the management of the company in his representation u/s 225 of the Companies Act, 1956.*
- (d) *A letter is sent by a Chartered Accountant in practice to the Ministry of Finance inquiring whether a panel of auditors is being maintained by the Ministry and if so to include his name in the panel (CV enclosed).*

(4 Marks each, May, 2011)

Answer

- (a) **Allowing a Member Not Being a Partner to Sign Certificate:** As per Clause (12) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct "if he allows a person not being a member of the Institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm, any balance sheet, profit and loss account, report or financial statements".

In this case, CA Smart allowed his assistant who is not a partner but a member of the Institute of Chartered Accountants of India to sign stock certificate on his behalf and thereby commits misconduct.

Thus, CA Smart is guilty of professional misconduct under Clause (12) of Part I of First Schedule to the Chartered Accountants Act, 1949.

- (b) This question is redundant in view of the provisions of the Companies Act, 2013.
- (c) This question is redundant in view of the provisions of the Companies Act, 2013.
- (d) **Making Roving Inquiries:** Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 states that a Chartered Accountant in practice shall be deemed to be guilty of misconduct if he solicits clients or professional work either directly or indirectly by a circular, advertisement, personal communication or interview or by any other means. Such a restraint has been put so that the members maintain their

independence of judgement and may be able to command respect from their prospective clients.

In case of making an application for the empanelment for the allotment of audit and other professional work, the Council has opined that, "where the existence of such a panel is within the knowledge of the member, he is free to write to the concerned organization with a request to place his name on the panel. However, it would not be proper for the member to make roving inquiries by applying to any such organization for having his name included in any such panel."

Accordingly, the member is guilty of misconduct in terms of the above provision as he has solicited professional work from the Finance Ministry, by inquiring about the maintenance of the panel.

Question 12

Give your comments with reference to the Chartered Accountants Act, 1949 and schedules thereto:

- (a) *PQR and Associates, Chartered Accountants have their website and on the letterhead of the firm it is mentioned that "Visit our website: PQR com". In the website the nature of assignments handled, names of prominent clients and fees charged is also displayed.*
- (b) *Mr. B is a practising Chartered Accountant holding a valid certificate of practice. He accepted the appointment as Director of the Green World Co. Ltd. Mr. C, a partner of Mr. B is statutory auditor of the said company.*
- (c) *YKS & Co., a proprietary firm of Chartered Accountants was appointed as concurrent auditor of a bank. YKS used his influence for getting some cheques purchased and thereafter failed to repay the loan/overdraft.*
- (d) *Mr. Mohan is a practising Chartered Accountant. He issued a certificate of consumption which did not reflect the correct factual position of the consumption of raw material by the concerned entity. It is found that the certificate is given on the basis of data appearing in the minutes of meeting of the Board of Directors. (4 Marks each, November, 2010)*

Answer

- (a) The Council of the Institute of Chartered Accountants has issued guidelines for posting the particulars on Website by Chartered Accountants in practice and firms of Chartered Accountants in practice under Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949. According to the guidelines the details in the website should be so designed that it does not amount to soliciting client or professional work. It is permitted to mention the website address on letterhead but soliciting people to visit website is not permitted. PQR and Associates letterhead invites to people to visit their website. Similarly the website mentions the nature of assignments, names of the prominent clients and fees charged. The nature of assignments is permitted for display only on specific 'Pull' request. And the name of clients, the fees charged is not permitted at all.

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PQR & Associates will be held guilty of Professional Misconduct under Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949.

- (b) Clause (11) of Part 1 of First Schedule to the Chartered Accountants Act, 1949 prohibits a member to engage in any business or occupation other than the profession of chartered accountants unless permitted by the Council so to engage. It does not prohibit a Chartered Accountant from being a director of a company, except managing director or a whole time director. But if any of the partners is interested in such company as an auditor then he cannot be director of the said company.

In the present case Mr. B has accepted the directorship in a Company, where his partner Mr. C is an auditor, without obtaining specific permission of the council. Hence, Mr. B will be held guilty for professional misconduct under Clause (11) of Part 1 of First Schedule to the Chartered Accountants Act, 1949.

Further, the Council of the Institute of Chartered Accountants of India has categorically stated that in cases where a member is a director of a company, the firm, in which the said member is a partner, should not express any opinion on its financial statements. Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 states that expressing an opinion on financial statements of any business or enterprise in which he, his firm or a partner of his firm has a substantial interest would constitute misconduct.

Additionally, Section 141(3)(c) of the Companies Act, 2013 also disqualifies a person to be appointed as an auditor if he is a partner of an officer of the company. Furthermore, section 141(4) of the Companies Act, 2013 requires the appointed auditor to vacate his office if he incurs any of the disqualifications mentioned under sub-section (3).

Therefore, in cases, where a member of the Institute is a director of a company or a firm in which said member is a partner should not express any opinion on its financial statements. Hence Mr. C, a partner of Mr. B, should vacate the office.

- (c) This is a case which is covered under the expression in other misconduct of the Chartered Accountants Act, 1949. As per Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949, a member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he, in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work. Here the Chartered Accountant is expected to maintain the highest standards and integrity even in his personal affairs and any deviation from these standards calls for disciplinary action.

In the present case, YKS & Co, being a concurrent auditor used his position to obtain the funds and failed to repay the same to the bank. This brings disrepute to the profession of a Chartered Accountant. This act of YKS & Co is not pardonable.

Therefore, YKS & Co will be held guilty of other misconduct under Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949.

- (d) According to Clause (2) of Part I of Second Schedule to the Chartered Accountants Act, 1949 a chartered accountant is held guilty of professional misconduct if he certifies or submits a report of an examination of financial statements unless the examination of

such statements and the related records has been made by him or by a partner or employee in his firm or any other chartered accountant in practice.

Mr. Mohan has issued a certificate of consumption which does not reflect the correct factual position of the consumption of raw material by the concerned entity. He has failed in his duty of examining the record. He has relied on the minutes of Board of director's meeting which is not proper evidence to show the consumption of raw material. The relevant record of production and stock register should have been scrutinized thoroughly and properly.

Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 also applies to this case which states that a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he does not exercise due diligence or is grossly negligent in the conduct of his professional duties.

Mr. Mohan will be held guilty of Professional Misconduct under Clause (2) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Question 13

XYZ Ltd. appoints you as the auditor of the company. You observe that previous auditors A & Co., resigned. Also Balance Sheet as at 31-03-2010 shows an audit fee payable of ₹ 25,000. What precautions you will take before commencing the audit work? (4 Marks, November, 2010)

Answer

Precautions before Commencing the Audit Work: In the instant case, before accepting the appointment as well as commencing the audit work, the auditor should see the following-

- (i) Check whether a statement, in the prescribed form, has been filed by the resigning auditor within a period of 30 days from the date of resignation, to the company and the registrar (or the Comptroller and Auditor-General of India, as the case may be), indicating the reasons and other facts as may be relevant with regard to the resignation, for the compliance of Section 140(2) of the Companies Act, 2013 (herein after referred as the Act).
- (ii) Ascertain that the appointment of new Auditor is in compliance with Section 139(8) of the Act as mentioned above i.e. the resolution appointing the new auditor has been approved by the company in the general meeting as in the case of casual vacancy by resignation.
- (iii) The auditor must obtain the NOC from previous auditor. He should also refer the resignation statement file by the previous auditor and communicate with him (previous auditor) to ascertain the circumstances which led up him to retire.
- (iv) The auditor must ascertain whether there existed any circumstances on account of which he should not accept the appointment.
- (v) As per Section 139 of the Act, the auditor must ensure that before any appointment or reappointment of auditors is made at an annual general meeting, a written certificate has been provided by him to the company that his appointment is in accordance with the limits specified in Section 141(3)(g).

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- (vi) He should also satisfy himself that the notice provided for under Sections 139 and 140 has been effectively served on the outgoing auditor.

Further, Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949, provides that a member in practice shall be deemed to be guilty of professional misconduct if he accepts a position as auditor previously held by another chartered accountant without first communicating with him in writing. Moreover, Clause (9) of Part I of the same Schedule, provides that a member in practice shall be deemed to be guilty of professional misconduct if he accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of Sections 224 and 225 of the Companies Act, 1956 (now Section 139 and 140 of the Companies Act, 2013), in respect of such appointment have been duly complied with.

Question 14

Give your comments with reference to the Chartered Accountants Act, and Schedules thereto:

- (a) *Mr. A, a practicing Chartered Accountant, took over as the executive chairman of Software Company on 1.4.2010. On 10.4.2010 he applied to the Council for permission.*
- (b) *Mr. X, a practicing Chartered Accountant, issued a circulation certificate for a periodical on the basis of outward memos, which was later found to be false.*
- (c) *Mr. Z, a practicing Chartered Accountant, received a sum of ₹ 1 lac on 1.9.2009 from a Client who intends to leave abroad for a period of a year, with a request that his advance tax liabilities to be paid over the three instalments. On 15th September, 2009, 15th December, 2009 and 15th March, 2010. After remitting the 1st instalment of advance tax on 15.9.2009, Z did not keep the Balance Money in a separate Bank account and he is of the opinion he will remit the money within reasonable time as per payment schedule of Advance tax.*
- (d) *Mr. X, a Chartered Accountant, employed as a paid Assistant with a Chartered Accountant firm. On 31st December, 2008 he leaves the services of the firm. Despite many reminders from ICAI he fails to reply regarding the date of leaving the services of the firm.*
(4 Marks each, May, 2010)

Answer

- (a) Specific Permission to be Obtained: As per Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice will be deemed to be guilty of professional misconduct if he engages in any business or occupation other than the profession of Chartered Accountant unless permitted by the Council so to engage.

In the instant case, Mr. A took over as the executive chairman on 01.04.2010 and applied for permission on 10.04.2010. On the basis of these facts, he was engaged in other occupation between the period 01.04.2010 and 10.04.2010, without the permission of the Council and therefore, Mr. A is guilty of professional misconduct in terms of Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

- (b) Failure to Obtain Information: As per Clause (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice, will be deemed to be guilty of professional misconduct if he fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion.

This indicates a Chartered Accountant must determine the extent of information, which, should be obtained by him before he expresses an opinion on the financial statements.

In the present case, Mr. X certifies the circulation based on outward memos, without going into the most elementary details of how the circulation of a periodical was maintained, i.e. not verifying the financial records, bank statements, collections for the periodicals, payment of the printer's bills etc. Hence, he is guilty of professional misconduct as per Clause (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

- (c) Money of Client to be Kept in a Separate Bank Account: As per Clause (10) of Part I of Second Schedule to the Chartered Accountant Act, 1949, a Chartered Accountant in practice will be deemed to be guilty of professional misconduct if he fails to keep moneys of his client other than the fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time.

The term reasonable time would depend upon the circumstances of the case. Moneys which are intended to be spent within a reasonably short time need not be put in a separate bank account.

Thus, in the instant case, Mr. Z should have kept the balance money after remitting the first instalment of advance tax into a separate bank account. Hence he is guilty of professional misconduct as per Clause (10) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

- (d) Failed to Supply Information Called For: As per Clause (2) of Part III of the First Schedule to the Chartered Accountants Act, 1949, a member, whether in practice or not, will be deemed to be guilty of professional misconduct if he does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate authority.

Thus, in the given case, Mr. X has failed to reply to the letters of the Institute asking him to confirm the date of leaving the service as a paid assistant. Therefore, he is held guilty of professional misconduct as per Clause (2) of Part III of the First Schedule to the Chartered Accountants Act, 1949.

Question 15

Give your comments with reference to the Chartered Accountants Act, and schedules thereto:

- (a) *Mrs. Fair is a Director of XYZ Private Limited, having 15% share -holdings in the company. During 2003, the company appointed C.A. Mr. Lovely, Mrs. Fair's spouse, as its*

statutory auditor. On Mr. Lovely's advice, the company issued fresh equity shares in 2003-04, in the ratio of one share for every two shares held by the shareholders of the company. Mr. Lovely used to deliver audit report for subsequent years without any comments or disclosures, thereupon.

- (b) *Mr. A, a Chartered Accountant was the auditor of 'A Limited'. During the financial year 2007-08, the investment appeared in the Balance Sheet of the company of ₹ 10 lakhs and was the same amount as in the last year. Later on, it was found that the company's investments were only ₹ 25,000, but the value of investments was inflated for the purpose of obtaining higher amount of Bank loan.*
- (c) *An advertisement was published in a Newspaper containing the photograph of Mr. X, a member of the institute wherein he was congratulated on the occasion of the opening ceremony of his office.*
- (d) *Mr. X, a Chartered Accountant and the proprietor of X & Co., wrote several letters to the Assistant Registrar of Co-operative Societies stating that though his firm was on the panel of auditors, no audit work was allotted to the firm and further requested him to look into the matter.*

(4 Marks each, May, 2010)

Answer

- (a) Expressing an Opinion on Financial Statements where Director is a Relative: Clause (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949, provides that a member in practice shall be deemed to be guilty of professional misconduct if he accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of Sections 224 and 225 of the Companies Act, 1956 (now Section 139 and 140 read with Section 141 of the Companies Act, 2013), in respect of such appointment have been duly complied with.

As per Section 141(3)(f) of the Companies Act, 2013, a person shall not be eligible for appointment as an auditor of a company whose relative is a director or is in the employment of the company as a director or key managerial personnel. The definition of 'Relative' includes husband and wife.

In this case Mrs. Fair is a Director of XYZ Private Limited and the company has appointed Mr. Lovely, Chartered Accountant, Mrs. Fair's spouse, as its statutory auditor. Mr. Lovely should not accept the appointment as statutory auditor of the company, where his wife Mrs. Fair is director. This is contravention of section 141(3)(f) of the Companies Act, 2013.

Therefore, Mr. Lovely is liable for misconduct as per Clause (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

- (b) Grossly Negligent in Conduct of Duties: As per Part I of Second Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he, certifies or submits in his name or in the name of his firm, a report of an examination of financial statements unless the examination of such statements and the related records has been made by him or by a partner or an employee in his firm or by another chartered accountant in practice, under Clause (2);

does not exercise due diligence, or is grossly negligent in the conduct of his professional duties, under Clause (7); or fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion, under Clause (8).

The primary duty of physical verification and valuation of investments is of the management. However, the auditor's duty is also to verify the physical existence and valuation of investments placed, at least on the last day of the accounting year. The auditor should verify the documentary evidence for the cost/value and physical existence of the investments at the end of the year. He should not blindly rely upon the Management's representation.

In the instant case, such non-verification happened for two years. It also appears that auditors failed to confirm the value of investments from any proper source. In case auditor has simply relied on the management's representation, the auditor has failed to perform his duty.

Accordingly, Mr. A, will be held liable for professional misconduct under Clauses (2), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

- (c) Publishing an Advertisement Containing Photograph: As per Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice shall be deemed to be guilty of misconduct if he solicits clients or professional work either directly or indirectly by a circular, advertisement, personal communication or interview or by any other means.

In the given case, Mr. X published an advertisement in a Newspaper containing his photograph on the occasion of the opening ceremony of his office. On this context, it may be noted that the advertisement which had been put in by the member is quite prominent. If soliciting of work is allowed, the independence and forthrightness of a Chartered Accountant in the discharge of duties cannot be maintained.

The above therefore amounts to soliciting professional work by advertisement directly or indirectly. Mr. X would be therefore held guilty under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

- (d) Soliciting Professional Work: As per Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice shall be deemed to be guilty of misconduct if he solicits clients or professional work either directly or indirectly by a circular, advertisement, personal communication or interview or by any other means.

In the given case, Mr. X, a Chartered Accountant and proprietor of M/s X and Co., wrote several letters to the Assistant Registrar of Co-operative Societies, requesting for allotment of audit work. In similar cases, it was held that the Chartered Accountant would be guilty of professional misconduct under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949. The writing of continuous letter to ascertain the reasons for not getting the work is quite alright but in case such either amount to request for allowing the work then Mr. X will be liable for professional misconduct.

Consequently, Mr. X would therefore be held guilty under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

Question 16

Comment with reference to the Chartered Accountants Act, 1949 and Schedules thereto:

- (a) *H, a Chartered Accountant in practice is a partner in 3 firms. On the personal Letter Heads of H, names/address of all the 3 firms are mentioned.* (4 Marks, June 2009)
- (b) *D, who conducts the tax audit u/s 44AB of the Income Tax Act, 1961 of M/s ABC, a partnership firm, has received the entire audit fees of ₹ 25,000 in April, 2009 in respect of the tax audit for the year ended 31.3.2009. The audit report was, however, signed on 25.5.2009.* (4 Marks, June 2009)
- (c) *M/s LMN, a firm of Chartered Accountants having 5 partners accepts an audit assignment of a newly formed private limited company for audit fees of ₹ 5,000.* (5 Marks, June 2009)
- (d) *P, a Chartered Accountant in practice, accepts appointment as statutory auditor for LMN Pvt. Ltd. Q, brother of P has substantial interest in LMN Pvt. Ltd.* (5 Marks, June 2009)

Answer

- (a) **Printing of Details of Firms on Personal Letterheads:** Under Clause (7) of Part I of First Schedule, a CA in practice is deemed to be guilty of professional misconduct if he (i) advertises his professional attainments or services or (ii) uses any designation or expressions other than 'Chartered Accountant' on professional documents, visiting cards, letter heads or sign boards unless it be a degree of a university established by law in India or recognized by the Central Government or a title indicating membership of the ICAI or of any other institution that has been recognized by the Central Government or may be recognized by the council.

Here there is no prohibition for printing names of all 3 firms on the personal letter heads in which a member holding certificate of practice is a partner. Thus, H is not guilty of any professional misconduct in the above case.

- (b) **Entire Audit Fees Received in Advance:** As per Section 141(3)(d)(ii) of the Companies Act, 2013, a person who, or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company, or a subsidiary of its holding company, for an amount exceeding ₹ 5,00,000 then he is not qualified for appointment as an auditor of a company. There is no such similar provision in the Income Tax Act.

Further, the Research Committee of the ICAI has expressed the opinion that where in accordance with the terms of his engagement by a client the auditor recovers his fees on a progressive basis as and when a part of the work is done without waiting for the completion of the whole job, he cannot be said to be indebted to the company at any stage.

However, as per Chapter X of Council General Guidelines, 2008 a member of the Institute in practice or a partner of a firm in practice or a firm shall not accept appointment as auditor of a concern while indebted to the concern or given any

guarantee or provided any security in connection with the indebtedness of any third person to the concern, for limits fixed in the statute and in other cases for amount exceeding ₹ 10,000/-.

In the instant case, Mr. D is appointed to conduct a tax audit u/s 44AB of the Income Tax Act, 1961. He has received the entire audit fees of ₹ 25,000 in April, 2014 in respect of the tax audit for the year ended 31.3.2014 which is not on progressive basis. Furthermore, the monetary limit is also exceeding the limit of ₹ 10,000 as per Council General Guidelines. Therefore, Mr. D will be held guilty for misconduct.

- (c) **Minimum Audit Fee:** Prescribed minimum audit fee is recommendatory, not mandatory in nature. Therefore, acceptance of audit assignment by M/s LMN, a firm of Chartered Accountants having 5 partners of a newly formed private limited company for audit fees of ₹ 5,000 is not violation of any provisions.

Therefore M/s LMN will not be held liable for guilty of misconduct.

- (d) **Accepting Appointment as an Auditor where Relative Holding Substantial Interest:** As per Clause (4) of Part I of Second Schedule, a CA in practice is deemed to be guilty of professional misconduct if he expresses his opinion on financial statements of any business or enterprise in which he, his firm or a partner in his firm has a substantial interest. As per Council General Guidelines, 2008, the above restriction is also made applicable for relatives of the members.

Further, as per Section 141(3)(f) of the Companies Act, 2013, a person shall not be eligible for appointment as an auditor of a company whose relative is a director or is in the employment of the company as a director or key managerial personnel.

In the instant Case, since Q, a relative has a substantial interest in LMN Pvt. Ltd., P cannot conduct the audit and needs to vacate the office. Thus Q will be guilty of misconduct in terms of above clause.

Question 17

Loans were given out of the funds of an Employees Provident Fund to the employer company in contravention of the applicable rules. As the auditor of the said Provident Fund, M discloses the contraventions to the Trustees of the fund, but failed to do so to the members of the fund.
Comment. (5 Marks, June 2009)

Answer

Failed to Report Material Misstatement: As per Clause (5) of Part I of Second Schedule to the Chartered Accountants Act, 1949, if a member in practice fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary to make the financial statement not misleading, where he is concerned with that financial statement in a professional capacity, he will be held guilty under Clause (5).

Further, as per Clause (6) of Part I of Second Schedule if he fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity, he will be held guilty under Clause (6).

In the given Case, CA M has contravened Clause (5) of Part I of Second Schedule as it is the duty of a CA in practice to disclose material facts known to him so that the financial statement does not become misleading.

Further the auditor CA should disclose such facts to beneficiaries of a fund in applicable cases. Technically, appointment of an auditor could be done by a company through its directors, but in substance the auditor in such cases addresses to the beneficiaries just like he gives his report to the shareholders of a company.

Therefore, in the instant case Mr. M is found guilty of professional misconduct.

Question 18

Comment on the following with reference to the Chartered Accountants Act, 1949 and schedules there to:

- (a) *CA X was appointed as the Auditor of ABC Ltd. for 2007-08. Since he declined to accept the appointment, the Board of Directors appointed CA Y as the auditor in the place of CA X, which was also accepted by CA Y.*
 - (b) *CA Z who is a leading Income Tax Practitioner and consultant in Jaipur is also trading in derivatives.*
 - (c) *CA D, a Chartered Accountant prepared a project report for one of his clients to obtain bank finance (long-term) of ₹ 50 lakhs from a Commercial Bank. Consequent to the sanction of the loan by the bank CA D raised a bill for his services @ 2% of the loan sanctioned.*
 - (d) *CA ZZ who conducted ABC audit of a marathi daily 'New Era' certified the circulation figures based on Management Information System Report (M.I.S Report) without examining the books of Account.*
- (4 Marks each, November, 2008)

Answer

- (a) **Compliance of Statutory Requirements Before Accepting Appointment:** Clause (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949, provides that a member in practice shall be deemed to be guilty of professional misconduct if he accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of Sections 224 and 225 of the Companies Act, 1956 (now Section 139 and 140 read with Section 141 of the Companies Act, 2013), in respect of such appointment have been duly complied with.

Board can appoint the auditor in the case of casual vacancy under Sections 139(8)(i) and Section 139(6) of the Companies Act, 2013. The non-acceptance of appointment by CA. X does not constitute a casual vacancy to be filled by the Board. In this case, it will be deemed that no auditor was appointed in the AGM.

Further, as per Section 139(10) of the Companies Act, 2013 when at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company. The appointment of the auditor by the Board is defective in law.

Hence CA. Y is guilty of professional misconduct as per Clause (9) of the First Schedule

as he accepted the appointment without verification of statutory requirements.

- (b) **Engaging into Business/Profession Other Than the Profession of CA:** As per Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949 (hereinafter referred as 'Act'), a Chartered Accountant is deemed to be guilty of professional misconduct if he "engages in any business or occupation other than the profession of Chartered Accountant unless permitted by the Council so to engage".

However, the Council has granted general permission to the members to engage in 12 specific occupation. In respect of all other occupations specific permission of the Institute is necessary.

In this case CA Z is engaged in the occupation of trading in derivatives which is not covered under the general permission.

Hence specific permission of the Institute has to be obtained otherwise he will be deemed to be guilty of professional misconduct under Clause (11) of Part I of First Schedule of the Act.

- (c) **Charging of Fees based on Percentage:** Clause (10) of Part I to First Schedule to the Chartered Accountants Act prohibits a Chartered Accountant in practice to charge, to offer, to accept or accept fees which are based on a percentage of profits or which are contingent upon the findings or results of such work done by him.

However, this restriction is not applicable where such payment is permitted by the Chartered Accountants Act, 1949. The Council of the Institute has framed regulation 192 which exempts certain professional services from the operation of Clause (10).

The services rendered by CA. D are not covered under the said exemption and hence CA. D is liable for professional misconduct.

- (d) **Certification without Examining Books of Account:** According to Clause (7) of Part I of Second Schedule of Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he "does not exercise due diligence or is grossly negligent in the conduct of his professional duties".

In the instant case, CA ZZ did not exercise due diligence and is grossly negligent in the conduct of his professional duties since he certified the circulation figures without examining the books of accounts.

To ascertain the number of paid copies verification of remittances from the agents, credit allowed to the agents for unsold copies returned, examination of books of account is essential.

Further certification of circulation figures based on statistical information without cross verification with financial records amounts to gross negligence and failure to exercise due diligence.

Hence, CA ZZ is guilty of professional misconduct as per Clause (7) of Part I of Second Schedule of Chartered Accountants Act, 1949.

Question 19

Comment on the following with reference to the Chartered Accountants Act, 1949 as amended by the Chartered Accountants (Amendment) Act, 2006 and schedules thereto:

- (a) *As a Chartered Accountant in practice, you are asked to conduct a review of the "Profit Forecast" prepared by a Company in connection with its application for a Term loans from a bank.* (4 Marks, May, 2008)
- (b) *X, a Chartered Accountant availed a loan against his shares held as investments from a nationalized bank. He issued 2 cheques towards repayment of the said loan. Both the cheques were returned back by the bank with the remarks "Refer to Drawer".* (5 Marks, May, 2008)
- (c) *BC & Co, a firm of Chartered Accountants, accepted an assignment for audit under State level VAT Act, without any prior communication with the previous auditor.* (4 Marks, May, 2008)
- (d) *M, a Chartered Accountant in practice, is the Statutory Auditor of S Ltd. for the year ended 31st March 2008. In January 2008, he was appointed as a Director in H Ltd., which is the holding Company of S Ltd.* (5 Marks, May, 2008)

Answer

- (a) Certification of Financial Forecast: Under Clause (3) of Part I of Second Schedule to The Chartered Accountants Act, 1949, a CA in practice is deemed to be guilty of professional misconduct if he permits his name or the name of his firm to be used in connection with an estimate of earnings contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast.

Further, SAE 3400 "The Examination of Prospective Financial Information", provides that the management is responsible for the preparation and presentation of the prospective financial information, including the identification and disclosure of the sources of information, the basis of forecasts and the underlying assumptions. The auditor may be asked to examine and report on the prospective financial information to enhance its credibility, whether it is intended for use by third parties or for internal purposes. Thus, while making report on projection, the auditor need to mention that his responsibility is to examine the evidence supporting the assumptions and other information in the prospective financial information, his responsibility does not include verification of the accuracy of the projections, therefore, he does not vouch for the accuracy of the same.

Hence, the offer can be accepted if the above requirements are complied with.

- (b) Bringing Disrepute to the Profession: A Chartered Accountant is expected to maintain the highest standard of integrity even in his personal affairs and any deviation from these standards, even in his non-professional work would expose him to disciplinary action.

A member is liable to disciplinary action under Section 21 of the Chartered Accountants Act, if he is found guilty of any professional or "Other Misconduct".

As per Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, a member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.

The question whether a particular act or omission constitutes "other misconduct" should be based on fact and circumstances of each case.

Under Negotiable Instruments Act 1881, where any cheque drawn by a person for the discharge of any liability is returned by the bank unpaid, either for insufficiency of funds or the cheque amount exceeds the arrangements made by the drawer of the cheque, the drawer of such cheque shall be deemed to have committed an offence.

In the given case the cheque was dishonoured with the remark "refer to drawer". However, such dishonour need not necessarily be only due to insufficiency of funds.

If it is proved that the cheques were dishonoured due to insufficiency of funds, the CA would be held guilty of "other misconduct".

- (c) Failure to Communicate with the Previous Auditor: As per Clause (8) of Part I of First Schedule to the CA Act 1949, a chartered accountant in practice is deemed to be guilty of professional misconduct if he accepts a position as auditor previously held by another chartered accountant or a certified auditor who has been issued certificate under the Restricted Certificates Rules 1932, without first communicating with him in writing.

In the instant case, BC & Co. accepted VAT – audit under State Level Act, carried out by another firm of chartered accountants in the previous year, without prior communication with the previous auditor.

A communication is mandatory requirement for all types of audit, if the previous auditor is a chartered accountant. Hence, the firm is guilty of professional misconduct.

- (d) Independence of Auditor: In terms of Clause (11) of Part I of the First Schedule to the CA Act, 1949, a CA in practice cannot engage (unless permitted by the council) in any business or occupation other than the profession of Chartered accountant, but he can be a director of a company wherein he or any of his partners is not interested in such company as auditor.

However, public conscience is expected to be ahead of law and the requirement of independence should be interpreted much more strictly. Members should thus not place themselves in position which would either compromise or jeopardise their independence.

In view of the above, an auditor of a subsidiary cannot be a director of a holding company as it will affect his independence.

Question 20

Comment on the following with reference to the Chartered Accountants Act, 1949 and schedules thereto:

- (a) Mr. A, a practicing Chartered Accountant agreed to select and recruit personnel, conduct training programmes for and on behalf of a client. (5 Marks, November, 2007)

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- (b) *XY & Co., a firm of Chartered Accountant having 2 partners X & Y, one in charge of Head Office and another in charge of Branch at a distance of 80 kms, puts up a name-board of the firm in both premises and also in their respective residences.* (5 Marks, November, 2007)
- (c) *A practicing Chartered Accountant was appointed to represent a company before the tax authorities. He submitted on behalf of his clients certain information and explanations to the authorities, which were found to be false and misleading.* (4 Marks, November, 2007)
- (d) *AB & Co., a firm of Chartered Accountants, included the name of P as a partner while filing an application for empanelment as auditor for Public Sector bank branches. It was subsequently noticed that on the date of application, P was not a partner with AB & Co.*

(4 Marks, November, 2007)

Answer

- (a) Providing Management Consultancy and Other Services: Under Section 2(2)(iv) of the Chartered Accountants Act, 1949, a member of the Institute shall be deemed "to be in practice" when individually or in partnership with Chartered Accountants in practice, he, in consideration of remuneration received or to be received renders such other services as, in the opinion of the Council, are or may be rendered by a Chartered Accountant in practice. Pursuant to Section 2(2)(iv) above, the Council has passed a resolution permitting a Chartered Accountant in practice to render entire range of "Management Consultancy and other Services".

The definition of the expression "Management Consultancy and other Services" includes Personnel recruitment and selection. Personnel Recruitment and selection includes, development of human resources including designing and conduct of training programmes, work study, job description, job evaluation and evaluations of work loads.

So A is not guilty of professional misconduct.

- (b) Putting Name Board of the Firm at Residence: The council of the Institute has decided that with regard to the use of the name-board, there will be no bar to the putting up of a name-board in the place of residence of a member with the designation of chartered accountant, provided, it is a name-plate or board of an individual member and not of the firm.

In the given case, partners of XY & Co., put up a name board of the firm in both offices and also in their respective residences.

Thus the chartered accountants are guilty of misconduct. Distance given in the question is not relevant for deciding.

- (c) Submitting Information as Authorised Representative: As per Clause (5) of Part I of Second Schedule to the Chartered Accountant Act, 1949, if a member in practice fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary to make the financial statement not misleading, where he is concerned with that financial statement in a professional capacity, he will be held guilty under Clause (5). As per Clause (6) of Part I of Second Schedule if he fails to report a material misstatement known to him to appear in a financial statement with

which he is concerned in a professional capacity, he will be held guilty under Clause (6).

In given case, the Chartered Accountant had submitted the statements before the taxation authorities. These statements are based on the data provided by the management of the company. Although the statements prepared were based on incorrect facts and misleading, the Chartered Accountant had only submitted them acting on the instructions of his client as his authorized representative.

Hence the Chartered Accountant would not be held liable for professional misconduct.

- (d) Submitting False Information to the Institute: Under Clause (3) of Part II of Second Schedule to the Chartered Accountant Act, 1949, a Chartered Accountant whether in practice or not is guilty of professional misconduct if he includes in any information, statement, return or form to be submitted to the Institute, Council or any of its committees, Directors (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false.

In the instant case, AB & Co. included another Chartered Accountant name as partner in his firm, in his application for empanelment as Auditor of branches of Public Sector Banks submitted to the Institute. In fact such a member was not a partner of the said firm on the date of application. He will be held guilty of professional misconduct.

Question 21

Comment on the following with reference to the Chartered Accountants Act, 1949 and schedules thereto:

- (a) *A chartered accountant in practice created his own website in attractive format and colours and circulated the information contained in the website through E-mail.*
(5 Marks, May, 2007)
- (b) *A chartered accountant in practice takes up the appointment as managing director of a public limited company.*
(4 Marks, May, 2007)
- (c) *S. a practicing chartered accountant gives power of attorney to an employee chartered accountant to sign reports and financial statements, on his behalf.*
(5 Marks, May, 2007)
- (d) *A is the auditor of Z Ltd., which has a turnover of ₹ 200 crore. The audit fee for the year is fixed at ₹ 50 lakhs. During the year, the company offers A an assignment of management consultancy within the meaning of Section 2(2)(iv) of the CA Act, 1949 for a remuneration of ₹ 1 crore. A seeks your advice on accepting the assignment.*
(4 Marks, May, 2007)

Answer

- (a) Creation of Own Website by a Chartered Accountant/Firm of Chartered Accountants: The guidelines approved by the Council of the Institute of Chartered Accountants of India permits creation of own website by a chartered accountant in his or his firm name and no standard format or restriction on colours is there. The chartered

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accountant or firm, as per the guidelines, should ensure that none of the information contained in the website be circulated on their own or through E-mail or by any other mode except on a specific "Pull" request.

Since in the given case, the chartered accountant circulated the information contained in the website through E-mail, he is guilty of misconduct under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, i.e., a chartered accountant in practice is deemed to be guilty of professional misconduct if he solicits client or professional work either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means.

- (b) **Appointment of a Chartered Accountant in Practice as MD of a Public Limited Company:** Under Clause (11) of Part I of First Schedule to the Chartered Accountants Act, a chartered accountant in practice is deemed to be guilty of professional misconduct, if he engages in any business or occupation other than the profession of chartered accountants, unless permitted by the council so to engage.

However, nothing contained in Clause (11) shall disentitle a chartered accountant from being a director of a company, unless he or any of his partners is interested in such company as an auditor.

Regulation 190A, states a member in practice cannot engage himself in any business or occupation other than that of a chartered accountant except when permitted by the council. As per Appendix 10 of Chartered Accountants Regulations, 1988, a Chartered Accountant in practice may hold the office of a Managing Director a Whole-time Director of a body corporate, provided that the member and/or his relatives do not hold substantial interest in such concern, after obtaining the specific and prior approval of the Council.

He should seek prior approval of the council otherwise he would be held guilty of misconduct.

- (c) **Power of Signing Reports and Financial Statements:** Under Clause (12) of Part I of First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he allows a person not being a member of the Institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm, any balance sheet, profit and loss account, report or financial statements.

This clause read in conjunction with Section 26 of the Chartered Accountants Act, 1949 stipulates that no person other than the member of the institute shall sign any document on behalf of a Chartered Accountant in practice or a firm of Chartered Accountants in his or its professional capacity.

The term 'Financial Statement' for this purpose would cover an examination of the accounts or financial statements given under a statutory enactment or otherwise. Accordingly, S is guilty of professional misconduct under Clause (12) of Part I of First Schedule and also under Clause (1) of Part II of Second Schedule for contravening Section 26.

- (d) Appointment as a Statutory Auditor of a PSUs'/Govt Company(ies)/Listed Company(ies) and Other Public Company(ies): As per the Council General Guidelines 2008, under Chapter IX on appointment as statutory auditor a member of the Institute in practice shall not accept the appointment as a statutory auditor of a PSUs'/Govt company(ies)/Listed company(ies) and other public company(ies) having a turnover of ₹ 50 crores or more in a year and where he accepts any other work(s) or assignment(s) or service(s) in regard to same undertaking(s) on a remuneration which in total exceeds the fee payable for carrying out the statutory audit of the same undertaking. For this purpose the other work/services includes Management Consultancy and all other professional services permitted by Council excluding audit under any other statute, Certification work required to be done by the statutory auditor and any representation before an authority.

In view of the above position it would be a misconduct on A's part if he accepts the management consultancy assignment for a fee of ₹ 1 crore.

Question 22

Comment on the following with reference to the Chartered Accountants Act, 1949 and schedules thereto:

- (a) *Mr. Rahul, a locally based Chartered Accountant, accepted an audit assignment at a fee lower than that charged by the previous auditor, who was stationed in another town and had to spend a lot of money on travel for which he did not charge separately.* (4 Marks, November, 2006)
- (b) *The superannuation-cum-pension fund for the employees of a company was under a separate 'trust'. Both the company and the trust were under the same management. The auditor, who was auditing the accounts of the company as well as the trust noted some irregularities in the operation of the trust and commented upon these irregularities in the confidential report given to the trustees, but did not mention about these irregularities in his report on the Annual accounts of the Trust.* (5 Marks, November, 2006)
- (c) *M/s XYZ a firm of Chartered Accountants received ₹ 2 lakhs in January, 2006 on behalf of one of their clients, who has gone abroad and deposited the amount in their Bank account, so that they can return the money to the client in July, 2006, when he is due to return to India.* (5 Marks, November, 2006)
- (d) *Mr. J.J. a practicing Chartered Accountant engages himself as part time finance manager of Quick Return Securities Ltd. He is of the view that as both functions are independent, he need not take permission from the Institute.* (4 Marks, November, 2006)

Answer

- (a) Undercutting of Fees: In this case, Mr. Rahul is a locally based Chartered Accountant, accepted an audit assignment at a fee lower than that charged by the previous auditor, who was outstation based Chartered Accountant and had to spend a lot of money on travel which was included in his audit fee and was not charged by him separately. The

motive of Mr. Rahul was not to get the work from previous auditor by accepting the audit assignment on lower fee i.e. undercutting of fee. Because, in considering whether variation in fees charged would constitute undercutting, the quantum of work; incidental and out of pocket expenses and other terms of appointment should be considered.

Since the previous auditor was stationed in another town and therefore, had to incur higher cost on account of conveyance, and the previously the fee was decided on a composite basis inclusive of travelling expenses of the auditor, it cannot be said that Mr. Rahul has accepted an audit assignment based on under cutting of fees. Hence, Mr. Rahul will not be held guilty for misconduct.

- (b) Disclosure of Material Facts: A Chartered Accountant in practice is deemed to be guilty of professional misconduct under Clause (5) of Part I of the Second Schedule if he "fails to disclose a material fact known to him which is not disclosed in a financial statement but disclosure of which is necessary to make the financial statement not misleading". In this case, the Chartered Accountant was aware of the contraventions and irregularities committed by the trust as these were referred to in the confidential report given by the Chartered Accountant to the trustees of the company. However, he had issued the annual accounts without any qualification. On similar facts it was held by the Supreme Court in Kishorilal Dutta vs. P. K. Mukherjee that it was the duty of the Chartered Accountant to have disclosed the irregularities and contravention to the beneficiaries of the fund in the statement of accounts signed by him. Accordingly, in the present case also it has to be held that the Chartered Accountant is guilty of professional misconduct if the amount of irregularities is proved material.
- (c) Money of Clients to be Deposited in Separate Bank Account: Clause (10) of Part I of Second Schedule states that a Chartered Accountant shall be deemed to be guilty of professional misconduct if "he fails to keep money of his clients in separate banking account or to use such money for the purpose for which they are intended".

XYZ received the money in January, 2006 which is to be paid only in July 2006; hence it should be deposited in a separate bank account. Since in this case XYZ have failed to keep the sum of ₹ 2 lakhs received on behalf of their client in a separate Bank Account it amounts to professional misconduct under Clause (10) of Part I of Second Schedule.

- (d) Engaging in any Business other than the Profession of Chartered Accountants: Clause (11) of Part I of First Schedule of Chartered Accountants Act, 1949 states that a Chartered Accountant is deemed to be guilty of professional misconduct if he engages in any business other than the profession of Chartered Accountant unless permitted by the Council for the same.

In the given case Mr. J. J. a practicing Chartered Accountant is engaging himself as part time Finance Manager without the permission of the Institute which is misconduct attracted by Clause (11) of Part I of First Schedule.

Question 23

Comment on the following with reference to the Chartered Accountants Act, 1949, Code of Ethics and Schedules to the Act:

- (a) *P, a Chartered Accountant in practice provides management consultancy and other services to his clients. During 2005, looking to the growing needs of his clients to invest in the stock markets, he also advised them on Portfolio Management Services whereby he managed portfolios of some of his clients.* (5 Marks, May, 2006)
- (b) *B, a Chartered Accountant in practice is a partner in 3 firms. While printing his personal letter heads, B gave the names of all the firms in which he is a partner.* (4 Marks, May, 2006)
- (c) *XYZ & Associates, a firm with 5 partners developed a website www.xyzassociates.com. The website also contained a link to "All India Chartered Accountants Association", a voluntary association where X, a partner of the firm is currently the Vice-president.* (4 Marks, May, 2006)
- (d) *M/s LMN, a firm of Chartered Accountants responded to a tender from a State Government for computerization of land revenue records. For this purpose, the firm also paid ₹ 50,000 as earnest deposit as part of the terms of the tender.* (5 Marks, May, 2006)

Answer

- (a) **Advising on Portfolio Management Services:** The Council of the Institute of Chartered Accountants of India (ICAI) pursuant to Section 2(2)(iv) of the Chartered Accountants Act, 1949 has passed a resolution permitting "Management Consultancy and other Services" by a Chartered Accountant in practice. A clause of the aforesaid resolution allows Chartered Accountants in practice to act as advisor or consultant to an issue of securities including such matters as drafting of prospectus, filing of documents with SEBI, preparation of publicity budgets, advice regarding selection of brokers, etc. It is, however, specifically stated that Chartered Accountants in practice are not permitted to undertake the activities of broking, underwriting and portfolio management Services. Thus, a chartered accountant in practice is not permitted to manage portfolios of his clients.

In view of this, P would be guilty of misconduct under the Chartered Accountants Act, 1949.

- (b) **Advertisement of Professional Attainments:** Clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949 prohibits advertising of professional attainments or services of a member. It also restrains a member from using any designation or expression other than that of a Chartered Accountant in documents through which the professional attainments of the member would come to the notice of the public. Even a member is not permitted to specify the date of setting up of practice or establishment of firm. However, there is no prohibition for printing names of all the three firms on the personal letterheads in which a member holding Certificate of Practice is a partner. Thus B is not guilty of any misconduct under the Chartered Accountants Act, 1949.

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- (c) Developing Website: As per the guidelines laid down under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 in respect of websites by chartered accountants in practice, it is permitted that website may provide a link to the website of ICAI, its Regional Councils, Branches and Government Departments and other professional Bodies like AICPA, ICAEW, CICA. In this case, M/s XYZ Associates provided a link to "All India Chartered Accountants Association" which is not permitted. Hence the firm would be liable for misconduct under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
- (d) Responding to Tenders: Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 lays down guidelines for responding to tenders, etc. As per the guidelines if a matter relates to any services other than audit, members can respond to any tender. Further, in respect of a non-exclusive area, members are permitted to pay reasonable amount towards earnest money/security deposits.

In the instance case, since computerization of land revenue records does not fall within exclusive areas for chartered accountants, M/s LMN can respond to tender as well as deposit ₹ 50,000 as earnest deposit and shall not have committed any professional misconduct.

Question 24

Comment on the following with reference to the Chartered Accountants Act, 1949 and Schedules thereto:

- (a) *Mr. S, a Chartered Accountant published a book and gave his personal details as the author. These details also mentioned his professional experience and his present association as partner with M/s RST, a firm.* (5 Marks, November, 2005)
- (b) *Mr C accepted the statutory audit of M/s PSU Ltd., whose net worth is negative for the year 2003-04. The audit was to be conducted for the year 2004-05. The audited accounts for the year 2004-05 showed liability for payment of tax audit fees of ₹ 15,000 in favour of Mr E, the previous auditor.* (5 Marks, November, 2005)
- (c) *M/s PQR, a firm of Chartered Accountants with 5 partners has accepted the audit of ABC Pvt. Ltd. for 2004-05 at an audit fee of ₹ 2,500. ABC Pvt. Ltd was incorporated in April, 2002, but had commenced operations in January, 2005.* (4 Marks, November, 2005)
- (d) *Mr. P, a Chartered Accountant in practice entered into a partnership with Mr. L, an advocate for sharing of fees for work sent by one to the other. However, due to some disputes, the partnership was dissolved after 1 month without any fees having been received.* (4 Marks, November, 2005)

Answer

- (a) Soliciting Professional Work: Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 refers to professional misconduct of a member in practice if he solicits client or professional work either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means. Therefore, members should not adopt any indirect methods to advertise their professional practice with a view to gain

publicity and thereby solicit clients or professional work. Such a restraint must be practised so that members may maintain their independence of judgement and may be able to command the respect of their prospective clients. While elaborating forms of soliciting work, the Council has specified that a member is not permitted to indicate in a book or an article, published by him, the association with any firm of chartered accountants. In this case, Mr S a chartered accountant, published the book and mentioned his professional experience and his association as a partner with M/s RST, a firm of chartered accountants.

Mr. S being a chartered accountant in practice has committed the professional misconduct by mentioning that at present he is a partner in M/s. RST, a chartered accountants firm.

- (b) **Accepting Appointment as an Auditor:** As per Chapter 7 of Council General Guidelines 2008 a member of the Institute of Chartered Accountants of India in practice shall be deemed to be guilty of professional misconduct if he accepts appointment as auditor of an entity in case the undisputed audit fee of another chartered accountant for carrying out the statutory audit under Companies Act or various other statutes has not been paid.

As per the proviso, such prohibition shall not apply in case of a sick unit where a sick unit is defined to mean "where the net worth is negative".

In the instant case, though the undisputed fees are unpaid, Mr C would still not be guilty of professional misconduct since the M/s PSU Ltd. is a sick unit having negative net worth for the year 2003-04.

- (c) **Minimum Audit Fee:** Prescribed minimum audit fee is recommendatory, not mandatory in nature. Therefore, acceptance of audit assignment by M/s PQR, a firm of Chartered Accountants having 5 partners of ABC Pvt. Ltd. for audit fees of ₹ 2,500 is not violation of any provisions.

Therefore M/s PQR will not be held liable for guilty of misconduct.

- (d) **Partnership with an Advocate:** As per Clause (4) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a chartered accountant will be guilty of professional misconduct if he enters into partnership with any person other than a chartered accountant in practice or a person resident without India who but for his residence abroad would be entitled to be registered as a member under Clause (v) of Sub-section (1) of Section 4 or whose qualification are recognized by the Central Government or the Council for the purpose of permitting such partnership.

However, Regulation 53B of the Chartered Accountants Regulations, 1988 permits a Chartered Accountant in practice to enter into partnership with other prescribed Professional Bodies which includes an Advocate, a member of Bar Council of India.

In the instant case, Mr. P, a chartered accountant, has entered into partnership with Mr. L, an advocate.

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Thus, he would not be guilty of professional misconduct as per Clause (4) of Part I of First Schedule read with Regulation 53B.

Question 25

Write a short note on Record of Audit Assignments (as required by ICAI regulations).

(4 Marks, November, 2005)

Answer

Record of Audit Assignments: In exercise of the powers conferred by Chapter 8 of Council General Guidelines 2008, the Council of the Institute of Chartered Accountants of India specified that a member of the Institute in practice shall be deemed to be guilty of professional misconduct, if he holds at any time appointment of more than the "specified number of audit assignments of the companies under Section 224 and /or Section 228 of the Companies Act, 1956 (Now under Section 141(3)(g) and 143 of the Companies Act, 2013). As a part of this clause, to meet its requirements, a Chartered Accountants in practice as well as a firm in practice shall maintain a record of the audit assignments accepted as laid out in guidelines issued by the Council of the ICAI under Part II of Second Schedule to the Chartered Accountants Act, 1949 in respect of ceiling on audits containing following particulars:

- (i) Name of Company Audit/ Assignment.
- (ii) Regn. No.
- (iii) Date of appointment with Registrar of Companies.
- (iv) Date of acceptance.
- (v) Date on which form 23B filed (now Form ADT – 1 as per the provisions and rules made under Companies Act, 2013).

Question 26

Comment on the following with reference to the Chartered Accountants Act, 1949 and Schedules thereto:

- (a) *L, a chartered accountant did not maintain books of account for his professional earnings on the ground that his income is less than the limits prescribed u/s 44AA of the Income Tax Act, 1961.* (5 Marks, May, 2005)
- (b) *M/s. ABC, a firm of Chartered Accountants has taken a loan for acquiring computers, from a company whose Managing Directors' son is an Articled Trainee with A, a partner of M/s ABC.* (4 Marks, May, 2005)
- (c) *M/s XYZ, a firm of Chartered Accountants created a website "www.xyzindia.com". The website besides containing details of the firm and bio-data of the partners also contains the photographs of all the partners of the firm.* (5 Marks, May, 2005)
- (d) *Z, a Chartered Accountant, certifies a financial forecast of his client which was forwarded to the client's bank based on which the bank sanctioned a loan to the client.*

(4 Marks, May, 2005)

Answer

- (a) **Maintenance of Books of Account:** As per the Council General Guidelines 2008, under Chapter 5 on maintenance of books of accounts, it is specified that if a chartered accountant in practice or the firm of Chartered Accountants of which he is a partner fails to maintain and keep in respect of his/its professional practice, proper books of account including the Cash Book and Ledger, he is deemed to be guilty of professional misconduct. Accordingly, it does not matter whether section 44AA of the Income Tax Act, 1961 applies or not. Hence, Mr. L is guilty of professional misconduct.
- (b) **Loan from a Company:** As per Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949, a chartered accountant is deemed to be guilty of professional misconduct if he contravenes any of the provisions of Chartered Accountants Act, 1949 or Regulations made thereunder. Regulation 47 of the Chartered Accountant's Regulations, 1988, prohibits a member from accepting any premiums or loans or any deposit in any form from an articled clerk directly or indirectly. However, M/s ABC has taken loan from a company whose Managing Director happens to be father of articled clerk with Mr. A, a partner of M/s ABC. In this case, the articled trainee has no direct interest in that company. There has been a case wherein a chartered accountant was held guilty of professional misconduct because he took a loan from a firm in which the articled clerk and his father were both interested. But, in this case as per the facts, the articled trainee has no direct interest in the company. However, if relationship, direct or indirect, can be established in view of relationship of articled trainee with MD of the company, Mr. A of M/s ABC would be held liable for professional misconduct. Thus, M/s ABC would be guilty of professional misconduct under this clause if it is proved that the loan was related to the engagement of the articled clerk.
- (c) **Hosting Details on Website:** As per detailed guidelines of the ICAI laid down in Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a chartered accountant of the firm can create its own website using any format subject to guidelines. However, the website should be so designed that it does not solicit clients or professional work and should not amount to direct or indirect advertisement. The guidelines of the ICAI to allow a firm to put up the details of the firm, bio-data of partners and display of a passport size photograph. In the case of M/s XYZ, all the guidelines seem to have been complied and there appears to be no violation of the Chartered Accountants Act, 1949 and its Regulations.
- (d) **Certification of Financial Forecast:** Under Clause (3) of Part I of Second Schedule to the Chartered Accountants Act, 1949, a chartered accountant in practice is deemed to be guilty of professional misconduct if he permits his name or the name of his firm to be used in connection with an estimate of earnings contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast.

Further, SAE 3400 "The Examination of Prospective Financial Information", provides that the management is responsible for the preparation and presentation of the prospective financial information, including the identification and disclosure of the sources of information, the basis of forecasts and the underlying assumptions. The auditor may be asked to examine and report on the prospective financial information to enhance its

credibility, whether it is intended for use by third parties or for internal purposes. Thus, while making report on projection, the auditor need to mention that his responsibility is to examine the evidence supporting the assumptions and other information in the prospective financial information, his responsibility does not include verification of the accuracy of the projections, therefore, he does not vouch for the accuracy of the same.

In the instant case, Mr. Z has certified a financial forecast of his client which was forwarded to the client's bank based on which the bank sanctioned a loan to the client. Thus, Mr. Z will not be held guilty of misconduct if all the requirements have been complied with or *vice versa*.

Question 27

Do you approve of the following? If not, why?

- (a) *A firm of Chartered Accountants was appointed by a company to evaluate the costs of the various products manufactured by it for its information system. One of the partners of the firm was a Non-Executive Director of the company.*
- (b) *Mr. Qureshi, Chartered Accountant, in practice died in a road accident. His widow proposes to sell the practice of her husband to Mr. Pardeshi, Chartered Accountant, for ₹ 5 lakhs. The price also includes right to use the firm name - Qureshi and Associates. Can widow of Qureshi sell the practice and can Mr. Pardeshi continue to practice in that name as a proprietor?* (4 Marks each, November, 2004)

Answer

- (a) **Evaluation of Cost of Products:** Clause (4) of Part I of the Second Schedule to Chartered Accountants Act, 1949, states that expressing an opinion on financial statements of any business or enterprise in which he, his firm or a partner in his firm has a substantial interest would constitute misconduct. Also, the Council of the Institute of Chartered Accountants of India has stated that in cases where a member of the Institute is a director of a company, or the firm in which the said member is a partner, should not express any opinion on its financial statements. As per facts of the case, the firm has been retained to evaluate the cost of products manufactured by it for its information system. It is a part of management consultancy service of the firm and moreover its partner was on the Board. Hence, the firm can perform this assignment and it will not constitute misconduct. However, the firm while accepting the position as auditor in future would have to consider whether it would be possible to act in independent manner and express opinion on financial statements.
- (b) **Sale of Goodwill:** With reference to Clause (2) of Part I to the First Schedule to Chartered Accountants' Act, 1949, the Council of the Institute of Chartered Accountants of India had an occasion to consider whether the goodwill of a proprietary concern of chartered accountant can be sold to another member who is otherwise eligible, after the death of the proprietor. It lay down that the sale is permitted subject to certain conditions. It further resolved that the legal heir of the deceased member has to obtain the permission of the Council within a year of the death of the proprietor concerned. Thus, in

a given case and on the facts, the widow of Mr. Qureshi, who has sold the practice for ₹ 5 lakhs is nothing but sale of goodwill. Thus the act of Mrs. Qureshi is permissible.

Question 28

Write a short note on Other Misconduct.

(4 Marks, November, 2004)

Answer

Other Misconduct:

- (i) A member is liable to disciplinary action under Section 21 of the Chartered Accountant Act if he is found guilty of any professional or 'other misconduct'.
- (ii) Other misconduct has been defined in Part IV of First Schedule and Part III of Second Schedule in the CA (Amendment Act) 2006.
- (iii) As per Part IV of First Schedule of the CA Act, a member of the Institute whether in practice or not, shall be deemed to be guilty of other misconduct if he -
 - 1. Is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months.
 - 2. In the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action, whether or not related to his professional work.
- (iv) As per Part III of Second Schedule to the CA Act, a member of the Institute whether in practice or not shall be deemed to be guilty of other misconduct if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months.

This provision empowers the Council to enquire any misconduct of a member even if it does not arise of professional misconduct.

Some illustrative examples, where a member may be found guilty of "Other Misconduct", under the aforesaid provisions rendering, himself unfit to be member are:

- (i) Where a chartered accountant retains the books of account and documents of the client and fails to return these to the client on request without a reasonable cause.
- (ii) Where a chartered accountant makes a material misrepresentation.
- (iii) Where a chartered accountant uses the services of his articled or audit clerk for purposes other than professional practice.
- (iv) Conviction by a competent court of law for any offence under Section 8(v) of the Chartered Accountants Act 1949.
- (v) Misappropriation by office-bearer of a Regional Council of the Institute, of a large amount and utilisation thereof for his personal use.
- (vi) Non-relying within a reasonable time and without a good cause to the letter of the public authorities.
- (vii) Where certain assessment records of income tax department belonging to the client of Chartered Accountant were found in the almirah of the bed-room of the chartered accountant.

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- (viii) Where a chartered accountant had adopted coercive methods on a bank for having a loan sanctioned to him.

Question 29

Comment on the following with reference to Chartered Accountants Act, 1949 and schedules thereto:

- (a) *Mr. Parekh, a Chartered Accountant was invited by the Chamber of Commerce to present a paper in a symposium on the issues facing Indian Leather Industry. During the course of his presentation he shared some of the vital information of his client's business under the impression that it will help the Nation to compete with other countries at international level.*
- (b) *Mr. Shah, a Chartered Accountant certified the financial statements of a company in which his wife is a Director holding substantial interest.*
- (c) *Mr. Joe, a Chartered Accountant during the course of audit of M/s XYZ Ltd. came to know that the company has taken a loan of ₹ 10 lakhs from Employees Provident Fund. The said loan was not reflected in the books of account. However, the auditor ignored this information in his report.*
- (d) *Mr. Jain, a Chartered Accountant certified the circulation of "Good Luck" a weekly magazine without examination of financial records and other required documents.*
- (e) *A charitable institution entrusted ₹ 10 lakhs with its auditors M/s Ram and Co., a Chartered Accountant firm, to invest in a profitable portfolio. The auditors pending investment of the money, deposited it in their Savings bank account and no investment was made in the next three months.*

(4 Marks each, May, 2004)

Answer

- (a) **Disclosure of Client's Information:** Clause (1) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 deals with the professional misconduct relating to the disclosure of information by a chartered accountant in practice relating to the business of his clients to any person other than his client without the consent of his client or otherwise than as required by any law for the time being in force would amount to breach of confidence. The Code of Ethics further clarifies that such a duty continues even after completion of the assignment. The Chartered Accountant may however, disclose the information in case it is required as a part of performance of his professional duties. In the given case, Mr. Parekh has disclosed vital information of his client's business without the consent of the client under the impression that it will help the nation to compete with other countries at International level. Thus it is a professional misconduct covered by Clause (1) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
- (b) **Relative of Auditor Holding Position of Director with Substantial Interest:** Clause (4) of Part I of Second Schedule to the Chartered Accountants Act, 1949 states that if an auditor expresses his opinion on the financial statements of any business or enterprise in which he, his firm or partner in his firm has a substantial interest, he is committing professional misconduct. Further as per Council General Guidelines, 2008, a member of the Institute shall not express his opinion on financial statements of any business or enterprise in which one or more persons, who are his "relatives" within the meaning of AS

18 have, either by themselves or in conjunction with such member, a substantial interest in the said business or enterprise.

The Council also emphasizes that the aforesaid requirement of Clause (4) is equally applicable while performing all types of attest functions by the members.

This is further also a contravention of section 141(3)(f) of the Companies Act, 2013, which requires that a person shall not be eligible for appointment as an auditor of a company whose relative is a director or is in the employment of the company as a director or key managerial personnel.

In the given case, Mr. Shah, Chartered Accountant, has certified the financial statements of a company in which his wife is a director with substantial interest. Hence this amounts to professional misconduct which attracts Clause (4) of Part I of Second Schedule to the Chartered Accountants Act, 1949 and Mr. Shah shall have to vacate the office accordingly.

- (c) **Failure to Disclose Material Facts:** As per Clause (5) of Part I of Second Schedule to the Chartered Accountants Act, 1949, a chartered Accountant in practice will be held liable for misconduct if he fails to disclose a material fact known to him, which is not disclosed in the financial statements but disclosure of which is necessary to make the financial statements not misleading. In this case, Mr. Joe has come across information that a loan of ₹ 10 lakhs has been taken by the company from Employees Provident Fund. This is contravention of Rules and the said loan has not been reflected in the books of accounts. Further, this material fact has also to be disclosed in the financial statements. The very fact that Mr. Joe has failed to disclose this fact in his report, he is attracted by the provisions of professional misconduct under Clause (5) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
- (d) **Failure to Obtain Information:** Clause (8) of Part I of Second Schedule to Chartered Accountants Act, 1949 states that if a Chartered Accountant in practice fails to obtain sufficient information to warrant the expression of an opinion or his exceptions are sufficient material to negate the expression of an opinion, the chartered accountant shall be deemed to be guilty of a professional misconduct. Mr. Jain, a Chartered Accountant, certified the circulation figures of Good Luck, a weekly magazine without examination of financial records and other required documents. The chartered accountant should not express his opinion before obtaining the required data and information. As an auditor, Mr. Jain ought to have verified the basic records such as print order, printer's bill, number of copies sold and paid for, number of copies returned unsold to ensure the correctness of circulation figures. Thus in the present case, Mr. Jain will be held guilty of professional misconduct.
- (e) **Failure to Keep Money in Separate Bank Account:** If a Chartered Accountant in practice fails to keep moneys of his clients in a separate bank account or fails to use such moneys for purposes for which they are intended then his action would amount to professional misconduct under Clause (10) of Part I of Second Schedule to the Chartered Accountants Act, 1949. In the course of his engagement as a professional accountant, a member may be entrusted with moneys belonging to his client. If he should receive such funds, it would be his duty to deposit them in a separate banking account, and to utilise

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such funds only in accordance with the instructions of the client or for the purposes intended by the client. In the given case by depositing the client's money by M/s Ram and Co., a firm of Chartered Accountants, in their own savings bank account, the auditors have committed a professional misconduct. Hence in the given case, M/s Ram & Co. will be held guilty of professional misconduct.