

\$~8

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CHAT.A.C. 2/2011

MAHESH KUMAR GUPTA Petitioner
Through: Mr. S.P. Jha, Advocate.

versus

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA & ANR
..... Respondent
Through: Mr. Rakesh Aggarwal, Advocate.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

% **ORDER**
09.11.2011

1. The appellant has filed this appeal under Section 22A of the Chartered Accountants Act, 1949 (hereinafter referred to as 'the CA Act') impugning the order dated 21.9.2010 communicated (on 04.4.2011) passed by the Institute of Chartered Accounts of India ('Institute' for brevity). Perusal of this order shows that the appellant was charged with two kinds of professional misconduct, but has been found guilty only of 'Other Misconduct' under Section 22 read with Section 21 of the CA Act. However, for this misconduct, which does not fall in First Schedule, as per the provisions of sub-Section (5) of Section 21 of the CA Act, the Institute cannot impose the punishment of its own. It has to recommend the punishment to the High Court and unless the High Court approves the same, punishment cannot be

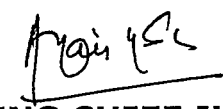
awarded. The communication dated 04.4.2011 (*supra*) states that the Institute has decided to recommend punishment of "reprimand" and to make reference to the High Court for its approval.

2. The counsel for the Institute contends that since the case does not fall in First Schedule, appeal under Section 22A of the Act is not maintainable.

3. Mr. Aggarwal, counsel for the Institute is right in his submission. It is only when the High Court accepts the recommendation that the punishment would be imposed. The prescribed procedure in such reference entitles the appellant to have an opportunity of being heard. At that stage, it would be open to the appellant to raise all objections to the findings of the Inquiry Report as accepted by the council/Institute and to oppose the recommendations.

4. We also record the statement of Mr. Aggarwal that the reference has already been filed on the basis of recommendation of the punishment of reprimand.

5. In view thereof, we dismiss this appeal as not maintainable.


ACTING CHIEF JUSTICE

NOVEMBER 09, 2011/pmc


RAJIV SAHAI ENDLAW, J