IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.7428 of 2017
Pr. Director of Income Tax (Investigation), Sadar, Nagpur
Versus
The Institute of Chartered Accountants of India, New Delhi, and another.

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's order	Court's or Judge's orders

Shri Anand Parchure with Shri Ram Heda, Advocates for Petitioner.
Shri Sunil Manohar, Senior Advocate, assisted by Shri H.V. Thakur, Advocate for Respondent No.1.
Shri M.G. Bhangde, Senior Advocate, assisted by Shri S.V. Bhutada, Advocate for Respondent No.2.

Coram : R.K. Deshpande & S.M. Modak, JJ.
Dated : 12th March, 2019

1. The respondent No.2- Anand Shyamsundar Daga, a Chartered Accountant, is punished by the Institute of Chartered Accountants of India with an order of reprimand and fine of Rs.1,00,000/- payable by him within a period of sixty days from the date of receipt of the order. It is in relation to his conduct in the proceedings before the Income Tax Department. Hence, the Department of Income Tax is before this Court seeking enhancement of punishment of debarment of the respondent No.2 from the profession of Chartered Accountant.

2. Shri Parchure, the learned counsel appearing for the petitioner- Department, submits that the procedure prescribed for imposing punishment has not been followed. The act of misconduct complained against the respondent No.2 falls under the Second Schedule, whereas it is classified as one falling under the First Schedule of the Chartered Accountants Act, 1949, which is erroneous. According to him, there should have been a punishment of permanently debarring the respondent No.2 from practising the profession.

3. If we accept the contention of Shri Parchure that the procedure prescribed for imposing an order of punishment and fine has not been followed, we will have to set aside the said order and remand the matter back to the respondent No.1 for fresh consideration in accordance with law. The question as to whether the act of misconduct complained of falls under the First Schedule or the Second Schedule of the Chartered Accountants Act, 1949 is a disputed question. Again, the question as to whether the punishment imposed upon the respondent No.2 is proportionate to the act of misconduct alleged against him, is required to be judged by the Board of Discipline. We, however, fail to understand the locus of the petitioner- the Department of Income Tax to challenge the action of the respondent No.1. Merely because the respondent No.2 is punished on the basis of the complaint of the petitioner- Department, in our view, would not make the Department as a person aggrieved to challenge it and seek enhancement in the punishment by way of debarring the respondent No.2 from practising the profession of Chartered Accountant.

4. The subject of misconduct on the part of the professional is covered by Chapter V of the Chartered Accountants Act, 1949. Section 21A(3) thereof being relevant, is reproduced below :

*"**21A. Board of Discipline.***

... ...

(3) Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:-

(a) reprimand the member;

(b) remove the name of the member from the Register up to a period of three months;

(c) impose such fine as it may thinks fit which may extent to rupees one lakh.

... ..."

5. Perusal of the order impugned, more particularly Paragraphs 11 and 12, clearly shows that considering the facts of the case, the consequent misconduct on the part of the respondent No.2 and upon consideration of the written and oral submissions, the Board of Discipline has taken a view that the ends of justice shall be met if reasonable punishment is awarded to the respondent No.2. Accordingly, the punishment of reprimand and imposition of fine of Rs.1,00,000/- is considered to be reasonable by the Board of Discipline in exercise of its power under Section 21A(3) of the Chartered Accountants Act, reproduced above. We are not sitting in appeal over the decision of the Board of Discipline and, therefore, on merits also, we do not find that a case is made out for claiming debarment of the respondent No.2 from practising the profession of Chartered Accountant.

6. Be that as it may, it is conceded before us that in the prosecution initiated by the petitioner- Department against the respondent No.2, if the conviction is recorded, the respondent No.2 would certainly be debarred from practising the profession of Chartered Accountant. It is, therefore, open for the petitioner-Department, as a Prosecutor, to bring home the guilt of the respondent No.2 in accordance with law. Any observation by this Court in the present order shall not come in the way if such conviction is recorded.

7. The writ petition is dismissed.

(S.M. Modak, J.) **(R.K. Deshpande, J.)**

Lanjewar, PS