

DISCIPLINARY CASE

Summary of a disciplinary case - Council of the Institute of Chartered Accountants of India Vs. Shri Sandeep Abbott¹ (Chartered Accountant Reference No. 1 of 2003) decided on 19.01.2007 by the High Court of Delhi, New Delhi under Section 21(5) of the Chartered Accountants Act, 1949.

Facts of the case:

Shri A.C. Sharma and Mrs. Indu Sharma of M/s Sharma Share Trading Co., Delhi (hereinafter referred to as the "Complainants") filed a complaint against Shri Sandeep Abbott, Chartered Accountant, New Delhi (hereinafter referred to as the "Respondent") under Section 21 of the Chartered Accountants Act, 1949 (hereinafter referred to as the 'Act') to the Institute of Chartered Accountants of India (hereinafter referred to as the 'Institute') alleging, inter alia, that the respondent induced the complainants to become client by giving free Swot Scan (stock market review by chartered Accountants) offering useful tips, but the swot scan did not come till the close of his business in October, 1991. It was also alleged that the Respondent was doing the brokership of shares apart from practising as Auditor. He was in charge of the above business and all other partners seem to have no dealing with the Respondent's firm during the Complainants' dealing with the Respondent. They have refused to accept even registered letters. It was further alleged that the Respondent had not disclosed in his statement the deliveries not given to the Complainant and shares which were sent for transfer on behalf of the Complainant. The Respondent had also not given to the Complainant the right or preferential quota for the said shares. Further, the Respondent had not made payment even after selling (without consent) the shares to the Complainants. Similarly, the Respondent had also not delivered the shares reported to have been transferred on Complainant's behalf.

The Council of the Institute prima facie opined that the respondent was guilty of professional and/or other misconduct and referred the case to

the Disciplinary Committee for enquiry. The Disciplinary Committee on perusal of the documents on record and those produced at the time of hearing, upon recording the evidence and hearing the final submissions made by the Complainant, came to the conclusion that the Respondent was guilty of professional misconduct within the meaning of Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949 and "other misconduct" within the meaning of Section 22 of the Chartered Accountants Act, 1949 read with Section 21 of the said Act.

The Council on consideration of the report of the Disciplinary Committee, along with the written representation of the Complainant, accepted the report of Disciplinary Committee and held that the Respondent was guilty of professional misconduct within the meaning of Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949 and "other misconduct" within the meaning of Section 22 read with Section 21 of the said Act. In respect of guilty of misconduct under the First Schedule, the Council gave an opportunity of hearing under Section 21(4) of the Act to the Respondent. The Respondent neither sent any representation nor appeared before the Council. The Council after considering the facts and circumstances of the case decided to remove the name of the Respondent from the Register of Members for a period of six months. In respect of 'other misconduct', the Council recommended to the High Court that the name of the respondent be removed from the Register of Members for a period of three months. As required under Section 21(5) of the Act, the matter was

referred to the Delhi High Court with the recommendations of the Council. The Judgment of the Division Bench of the High Court of Delhi at New Delhi comprising of Hon'ble Mr. Justice Madan B. Lokur and Hon'ble Justice V.B. Gupta is summarized below:

Decision of the Hon'ble Court:

The Hon'ble Court observed that inspite of the opportunity given, the Respondent neither filed his written statement nor appeared before the Disciplinary Committee on some pretext. The Court also observed that the Respondent had engaged advocate, whose name appeared in the Cause List of the High Court but neither his Advocate nor the Respondent had put in appearance on the last three dates. The Hon'ble Court further observed that the Disciplinary Committee had taken all factors into consideration in coming to the conclusion that the Respondent was carrying on some other business while he was a Chartered Accountant and this is clearly not permissible by virtue of Clause (11) of the First Schedule of the Act.

The Hon'ble Court further observed that since no defence having been put up by the Respondent, the Court has no option but to accept the view taken by the Disciplinary Authority. The Court held that the conclusion of the Disciplinary Authority is essentially a question of fact, which had been arrived at after going through the necessary evidence.

On overall consideration of the matter, the Hon'ble High Court accepted the finding & recommendation of the Council that the name of respondent be removed from the Register of Members for a period of three months.

¹ For full text of the Judgment please see Institute's publication viz. Disciplinary Case Vol.IX, Part I, p. 78 or visit Editorial Board page at http://www.icaai.org/post.html?post_id=967&c_id=59