

CA expected to be diligent & careful in his professional work

A Chartered Accountant has an obligation, not only statutory but also moral and social, to be absolutely and completely diligent and cautious and careful while preparing, signing and certifying Annual Accounts and/or Audit report. Several Government and private organizations and individuals rely on the report/certificate by Chartered Accountant and once a particular factual aspect or entries, etc. are prepared, signed and certified by Chartered Accountant they are ordinarily accepted without further probing or investigation. In such circumstances, the duty and obligation of being absolutely diligent, conscious and careful is multiplied manifold and a Chartered Accountant should not, and cannot take, such obligation or perform his duties lightly or casually. A mistake by a petty clerk or lower level accountant may be dealt with in different manner but a mistake by a Chartered Accountant cannot be treated with indifference or casually or lightly. A mistake by a clerk or an accountant, which may be considered or allowed or overlooked as inadvertent error, cannot be overlooked lightly or casually if committed by a practicing Chartered Accountant, more so when it is committed in Annual report duly certified by him as correct and authentic report. It has to be, and should be, dealt with seriousness which it would deserve.

The professional or trained Chartered Accountant is equipped with knowledge, training and experience to catch a mistake and if such trained and experienced professional allows so many mistakes, errors, inaccuracies and anomalies pass-by without detecting them and if he signs and authenticates report containing such mistakes, etc. and also issues certificate, then, in such circumstances, any fault cannot be found with the conclusions by the Disciplinary Committee, also confirmed by the Appellate Committee, that the petitioner did not exercise due diligence. The petitioner has tried to wish-away his failure in detecting – catching and correcting the mistakes by attributing the blame to typist and computer operator.

The institute, which is statutorily obliged to maintain high standards of the profession and, for that purpose, to take action in cases which are brought to its notice wherein member of the institute is found wanting exercising due diligence and in being careful and cautions, would fail in its duty and obligation if it does not take appropriate action and/or does not pass appropriate order against such member. A lenient attitude by the institute may, in long run dilute the professional standards and tarnish its image and credibility and with passage of time may also result into deleting institutes vigil over its members and their conduct. Having regard to these aspects, the Court is not inclined to accept the petitioner's contention that the action taken by the institute is too harsh.

In present case, it is not possible to hold that punishment of removal of petitioner's name from the register for one year is harsh as compared to the proved charge. The decision as regards quantum of penalty is in the realm of the Disciplinary Authority and once misconduct is proved – and accepted as proved by the Court – then Court would not interfere with Disciplinary Authority's decision regarding quantum of penalty unless it is excessively disproportionate which amounts to or appears to be on the verge of victimisation.

In this view of the matter and on overall consideration of all facts and circumstances, the petition, for the foregoing discussion and reasons, fails and does not deserve to be entertained.

HIGH COURT OF GUJARAT

CA Rajesh

v.

Disciplinary Committee

SPECIAL CIVIL APPLICATION NO. 10813 OF 2012

NOVEMBER 6, 2012

JUDGMENT

In present petition, the petitioner has prayed that:-

“5.1b. A Writ of Certiorari or any other Writ, order or direction in the nature of Certiorari to stay the implementation of the impugned order dated 05-05-2012 till the final disposal of this petition;

c. A writ of Mandamus or any other writ, order or direction in the nature of mandamus restraining the Respondent not to give effect to the operation of the said order in the interest of justice;”

- 1.1** The petitioner is, thus, aggrieved by two concurrent orders whereby punishment of removal of petitioner's name from the register for a period of 1 year is imposed and confirmed.
- 2.** The relevant facts, involved in and leading to submission of present petition are that, the petitioner, a practicing Chartered Accountant [hereinafter referred to as "CA"] had undertaken, on agreement, assignment as Chartered Accountant of a multi location unit i.e. M/s. Sumilon Industries Ltd, Surat. The assignment also included work of auditing the accounts of the said company. It appears from the record that on the basis of the certificate issued by the petitioner in his capacity as CA, the Excise Department had made certain assessments and liability of the said company towards excise duty under Excise Act were assessed. Thereafter, it came to the notice of the Excise Department that the accounts and audit report submitted by the petitioner was inaccurate and there were several serious and material discrepancies and anomalies. In this view of the matter, the office of Commissioner of Central Excise, Surat lodged complaint with the institute of the Chartered Account [hereinafter referred to as "the institute"] and vide letter dated 24.10.2008 brought

to the notice of the institute the irregularities as well as the inaccuracies, anomalies and mistakes committed by the petitioner in the accounts and audit report.

- 2.1 After examining the said complaint by the Joint Commissioner (Audit) of Excise Department, the institute called for certain information and details from the petitioner vide institute's letter dated 6.3.2009. Subsequently, the Disciplinary Committee of the institute, prima facie, examined the said complaint dated 24.10.2008 and the information supplied by the petitioner and through Director (Discipline) of the Disciplinary Committee of the institute, prima facie, opinion dated 12.10.2009 of the Disciplinary Committee was submitted to the institute. In the said opinion, the Disciplinary Committee formed prima facie opinion that the petitioner is guilty of professional and other misconduct falling within the meaning of Clause (7) of Part-I of IInd Schedule to the Chartered Accountants (Amendment) Act, 2006 [hereinafter referred to as "the Act"].
- 2.2 The said prima facie opinion was supplied to the petitioner and his explanation and reply was called for. In response, the petitioner filed his written statement dated 25.4.2009 (which was submitted in response to the notice/intimation dated 6.3.2009) and another written statement dated 27.5.2010 (which was submitted in reply to the notice/intimation dated 11.3.2010).
- 2.3 Thereafter, the institute, vide its communication dated 18.7.2011 granted personal hearing to the petitioner and intimation about the date and time for personal hearing was informed to the petitioner under the said letter dated 18.7.2011.
- 2.4 Upon conclusion of the hearing before the Disciplinary Committee, a report dated 10.2.2011 was submitted by the Disciplinary Committee. In the said report dated 10.2.2011, the Disciplinary Committee, concluded, inter alia, that the respondent is guilty of professional misconduct falling within the meaning of Clause (7) of Part-I of IInd Schedule of the Act. The said report and conclusion of the Disciplinary Committee was considered by the competent authority of the institute and upon consideration of the entire material including the report and conclusion dated 10.2.2011, the competent authority of the institute passed order under Section 21(B)(iii) of the Act read with Rule 19(1) of the Chartered Accountant's Procedure of Investigation of Professional and other Misconduct and Conduct of Cases Rules, 2007[hereinafter referred to as "the Rules"] suggesting and recommending punishment of removal of petitioner's name from member's register for a period of 1 year. The said order was passed by the competent authority on 12.9.2011 and was forwarded to the petitioner under institute's letter dated 15.9.2011.
- 2.5 Thereafter, the petitioner preferred appeal against the decision of the competent authority. The appeal was registered by the appellate authority as Appeal No.17/ICAI/ICSI of 2011.
- 2.6 On 28.1.2011, the appellate committee heard the petitioner and after considering the record including the report of the Disciplinary Committee and the decision of the competent authority, passed order dated 5.5.2012. The appellate committee concurred with the decision of the competent authority i.e. order dated 12.9.2011 and observed that, the

appellant i.e. present petitioner is rightly held guilty of professional misconduct within meaning of clause (7) of Part-I of IInd Schedule to the Act. The appellate committee also held that the petitioner did not exercise due diligence and he had shown gross negligence and carelessness in certifying Tax Audit Report which did not reflect true and fair picture of the affairs of the company and he signed the Tax Audit Report without actually performing the audit as required.

2.7 Aggrieved by the said two concurrent orders, the petitioner has preferred present petition.

3. Mr. Shah, learned advocate, has appeared for the petitioner and submitted that the impugned order dated 12.9.2011 and the order dated 5.5.2012 are arbitrary, too harsh and non-commensurate with the alleged misconduct. The learned counsel for the petitioner contended that the petitioner cannot be said to have shown gross negligence (as contemplated under clause (7) of Part-I of IInd Schedule to the Act) in preparing and submitting tax audit report. Mr. Shah, learned counsel for the petitioner submitted that the tax audit report contained some minor and irrelevant typographical errors which are negligible and the said mistakes/errors did not cause or did not result into any actual financial loss to the Excise Department. He submitted that the errors in the tax audit report cannot be construed as or classified as gross negligence as contemplated under clause (7) of Part-I of IInd Schedule to the Act. Mr. Shah, learned advocate for the petitioner also claimed that the report/order dated 12.9.2011 by the competent authority of the institute also suffers from vice of violation of principles of natural justice, inasmuch as despite the fact that the petitioner had requested for adjournment vide his letter dated 26.7.2011, the request was not granted and the committee/competent authority proceeded to pass final order as regards penalty without hearing the petitioner on the issue as regards quantum of penalty. Mr. Shah, learned advocate for the petitioner, referred to the tax audit report prepared and submitted by him in relation to the above-named company and tried to contend that actually there are no mistakes in the report and the petitioner has separately shown the inter-departmental transfer/consumption of material and the sale of material in the market by the company and the conclusions by the institute are not correct. Mr. Shah, learned advocate for the petitioner, submitted that the matter deserves to be remanded for reconsideration by the appellate committee so far as the quantum of penalty is concerned.

Mr. Shah, learned advocate for the petitioner, relied on the decision by the Apex Court in case of *In Re: An advocate* [AIR 1989 SC 245] and the decision in case of *V.P. Kumaravelu v. The Bar Council of India, New Delhi & Ors.* [AIR 1997 SC 1014] to support the contention that there was no motive or intention on the part of the petitioner and that the alleged mistakes cannot be construed as gross negligence.

4. Mr. Soparkar, learned Senior Counsel, with Mrs. Soparkar, learned advocate, has appeared for the respondent institute and submitted that the penalty imposed by the institute is minimum penalty which could be imposed in such type of cases. The learned Senior Counsel submitted that the institute is responsible for maintaining professional standards and standard of accuracy of the reports submitted by its members, more particularly when the report by the members of the institute are being relied on, almost blindly, by all private

as well as Government organizations. Mr. Soparkar, learned Senior Counsel, also submitted that in his reply submitted to the committee, the petitioner accepted the inaccuracies and anomalies in his report/certificate. He also submitted that the details mentioned by the Disciplinary Committee in its report enumerates the inaccuracies and anomalies. Mr. Soparkar submitted that the mistakes from the tax audit report submitted by the petitioner demonstrate that the petitioner did not exercise due diligence and/or he was grossly negligent in performing his professional duties. Mr. Soparkar submitted that in view of the provision contained under clause (7) of Part-I of IInd Schedule to the Act, existence of motive or intention is neither relevant nor necessary when question under consideration is about exercising due diligence and/or committing gross negligence in performing professional duty. He also submitted that the Disciplinary Committee/Institute has taken entire aspect and record as well as submissions of the petitioner into consideration and after examining entire material vis-à-vis the gravity of the charge or the proved professional misconduct, the institute has taken appropriate decision which does not call for any interference in exercise of writ jurisdiction by the Court. So far as the petitioner's allegation about violation of principles of natural justice is concerned, Mr. Soparkar submitted that sufficient opportunity was granted to the petitioner, however, the petitioner did not remain present, but he asked for extensions and therefore, ultimately, the committee proceeded to pass order as regards quantum of penalty and that therefore, the petitioner is not right in alleging that he has not been granted opportunity of hearing as regards penalty.

Mr. Soparkar relied on the decision by the Division Bench of this Court dated 29.11.2003 in Chartered Accountant Reference No.1 of 2000 and another decision dated 14.2.2005 by Division Bench in Chartered Accountant Reference No.1 of 2004.

5. Before dealing with the petitioner's allegations and contentions as regards the conclusion, on merits, by the Disciplinary Committee and the Appellate Committee it would be appropriate to deal with petitioner's allegation and contention on the ground of alleged violation of principles of natural justice.
- 5.1 In order to contend that Disciplinary Committee/Competent Authority did not grant opportunity of hearing on the point of penalty, the learned counsel for the petitioner relied on observation in paragraph nos.3 and 4 of the order dated 12.9.2011 wherein the Committee has observed that:-
 - "3. That CA Rajesh Vasant Dudhwala sent a letter dated 26.07.2011 wherein he has requested for deferment of this hearing on account of his engagement in Tax returns and audit assignments.
 4. The Committee had perused the facts of the case and was of the view that adjournment at this stage was not warranted. The Committee also noted that no new facts have also been brought on record by the Respondent."

- 5.2 By exploiting the observation recorded in paragraph no.4 of the said order dated 12.9.2011, more particularly in light of the observation in paragraph no.3, the learned advocate submitted that vide his letter dated 26.7.2011 adjournment was requested for by the petitioner, however, the Committee/Competent Authority did not consider it proper to wait for some more time, but proceeded to pass order regarding penalty, which is unjustified and arbitrary.
- 5.3 While relying on the said observations in paragraph nos.3 and 4, the learned advocate for the petitioner has conveniently overlooked the fact that the report of the Disciplinary Committee was submitted on 10.2.2011 and thereafter, the petitioner was granted opportunity to submit written representation. Besides this, at his requests, under communications dated 30.5.2011 and 18.7.2011, opportunity/time was granted to the petitioner. These details and aspects are recorded in paragraph no.2 of the very same order i.e. order dated 12.9.2011, which reads thus:-
- “2. That an action under Section 21B(3) of the Chartered Accountants (amendment) Act, 2006 was contemplated against CA Rajesh Vasant Dudhwala and, therefore, communications dated 30.05.2011 and 18.07.2011 were addressed to him thereby granting him an opportunity of being heard in person as also to make written representation.” (emphasis supplied)
- 5.4 Thus, when time/adjournments are granted and yet the petitioner continues to ask for more time only on the ground that he is engaged and busy in preparing the tax returns of his branch i.e. without any strong reason and compelling circumstance for not appearing before the committee and to avail opportunity of hearing as regards proposed penalty and/or he did not even find time to submit even written representation as regards proposed penalty then, no fault can be found with the competent authority/institute in proceeding to take the decision as regards proposed penalty and such order cannot be categorized as vitiated on the ground of denial of reasonable opportunity and cannot be set aside.
- 5.5 The details mentioned in the order dated 12.9.2011 go to show that the petitioner was granted opportunity/time and even further time/adjournments were granted, however, the petitioner continued to delay his appearance before the competent authority/institute and/or did not even file his written representation.
- 5.6 Moreover, the reason advanced by the petitioner for seeking further time under his letter dated 26.7.2011 also cannot be termed as compelling and unavoidable circumstance that the petitioner could not, even for one day, spare time and appear before the authority/institute or did not/could not even file his written representation making submissions as regards penalty.
- 5.7 In the facts of the case, it appears that the competent authority/institute is justified in considering that the petitioner was merely delaying the proceedings.

- 5.8 The Court, therefore, does not find any reason or justification to interfere with and set aside the order on the said ground.
- 5.9 When a person does not avail the opportunity of hearing when granted, he would not be justified in alleging denial of opportunity of hearing. The rule of *audi-alterum-partum* and requirement of opportunity of hearing as regards proposed penalty is not infinitely elastic which can be stretched to interminable or illimitable limits and cannot be extended to boundless and unconditioned limit so as to hold that even if the concerned person does not avail the opportunity even after the opportunity is made available, the authority should continue to adjourn the proceedings *ad-infinitum* so as to honour and comply the requirement of granting opportunity of hearing on the issue about proposed penalty.
- 5.10 If the petitioner was too busy in his professional work to appear before the competent authority/institute, he could have submitted written reply/representation raising all available contentions on the point of proposed penalty. However, the petitioner, in present case, did not care to even take that trouble to submit even written reply/representation as regards proposed penalty.
- 5.11 The said aspects cumulatively establish that the petitioner was merely trying to delay the proceedings. Therefore, the said submission is not accepted.
- 5.12 In this context, reference may be made to the observations by the Hon'ble Apex Court in para-13 of the decision in the case between The Chairman, Board of Mining Examination and *Chief Inspector of Mines, and Anr. v. Ramjee*. [AIR 1977 SC 965], which reads thus:-
- “13.....Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt – that is the conscience of the matter.”
6. Now, so far as the petitioner's submissions as regards the concurrent conclusions by the disciplinary committee and appellate committee as well as the prima facie opinion are concerned, it would be appropriate, so as to consider the said aspects, to keep in focus the provision contained under clause (7) of Part-I of IInd Schedule to the Act, which read thus:-
- “(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;”
- 6.1 The said Part-I of IInd Schedule (which is framed under Sections 21(3), 21(B)(3) and 22) prescribe “professional misconduct in relation to Chartered Accountants in practice”. The

said clause (7) of Part-I of IInd Schedule to the Act prescribes inter alia that if practicing Chartered Accountant does not exercise “due diligence” or shows “gross negligence” and is grossly negligent in conduct of his professional duties, then, it would amount to professional misconduct.

6.2 Thus, not only gross negligence, but due diligence is equally relevant and important criterion in measuring and determining “professional misconduct” in case of a Chartered Accountant.

6.3 In present case, the Joint Commissioner (Audit), Central Excise and Customs, submitted complaint to the institute stating, inter alia, that :-

“The audit of above mentioned unit viz. M/s. Sumilon Industries Ltd. (an MLU) having its registered office at Delhi Gate, Vairagini Wadi, Surat – 395003, was being co-ordinated by the Office of Additional Director General of Audit, Customs, Central Excise & Service Tax, Ahmedabad Zonal Unit, Ahmedabad. During the course of scrutiny of documents submitted by the unit, it was observed that there were some discrepancies in the figures of Audited Annual Report for the year 2006-07. On being pointed out, the unit, vide their letter dated 15.01.2008 submitted that there are some typing errors in the notices on the accounts of schedule 19. Accordingly, they filed the revised figures as below:-

<i>Source Documents</i>	<i>Figures</i>			<i>New Figures</i>		
	<i>As given in letter as per old figures</i>			<i>As per corrected statement</i>		
	<i>Raw material consumption</i>	<i>Production</i>	<i>Sales</i>	<i>Raw material consumption</i>	<i>Production</i>	<i>Sales</i>
Annual Report 2005-06	3405.622	6870.380	5755.415	3815.198	6836.000	4565.858
Annual Report 2006-07	4359 479	5587.099	6520.461	4657.962	6778.051	4622.758
Tax Audit Report 2006-07	5093.540	5196.792	3799.446	6678.527	6778.047	4622.752

The said Tax Audit report is prepared by the auditor M/s. R.V. Dudhwala & Co. Chartered Accountants, 104, Dalal Chambers, Bhajiwali Pole, Bhagal, Surat. (M.No.38264)

It seems that the Company’s Auditor have not verified the accounts and certified report properly prior to issuing the same, as a result of which, lot of time of our officers have been wasted. Annual Report is an important financial document for many stake holders and it cannot be taken lightly. Therefore, it is brought to your notice for taking necessary action in this regard against aforesaid Auditor.” (emphasis supplied)

6.4 In pursuance of the said complaint, the institute called for certain details from the petitioner under its letter dated 6.3.2009 and after considering the complaint and the details

submitted by the petitioner and also the other material, the disciplinary committee submitted its prima facie opinion dated 12.10.2009 wherein the committee recorded, inter alia, that

- “8.3 It is an admitted fact that there was an error in the quantity figure of the stocks in the Annual Reports of the Company for the financial years 2005-06 & 2006-07. Further, quantity details of the stocks was also wrongly certified by the Respondent in Tax Audit Reports for the Financial Year 2006-07. The Respondent contended that the said mistake was due to typing, arithmetic, copying and pasting.
- 8.4 As regard discrepancies in Tax Audit Report, it has been observed that there is difference in figure in Tax Audit Report for the year 2006-07, it has been noticed that there was mistake in quantity records of Metallised and Lacquered poly film only. It appears that the actual consumption of Metallised and Lacquered poly film was shown higher by 90 M.T. and finished goods of Gandhidham unit was shown higher by 60 M.T.
- 8.5 On overall perusal of the complaint and submission made by the Respondent, it appears that there were typing/clerical mistakes in the quantity records. However, Auditor is required to ensure the accuracy of the figures/facts before signing the Audit Report. From the above, it appears that the Respondent was negligent in performing his duties.
- 8.6 The Respondent himself has accepted that there were mistakes in the certified Annual reports for the financial years 2005-06 & 200-07 and in the Tax Audit Report for the financial year 2006-07. As per the submissions of the Respondent, the Respondent clearly admitted all the mistakes/discrepancies pointed out by the Complainant, but the Respondent admitted that there were only arithmetical, typing, copying and pasting errors, due to these mistakes/discrepancies the Complainant has not suffered any revenue loss.
- 8.7 From the above admitted facts of the Respondent, it is apparent, that the Respondent was grossly negligent, while performing his professional duties. As a prudent Auditor, the Respondent is required exercise his duties in a professional & diligent manner.” (emphasis supplied)
- 6.5** The committee, in the said prima facie opinion, recorded that “the respondent i.e. present petitioner” also did not provide copies of balance sheet and tax audit reports of the company for financial year 2005-2006 and 2006-2007. After considering the available material, the Director (Discipline) observed, in the said prima facie, opinion that,
- “I am of prima facie opinion that the respondent is guilty of professional and/or other misconduct falling within the meaning of clause (7) of Part-I of IInd Schedule to the Act”.

- 6.6** Now, at this stage, it is pertinent to note that in his written statement/reply dated 27.5.2010, the petitioner himself mentioned that,

“the mistakes found in the annual report and revised data are in the nature of typing error of a computer operator....”.

- 7.** Thus, actually, the petitioner had admitted and acknowledged that the report was infected with mistakes and that mistakes had been committed in preparing, signing and submitting the report. However, the petitioner has tried to underplay the mistake by claiming that the “mistakes” were merely typographical errors. It comes out that there is no dispute about the fact, rather the petitioner has admitted, that there were errors, inaccuracies and anomalies in the report prepared, signed and certified by the petitioner. After wishing away the mistakes, inaccuracies and anomalies in the report on the pretext that it was typographical error of computer operator, the petitioner tried to shift the liability on the company by stating, inter alia, that,

“the basic responsibility of preparing annual accounts including notes on accounts is of the company”.

- 8.** The petitioner then, concluded his written statement/reply stating, inter alia, that :-

“Considering the explanation of error, explanation given by the company and supporting evidence, nature of error, no loss suffered by excise department and no gross negligence in performance of audit, I request Your Honour to take lenient view in my case.” (emphasis supplied)

- 8.1** Another relevant and vital feature which emerges from petitioner’s reply/written statement dated 25.4.2009 is the statement made by the petitioner in paragraph no.9 of the said reply/written statement which reads thus:-

“The above clearly shows that there were arithmetical, typing, copying and pasting errors. The exercise department has also not suffered any revenue loss due to above mistake. The only grievance of the excise department was that there some time was wasted.” (emphasis supplied)

- 8.2** In the said reply/written statement, the petitioner has also stated, inter alia, that :-

- (i) “same way there was discrepancy only in quantity of matelized and lacquered division due to typing error and no discrepancy or mistake found in the quantity of purchase and sales excluding inter division”.
- (ii) “(5) The discrepancies were occurred only due to typing error, copying and pasting of data and mistake in pasting and mistake in applying formula in excel sheet.”

- (iii) Under the heading discrepancies in raw material consumption, the petitioner has stated, inter alia, that,

“... due to mistake of accountant, this figure of 1565.733 has been taken. The working of revised figure of 1975.309 is given below....”.

- (iv) Under note No. 2 of same heading, the petitioner has stated, inter alia, that,

“the discrepancies was only due to purchases of plane, polyester, film shown as consumption. The purchase report of plane polyester film from the books of account of Sumilon Industries Ltd. is enclosed to prove purchases”.

- (v) Under the heading discrepancies in production, the petitioner has stated, inter alia, that,

“note 1, due to mistake by accountant in F.Y.2005-2006, the actual production quantity of metal quoted polyfilm taken as 3743.330 instead of 3708.950 MT. Hence, the discrepancy of MT in production. There was no mistake in other products.

- (vi) Under the heading tax audit report, the petitioner stated, inter alia, that,

“the mistake in quantity data of metalized and lacured polyfilm is given below.....”

“8. Tax Audit report:-

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- (i) The plain poly film transferred from Gandhidham unit of 1276.999 M.T. was recor 1366.994 M.T. in Metalilised and Lacquered poly film division of Gandhidham unit, the consumption of Metallised and Lacquered poly film in Gandhidham division was higher by 90 M.T. The actual consumption of Metallised and Lacquered poly film 1962815.760 was shown as 2052815.760 (Due to above mistake).
- (ii) In the quantity record of finished goods of Gandhidham unit there was totalling mistake in quantity manufactured. The actual quantity manufactured was 2099.265 M.T. was shown as 2159.265 M.T. The actual production of Metallised and Lacquered poly film of 2099.267 M.T. is tallied with the exercise return filed and accepted by Excise audit team.
- (iii) in the quantity records of raw materials consumed of Kim unit, the consumption of quantity of 973.969 M.T. includes closing stock of 42.553 M.T. Hence, the consumption quantity of 973.969 M.T. is required to be decreased by 42.553 M.T. The correct consumption quantity was (973.969 M.T. – 42.553 M.T.) 913.416 M.T.

- (iv) As the consumption was increased by 42.553 M.T. and this has increased the quantity issued to other department by the same quantity of 42.553 M.T. The Quantity issued to other branch of 573.274 should be read as 530.715 M.T. (573.24 M.T. – 42.553 M.T.). The original quantity and corrected quantity of goods received from department, consumption, quantity manufactured and good issued to department is given in the enclosed sheet (Schedule 4). This mistake is only due to copying, pasting and wrong formula of summing. The quantity of opening stock, purchase, sales and closing stock has no change and all tallied with books of account and with excise returns.

The statement showing the quantity details of Metallised & Lacquered poly firm showing old and corrected is enclosed (Schedule 5).”

9. The above-mentioned details, which are stated by petitioner himself in his written statement/reply, demonstrate and establish that the report contained various mistakes, inaccuracies, discrepancies and anomalies with regard to several items, including raw material consumption, production record, tax audit report and other items and the petitioner has tried to significantly underplay the said mistakes by claiming that the errors in the report were merely either arithmetical errors or typing errors or copying errors or cutting-pasting errors.
- 9.1 In urging such contention, the petitioner is conveniently overlooking the fact that as a professional Chartered Accountant certifying audit report, it was his duty to diligently prepare the report without any mistake. It was his obligation to be diligent, careful and cautious, i.e. it was his duty to exercise due diligence, in preparing and signing and certifying the report and to carefully examining and verifying it before signing it and before issuing certificate.
- 9.2 It is in this context that the provision under clause (7) of Part-I of IInd Schedule of the Act is required to be taken into account, which makes lack of due diligence misconduct inasmuch as it is prescribed that when practicing Chartered Accountant does not “exercise due diligence” or when a practicing Chartered Accountant is grossly negligent in conduct of his professional duties then it would tantamount to professional misconduct.
- 9.3 In paragraph no.4 of the report dated 10.2.2011, the Committee has taken note of the prima facie opinion firmed by the Director (Discipline) and in paragraph no.5 the committee has considered the written statement submitted by the petitioner. The committee has also recorded that the time of hearing, the petitioner had remained present with his advocate. In paragraphs no.9 to 12, the details of the proceeding are recorded by the committee. The said observations are relevant and read thus:-
- “9. During the course of hearing, the Respondent has admitted the fact of mistakes in the quantitative details of raw-materials consumed, production and sales of the Company which were attributed to the mistakes on the part of accountant in cutting and pasting. With regard to the elimination of inter division transfers from the sale and

purchases in the financial statements, the Respondent admitted that he should have eliminated the inter division transfers from the financial statements. He has further admitted that the non elimination of the inter division transfers does not give true and fair view of the financial statements.

10. The Committee had also pointed out the discrepancy between the stated accounting policy of the Company and the actual implementation of the same in the presentation of financial statements, viz. as per the accounting policy on sales, it reads as under:

“the sales are accounted exclusive of excise duty and other taxes and exclude inter divisional transfers” (point No.F of Schedule 19 to Balance Sheet as at 31.3.06)
 11. However, in furnishing the details of sales of finished goods in Notes on Accounts, the sales were shown as including inter branch/divisional transfers. For this the Respondent admitted that it is a mistake on his part and the said presentation did not give a true and fair view of the financial statements.
 12. Finally, the Respondent while admitting the mistakes and lapses on his part, prayed that the same does not constitute “gross negligence” and it can at best be attributed as work carried out without “due diligence”. (emphasis supplied)
- 10.** After considering the relevant aspects, the committee recorded its findings in para nos.13 & 16 that:-
- “13. The Committee had noted that there were several mistakes, omissions and commissioning in the Financial Statements of Sumilon Industries Ltd. for the financial years 2005-2006 and 2006-07 which were audited by the Respondent. The Committee also noted the admission of the Respondent about the mistakes and omissions in the financial statements and the Respondent’s submission that the mistakes/omissions did not result in any loss to the Central Excise Department.
 14. Briefly, the omissions and commissions in the financial statements of the Company which were attested by the Respondent are as under:-

(figures in M.T.)

<i>Source Documents</i>	<i>Figures As given in letter (as per old figures)</i>			<i>New Figures As per corrected statement</i>		
	<i>Raw material consumption</i>	<i>Production</i>	<i>Sales</i>	<i>Raw material consumption</i>	<i>Production</i>	<i>Sales</i>
Annual Report 2005-06	3405.622	6870.380	5755.415	3815.198	6836.000	4565.858
Annual Report 2006-07	4359.479	5587.099	6520.461	4657.962	6778.051	4622.758

Tax Audit Report 2006-07	5093.540	5196.792	3799.446	6678.527	6778.047	4622.752
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15. The Committee noted that in the financial statements of the Company for the years 2005-06 and 2006-07, the sales of finished goods were disclosed inclusive of Inter Branch transfer where as per the Accounting Standard – 9, Revenue Recognition, the Inter Divisional Transfer can not be recognized as Sales/revenue as in case of inter-divisional transfers, risks and rewards remain within the enterprise and also there is no consideration from the point of view of the enterprise as a whole, the recognition criteria for revenue recognition are also not fulfilled in respect of inter-divisional transfers. However, in the present matter, the Company in its financial statements for the years 2005-06 and 2006-07 shown the Sales/Revenue inclusive of Inter Unit/Branch transfer in violation of the provisions of the Accounting Standard 9.
 16. Further, by adding the amount/quantity of Branch Transfer in the financial statements, the accounts were misstated and did not give a true & fair view of the affairs of the Company. In those circumstances, the Respondent ought to have disclosed the said fact in his audit report and/or expressed quantified opinion. But the Respondent failed to do so.”
- 10.1** After having taken into account the aforesaid aspect, the committee has observed in the report dated 10.2.2011, that,
- “the financial statements are very important documents for the stake holders and the general public at large and they rely on certification of chartered accountants for accuracy and the correctness of the same.”
- The committee has also observed that,
- “the committee though noted the admission of the respondent of the mistakes in the financial statement, could not accept (sic, accede) to his prayer that a lenient view may be taken of the mistakes”.
- 10.2** Besides this, it is also pertinent to note that the committee has observed in the said report that,
- “the committee has also noted that irrespective of the fact that there is no loss to the government or anybody due to the above mistakes, the mistakes are very serious resulting in affecting the true and fair view of financial statement. The committee also felt that as a prudent professional, the respondent ought to have exercise due care and caution and due diligence in certifying the financial statements with correct details.” (emphasis supplied)
- 11.** At the end, the committee recorded the conclusion that the respondent is guilty of professional misconduct falling under clause (7) of Part-I of IInd Schedule of the Act.

12. A glance at the communication dated 18.7.2011, wherein it is observed, inter alia, that, “.... an opportunity of being heard before any order is passed against you under sub-section (3) of Section 21(B) of the Chartered Accountants is required to be given to you. Accordingly, the disciplinary committee hereby gives you an opportunity to represent yourself in person and/or send your written submission/representation on the aforesaid findings” (emphasis supplied) demonstrates and establishes that the committee had granted opportunity to the petitioner.

13. In the said communication, the committee had also cautioned the petitioner that,

“in case you do not present yourself on the said date and time before the Disciplinary Committee or your written submissions/representation do not reach this office within prescribed period, the Disciplinary Committee shall presume that you have nothing more to represent....”(emphasis supplied)

further establishes that the petitioner was also informed that in event of his failure to appear or failure to submit written representation, the committee will be constrained to proceed further in the matter, and yet the petitioner failed to or avoided to appear before the committee (and also failed in submitting his reply/representation). In the said communication dated 18.7.2011, the Committee had offered two alternatives/options to the petitioner viz. to attend the hearing or to file written statement/representation. If the petitioner was not able to attend the hearing, as he has claimed, he could have submitted his written statement/representation. When both alternatives/options are made available and the petitioner does not avail either of them, then, the petitioner has no reason or justification to make allegation about denial of opportunity of hearing. The principle of natural justice does not always mean that oral/personal hearing may be given. The decision taken after taking into consideration the written objections would also be sufficient compliance of the doctrine of natural justice.

In this context, reference may be made to the decision of this Court in case between *B.K. Sharma v. Union of India* [2005(4) GLR 3432] wherein, the Hon’ble Division Bench in para-44 of the said decision observed thus:-

“44. This aspect was also considered by De Smith, Woolf & Jowell in Judicial Review of Administrative Action, and it was observed therein that “A fair “hearing” does not necessarily mean that there must be an opportunity to be heard orally. In some situations it is sufficient if written representations are considered. Where the words “hearing” or “opportunity to be heard” are used in legislation, they usually require a hearing at which oral submissions and evidence can be tendered. However, in a great many statutory contexts, a duty of “consultation” is placed upon the decision-maker. This is almost always interpreted by the courts to require merely an opportunity to make written representations, or comments upon announced proposals.”

14. However, the petitioner did not avail either of the alternatives/opportunities and he neither appeared before the committee nor filed representation.

15. The above quoted observations from the report of the Disciplinary Committee brings out and establishes, inter alia, that,
- (a) the committee granted opportunity of hearing to the petitioner,
 - (b) it also took into consideration his reply/ explanation,
 - (c) it has also examined the audit report and other relevant data and details and after carefully examining the entire material recorded its findings as well as reasons in support of its conclusions.
16. Reappreciation of evidence considered by the Disciplinary Committee is outside and beyond the scope of judicial review by the Court in writ proceedings.
- 16.1 The Court, would not enter into the process of reexamination and reappreciation of the evidence considered by the Disciplinary Committee.
17. On consideration of the report, it emerges that the said report and conclusions cannot be said to be arbitrary, unreasonable or unjust and it cannot be said that the report/order is unreasoned or
- 17.1 The report and the findings cannot be said to be without any basis or without evidence or contrary to evidence, much less perverse.
18. Actually, the mistakes, inaccuracies, errors, etc. have been admitted by the petitioner and then he has tried to underplay the said mistakes, etc. So as to show that they are insignificant, he has tried to brush them aside and sweep them under carpet claiming and describing them as negligible.
- The report/order also does not suffer from any jurisdictional error.
19. Besides this, the entire material including the evidence on record and the report/order by the Disciplinary Committee has been thoroughly reexamined and reappreciated by the appellate committee while entertaining and deciding the appeal preferred by the present petitioner.
- 19.1 Thus, reappreciation of the material and evidence on record has been undertaken by the appellate committee which is another reason for the Court to not enter into realm of reappreciation of evidence.
20. Under the circumstances and for the foregoing reasons, the Court does not find any basis or justification to hold that the findings and conclusions by the Disciplinary Committee, as confirmed by the appellate committee, suffer from any infirmity and/or that the decision deserves to be interfered with on any permissible ground.

21. In this background, the contention by learned counsel for the petitioner viz. that the mistakes cannot be said to be or construed as “gross negligence” is required to be considered.

So as to support and justify its contention, the learned advocate for the petitioner has relied on the decisions in case of *In Re: An advocate* [AIR 1989 SC 245] and the decision in case of *V.P. Kumaravelu v. The Bar Council of India, New Delhi & Ors.* [AIR 1997 SC 1014].

- 21.1 In the decision *In Re: An advocate* [AIR 1989 SC 245], the Hon’ble Apex Court observed in para-12 that:-

“12. In our opinion the appellant has not been afforded reasonable and fair opportunity of showing cause inasmuch as the appellant was not apprised of the exact content of the professional misconduct attributed to him and was not made aware of the precise charge he was required to rebut. The conclusion reached by the Disciplinary Committee in the impugned order further shows that in recording the finding of facts on the three questions, the applicability of the doctrine of benefit of doubt and need for establishing the facts beyond reasonable doubt were not realised. Nor did the Disciplinary Committee consider the question as to whether the facts established that the appellant was acting with bona fides or with mala fides, whether the appellant was acting with any oblique or dishonest motive, whether there was any mens rea, whether the facts constituted negligence and if so whether it constituted culpable negligence. Nor has the Disciplinary Committee considered the question as regards the quantum of punishment in the light of the aforesaid considerations and the exact nature of the professional misconduct established against the appellant. The impugned order passed by the Disciplinary Committee, therefore cannot be sustained. Since we do not consider it appropriate to examine the matter on merits on our own without the benefit of the finding recorded by the Disciplinary Committee of the apex judicial body of the legal profession, we consider it appropriate to remit the matter back to the Disciplinary Committee.”

The Hon’ble Apex Court also observed that:-

“12We must explain why we consider it appropriate to remit the matter back to the Bar Council of India. This matter is one pertaining to the ethics of the profession which the law has entrusted to the Bar Council of India. It is their opinion of a case which must receive due weight because in the words of Hidayatullah, CJ, in *Mohindroo’s case* (AIR 1971 SC 107 at p. 116);

“this matter is one of the ethics of the profession which the law has entrusted to the Bar Council of India. It is their opinion of a case which must receive due weight.”

In the said case, the petitioner, an advocate, was suspended from practicing his profession for 3 years on the charge of having withdrawn a suit (as settled) without

the instructions from his client. In the said decision the Hon'ble Apex Court framed below mentioned questions:

- “(1) Whether a charge apprising him specifically of the precise nature and character of the professional misconduct ascribed to him needs to be framed?
- (2) Whether in the absence of an allegation or finding of dishonesty or mens rea a finding of guilt and a punishment of this nature can be inflicted on him?
- (3) Whether the allegations and the finding of guilt require to be proved beyond reasonable doubt?
- (4) Whether the doctrine of benefit of doubt applies?
- (5) Whether an Advocate acting bona fide and in good faith on the basis of oral instructions given by some one purporting to act on behalf of his client, would be guilty of professional misconduct or of an unwise or imprudent act, or negligence simpliciter, or culpable negligence punishable as professional misconduct?”

From the facts of the said case, it emerges that a profession similar to Clause (7) of Part-I of IInd Schedule of the Act was not under consideration before the Hon'ble Apex Court in the said decision.

21.2 So far as the decision in the case between *V.P. Kumaravelu v. The Bar Council of India, New Delhi & Ors.* [AIR 1997 SC 1014] is concerned, in the said decision also, the profession similar to Clause (7) of Part-I of IInd Schedule of the Act was not under consideration before the Hon'ble Apex Court. Moreover, in the said decision, the Hon'ble Apex Court has observed that:-

- “12. Looking to all the circumstances the appellant was negligent as he had failed to attend to the two cases. His client had to suffer ex parte decrees. There is, however, no finding of any mala fides on the part of the appellant or any deliberate inaction on his part in not attending to the two cases. Will his negligence or “constructive negligence” as the respondent-Bar Council puts it, amount to professional misconduct? Whether negligence will amount to professional misconduct or not will depend upon the facts of each case. Gross negligence in the discharge of duties partakes of shades of delinquency and would undoubtedly amount to professional misconduct. Similarly, conduct which amounts to dereliction of duty by an advocate towards his client or towards his case would amount to professional misconduct. But negligence without moral turpitude or delinquency may not amount to professional misconduct.”

Thus, not attending the two cases and allowing the client to suffer ex-parte decrees is treated as gross negligence in discharge of duties. The Hon'ble Apex Court has also observed that whether negligence will amount to professional misconduct or not will

depend upon the facts of each cases. Therefore, present case is required to be considered and decided in light of facts of this case and in light of the provision contained under clause (7) of Part-I of IInd Schedule to the Act, which, inter alia, prescribes lack or absence of exercising due diligence as professional misconduct.

22. However, in present case, the aspect is required to be examined in light of clause (7) of Part-I of IInd Schedule of the Act read with provision under Sections 21(3), 21(B)(3) and 22 of the Act, which, inter alia, also prescribe that failure to exercise “due diligence” or lack of “due diligence” also amounts to misconduct. Thus, the petitioner is not justified in overemphasizing or concentrating only on the term “gross negligence” in clause (7) of Part-I of IInd Schedule to the Act and in ignoring the term “due diligence” in the said clause.
- 22.1 Therefore, “gross negligence” alone is not required to be taken into account while examining the conclusions by the disciplinary committee and the appellate committee. It is pertinent that exercise of due diligence is equally vital aspect which also is to be taken into account in examining a Chartered Accountant’s conduct and decide whether his acts of omission and/or commission amounts to misconduct.
- 22.2 When the mistakes or errors or inaccuracies and anomalies in the report prepared and certified by the petitioner are taken into consideration, then, it emerges that the conclusions by the disciplinary committee and thereafter, by the appellate committee confirming disciplinary committee’s conclusions that the petitioner did not exercise due diligence in preparing and certifying the report, cannot be faulted and the decisions relied on by the learned advocate for the petitioner would not, in light of facts of present case and in view of relevant provision, provide any assistance to the petitioner as the said decisions take into account different set of facts and circumstances which are materially different from facts of present case and the relevant provision are also different.
23. The learned advocate for the petitioner then contended that the quantum of penalty is too harsh and is not commensurate with the misconduct.
- 23.1 Once the Court comes to the conclusion that the findings/ conclusion as regards misconduct does not warrant any interference, then, unless the quantum of penalty is shown to be or is found to be so disproportionate as would amount to victimization, the Court would, ordinarily, not interfere with the quantum of penalty.
24. In present case, the competent authority has imposed penalty of removal of petitioner’s name from member’s register for 1 year.
- 24.1 So as to consider the extent of care and diligence required to be exhibited by a practicing Chartered Accountant, it is appropriate to refer to the observations by the Division Bench in decision dated 29.11.2003 in case between Council of the *Institute of Chartered Accountants of India v. C.K. Vyas FCA* wherein the Court observed, inter alia, that :-

- “20. We have heard learned Senior advocate Mr. Soparkar and have perused the entire record pertaining to the case. Upon perusal of the record and the report of the Disciplinary Committee and the written submissions filed by the respondent, we feel that looking to the position which Chartered Accountants enjoy in the society today, the punishment proposed to be inflicted by the Disciplinary Committee appears to be less. We also find that the respondent had submitted the Certificate dtd.22.04.1988 without proper verification of the books of accounts and vouchers in respect of the factory building. The site of factory building was either not inspected by the respondent or he had deliberately issued a false certificate regarding worth of the building. It has been specifically found that the building material was hardly worth Rs. 10,000/- at the site whereas the building as stated in the certificate was not at all in existence. The said fact can be clearly seen by the evidence which was adduced before the Disciplinary Committee. There is no reason to disbelieve the witnesses who adduced their evidence which was duly scrutinised by the Disciplinary Committee.
21. In our humble opinion, the punishment proposed to be inflicted upon the respondent is less and, therefore, though we do not propose to order removal of the respondent’s name from the Register of members, in our opinion, the ends of justice would be served if the name of the respondent is removed from the Register of members for a period of six months. One very well knows that a certificate given by a Chartered Accountant is blindly relied upon and if a Chartered Accountant knowing fully well about the value of his certificate, issues a Certificate either negligently or in a fraudulent manner, he thereby not only performs his duties negligently, but he also helps someone in commission of a fraud. In a given case, someone can be easily defrauded by a dishonest and unscrupulous person with help of a certificate of a Chartered Accountant, which is given either negligently or in a fraudulent manner so as to see that the purpose of a dishonest and unscrupulous person is achieved. We feel that in a society where Chartered Accountants are highly respected as Professionals, a Chartered Accountant should take due care before issuing any Certificate and as in the instant case, the respondent had failed to do so, we feel that removal of his name from the Register of members for a period of six months would be sufficient punishment to the respondent and it will also have a deterrent effect.”
- 24.2** It will also not be out of place to refer to the observations by the Court in paragraph no.20 and 21 of the decision in case between Council of *Institute of Chartered Accountants of India* v. *Mukesh R. Shah* [AIR 2004 GUJ 164], which read thus:-
- “20 A Chartered Accountant is statutorily required to undertake and carry out various functions as statutorily prescribed under the Companies Act, 1956. Part VI of the Companies Act deals with management and administration. Chapter I in the said part relates to general provisions and there are separate heads regarding accounts and audit. Section 226(1) of the Companies Act specifically prescribes that a person shall not be qualified for appointment as auditor of a company unless he is a Chartered Accountant within the meaning of the Act. There are various other provisions which

prescribe the powers and duties of the Auditors as well as the responsibilities. These provisions are indicative of the extent a Chartered Accountant is looked upon by the society, with special reference to the corporate world, as being competent to discharge various statutory duties and responsibilities as a qualified professional.

- 21 Similarly under the Income Tax Act, 1961 Section 288 stipulates as to who can appear as authorized representative of an assessee under the said Act. Section 288(2)(iv) states that an Accountant can be an authorized representative. The Explanation below the said sub-section specifies that in this Section, namely Section 288 of the said Act, 'Accountant' means a chartered accountant within the meaning of the Act. The Income Tax Act stipulates compulsory audit of accounts in relation to various categories of assessees for different purposes. Section 12A of the said Act stipulates that the accounts have to be audited by a Chartered Accountant in case of a trust or institution seeking registration. Similarly Section 44AB of the said Act provides for audit of accounts of certain persons carrying on business or profession. There are various provisions permitting deductions in respect of certain incomes under Chapter VI-A of the said Act wherein it is necessary to obtain a separate audit report in relation to the specified deduction under a particular provision. Section 142(2A) of the Income Tax Act empowers the assessing officer to obtain a special audit report from a Chartered Accountant nominated by the Chief Commissioner or Commissioner. It is not necessary to refer to the various provisions in detail, suffice it to state that the revenue authorities rely upon the integrity of a Chartered Accountant to assist the tax authorities in finalizing assessment on the basis of the audit report submitted by such Chartered Accountant. The decision rendered by the Delhi High Court in the case of Additional Commissioner of Income Tax Vs. Jay Engineering Works Ltd., (1978) 113 ITR 389 indicates the extent to which the income tax authorities can place reliance upon a report submitted by the auditor.

"It is quite competent for the income-tax authorities not only to accept the auditors' report, but also to draw the proper inference from the same. The income-tax authorities can, therefore, come to the conclusion that, since the auditors were required by the statute to find out if the deductions claimed by the assessee in their balance-sheets and profit and loss accounts were supported by the relevant entries in their account books, the auditors must have done so and must have found that the account books supported the claims for deductions.

Where the original account books of the assessee had been destroyed in a fire it was held that the Appellate Tribunal, in allowing a deduction, could rely upon other material mainly consisting of the auditors' reports from which it could be inferred that the deductions were properly supported by the relevant entries in the account books".

25. When the facts of the petitioner's case and the report by the Disciplinary Committee and its conclusions as well as the concurring decision of the appellate committee are examined

in light of the said observations, the submission by learned advocate for the petitioner cannot be accepted.

26. In light of the mistakes, inaccuracies, anomalies, etc. which, according to the conclusions by the disciplinary committee and confirmed by the appellate committee have been proved/established and having regard to nature and more particularly number of mistakes, inaccuracies, etc. it is not possible to accept submission by learned advocate of petitioner and it is also not possible to hold that penalty imposed on the petitioner is too harsh or non-commensurate with misconduct.
27. A Chartered Accountant has an obligation, not only statutory but also moral and social, to be absolutely and completely diligent and cautious and careful while preparing, signing and certifying Annual Accounts and/or Audit report. Several Government and private organizations and individuals rely on the report/certificate by Chartered Accountant and once a particular factual aspect or entries, etc. are prepared, signed and certified by Chartered Accountant they are ordinarily accepted without further probing or investigation. In such circumstances, the duty and obligation of being absolutely diligent, conscious and careful is multiplied manifold and a Chartered Accountant should not, and cannot take, such obligation or perform his duties lightly or casually. A mistake by a petty clerk or lower level accountant may be dealt with in different manner but a mistake by a Chartered Accountant cannot be treated with indifference or casually or lightly. A mistake by a clerk or an accountant, which may be considered or allowed or overlooked as inadvertent error, cannot be overlooked lightly or casually if committed by a practicing Chartered Accountant, more so when it is committed in Annual report duly certified by him as correct and authentic report. It has to be, and should be, dealt with seriousness which it would deserve.

The professional or trained Chartered Accountant is equipped with knowledge, training and experience to catch a mistake and if such trained and experienced professional allows so many mistakes, errors, inaccuracies and anomalies pass-by without detecting them and if he signs and authenticates report containing such mistakes, etc. and also issues certificate, then, in such circumstances, any fault cannot be found with the conclusions by the Disciplinary Committee, also confirmed by the Appellate Committee, that the petitioner did not exercise due diligence. The petitioner has tried to wish-away his failure in detecting – catching and correcting the mistakes by attributing the blame to typist and computer operator.

The institute, which is statutorily obliged to maintain high standards of the profession and, for that purpose, to take action in cases which are brought to its notice wherein member of the institute is found wanting exercising due diligence and in being careful and cautions, would fail in its duty and obligation if it does not take appropriate action and/or does not pass appropriate order against such member. A lenient attitude by the institute may, in long run dilute the professional standards and tarnish its image and credibility and with passage of time may also result into deleting institutes vigil over its members and their conduct.

Having regard to these aspects, the Court is not inclined to accept the petitioner's contention that the action taken by the institute is too harsh.

- 27.1** In present case, it is not possible to hold that punishment of removal of petitioner's name from the register for one year is harsh as compared to the proved charge. The decision as regards quantum of penalty is in the realm of the Disciplinary Authority and once misconduct is proved – and accepted as proved by the Court – then Court would not interfere with Disciplinary Authority's decision regarding quantum of penalty unless it is excessively disproportionate which amounts to or appears to be on the verge of victimisation.
- 27.2** In this view of the matter and on overall consideration of all facts and circumstances, the petition, for the foregoing discussion and reasons, fails and does not deserve to be entertained.
- 28.** The petitioner has failed to make out any case to entertain the petition in writ jurisdiction and interfere with two concurrent decisions proceeded by prima facie opinion of the Disciplinary Committee. The petition, therefore, fails and is not accepted. Notice is discharged. However, in the facts of the case, there shall be no costs.