2024 INSC 451

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

TRANSFERRED CASE (CIVIL) NO.29 OF 2021

SHAJI POULOSE ..... PETITIONER

VERSUS

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA & OTHERS ..... RESPONDENTS

WITH

WRIT PETITION (CIVIL) NO.267 OF 2021

WRIT PETITION (CIVIL) NO.272 OF 2021

WRIT PETITION (CIVIL) NO.371 OF 2021

WRIT PETITION (CIVIL) NO.581 OF 2021

WRIT PETITION (CIVIL) NO.670 OF 2021

WRIT PETITION (CIVIL) NO.1084 OF 2021

WRIT PETITION (CIVIL) NO.1200 OF 2021

WRIT PETITION (CIVIL) NO.1256 OF 2021

WRIT PETITION (CIVIL) NO.1291 OF 2021

WRIT PETITION (CIVIL) NO.1295 OF 2021

WRIT PETITION (CIVIL) NO.1360 OF 2021

WRIT PETITION (CIVIL) NO.32 OF 2022

WRIT PETITION (CIVIL) NO.186 OF 2022

WRIT PETITION (CIVIL) NO.833 OF 2022

TRANSFERRED CASE (CIVIL) NO.27 OF 2021

TRANSFERRED CASE (CIVIL) NO.28 OF 2021

TRANSFERRED CASE (CIVIL) NO.30 OF 2021

TRANSFERRED CASE (CIVIL) NO.31 OF 2021

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J U D G M E N T

NAGARATHNA, J.

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The petitioners herein are Chartered Accountants who have challenged the validity of Clause 6 of Guidelines No.1-CA(7)/02/2008 dated 08.08.2008 issued by the Institute of Chartered Accountants of India (hereinafter referred as, "respondent-Institute"), under powers conferred by the Chartered Accountants Act, 1949 (hereinafter referred to as "the 1949 Act") on the ground that the same is illegal, arbitrary and violative of Article 19(1)(g) of the Constitution of India.

1.1 Some of the present writ petitions have been filed before this Court under Article 32 of the Constitution while others were filed before various High Courts invoking Article 226 thereof. By order dated 09.12.2020, this Court transferred the writ petitions pending before various High Courts to this Court. That is how, these cases have been clubbed and were heard together and are being disposed of by this common order.

1.2 The petitioners are, specifically, aggrieved by the mandatory ceiling limit imposed by Clause 6.0, Chapter VI of said Guidelines on the number of tax audits that a Chartered Accountant can accept in a financial year under Section 44AB of the Income Tax Act, 1961 (hereinafter referred to as, "IT Act,

1961"). Additionally, and importantly, the petitioners seek a direction for quashing and/or setting aside of the disciplinary proceedings initiated by the respondent-Institute in pursuance of the Impugned Guideline. Clause 6.0, Chapter VI of Guidelines dated 08.08.2008 provides that a member of the Institute in practice shall not accept, in a financial year, more than the "specified number of tax audit assignments" under Section 44AB of the IT Act, 1961. It further provides that in the case of a firm of Chartered Accountants, the "specified number of tax audit assignments" shall be construed as the specified number of tax audit assignments for every partner of the firm.

1.3 At the outset, we find it pertinent to note that the ceiling limit, that is the subject of controversy has not been stagnant but has, on the basis of several factors, been increased by the Council of respondent-Institute during the passage of time. Initially, the Council of respondent-Institute v*ide* Notification No.1/CA(7)/3/88 dated 13.01.1989 set a limit of thirty audits, in exercise of powers conferred on it under Clause (ii), Part II, Second Schedule of the 1949 Act. Further, in February 2014, *vide* resolution adopted at the 331st Meeting of the Council of

respondent-Institute, the ceiling limit in question was specified as sixty and presently stands the same.

Bird's Eye View of the Controversy:

2. The controversy that has arisen in these petitions is two-fold: firstly, whether the respondent-Institute, constituted under the 1949 Act, had the competency to impose a restriction of the nature and effect herein? If the answer is in the affirmative, secondly, whether a Chartered Accountant's right "*to practice any profession"* as provided under Article 19(1)(g) of the Constitution, is unreasonably restricted by a ceiling limit imposed by respondent-Institute on the number of tax audits, under Section 44AB, that can be accepted by a Chartered Accountant in a financial year? In other words, whether a Chartered Accountant can be restricted from undertaking more tax audits than specified by the respondent-Institute? Whether the impugned Guideline is saved under Article 19(6) of the Constitution of India?

Historical Perspective:

3. It is apposite for us, at this juncture, to preface the origin of Section 44AB in the IT Act, 1961, popularly known as the

compulsory audit provision and the ceiling limit imposed by the respondent-Institute on the Chartered Accountants by way of a Guideline, violation of which would result in a misconduct.

3.1 With the aim of examining and suggesting legal and administrative measures for countering evasion and avoidance in direct taxation in the country, the Government of India on 02.03.1970, constituted a High Power Committee of Experts, namely, the Direct Taxes Enquiry Committee, under the chairmanship of Justice K.N. Wanchoo, retired Chief Justice of India. In December 1971, the Wanchoo Committee submitted its Final Report to the Government of India. A bare perusal of *Chapter 1 – Introduction, Direct Taxes Enquiry Committee-Final Report* elucidates that the Wanchoo Committee was asked to examine and recommend:

(a) concrete and effective measures (i) to unearth black money and prevent its proliferation through further evasion; (ii) to check avoidance of tax through various legal devices, including the formation of trusts; and (iii) to reduce tax arrears,

(b) examine various exemptions allowed by the tax laws with a view to their modification, curtailment or withdrawal, and

(c) indicate the manner in which tax assessment and administration may be improved for giving effect to all its recommendations.

3.2 In order for the tax administration to become more efficient, the Committee, *inter alia,* made other extensive recommendations, in *Chapter 2 – Black Money and Tax Evasion* and recommended insertion of a statutory provision for compulsory audit of accounts. The Committee noted that mandatory audit, simultaneously with compulsory maintenance of accounts, would ensure that books and records are properly maintained; the taxpayer's income is faithfully presented, and proper presentation is facilitated before the Assessing Officer. It was further understood that information furnished by the Auditor along with his certificate would enable building up of information for cross-verification leading to prevention of tax evasion and identification of new assessees. At *para 2.145,* it was interestingly noted that earlier Committees and Working Groups had also deliberated on a

provision providing for compulsory audit. In furtherance, it was noted that the Working Group of the Administrative Reforms Commission had favoured compulsory audit by Chartered Accountants of persons with income over Rs.50,000 but it was finally decided that due to *limited number of Chartered Accountants* at that point in time, it may not be possible for all assesses to secure their services, except at heavy cost and delay. Noting, at *para 2.148,* that an auditor can devote more time to examination and verification of accounts than an Income-Tax Officer, the Wanchoo Committee recommended insertion of a provision for mandatory presentation of audited accounts and if found necessary, in practice, future evolution of proforma for furnishing of information by auditors.

3.3 It is pertinent to highlight that by the Taxation Laws (Amendment) Act, 1975, Section 142(2A) was inserted to the IT Act, 1961 conferring special power of audit by a Chartered Accountant in certain cases where so sought by the Assessing Officer.

3.4 Thereby, only a few of the recommendations of the Wanchoo Committee were accepted in the first instance and

legislated upon by the Parliament. As per the respondent-Institute, this conspicuously reflects that the Parliament did not favour compulsory tax audit provision of all sizeable cases by Chartered Accountants and as a necessary corollary, the opportunity to conduct tax audits must be seen as a privilege extended by a statute.

3.5 Later, the provision for compulsory audits found favour with the Parliament and was inserted by the Parliament through Finance Act, 1984. The then Finance Minister, while introducing the budget through the Finance Bill, 1984 stated in Parliament as under:

> "With the reduction in rates and expeditious disposal of assessments, I believe there will now be no excuse for any leniency to be shown to those who abuse our laws, such cases will necessarily have to be dealt with severely. In order to discourage tax avoidance and tax evasion, I am also introducing some further measures. In all cases where the annual turnover exceeds Rs. 20 lakhs or where the gross receipts from a profession exceed Rs. 10 lakhs, I am providing for a compulsory audit of accounts. **This is intended to ensure that the books of account and other records are properly maintained and faithfully reflect the true income of the taxpayer. ..."**
>
> ***(emphasis supplied)***

3.6 The relevant portion of the Memorandum explaining the provisions in Finance Bill, 1984, which proposed to introduce Section 44AB, reads as under:

> "16. A proper audit for tax purposes would ensure that the books of account and other records **are properly maintained and that they faithfully reflect the income of the tax payer and claims for deductions are correctly made by him.** Such audit would also help in checking fraudulent practices. It can also facilitate the administration of tax laws by proper presentation of the accounts before the tax authorities and **considerably saving the time of the assessing officers in carrying out routine verifications,** like checking correctness of totals and verifying whether purchases and sales are properly vouched or not. **The time of the assessing officers thus saved could be utilized for attending to more important investigational aspects of a case."**
>
> ***(emphasis supplied)***

3.7 Finally, Clause No. 11 of the Finance Bill, 1984 (Bill No. 11 of 1984), was introduced in Parliament to give effect to the proposals of the Central Government. Resultantly, Section 44AB of the IT Act, 1961 was inserted and came into force w.e.f. 01.04.1985, providing for compulsory audit. Section 44AB, as it stood then, provided that every person carrying on business, if his total sale, turnover or gross receipts exceed Rs.40 Lakhs and every person carrying on a profession, if his gross receipts exceed Rs.10 Lakhs, in any previous year, is required to get his

accounts of such previous year audited by an Accountant and obtain before the specified date, a report of the audit in the prescribed form duly signed and verified. Explanation (i) to the Section 44AB clarified that the word 'accountant' shall have the meaning as in the Explanation to sub-section (2) of Section 288. The present position is that a tax audit, under Section 44AB, can be undertaken only by a Chartered Accountant. For immediate reference, Section 44AB when it was introduced is extracted as under:

> "**44AB. Audit of accounts of certain persons carrying on business or profession**.—Every person,—
>
> (a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds forty lakh rupees in any previous year or years relevant to the assessment year commencing on the 1st day of April, 1985 or any subsequent assessment year; or
>
> (b) carrying on profession shall, if his gross receipts in profession exceed ten lakh rupees in any previous year or years relevant to the assessment year commencing on the 1st day of April, 1985 or any subsequent assessment year,
>
> get his accounts of such previous year or years audited by an accountant before the specified date and obtain before that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed:

Provided that in a case where such person is required by or under any other law to get his accounts audited by an accountant, it shall be sufficient compliance with the provisions of this section if such person gets the accounts of such business or profession audited under such law before the specified date and obtains before that date the report of the audit as required under such other law and a further report in the form prescribed under this section.

Explanation.—For the purposes of this section,—

(i) "accountant" shall have the same meaning as in the *Explanation* below sub-section (2) of section 288;

[(ii) "specified date", in relation to the accounts of the previous year or years relevant to an assessment year, means the date of the expiry of four months from the end of the previous year or, where there is more than one previous year, from the end of the previous year which expired last before the commencement of the assessment year, or the 30th day of June of the assessment year, whichever is later.'."

3.8 Pragmatically, the insertion of Section 44AB meant that persons covered by the provision must compulsorily get their accounts of relevant assessment year audited by a Chartered Accountant before the specified date and obtain a report of such audit in the prescribed form duly signed and verified by the Chartered Accountant furnishing the particulars stipulated in the rules made by the Central Board of Direct Taxes (for short, "CBDT") and annex them to their returns filed in

accordance with Section 139 of the IT Act, 1961. Consequently, Rule 6G to the Income Tax Rules, 1962 was inserted.

3.9 At this chronological juncture, a perusal of relevant material indicates that the objective of the insertion of Section 44AB was multifold: firstly, it was intended that compulsory audit will discourage tax avoidance and tax evasion by allowing faithful reflection of income of the taxpayer and only appropriate claims for deductions. Secondly, and importantly, as Chartered Accountants can devote more time to examination and verification of accounts than an Assessing Officer, it was believed that a compulsory audit would save considerable and precious time of assessing officers. Thirdly, it was hoped that proper presentation of income and records in a structured and presentable manner will be facilitated by compulsory audit. Comprehensively, it is apparent that the intent behind Section 44AB was not to codify an essential extant practice of the Chartered Accountant's profession but to mandate tax audits to prevent evasion of taxes, plug loopholes leading to tax avoidance and also facilitate tax administration, thereby

ensuring that the economic system does not result in concentration of wealth to the common detriment.

3.10 Post insertion of Section 44AB in the statute book and in pursuance of its operation, CBDT noted that the quality of tax audits was deteriorating as some Chartered Accountants were completing fifty tax audits a month. It is apparent on the face of the material perused that such a finding would run counter to the long sought and deliberated goal of plugging the loopholes in tax administration and saving considerable and precious time of assessing officers by presentation of quality audit reports. To remedy this, authorities in tax administration were of the view that the Government could impose a ceiling on maximum number of audits an auditor could undertake. *Vide* letter dt. 19.01.1988, CBDT sought comments from the Secretary, Institute of Chartered Accountants of India on possibly restricting the number of tax audits a Chartered Accountant may be permitted to complete in a year. The contents of the CBDT letter dated 19.01.1988 are reproduced as under:

"F.No.225/2/88-IT.ALL
Government of India
Ministry of Finance
Department of Revenue
(C.B.D.T.)

New Delhi, Dated the 19th January, 1988.

Shri R.L. Chopra,
Secretary,
Institute of Chartered Accountants of India,
I.P. Estate,
New Delhi.

Sub: Fixation of number of tax audit per auditor.

Dear Sir,

As per the provisions of Section 44AB of the Income Tax Act, a class of assesses have to get their accounts audited by auditor. This audit has to be completed by a particular date as provided in Section 44AB of the Act. It has been represented that some of the auditors are completing around 50 audits in a month which result in the deterioration of the quality of audit. It has, therefore, been that the Government may fix the maximum number of audits which an auditor may be allowed to undertake under the provisions of Section 44AB of the Income Tax Act. In this connection reference has also been invited to Section 224 of the Companies Act whereby the number of company audits which a Chartered Accountant can do has been restricted to 20.

2. You are requested to kindly send your comments regarding the suggestion of restricting the number of audits under Section 44AB of the Income Tax Act which a Chartered Accountant may be permitted to complete. The number of audits as in the case of Section 224 of the Companies Act may also be

indicated. I would request you to kindly forward the comments of the Institute at the earliest.

Yours faithfully,
Sd/-
(M.G.C. Goyal)
Officer on Special Duty (IT.ALL)
Central Board of Direct Taxes."

3.11 After consideration of the aforesaid letter, the Professional Development Committee of the respondent-Institute at its 90th Meeting held on 22.02.1988 recommended that every Chartered Accountant be permitted to conduct a maximum of twenty tax audits of non-corporate assessees every year in addition to entitlement of audits conducted under the Companies Act and other statutes. Considering the recommendation of the Professional Development Committee, on 28.04.1988–30.04.1988, the Council of the respondent-Institute in its 133rd Meeting decided to issue a Notification under Clause (ii) of Part II of the Second Schedule of the 1949 Act specifying that w.e.f. 01.04.1989 a member of the respondent-Institute in practice shall be deemed guilty of professional misconduct, if he accepts in a financial year more than thirty assignments of tax audit, be they in respect of corporate or non-corporate assessees. It was further decided

that in case of a partnership firm, the number of tax audits shall be counted at the rate of thirty assignments per partner of thirty tax audit. In pursuance of this decision, Notification No.1/CA(7)/3/88 dated 13.01.1989 was issued by the Council, setting the limit of thirty tax audits. Admittedly, at this point, the ceiling limit was intended as only a self-regulatory mechanism to be followed by all members.

3.12 The *vires* and constitutionality of aforesaid Notification No. 1/CA(7)/3/88, dated 13.01.1989 was the subject of much litigation before several High Courts. In fact, the Notification was successfully challenged by a practicing Chartered Accountant, in Writ Petition No.5925 of 1989 before the Madras High Court. The legality and validity of the Notification No.1/CA(7)/3/88, dated 13.01.1989 as also Notification No.1-CA(7)/15887 dated 25.05.1987 was also assailed in Writ Petition No.5926 of 1989. The central challenge in both writ petitions was to the Notifications being violative of Article 19(1)(g) of the Constitution. Of imminent interest is the constitutional challenge to the ceiling limit in Writ Petition No.5925/1989. The Madras High Court observed

that *'accepting a legitimate professional engagement by a professional can never be considered unprofessional and be made a misconduct'*. It was further noted that, once a person acquires the requisite qualifications to be a Chartered Accountant, he would be free to engage himself in the profession restricted only by conduct marred with dishonesty and inviting condemnation. Therefore, it was observed that the Act and the Rules could bring in restrictions or provisions only for the purpose of attaining the aforesaid professional standards. The judgment in Writ Petition No.5925 of 1989 was affirmed by the Division Bench in Writ Appeal Nos.1452-1453 of 1998, on 24.03.2005. Furthermore, in SLP(C) Nos. 14370-14371/2005 preferred by respondent-Institute, this Court *vide* Order dated 29.07.2005, issued notice and granted a stay on the operation of the judgment of learned Division Bench of Madras High Court. The aforesaid captioned Special Leave Petitions were admitted as Civil Appeal Nos. 7208-7209 of 2005.

3.13 Certain other High Courts dismissed the challenge to the *vires* and constitutionality of the Notification dated 13.01.1989.

Amongst others, four such petitions filed before the Madhya Pradesh High Court have been brought to our attention, being Miscellaneous Petition No.2844 of 1989 – *Prem Chand vs. Institute of Chartered Accountants of India*; Miscellaneous Petition No.2792 of 1990 – *Ram Narain vs. Institute of Chartered Accountants of India;* Miscellaneous Petition No.4202 of 1992 – *Arun Grover vs. Institute of Chartered Accountants of India; and* Miscellaneous Petition No.3307 of 1993 – *Anil Kumar Gupta vs. Institute of Chartered Accountants of India.* The challenge in all the above captioned petitions was to the validity and legality of the Notification dated 13.01.1989. By way of a common judgment dated 18.04.1995 passed by the Division Bench of the Madhya Pradesh High Court, the aforesaid writ petitions were dismissed holding that the Notification does not take away the right of petitioners to carry on their profession but only placed a ceiling limit for purposes of effective and business-like audit. Furthermore, the Division Bench of the High Court found that public interest was met by distribution of work amongst many Chartered Accountants. Against the aforesaid judgment of the Division Bench of Madhya Pradesh High Court, leave was granted by this Court in Special Leave Petition (Civil)

No.21988 of 1995 but the Civil Appeal was dismissed as withdrawn by order dated 04.05.1999. Before the Madhya Pradesh High Court, in another Writ Petition No.2085 of 1993 – *Prakash Mehta vs. ICAI*, the validity and legality of the Notification dated 13.01.1989 was challenged. However, the said writ petition was dismissed by the said High Court by its order dated 16.05.2005.

3.14 Further, a challenge to Notification dated 13.01.1989 was dismissed by the High Court of Kerala *vide* judgment dated 25.02.2003 in O.P. No. 3775 of 1991. Dismissing the challenge, it was noted that Section 30(2)(k) of the 1949 Act vests power on the Council to make regulations for regulating and maintaining the status of members of the Institute and standard of professional qualifications of members of the Institute. It was noted that the restriction therein, as it does here, confined the ceiling limit only to tax audit assignments accepted under Section 44AB and not to any other audit work, unless otherwise restricted under any law. Noting the importance attributed to a certificate of audit issued by a Chartered Accountant and its concomitant serious public

interest, it was further noted that audit is a time-bound work demanding precision and that the intent of the restriction was to ensure quality and accuracy in execution. It was further noted that on recommendation of the Professional Development Committee, the Notification had been issued by the Council of Chartered Accountants, which is composed of its members, by its members and for its members. Observing that under Section 15 of the 1949 Act, it is the duty and function of the Council to make provision for regulating and maintaining the status of members of the Institute and that Section 30(2)(k) empowers the Council to frame regulations in that regard, the restriction was held to be reasonable. It is also pertinent to highlight that the judgments in writ petitions before the Madras High Court and Madhya Pradesh High Court were considered and the latter High Court found itself in disagreement with the Madras High Court on the ground that the restriction had been imposed by a competent statutory body of professionals in the interest of the profession. It was reasoned that no interference was warranted when the statutory body had taken a decision within its powers in the interest of the profession. Against the aforesaid judgment of the High Court of Kerala, Writ Appeal

No.1116/2003 was filed before the Division Bench of the Kerala High Court but was dismissed as infructuous on 14.01.2016 on account of the death of the writ petitioner therein.

3.15 At the 184th Meeting of the Council in the year 1997, it considered the issue of certain Chartered Accountants exceeding the prescribed limit and proceeded to refer the matter to the Committee for Ethical Standards and Unjustified Removal of Auditors (CESURA) for a detailed review on the limit of thirty tax audits in a year and also to examine the issue of developing a suitable mechanism for the purpose of monitoring such limit. CESURA, in its 58th Meeting held on 25.02.1997 recommended that the Council, before developing a suitable mechanism for the purpose of monitoring such limit, should ask members to submit a report on the number of tax audits carried out by them in a prescribed format. At its 186th Meeting, the Council took up the recommendation of the CESURA and asked members to submit a report on the number of tax audits carried out by them, as per the prescribed format appearing at pages 61 to 63 of the Guidance Note on Tax under Section 44AB of the IT Act, 1961. In pursuance of the decision of the Council

taken at the 186th Meeting, an announcement was published in April, 1998 whereby members were requested to furnish the reports on number of tax audits carried out by them in the financial year corresponding to the assessment year 1997-98.

3.16 After several iterations of the announcement calling for the reports from members, the Council at its 197th Meeting, held on 16.01.1999-18.01.1999, considered the matter of review of limit of thirty tax audits in a year. It is important to note that members, even in the year 1999, were of the view that the objective of calling the information was only to review the limit and not to take disciplinary action and requested the President to suitably publish the view of the Council. In pursuance thereof, an announcement was published in the Institute's Journal in March, 1999, the relevant portion of it is reproduced as under:

"*Dear Colleague*,

March is a month of marching ahead.

X X X

Ceiling on Tax Audit Under Section 44AB

The revision of ceiling on tax audit under Section 44AB of the Income Tax Act is under consideration of the Council. In order to enable the Council to take an appropriate decision in the matter, members are requested to comply with the requirements called for in the format published in the Journal. **The information is being collected only for statistical purposes and will be treated as confidential.**

X X X

Yours in professional fellowship

New Delhi
March 1, 1999

S.P. Chhajed,
President"

3.17 At the 66th Meeting of the CESURA, held on 08.09.1999 and 05.10.1999, 12,196 reports received from members/firms were examined and it was concluded that the average number of Tax Audits done by a member came out to be about 14-15 audits per partner/proprietor. Reviewing the same at the 205th Meeting of the Council held from 15.12.1999-17.12.1999, it was decided that since the average number of tax audits done by a member/partner of a firm came to be about 14 to 15 audits, therefore, no change was warranted. Notably, the minutes of 205th Meeting of the Council record the Institute's President's reference to a relevant paper presented in CAPA

Conference at Korea in 1989. The minutes of the said Meeting describe the paper discussed in the Meeting of the Council as under:

> "The main thrust of the Korean paper was that when there was ceiling on audit, there was less competition. When less competition was there, the audit reports were qualified. When there was no ceiling, a member was free to accept any number of Tax Audits as a result of which there was more competition finally resulting in unqualified audit reports."

3.18 Considering that fourteen years had passed since the last ceiling limit was fixed in 1989 and that the number of persons eligible to tax audit had considerably increased due to the change in limits prescribed under Section 44AB, IT Act, 1961, the Financial Law Committee meeting of the respondent-Institute, held on 12.09.2003, recommended that the Council may increase the ceiling limit for tax audit assignments to fifty. However, the Council at its 236th Meeting decided against increasing the limit from thirty to fifty tax audits per member.

3.19 In exercise of powers conferred on the respondent-Institute by clauses (c) and (d) of Sub-section (2) of Section 29A, read with Sub-section (4) of Section 21 and Sub-sections (2) and (4) of Section 21B of the 1949 Act, the Central Government

notified the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The said Rules came into effect from 27.02.2007.

3.20 At the 268th Meeting, held on 30.04.2007 – 02.05.2007, the Council discussed whether it should revise the ceiling limit on number of tax audits. The Council was divided on the issue whether the Council should increase the ceiling limit of tax audits although factors such as the increased permeation of access to technology and consequential increased professional competence of auditors, dynamic and increasing economy, growth of new and specialized areas of practices, and such other factors prevailed. The Council, finally authorized its President to decide upon an appropriate increase in the ceiling on number of tax audits after taking into consideration the views expressed by its members. In pursuance thereof, on 11.05.2007, the respondent-Institute increased the limit on number of tax audits from thirty to forty-five per Chartered Accountant per year.

3.21 At this stage it is pertinent to note that the respondent-Institute was of the opinion that the extant self-regulatory mechanism was ineffective in ensuring compliance of the maximum limit. Therefore, the 1949 Act was amended by the Parliament by the Chartered Accountants (Amendment) Act, 2006 (hereinafter referred to as "Amendment Act, 2006") by which the erstwhile Notifications were superseded by Guidelines dated 08.08.2008. In view of the above development, this Court by order dated 01.04.2013 dismissed the Civil Appeal Nos.7208-7209 of 2005 as having become infructuous. For ease of reference, the said order is extracted as under:

"Civil Appeal No(s). 7208-7209 of 2005

Decided on April 1, 2013

ORDER

These appeals have been preferred against the impugned judgment and order dated 24.3.2005 passed in Writ Appeal No .1452 & 1453/1998 by the High Court of Madras quashing the notifications issued by the appellant by which it has quashed the notifications dated 25.5.1987 and 13.1.1989 by which certain regulatory measures have been taken by the appellant against its members.

Mr. N.K. Poddar, learned senior counsel appearing for the appellant stated that both these notifications do not survive. They have been withdrawn and subsequently two guidelines have been issued by the

appellant on 8th August, 2008 for regulating the business of its members. However, subsequently one of them had also been withdrawn in 2011 and today only one guidelines is issued for which the appellant has not received any representation, ventilation or any grievance from any member of the appellant association in respect of the existing guidelines which deals with Section 44 A(b) of the Income Tax Act, 1961. Mr. Poddar further submitted that in case, the appellant receives any representation against such existing guidelines, the highest body of the appellant will consider it and will take a decision as to whether such guidelines would continue or require any kind of modification.

In view of the above, we do not propose to hear the appeals on merit and the same are dismissed as having become infructuous. However, in case any member is aggrieved of the existing guidelines and files a representation before the appellant, the appellant shall consider it and pass appropriate order, and if any member is aggrieved thereof whether he has made representation or not, would have right to challenge it before the appropriate forum.

With the aforesaid observations, the appeals stand dismissed. Before parting with the case, we express our thanks to Shri K.V. Vishwanathan, learned senior counsel, Amicus Curiae, for rendering assistance in the instant case."

3.22 In a further exercise of review of the limit, at the 331st Meeting of the Council held in February 2014, it was again decided to increase the limit on accepting tax audits from forty-five to sixty w.e.f. from the financial year 2014-15.

3.23 In order to establish that the restriction has been incisively deliberated upon and the need of the restriction has been supported by expert practitioners over an extended period of time, the respondent-Institute has placed heavy reliance on the above-discussed CBDT letter dated 19.01.1988 and the Report of the Comptroller and Auditor General of India (for short, "CAG"), being No. 32 of 2014, tiled ***"Performance Audit on Appreciation of Third Party (Chartered Accountant) Reporting in Assessment Proceedings"***, presented to the Parliament on 19.12.2014.

3.24 Our attention was drawn to '***Section 3.6 Control on number of tax audit assignment'*** of the CAG's Report wherein pertinent observations were made on effectuating control on Chartered Accountants undertaking tax audit assignments under Section 44AB of the IT Act, 1961. Highlighting the relationship between the number of tax audits undertaken and the quality of tax audits, the CAG reported that there was no system in field offices of Income-Tax Department (for short, "ITD") to monitor compliance by Chartered Accountants of ceiling limit set by respondent-Institute. The

CAG was informed by the respondent-Institute, in September 2014, that even though Chartered Accountants have been provided with Form of Tax Audit particulars to be maintained by members/Firm, maintenance of such records is a self-regulatory mechanism and can be called upon by respondent-Institute for checking adherence to the Guidelines. However, any formal complaint received by respondent-Institute was acted upon within the framework provided in the Chartered Accountants Act and the Misconduct Rules, 2007 framed thereunder.

3.25 As per information provided by DGIT(Systems), ITD to the CAG in August, 2014:

a. 65,898 Chartered Accountants submitted at least one Tax Audit Report (TAR) for AY 2013-14. Further, out of total 65,898 records of Chartered Accountants:

    i. 81.13% Chartered Accountants adhered to the limit of forty-five prescribed by ICAI (Institute of Chartered Accountants of India).

    ii. 18.87% submitted more than forty-five TARs (Tax Audit Reports).

iii. Excess number of tax audits ranged from 46 to 2471.

b. A table showing twenty-two Chartered Accountants who issued more than forty-five TARs for the annual year 2013-2014 ranged from 401 TARs up to 2471 TARs.

The CAG Report pointed out that the purpose of maintenance of quality audit work had suffered due to no monitoring mechanism of this crucial ceiling limit by either respondent-Institute or ITD as per the following statistics:

Stratification of total TARs issued by Chartered Accountant for Assessment Year 2013-14

(*vide* CAG Report No. 32/2014, Section 3.6)

Range of TARs issued	Total Number of Accountants	Percentage of Total Accountants
1-45	53,463	81.13
46-100	10,838	16.45
101-200	1,364	2.07
201-300	166	0.25
301-400	45	0.07
401-500	10	0.02
501-1000	11	0.02
> 1000	1	0
Total Accountants	65,898	100

Note: 81.13% adhered to the ceiling limit.

Therefore, the CAG, at ***Section 3.11(d) Recommendations*** of the same Report recommended that the:

> *d. Ministry may ensure limiting the tax audit assignments in order to ensure quality of Tax Audit.*

3.26 The Ministry replied contending that the respondent-Institute, as an expert statutory body, would lay down restrictions on the number of tax audits and be capable of enforcing it. However, the CAG noted that Chartered Accountants have been assigned very crucial work of tax audit and therefore, the introduction of a suitable control mechanism in the IT system, by the Ministry, in consultation with respondent-Institute, was in the interest of the revenue for ensuring quality of tax audit.

3.27 Respondent-Institute at its 339th Meeting held from 23.12.2014 to 25.12.2014 discussed the report of the CAG and in pursuance thereof, a group of Council Members was constituted on 24.01.2015 to study the report of the CAG for the year ending March, 2014 and place its findings before the Council for appropriate direction. The Council decided to refer all cases, where ceiling was exceeded, to the Director (Discipline).

3.28 It is averred that respondent-Institute had no mechanism to record exact data on number of tax audits undertaken by a Chartered Accountant until the respondent-Institute made it mandatory in 2019 that submission of all tax audit reports undertaken by a Chartered Accountants be marked with a 'Unique Document Identification Number ('UDIN'). Lacking such a mechanism, the respondent-Institute, seeking to initiate disciplinary proceedings for professional misconduct for carrying out tax audits assignments under Section 44AB of the IT Act, 1961, treated data gathered by the CAG as complaints and issued communications to some petitioner-Chartered Accountants who accepted more than specified limit of tax audits for the Assessment Year 2013-14, namely, forty-five.

3.29 It was submitted on behalf of respondent-Institute in the course of proceedings that it decided to issue communications to only those Chartered Accountants who had conducted more than 200 tax audits in a relevant Assessment Year. As of date, the respondent-Institute has issued only 276 notices although

there has been violation by over ten thousand Chartered Accountants.

3.30 Aggrieved by the aforesaid communications seeking initiation of disciplinary proceedings for professional misconduct, several petitioner-Chartered Accountants have challenged the impugned Guidelines dated 08.08.2008 as well as the communications initiated by the respondent-Institute before respective High Courts having jurisdiction. In some writ petitions pending before various High Courts, stay of the disciplinary proceedings initiated by the respondent-Institute has been granted.

3.31 In order to avoid multiplicity of proceedings and conflicting decisions by various High Courts seized of identical issues, respondent-Institute filed Transfer Petition (Civil) Nos. 2849-2859 of 2019 and 727-728 of 2020 before this Court seeking transfer of the various Writ Petitions pending in the High Courts of Kerala, Madras and Calcutta to this Court. By order dated 09.12.2020, a three-Judge Bench of this Court, in T.P.(C) Nos. 2849-2859 of 2019, noting in paragraph 16 that the question involved was of public importance and

necessitated a comprehensive settlement of the question of law, allowed the transfer petitions. Consequently, the writ petitions were withdrawn from the respective High Courts and transferred to this Court. Thereafter, by subsequent orders passed by this Court, all the identical writ petitions pending before various High Courts were transferred to this Court. That is why, all these transferred cases and the writ petitions filed under Article 32 of the Constitution of India have been heard together. The relief sought in these writ petitions are similar and hence the relief sought in Writ Petition No. 25662 of 2016 before Kerala High Court [Transferred Case (Civil) No.29 of 2021 before this Court] are extracted as under:

> "RELIEFS:-
>
> (a) Declare that the restriction imposed by Ext P2 circular on the number of tax audits is discriminatory, unreasonable and violative of article 19(1)(g) of the Indian Constitution.
>
> (b) To call for records leading to Ext P2 guidelines 2008 and issue a writ in the nature of certiorari or any other appropriate writ, order or direction and quash and set aside chapter VI of Ext P2, which deals with tax audit assignments under section 44AB of the Income Tax Act 1961.
>
> (c) To call for records leading to Exhibit P3, Exhibit P7 and Exhibit P9 and issue a writ in the nature of certiorari or any other appropriate writ order or direction, setting aside Ext P3, P7 and P9 as the same is violative of fundamental rights guaranteed

under Article 14 and l9(1)(g) and also against the direction in Ext Pl judgment.

(d) To direct the highest body of the 1st respondent to pass orders on Ext P5 representation filed by the petitioner.

(e) To grant such other appropriate reliefs to the Petitioner as this Hon'ble Court may deem fit and proper in the interest of justice."

Hence, this Court has now come to be seized of the present petitions and questions involved therein.

Submissions:

4. We have heard learned senior counsel Sri V. Giri, Sri P.S. Patwalia, Sri Preetesh Kapur, Sri Rajashekhar Rao, Sri Tapesh Kumar Singh and learned counsel Sri Manish K. Bishnoi, Sri Pai Amit, Sri Goutham Shivshankar, Sri Nirmal Kumar Ambastha, Sri Ashwin Kumar Das, Sri B. Ramana Kumar and other learned counsel for the petitioners and learned senior counsel for the respondents Sri Arvind P. Datar ably assisted by Sri Nikunj Dayal, Advocate and learned counsel for the intervenors Sri Wills Mathews.

Submissions of the Petitioners:

4.1 Leading the arguments, Sri V. Giri submitted that the primary case of the petitioners is that the impugned Chapter

VI of the Guidelines dated 08.08.2008 imposing an unreasonable restriction on a Chartered Accountant duly qualified to practice the profession of Chartered Accountancy in India is violative of Article 19(1)(g) of the Constitution. Furthermore, the impugned Guidelines are arbitrary and lack any rational nexus with the objects sought to be achieved by the 1949 Act, namely, the regulation and maintenance of the status and standard of professional qualifications of the members of the Institute.

4.2 Learned senior counsel appearing for petitioners submitted that the intention of the 1949 Act was to provide for a rigorous test and exemplary qualification to enter into the sphere of the profession of accountants in practice and once in possession of requisite qualification, such a person is entitled to follow a profession which is exclusive and special on its own merit without any kind of restriction except for a conduct amounting to misconduct within the rigours of the 1949 Act. As a consequence, petitioners contended that accepting a legitimate professional engagement by a professional can never be considered unprofessional or be considered a misconduct.

4.3 To highlight the arbitrariness of the restriction, it was contended on behalf of the petitioners that the restriction lacks any reasonable classification and reasonable nexus with the objects sought to be achieved. If the ceiling limit has been imposed on audits under Section 44AB, to achieve purity and quality of work, the restriction should have been imposed on the volume of work, as evidenced from the number of transactions and not on the number of audits. It was argued that a single audit work itself could be voluminous and occupy significant amount of a Chartered Accountant's time, whereas another audit work itself could be completed with relative ease and within a limited time.

4.4 Furthermore, it was contended that the impugned Guidelines lack any reasonable classification or reasonable differentia on putting a ceiling limit on the number of tax audits under Section 44AB, IT Act, 1961 insofar as no maximum cap is placed on other audit assignments under the IT Act, 1961 that are carried out by Chartered Accountants with similarly taxing reporting requirements, such as Sections 44AD, 44AE, 44AF of the IT Act, 1961. In furtherance of the above, it was

also urged that the impugned Guidelines, in effect, also discriminate between Chartered Accountants practicing in smaller cities and towns as they are not in a position to charge the fee for each tax audit assignment in the same manner which can be charged by a Chartered Accountant practicing in big metropolitan cities. In effect, it was contended that the restriction will cause a more significant drop in the income of Chartered Accountants practicing in *mofussil* areas. As a result of this uneven restriction, an efficient Chartered Accountant may be able to complete the entire audit work within a short duration and remain unemployed for the rest of the year, was the submission made.

4.5 As further contended by the petitioners, the main object of the 1949 Act, is to regulate the conduct of the members of the respondent-Institute in carrying out their professional duties and the exercise of agency by a Chartered Accountant in choosing his own volume of work cannot be considered professional misconduct. Furthermore, where the Act and Rules made thereunder would be entitled to bring restrictions or provisions only for the purpose of attaining the prescribed

professional standards, a mere choice of work could not be considered professional misconduct.

4.6 During the course of arguments, analogies were often drawn to the legal profession to argue that, it is, firstly, inconceivable that a cap could be put on the number of cases that an advocate can take up and, secondly, there is no norm, custom, or practice of the profession that would require the rule-making body to ensure equitable distribution of work to younger Chartered Accountants. Relatedly, it was contended that the equitable distribution of work cannot automatically lead to betterment of the standards of chartered accountancy profession in the country.

4.7 It was further submitted on behalf of the petitioners that a Chartered Accountant's fundamental right to practice the profession is unreasonably restricted as there is no sanctity in the ceiling limit prescribed by the respondent-Institute. According to the petitioners, such a restriction ignores the differentiation in professional competence, sincerity, experience, ability and other factors that would enable a Chartered Accountant to complete more than the specified limit

while simultaneously ensuring compliance with all quality standards. The petitioners also vehemently argued that all auditors cannot be assumed to take equal time in completing a tax audit and the consequential conclusion that a Chartered Accountant would be able to satisfactorily fulfil his obligations only up to specified tax audit assignments under Section 44AB of the IT Act, 1961 would be fallacious. Furthermore, according to petitioners, by classifying both in the same category, the Guidelines fail to acknowledge the difference in competency between a senior Chartered Accountant who has years of experience, reputation, facility of ten articled clerks and availability of other audit staff with a fresh Chartered Accountant who has no articled clerk and no audit staff. Reliance in this regard was placed on ***Raja Video Parlour vs. State of Punjab, (1993) 3 SCC 708 ("Raja Video Parlour"),*** wherein this Court held that limiting the maximum seating capacity to 50, irrespective of the size of the screen in a cinema hall was unconstitutional and violative of Article 19(1)(g).

4.8 Learned counsel for the petitioners have vehemently argued that in the absence of any statistics or data supporting

the restriction on the number of tax audits and a related reasonable explanation justifying such a cap, this restriction could not be justified under Article 19(6) of the Constitution. Thereby, the petitioners have contended, that the limit on the number of tax audits a Chartered Accountant could accept has no reasonable nexus with the provisions of Section 44AB.

4.9 The petitioners have also drawn our attention to allegedly-identical Notification No.1/CA(7)/3/88 dated 13.01.1989 issued by the Council of the respondent-Institute in exercise of powers conferred under Clause (ii) of Part II of Second Schedule to the 1949 Act. It was highlighted that said Notification brought a restriction of the exact nature, function and importantly, restrictive effect wherein a ceiling limit of thirty tax audits was imposed under Section 44AB of the IT Act, 1961. The petitioners have placed most significant reliance on the fact that the said Notification was quashed and held to be *ultra vires* the Constitution by a judgment of the Madras High Court dated 13.07.1998 in Writ Petition (C) No.5925 of 1989 and the same was affirmed by a Division Bench of the same Court.

4.10 The contention is that the respondent-Institute issued impugned Guidelines dated 08.08.2008 during the pendency of the challenge to the Madras High Court judgment before this Court, solely to negate the binding dictum of judgment of the Madras High Court. Neither was any permission of this Court sought by respondent-Institute nor was this Court informed on 01.04.2013 that new Guidelines were of identical nature as the Notification impugned therein. Importantly, the argument of the petitioners is that the respondent-Institute could not have issued notices or instituted disciplinary proceedings, as doing so would be in teeth of the dictum laid by the Madras High Court which had not been reversed on merits by this Court. Reliance was placed by learned counsel for the petitioners on ***Kusum Ingots & Alloys Ltd. vs. Union of India, (2004) 6 SCC 254 ("Kusum Ingots & Alloys Ltd.")***, to contend that when the Madras High Court had quashed an identical Notification dated 13.01.1989, the same was in effect throughout the territory of India. It was held in ***Kusum Ingots & Alloys Ltd.*** as under:

> **"22.** The Court must have the requisite territorial jurisdiction. An order passed on a writ petition questioning the constitutionality of a parliamentary Act, whether interim or final keeping in view the provisions contained in clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act."

4.11 Challenge to procedural impropriety in issuance of the impugned Guidelines was also advanced by the petitioners. It was highlighted that impugned Guidelines were not issued in compliance with provisions of the 1949 Act as the Regulations made by the Council of the respondent-Institute were not notified in the official Gazette of India and despite the requirements of Section 30B of the Act, Impugned Guidelines were not laid before both Houses of Parliament. Thereby, it was contended, that the impugned Guidelines do not have the sanction of law. Therefore, learned senior counsel and learned counsel for the petitioners contended that the Guidelines dated 08.08.2008 may be struck down as running foul of Articles 19(1)(g) and 14 of the Constitution of India.

4.12 Learned senior counsel for petitioner in Writ Petition(C) No.1360 of 2021, Sri P.S. Patwalia relied upon the judgment of this Court in ***Institute of Chartered Financial Analysts of***

India vs. Council of the Institute of Chartered Accountants of India, (2007) 12 SCC 210, ("Institute of Chartered Financial Analysts of India") to contend that undertaking more tax audits could not possibly classify as professional misconduct. According to the learned senior counsel, the aforesaid case assists their submissions insofar as it was held that classification of an activity must be looked at pragmatically and within the structural context and realities. Therein, it was held that acquiring a qualification could not be construed as a professional misconduct and consequentially, such a restriction was held to be violative of Articles 14 and 19(1)(g). On a similar ground, emphasizing the sanctity of a right guaranteed under Article 19(1)(g), reliance was placed on paras 14 and 15 of the judgment in ***B.P. Sharma vs. Union of India, (2003) 7 SCC 309, ("B.P. Sharma")***, wherein this Court held as unconstitutional, a ban on carrying on a private profession or self-employment on attaining a certain age specified by the State in the absence of any reasons therefor.

4.13 Learned senior counsel appearing for the petitioners in Writ Petition (C) No.267/2021 argued that by no stretch of

imagination could the restriction as sought to be imposed herein could be achieved simply through a resolution – a delegated legislation not specifically provided for by the Parliament to impose a quantitative restriction. It was further contended that the Guidelines are *ultra vires* the provisions of the Act inasmuch as there is no power at all under the Act to lay down a maximum limit on the number of tax audits. Learned senior counsel focused on the language of the Preamble of the 1949 Act to argue that the Act was sought by the Parliament to 'make provisions' to regulate the profession. Thereby, any regulation made has to relate to a specific provision and no omnibus power to regulate has been granted to the Council.

4.14 Learned senior counsel Sri Patwalia further contended that the power to issue Guidelines has been conferred for the first time by the Amendment Act, 2022 by way of insertion of sub-clause (fa) and hence the impugned Guideline issued earlier in the year 2008 is without authority of law. Furthermore, it was contended that where Section 30B of the 1949 Act provides for power to make Regulations "for the

purpose of carrying out the objects of the Act", subject to the following conditions: (i) prior approval of the Central Government under Sub-section (3) of Section 30 and (ii) the requirement under Section 30-B of laying the same before Parliament. The Council could not have circumvented the aforesaid mandatory safeguards by resorting to power under Section 15, especially when creating penal consequences. Reliance in this regard was placed on ***Municipal Corporation of Greater Mumbai vs. Anil Shantaram Khoje, (2016) 15 SCC 726, ("MCGM")*** to contend that a regulation comes into operation only after promulgation in the official gazette.

4.15 Furthermore, learned senior counsel Sri Preetesh Kapur submitted that a restriction of this nature, to be found good in law, must have a legitimate nexus to the object sought and also, necessarily satisfy the proportionality test elucidated by this Court in ***Modern Dental College and Research Centre vs. State of Madhya Pradesh, (2016) 7 SCC 353, ("Modern Dental College and Research Centre").*** Learned counsel contended that where a fundamental right of an individual is abridged, justification of the restriction needs more than mere

demonstration of power; that the aforesaid position forms a part of our jurisprudence.

4.16 Learned senior counsel elucidated that a significant effect of the present restriction would be that a structural advantage is accrued to partnership firms over sole practitioners as a partnership firm of Chartered Accountants will be able to take up more multiples of tax audits than an individual practitioner permissibly can under the Guidelines. Learned counsel contended that a Chartered Accountant has a fundamental right to carry out tax audit, guaranteed under Article 19(1)(g) and such a right could not be bartered away to colleagues in a partnership firm.

4.17 Learned senior counsel also argued that the impugned Guideline is hit from the vice of excessive delegation as a resolution, by itself, could not penalize as misconduct for taking on more clients. Also, reliance was placed on ***V. Sasidharan vs. Peter and Karunakar, (1984) 4 SCC 230, ("V. Sasidharan")*** wherein this Court had held that the office of a lawyer is not a commercial establishment under the Shop & Establishments Act, 1968 (Kerala Act). Relying on the

aforesaid, it was contended by learned counsel that a technical profession stands on a different footing to other professions and while a prescription for technical qualification would be a reasonable restriction under Article 19(6), any other restriction on a profession must be carefully construed.

4.18 It was argued by learned senior counsel Sri Singh that professions have existed even before the Constitution came into being. Prior to the enforcement of the Constitution, an attempt to move a legislation to restrict the practice of a profession was subject to seeking the assent of Governor-General, in case of Federal Legislature, and the Governor in case of provincial legislature. Importantly, the Governor-General could not have given sanction, if a legislation was framed to restrict lawful practice of the profession, except in 'public interest'. As per learned counsel, the position could not have been said to be worse off after the coming into force of our Constitution, i.e. after repeal of the Government of India Act, 1935. That even if there were some safeguards and guardrails, the same could only be further emboldened. To buttress his submissions, learned counsel Sri Singh also laid emphasis on the judgment

of a Constitution Bench of this Court in ***Aswini Kumar Ghose vs. Arabinda Bose, (1952) 2 SCC 237, ("Aswini Kumar Ghose")*** and ***Devata Prasad Singh Chaudhuri vs. Chief Justice and Judges of Patna High Court, (1962) 3 SCR 305, ("Devata Prasad Singh Chaudhuri")***, to contend that a rule made by an authority to deny the right to exercise essential part of a function would be a serious invasion on the statutory right to practice.

4.19 Learned senior counsel, Sri Rajshekhar Rao, appearing for some of the petitioners submitted on the importance of professional identity of a Chartered Accountant. He also argued that the object of attaining quality has no nexus with the imposed restriction which, effectively restricts both the practitioner and the client in making a choice. It was pressed that the consequences of a punishment being imposed by the respondent-Institute are grave insofar as besides the punishment imposed, various audit works namely, Bank Audit etc. have a requirement that the auditor must not have suffered any kind of punishment for professional misconduct.

4.20 According to learned senior counsel, the Council of respondent-Institute, under powers conferred on it by the 1949 Act, deems a member to be qualified and competent to dutifully practice the services required of a Chartered Accountant and thereby, imposition of a blanket ban by the same Council without any qualitative assessment imposes an onerous penalty on the rights of a Chartered Accountant. More so, to attach a label of professional misconduct without any qualitative assessment, simply due to exceeding the maximum limit, would be incongruous with the object sought and damage future potential prospects without any established relationship between numerical benchmark and quality.

4.21 Reliance was placed by the petitioners on a judgment of the High Court of Delhi in ***Shri R. Nanabhoy vs. Union of India, 1982 SCC Online Del. 210 : CWP No. 2398/81, ("Shri R. Nanabhoy")***. It was held by Wad, J. therein that Section 233(B) and Section 637(A) of the Companies Act, 1956 did not empower the Central Government to impose any restriction on the number of cost audits which a cost accountant may undertake. Noting that there was no material to base such a

restriction, he further found that such a cap on maximum number of audits was arbitrary and in violation of Article 14 of the Constitution.

4.22 It was also canvassed on behalf of the petitioners that where the challenge to an erstwhile *in pari materia* Notification was not decided on merits the respondent-Institute erred in initiating disciplinary proceedings and imposing punishments, especially where a stay on the operation of the judgment of Madras High Court had been granted. Reliance was placed on ***Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association CSI CINOD Secretariat, Madras, (1992) 3 SCC 1 ('Chamundi Mopeds').*** Petitioners therefore sought the reliefs as noted above by allowing the writ petitions.

Submission of the Respondents:

5. *Per contra*, learned senior counsel Sri Arvind Datar, ably assisted by learned counsel Sri Nikunj Dayal, contended that the Guideline with regard to exceeding the specified number of tax audits being a misconduct was inserted pursuant to the communication received from the CBDT and with the aim of maintaining quality in tax audits. According to learned senior

counsel, putting a cap on the tax audits to be undertaken by the Chartered Accountants under Section 44AB of the IT Act, 1961, would not in any way restrict the freedom envisaged under Article 19(1)(g) of the Constitution of India. The said cap has been envisaged in public interest and therefore saved under Article 19(6) of the Constitution of India.

5.1 Learned senior counsel Shri Datar submitted that all writ petitioners herein have breached the Guideline and undertaken more than the specified number of tax audits as envisaged, thereby clearly committing a misconduct. Therefore, they would have to face the disciplinary proceedings initiated by the respondent-Institute and cannot assail the validity of the Guideline by either questioning the competence of the respondent-Institute in making such a Guideline or the manner in which the said Guideline was introduced on the statute book.

5.2 That, the Guidelines dated 08.08.2008 were issued in exercise of powers under clause (i) of Part II of the Second Schedule of the 1949 Act and in its role as the only statutory body for regulating and governing the profession of Chartered

Accountants, the respondent-Institute can define misconduct to ensure quality and professional good conduct. Further, the object is not to prohibit practice of but only to maintain quality in audit work, which is wholly in the interest of the general public including the ITD. It was further contended that the objects of both, the instant Guidelines dated 08.08.2008 and the erstwhile Notification dated 13.01.1989 have been to ensure efficiency, improve quality service, ensure maintenance of high standards of performance and to have equitable distribution of tax audit work amongst members of the respondent-Institute.

5.3 Learned senior counsel for the respondent-Institute submitted that the notified limit on tax audits has been decided by the Council, an expert body, on consideration of all pragmatic limitations and other work undertaken by a Chartered Accountant besides tax audit under Section 44AB, IT Act,1961. Section 139 of the IT Act, 1961 mandatorily requires every assessee, governed by provisions of Section 44AB of the IT Act, 1961, to file tax audit report along with his return before the due date – presently, 30th September of every

year. That being the case, the respondent-Institute contended that a Chartered Accountant cannot conceivably complete more than the specified number of audits in a period of 25-30 weeks, i.e., from April-September of the relevant assessment year.

5.4 Learned senior counsel sought to repel the argument that the petitioners' right under Article 19(1)(g) is violated by the restriction. Instead, it was argued that the right of an Indian citizen under the Constitution to practice any profession is not an absolute right but can be appropriately limited under Article 19(6). It was submitted that the right to practice as a Chartered Accountant is conferred by the 1949 Act and the same may be limited by conditions and limitations stipulated under the Act or Regulations or Guidelines framed thereunder. The contention of the respondent-Institute was that under Article 19(1)(g), what is available is a right to practice as a Chartered Accountant in accordance with the 1949 Act and the Guidelines or regulations made thereunder which is subject to reasonable restrictions.

5.5 Sri Datar took us through a wide variety of professional work that can be undertaken by a Chartered Accountant in practice such as statutory corporate audit, representation before tax authorities, consultation, audits under Section 44AF, audits under Section 141(3)(g) of the Companies Act, etc. It was contended that the ceiling has been imposed only in respect of the statutory tax audits under Section 44AB of the IT Act, 1961, which form a class by themselves as they involve more time and effort and are significantly more onerous.

5.6 On the question of professional misconduct, respondent-Institute sought to argue that the expression 'professional misconduct' cannot be construed to mean only an irregularity or an act of lowering of dignity of the profession. Rather, the respondent-Institute being a regulatory body of professionals can define misconduct to control and penalize a deviation from the quality compliance standards, *inter alia*, for which the respondent-Institute has been established by the Parliament to ensure. Reliance was placed on Section 30 of the 1949 Act, read with clause (i) of Part II of the Second Schedule of the 1949 Act,

to act effectively for ensuring compliance with standards of the Institute by penalizing a deviation as a misconduct.

5.7 Learned senior counsel for the respondent-Institute argued that a serious public purpose involved behind the Notification is visible under the 1949 Act which seeks to regulate the profession, hence the impugned Guidelines are issued to ensure maintenance of quality and standards in the work done and services rendered by Chartered Accountants. This would also aid in better and equitable distribution of work amongst the Chartered Accountants and to avoid concentration of professional work in a few hands, to ensure which is also a duty cast upon the Council in furtherance of its regulatory functions under the said Act. As per the respondent-Institute, the Council is in the best position to have definite information about deterioration in the quality of work, as also monopolization – both relevant factors in taking a decision on the maximum number of tax audits to be accepted.

5.8 It was also contended that a reduction in income and/or client base is not a ground in itself to say that fundamental

rights of a professional are affected. Nor can there by a comparison with the Advocate's profession.

5.9 To contravene the contention raised by petitioners that neither does the 1949 Act contemplate distribution of available work amongst Chartered Accountants, nor is there any obligation to provide work for young Chartered Accountants, it was contended that under the 1949 Act, the respondent-Institute has a responsibility to regulate the profession and hence, the Guidelines have been made to ensure quality work and equitable distribution of work amongst Chartered Accountants which objects are indisputably in furtherance of that statutory duty.

It was also submitted that the Division Bench of Madras High Court did not consider the judgment of the learned Single Judge of the Kerala High Court in ***B.K. Kamath vs. The Institute of Chartered Accountants, (2003) 2 KLJ 21, ("B.K. Kamath")***. However, the judgment of learned Single Judge of the Madras High Court was considered and dealt with by the Kerala High Court.

5.10 Learned senior counsel, Sri Datar placed reliance on a judgment of this court in ***Pathumma vs. State of Kerala,***

(1978) 2 SCC 1, ("Pathumma"), in support of his contention that a just balance between the fundamental rights and the larger and broader interest of society must be struck by this Court while trying to protect fundamental rights. Furthermore, it was argued that this Court should defer to the Legislature in appreciating the needs of the people and interfere only when the statute is clearly violative of the right conferred on the citizens under Part III of the Constitution. In addition to the foregoing, reliance was also placed on ***M/s Laxmi Khandsari vs. State of U.P., (1981) 2 SCC 600, ("M/s Laxmi Khandsari")***, to submit that if the restrictions imposed appear to be consistent with the Directive Principles of State Policy in Part IV of the Constitution they would have to be upheld as the same would be in public interest and reasonable. Further, according to learned senior counsel, in judging the reasonableness, this Court should bear in mind that the present restriction is imposed in furtherance of Part IV of the Constitution.

5.11 Further reliance was also placed on ***Minerva Talkies, Bangalore vs. State of Karnataka, AIR 1988 SC 526 ("Minerva Talkies"),*** in support of the contention that

Chartered Accountants have no unrestricted fundamental right to carry on the profession unregulated by the provisions of the the 1949 Act, including the regulations made and the Guidelines issued thereunder in the interest of general public and the society at large. In ***Minerva Talkies,*** this Court had upheld the restriction to limit the number of cinema shows to four in a day. This Court had further held that no law can be held to be unreasonable merely because it results in reduction in the income of the citizen.

5.12 Learned senior counsel, Sri Datar, also argued that the power to regulate a particular business or profession implies the power to prescribe and enforce all such just and reasonable rules and regulations, as may be deemed necessary for conduct of business or profession in a proper and orderly manner *vide* ***Deepak Theatre, Dhuri vs. State of Punjab, 1992 Suppl. (1) SCC 684, ("Deepak Theatre").*** Reliance was further placed by the respondents on ***T. Velayudhan Achari vs. Union of India, (1993) 2 SCC 582, ("T. Velayudhan Achari")***, wherein it was held that limiting the number of depositors that can be accepted by an individual, firm or unincorporated associations under Section 45S(1) of the Banking Laws (Amendment) Act,

1983 is not violative of Article 19(1)(g) of the Constitution, as it is in public interest that larger interests of the depositors are protected.

5.13 The judgment of Delhi High Court in ***Shri R. Nanabhoy,*** was sought to be distinguished from the present case by citing the presence of both legislative sanction and expert opinion, *vide* CBDT Letter dated 19.01.1988 and CAG Report No.32 of 2014, supporting the utility of the measure in achieving the objects sought, namely, quality and accuracy in such audits.

5.14 Therefore, it was prayed by the respondent-Institute that all the writ petitions/transferred cases filed before various High Courts and this Court challenging the validity of Chapter VI of the Council Guidelines No.1-CA(7)/02/2008 dated 08.08.2008 issued by the respondent-Institute be held to be devoid of any merits and thereby dismissed.

Points for Consideration:

6. Having heard learned senior counsel and learned counsel appearing for the respective parties and upon perusal of the record, the following points would arise for our consideration:

(i) Whether the Council of the respondent-Institute, under the 1949 Act, was competent to impose, by way of Guidelines, a numerical restriction on the maximum number of tax audits that could be accepted by a Chartered Accountant, under Section 44AB of the IT Act, 1961, in a Financial Year by way of a Guideline?

(ii) Whether the restrictions imposed are unreasonable and therefore, violative of the right guaranteed to Chartered Accountants under Article 19(1)(g) of the Constitution?

(iii) Whether the restrictions imposed are arbitrary and illegal and therefore, impermissible under Article 14 of the Constitution?

(iv) Whether exceeding such specified number of tax audits can be deemed to be 'professional misconduct'?

(v) What order?

Legal Framework:

7. At this stage, the relevant provisions of the 1949 Act must be perused. The Government of India framed the Auditors Certificate Rules in 1932 in exercise of the powers conferred by Section 144 of the Indian Companies Act, 1913. While the accountancy profession in India was regulated under those

Rules, in order to have a permanent regulation of accountancy profession, it was found necessary to have a body to secure and maintain all the requisite standards of professional qualifications, discipline and conduct of the accountancy.

7.1 In the above context, of particular relevance is the Statement of Objects and Reasons of the 1949 Act (*see* Gazette of India, 11-09-1948, Pt. V, p. 709), which is reproduced hereunder:-

"STATEMENT OF OBJECTS AND REASONS

1. The accountancy profession in India is at present regulated by the Auditors Certificates Rules framed in 1932 in exercise of the powers conferred on the Government of India by Section 144 of the Indian Companies Act, 1913, and the Indian Accountancy Board advises Government in all matters relating to the profession and assists it in maintaining the standards of the professional qualifications and conduct required of the members of the profession. The majority of the Board's members are elected by Registered Accountants members of the profession from all parts of India. These arrangements have, however, all long been intended to be only transitional, ***to lead up to a system in which such accountants will, in autonomous association of themselves, largely assume the responsibilities involved in the discharge of their public duties by securing maintenance of the requisite standard of professional qualifications, discipline and conduct***, the control of the Central Government being confined to a very few specified matters.

2. The Bill seeks to authorise the incorporation by statute of such an autonomous professional body and

> embodies a scheme which is largely the result of a detailed examination of the whole position by an *ad hoc* expert body constituted for the purpose, after taking into account the views expressed by the various Provincial Governments and public bodies concerned."
>
> ***(emphasis supplied)***

Therefore, the 1949 Act was enacted with the object of incorporating an autonomous professional body of accountants that would, in respect of discharge of their public duties, provide for uniform regulation of the profession. Thereby, it is apparent that the relationship of the profession to public duty is closely present even in the earliest statutory prescription.

7.2 It is pertinent to note that the long title and preamble of the 1949 Act was amended, w.e.f. 10.05.2022, *vide* the Chartered Accountants, the Cost and Works Accountants and the Company Secretaries (Amendment) Act, 2022, to substitute "regulation and development" instead of the extant "regulation".

The amended long title and preamble of the 1949 Act reads as under:

> "An Act to make provision for the **regulation and development** of the profession of Chartered Accountants."
>
> ***(emphasis supplied)***

7.3 Section 2 of the 1949 Act deals with interpretation and the relevant clauses of Section 2 are extracted as under:

> **"2. Interpretation.-** (1) In this Act, unless there is anything repugnant in the subject or context,–
>
> x x x
>
> (b) "chartered accountant" means a person who is a member of the Institute;
>
> (c) "Council" means the Council of the Institute;
>
> x x x
>
> (e) "Institute" means the Institute of Chartered Accountants of India constituted under this Act;
>
> x x x
>
> (2) A member of the Institute shall be deemed "to be in practice", when individually or in partnership with chartered accountants in practice, or in partnership with members of such other recognised professions as may be prescribed, he, in consideration of remuneration received or to be received,–
>
> (i) engages himself in the practice of accountancy; or
>
> (ii) offers to perform or performs services involving the auditing or verification of financial transactions, books, accounts or records, or the preparation, verification or certification of financial accounting and related statements or holds himself out to the public as an accountant; or
>
> (iii) renders professional services or assistance in or about matters of principle or detail relating to accounting procedure or the recording, presentation or certification of financial facts or data: or
>
> (iv) renders such other services as, in the opinion of the Council are or may be rendered by a chartered accountant in practice;

and the words "to be in practice" with their grammatical variations and cognate expressions shall be construed accordingly.

Explanation.– An associate or a fellow of the Institute who is a salaried employee of a chartered accountant in practice or a firm of such chartered accountants or firm consisting of one or more chartered accountants and members of any other professional body having prescribed qualifications shall, notwithstanding such employment, be deemed to be in practice for the limited purpose of the training of articled assistants."

7.4 Section 3 deals with incorporation of Institute of Chartered Accountants of India while Section 7 states that every member of the Institute is to be known as Chartered Accountant. *Vide* Section 9, the Council of the Institute is constituted for the management of the affairs of the Institute and for discharging the functions assigned to it under the Act and its functions are delineated in Section 15. The above-mentioned Sections are extracted as under:

"3. Incorporation of the Institute.-

(1) All persons whose names are entered in the Register at the commencement of this Act and all persons who may hereafter have their names entered in the Register under the provisions of this Act, so long as they continue to have their names borne on the said Register, are hereby constituted a body corporate by the name of the Institute of Chartered Accountants of India, and all such persons shall be known as members of the Institute.

(2) The Institute shall have perpetual succession and a common seal and shall have power to acquire, hold and dispose of property, both movable and immovable, and shall by its name sue or be sued.

x x x

7. Members to be known as Chartered Accountants.- Every member of the Institute in practice shall, and any other member may, use the designation of a chartered accountant and no member using such designation shall use any other description, whether in addition thereto or in substitution therefor:

Provided that nothing contained in this Section shall be deemed to prohibit any such person from adding any other description or letters to his name, if entitled thereto, to indicate membership of such other Institute of accountancy, whether in India or elsewhere, as may be recognised in this behalf by the Council, or any other qualification that he may possess, or to prohibit a firm, all the partners of which are members of the Institute and in practice, from being known by its firm name as Chartered Accountants.

x x x

9. Constitution of the Council of the Institute.- (1) There shall be a Council of the Institute for the management of the affairs of the Institute and for discharging the functions assigned to it under this Act.

(2) The Council shall be composed of the following persons, namely :−

(a) not more than thirty-two persons elected by the members of the Institute from amongst the fellows of the Institute chosen in such manner and from such regional constituencies as may be specified:

Provided that a fellow of the Institute, who has been found guilty of any professional or other misconduct and whose name is removed from the Register or has

been awarded penalty of fine, shall not be eligible to contest the election,−

(i) in case of misconduct falling under the First Schedule of this Act, for a period of three years;

(ii) in case of misconduct falling under the Second Schedule of this Act, for a period of six years,

from the completion of the period of removal of name from the Register or payment of fine, as the case may be;

(b) not more than eight persons to be nominated in the specified manner, by the Central Government.

(3) No person holding a post under the Central Government or a State Government shall be eligible for election to the Council under clause (a) of sub-section (2).

(4) No person who has been auditor of the Institute shall be eligible for election to the Council under clause (a) of sub-section (2), for a period of three years after he ceases to be an auditor.

x x x

15. Functions of Council.-

(1) The Institute shall function under the overall control, guidance and supervision of the Council and the duty of carrying out the provisions of this Act shall be vested in the Council.

(2) In particular, and without prejudice to the generality of the foregoing powers, the duties of the Council shall include –

(a) to approve academic courses and their contents;

(b) the examination of candidates for enrolment and the prescribing of fees therefor;

(c) the regulation of the engagement and training of articled and audit assistants;

(d) the prescribing of qualifications for entry in the Register;

(e) the recognition of foreign qualifications and training for the purposes of enrolment;

(f) the granting or refusal of certificates of practice under this Act;

(g) the maintenance and publication of a Register of persons qualified to practice as chartered accountants;

(h) the levy and collection of fees from members, examinees and other persons;

(i) subject to the orders of the appropriate authorities under the Act, the removal of names from the Register and the restoration to the Register of names which have been removed;

(j) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute;

(k) the carrying out, by granting financial assistance to persons other than members of the Council or in any other manner, of research in accountancy;

(l) the maintenance of a library and publication of books and periodicals relating to accountancy;

(m) to enable functioning of the Director (Discipline), the Board of Discipline, the Disciplinary Committee and the Appellate Authority constituted under the provisions of this Act;

(n) to enable functioning of the Quality Review Board;

(o) consideration of the recommendations of the Quality Review Board made under clause (a) of Section 28B and the details of action taken thereon in its annual report; and

(p) to ensure the functioning of the Institute in accordance with the provisions of this Act and in performance of other statutory duties as may be entrusted to the Institute from time to time."

7.5 Clause (fa) was inserted by the 'Chartered Accountants, the Cost and Works Accountants and the Company Secretaries (Amendment) Act, 2022' and the same reads as under:

> **"15. Functions of Council.-**
>
> (2) In particular, and without prejudice to the generality of the foregoing powers, the duties of the Council shall include –
>
> x x x
>
> (fa) to issue guidelines for the purpose of carrying out the objects of this Act;"

7.6 Chapter V of the 1949 Act deals with Misconduct. Section 22 defines professional or other misconduct as under:

> **"22. Professional or other misconduct defined.-** For the purposes of this Act, the expression "professional or other misconduct" shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this Section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances."

Section 22 of the 1949 Act defines "professional or other misconduct" to include any act or omission provided in any of the Schedules to the Act. Clause (1) of Part II of the Second Schedule to the Act stipulates that a member of the Institute, whether in practice or not, shall be deemed to be 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 of the respondent-Institute. For immediate reference the same reads as under:

> "**PART II: Professional misconduct in relation to members of the Institute generally**
>
> A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he –
>
> (1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council;"

Therefore, if a member of the Institute contravenes the provisions of the aforesaid Chapter VI of the Guidelines dated 08.08.2008, he shall be deemed to be guilty of professional misconduct under the 1949 Act. Clause 6 is extracted as under:

> "**<u>Chapter VI</u>**
> **Tax Audit assignments under Section 44AB of the Income-tax Act, 1961**
>
> **6.0** A member of the Institute in practice shall not accept, in a financial year, more than the "specified number of tax audit assignments" under Section 44AB of the Income-tax Act, 1961.
>
> Provided that in the case of a firm of Chartered Accountants in practice, the "specified number of tax audit assignments" shall be construed as the specified number of

tax audit assignments for every partner of the firm.

Provided further that where any partner of the firm is also a partner of any other firm or firms of Chartered Accountants in practice, the number of tax audit assignments which may be taken for all the firms together in relation to such partner shall not exceed the "specified number of tax audit assignments" in the aggregate.

Provided further that where any partner of a firm of Chartered Accountants in practice accepts one or more tax audit assignments in his individual capacity, the total number of such assignments which may be accepted by him shall not exceed the "specified number of tax audit assignments" in the aggregate.

Provided also that the audits conducted under Section 44AD, 44AE and 44AF of the Income-tax Act, 1961 shall not be taken into account for the purpose of reckoning the "specified number of tax audit assignments".

6.1 Explanation:

For the above purpose, "the specified number of tax audit assignments" means –

(a) in the case of a Chartered Accountant in practice or a proprietary firm of Chartered Accountant, 45 tax audit assignments, in a financial year, whether in respect of corporate or non-corporate assesses.

(b) in the case of firm of Chartered Accountants in practice, 45 tax audit assignments per partner in the firm, in a financial year, whether in respect of corporate or non-corporate assesses.

6.1.1 In computing the "specified number of tax audit assignments" each year's audit would be taken as a separate assignment.

6.1.2 In computing the "specified number of tax audit assignments", the number of such assignments, which he or any partner of his firm has accepted whether singly or in combination with any other Chartered Accountant in practice or firm of such Chartered Accountants, shall be taken into account.

6.1.3 The audit of the head office and branch offices of a concern shall be regarded as one tax audit assignment.

6.1.4 The audit of one or more branches of the same concern by one Chartered Accountant in practice shall be construed as only one tax audit assignment.

6.1.5 A Chartered Accountant being a part time practicing partner of a firm shall not be taken into account for the purpose of reckoning the tax audit assignments of the firm.

6.1.6 A Chartered Accountant in practice shall maintain a record of the tax audit assignments accepted by him relating to each financial year in the format as may be prescribed by the Council."

The Council at its 331st meeting held from 10th to 12th February, 2014 decided to increase the "specified number of tax audit assignments" for practicing Chartered Accountants, as an individual or as a partner in a firm, from forty-five to

sixty. The said limit will be effective for the audits conducted during the financial year 2014-15 and onwards.

7.7 Section 21 refers to Disciplinary Directorate, while Section 21A deals with Board of Discipline and Section 21B deals with Disciplinary Committee. Section 21C states that the Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the powers of a Civil Court. These provisions have to be read with the Schedules to the 1949 Act. The First Schedule of the 1949 Act deals with professional misconduct in relation to Chartered Accountants in practice and it enumerates various types of misconduct. It has four Parts. Part I deals with professional misconduct in relation to Chartered Accountants in practice. Part II deals with professional misconduct in relation to members of the Institute in service. Part III deals with professional misconduct in relation to members of the Institute generally. Part IV deals with other misconduct in relation to members of the Institute generally. Part I of the Second Schedule speaks about professional misconduct in relation to Chartered Accountants in practice while Part II deals with professional misconduct in

relation to members of the Institute generally. Part III thereof refers to other misconduct in relation to members of the Institute generally.

7.8 The First Schedule has to be read as part of Sections 21(3), 21A(3) and 22, while the Second Schedule has to be read as part of Sections 21(3), 21B(3) and 22.

In particular, what is relevant is with regard to a member of the Institute, whether in practice or not, contravening any of the provisions of the Act or the regulations made thereunder or any Guideline issued by the Council, who shall be deemed to be guilty of professional misconduct. What falls for interpretation in this batch of cases is the expression "any Guidelines issued by the Council". The Institute issued, *inter alia,* the Guidelines by Notification dated 08.08.2008.

7.9 According to the petitioners, the object of ensuring quality of audits would be served better by frequent reviews by the Quality Review Board established under Section 28A. The said section is reproduced as under:

"28A. Establishment of Quality Review Board

(1) The Central Government shall, by notification, constitute a Quality Review Board consisting of a Chairperson and ten other members.

(2) The Chairperson and members of the Board shall be appointed from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy.

(3) Five members of the Board shall be nominated by the Council and other five members shall be nominated by the Central Government."

7.10 Section 30 gives the Council of respondent-Institute the power to make regulations to fulfil its functions and duties. For ease of reference, relevant portions of Section 30 read as under:

"30. Power to make regulations

(1) The Council may, by notification in the "Gazette of India", make regulations for the purpose of carrying out the objects of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters :–

(a) the standard and conduct of examinations under this Act;

(b) the qualifications for the entry of the name of any person in the Register as a member of the Institute;

(c) the conditions under which any examination or training may be treated as

equivalent to the examination and training prescribed for members of the Institute;

(d) the conditions under which any foreign qualification may be recognised;

(e) the manner in which and the conditions subject to which applications for entry in the Register may be made;

(f) the fees payable for membership of the Institute and the annual fees payable by associates and fellows of the Institute in respect of their certificates;

x x x

(k) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute;

x x x

(t) any other matter which is required to be or may be prescribed under this Act.

(3) All regulations made by the Council under this Act shall be subject to the condition of previous publication and to the approval of the Central Government.

(4) Notwithstanding anything contained in sub-sections (1) and (2) the Central Government may frame the first regulations for the purposes mentioned in this Section, and such regulations shall be deemed to have been made by the Council, and shall remain in force from the date of the coming into force of this Act, until they are amended, altered or revoked by the Council."

7.11 Section 30B deals with laying procedure before the Parliament and the same is extracted as under:

> **"30B. Rules, regulations and notifications to be laid before Parliament**
>
> Every rule and every regulation made and every notification issued under this Act shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, regulation or notification, or both Houses agree that the rule, regulation or notification should not be made or issued, the rule, regulation or notification, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule, regulation or notification."

7.12 Chapter VIII of the Chartered Accountants Regulations, 1988, framed under the provisions of the 1949 Act, relates to 'Meetings and Proceedings of the Council'. Regulation 163 provides that the President of the respondent-Institute will assume the Chairmanship of the Council. Regulation 166 prescribes the manner of passing of resolution at a meeting. The aforesaid regulations are reproduced as under:

"163. Chairman of meeting

At a meeting of the Council, the President, or in his absence the Vice-President, shall preside, or in the absence of both, a member elected from among the members who are present, shall preside.

x x x

166. Passing of resolution at a meeting

At a meeting of the Council, a resolution shall be passed by a majority of the members present unless otherwise require by the Act or these Regulations, and in the case of equality of votes, the Chairman of the meeting shall have a casting vote."

7.13 The Council of the respondent-Institute, in exercise of its powers conferred by clause (ii) of Part II of the Second Schedule of the 1949 Act, issued a Notification bearing No.1/CA(7)/3/88 dated 13.01.1989 specifying that a member of the Institute in practice shall be deemed to be guilty of professional misconduct, if he accepts in a financial year, more than specified number of tax audit assignments under Section 44AB of the IT Act, 1961, the specified number being thirty (now sixty) in a financial year, whether in respect of corporate or non-corporate assesses.

7.14 As for relevant provisions of the IT Act, 1961 is concerned, Section 44AB of the IT Act, 1961 was inserted in the statute

book by the Finance Act, 1984 and the same came into force with effect from 01.04.1985. Presently, Section 44AB provides that every person carrying on business, whose total sale, turnover or gross receipts exceed Rs.10 crore, and every person carrying on a profession, if his gross receipts exceed Rs.50 lakhs, in any previous year, is required to get his accounts of such previous year audited by a Chartered Accountant, and obtain before the specified date, a report of the audit in the prescribed form duly signed and verified by such Chartered Accountant. The said provision is popularly called "compulsory tax audits". The object and purpose of Section 44AB is to prevent evasion of taxes, plug loopholes enabling tax avoidance and also facilitate tax administration, which would ensure that the economic system does not result in concentration of wealth to the common detriment. For immediate reference, Section 44AB of the IT Act, 1961 as it stands presently is extracted as under:

> **"44AB. Audit of accounts of certain persons carrying on business or profession.**—Every person,—
>
> (a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in

business exceed or exceeds one crore rupees in any previous year;

Provided that in the case of a person whose-

(a)aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent of the said amount; and

(b)aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent of the said payment,

this clause shall have effect as if for the words "one crore rupees", the words ten crore rupees had been substituted; or

Provided further that for the purposes of this clause, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt, as the case may be, in cash.

(b) carrying on profession shall, if his gross receipts in profession exceed fifty lakh rupees in any previous year; or

(c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or

(d) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA and he has claimed such income to be

lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year; or

(e) carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,

get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed:

Provided that this section shall not apply to a person, who declares profits and gains for the previous year in accordance with the provisions of sub-section (1) of section 44AD or sub-section (1) of Section 44ADA:

Provided further that this section shall not apply to the person, who derives income of the nature referred to in section 44B or section 44BBA, on and from the 1st day of April, 1985, or, as the case may be, the date on which the relevant section came into force, whichever is later:

Provided also that in a case where such person is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this section if such person gets the accounts of such business or profession audited under such law before the specified date and furnishes by that date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under this section.

Explanation.—For the purposes of this section,—

(i) "accountant" shall have the same meaning as in the Explanation below sub-section (2) of section 288;

(ii) "specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means date one month prior to the due date for furnishing the return of income under sub-section (1) of section 139."

Discussion:

8. We have heard the matter at length and perused the compilations submitted by learned senior counsel and learned counsel and perused the material on record.

9. During the course of submissions, we observed that the catalyst for filing these writ petitions was the issuance of the communications/notices to the petitioners herein pursuant to the Guideline dated 08.08.2008, violation of which is a misconduct. Although by an amendment made to the said Guidelines, a new type of misconduct was envisaged, since the respondent-Institute had initially not taken any steps *vis-à-vis* the said misconduct, there was no challenge as such to the Guideline as well as amendment thereto in question by any of the petitioners herein. Admittedly, the writ petitioners have

undertaken audits under Section 44AB of the IT Act, 1961 over and above the number of tax audits specified as per the Guidelines dated 08.08.2008. Thereby, it is in the guise of challenging the disciplinary proceedings initiated by the respondent-Institute against the petitioners herein for conducting the audits over and above the specified number of tax audits that has led to the constitutional challenge to the Guidelines as well as to the disciplinary proceedings.

10. This challenge is on three grounds: first, the manner in which the Guideline was brought about was not in accordance with law; second, that the Guideline is violative of Article 19(1)(g) of the Constitution of India and not protected by Article 19(6) thereof and third, the Guideline which constitutes a misconduct within Clause (c) of Part II of the Second Schedule to the 1949 Act has not at all been enforced until very recently and it has been enforced only selectively, and therefore, there is non-compliance of the equality clause envisaged under Article 14 of the Constitution of India.

11. During the course of submissions, learned senior counsel Sri Datar submitted that although a little over ten thousand

Chartered Accountants had violated the Guideline in question, notices for initiation of disciplinary proceedings were at first issued only in respect of a few of them, including writ petitioners herein and those who had undertaken more than two hundred tax audits. In regard to others, who had exceeded the specified number of tax audits, no disciplinary proceedings have been initiated as yet.

12. At the outset, we consider it useful to examine the privilege conferred under the 1949 Act to practise the profession of a Chartered Accountant. Reference to the observation of this Court in ***All-India Federation of Tax Practitioners vs. Union of India, (2007) 7 SCC 527, ("All-India Federation of Tax Practitioners"),*** is helpful in this regard. In answering the question of whether the Parliament was competent to levy service tax on services rendered by Chartered Accountants, this Court observed at para 34 that a Chartered Accountant or a Cost Accountant obtains a license or a privilege from the competent body to practise. We find ourselves in agreement with this observation. Reading along with Section 2(1)(b) of the 1949 Act which defines a Chartered

Accountant as a person who is a member of the respondent-Institute, we find it right to infer that a member of the respondent-Institute is conferred with the privilege of being able to practise as a Chartered Accountant.

12.1 As held by this Court in ***Kerala Ayurveda Paramparya Vaidya Forum vs. State of Kerala, (2018) 6 SCC 648, ("Kerala Ayurveda Paramparya Vaidya Forum")*** a right to practice a profession is indeed an acknowledged fundamental right, but not unrestricted and is subject to any law imposing regulatory measures aiming to ensure standards of the profession and nature of public interest involved in the practice of the profession.

Re: Point No.1: Whether the Council of the respondent-Institute, under the 1949 Act, was competent to impose, by way of Guidelines, a numerical restriction on the maximum number of tax audits that could be accepted by a Chartered Accountant, under Section 44AB of the IT Act, 1961, in a Financial Year by way of a Guideline?

13. We have perused the impugned Guideline dated 08.08.2008 which is extracted above. The same has to be read in the context of the respondent-Institute functioning under the overall control, guidance and supervision of the Council

which means the Council of the Institute has to carry out the duties so as to achieve the objects of the Act as delineated in its various provisions of the 1949 Act, *vide* Section 15. The power vested in the Council is general insofar as the carrying out the provision of the Act is concerned and in particular and without prejudice to the generality of the aforesaid powers, certain duties have been specifically delineated. This is evident on a reading of sub-sections (1) and (2) of Section 15 of the 1949 Act. One of the objects of the 1949 Act is to ensure that the profession of the Chartered Accountant in the country maintains high professional ethics and renders quality service inasmuch as Chartered Accountants are absolutely necessary for the efficient tax administration in the country. That on account of their services, the onerous duties cast on the assessing officer as well as the ITD is reduced. This would however depend upon the quality of service that is rendered by the Chartered Accountant as a professional for which regulation of the profession is necessary and the respondent-Institute has been established for, *inter alia*, such regulation of the profession.

13.1 In this context, Chapter V of the 1949 Act assumes importance. The said Chapter deals with misconduct. Section 22 of the Act defines "professional or other misconduct" to deem to include any act or omission provided in any of the Schedules. However, nothing in Section 22 shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances. The two prongs of Section 22 are expansive and wide inasmuch as there is no limitation in any way on the power conferred or duty cast on the Director (Discipline) under Sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under circumstances other than what is stated in the Schedules. Also, professional or other misconduct is defined by a deeming provision which implies that the Schedules which have enumerated various kinds of misconducts are not exhaustive or static. With the passage of decades and with the emerging varieties of misdemeanour, omissions or commissions of Chartered Accountants which are not in consonance with professional ethics and would amount to misconduct can be

defined under the Schedules so as to ensure quality service being rendered by the Chartered Accountants as professionals. Therefore, the deeming provision would imply that with the passage of time, there could be newer misconducts which could be included in the Schedules in the form of regulations or Guidelines. The Schedules are a part of the 1949 Act which has been passed by the Parliament. But bearing in mind the fact that in future, it may not always be possible for the Parliament to go on amending the Schedules to the Act so as to incorporate newer professional misconducts particularly with emerging technology and its applicability to the profession of Chartered Accountancy in India, Part II of Second Schedule by way of a foresight has delegated the power to the Council to make any regulation or Guideline, the breach of which would amount to a misconduct. This delegation to define and enumerate a misconduct by way of a regulation or a Guideline is a legislative device adopted by the Parliament so as to leave it to the discretion of the Council of the respondent-Institute to incorporate, define and insert a Guideline or a regulation, the breach of which would result in a misconduct committed by a Chartered Accountant.

13.2 The delegation of this power under Part II of the Second Schedule of the 1949 Act made by Parliament in favour of the Council of the respondent-Institute cannot be faulted with. This is on account of the fact that the 1949 Act itself defines certain types of misconduct *vis-à-vis* a Chartered Accountant. But in the year 1949, the Parliament could not have envisaged every possible variety or type of commission or omission which could be a misconduct by a Chartered Accountant. Therefore, the delegation has been made by the Parliament to the Council of the respondent-Institute to make regulations or Guidelines, the breach of which would result in a professional misconduct. The aforesaid delegation of the Parliament to the Council of the respondent-Institute is clearly to define possible types of misdemeanours in the Second Schedule in the form of a regulation or a Guideline, the breach of which would result in a misconduct *in futuro*. This is in order to avoid the Parliament itself amending the Schedules to the 1949 Act every time a different type of misconduct is to be inserted to the Schedules by way of an amendment to the Act. Therefore, the regulation or Guideline issued by the Council, the breach of which would

result in a professional misconduct, being a part of clause 1 of Part II of the Second Schedule have to be read as part and parcel of the 1949 Act itself. The delegation of powers to add newer types of misconducts by way of a regulation or a Guideline is neither excessive nor *ultra vires* under Section 22 of the 1949 Act which deems any breach of a regulation or Guideline as a misconduct as per Clause 1 of part II of Schedule II to the 1949 Act.

13.3 In the circumstances, we hold that the Council of the respondent-Institute had the legal competence to frame the impugned Guideline restricting the number of tax audits that a Chartered Accountant could carry out which was initially thirty and later raised to forty-five and thereafter to sixty in an assessment year. Therefore, the Council of the respondent-Institute having the legal competence to frame the Guidelines, the breach of which would result in professional misconduct, in terms of clause 1 of Part II of the Second Schedule of the 1949 Act cannot be held to be vitiated on account of there being lack of competency or powers to frame the impugned Guideline by the Council of the respondent-Institute. The argument

advanced by the petitioners regarding the issuance of the Guidelines dated 08.08.2008 by the respondent-Institute is hit by the vice of excessive delegation, is hence without substance. Accordingly, we answered the point No.1.

Re: Point No. 2: Whether the restrictions imposed are unreasonable and therefore, violative of the right guaranteed to Chartered Accountants under Article 19(1)(g) of the Constitution?

And,

Re: Point No.3: Whether the restrictions imposed are arbitrary and illegal and therefore, impermissible under Article 14 of the Constitution?

14. Before answering these points for ready reference and convenience, Article 19(1)(g) and (6) are reproduced as under:

> "**19. Protection of certain rights regarding freedom of speech, etc.—**
>
> (1) All citizens shall have the right—
>
> x x x
>
> (g) to practise any profession, or to carry on any occupation, trade or business.
>
> x x x
>
> 6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular,

> nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—
>
> (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
>
> (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."

15. Firstly, Article 19(6) of the Constitution empowers the State to impose reasonable restrictions upon the freedom of trade, business, occupation or profession in the interest of the general public, which freedom is recognised under Article 19(1)(g). Secondly, it empowers the State to prescribe professional and technical qualifications necessary for practising any profession or carrying on any occupation, trade or business. Thirdly, pursuant to the enactment of the Constitution (First) Amendment Act, 1951 — it enables the State to carry on any trade or business, either by itself or through a corporation owned or controlled by the State, to the exclusion of private citizens wholly or in part. It is trite law that restrictions imposed by the State upon the freedom guaranteed

by Article 19(1)(g) cannot be justified on any ground outside Article 19(6) *vide* ***Nagar Rice and Flour Mills vs. N. Teekappa Gowda and Bros., (1970) 1 SCC 575, ("Nagar Rice Milling").***

16. The ambit of reasonable restrictions on the exercise of rights under Article 19(1)(g) in the interest of the general public under Article 19(6) was further explained in ***Hathising Manufacturing Co. Ltd. vs. Union of India, (1960) 3 SCR 528 ("Hathising Manufacturing Co. Ltd.")***, which concerned the challenge to the validity of Section 25FFF(1) of the Industrial Disputes Act, 1947, which required the industries to pay compensation on closure of their undertakings:

> "10. …Whether an impugned provision imposing a fetter on the exercise of the fundamental right guaranteed by Article 19(1)(g) amounts to a reasonable restriction imposed in the interest of the general public must be adjudged not in the background of any theoretical standards or pre-determinate patterns, but in the light of the nature and incidents of the right the interest of the general public sought to be secured by imposing the restriction and the reasonableness of the quality and extent of the fetter upon the right."

17. On the scope of restrictions that may be imposed on fundamental rights, it is apposite to refer to Justice Holmes in ***Stephen Otis & Joseph F. Gassman vs. E. A. Parker, 187***

U.S. 606 (1903); 1903 SCC OnLine US SC 22, ("Stephen Otis & Joseph F. Gassman"), wherein it was held that if the State thinks that an admitted evil cannot be prevented except by prohibiting a calling or transaction not in itself necessarily objectionable, the courts cannot interfere, unless in looking at the substance of the matter they can see that it 'is a clear, unmistakeable infringement of rights secured by the fundamental law.'

18. The respondent-Institute has placed reliance on the letter of CBDT and the CAG Report No. 32/2014 in order to satisfy us of the overwhelming need and appropriateness of the decision to place a ceiling limit as the best conceivable and practical measure at rectifying the targeted mischief. A perusal of the material on record reflects that the respondent-Institute's assertion that there is a probable link between the number of tax audits undertaken and the quality thereof is supported by concerns and suggestions shared by experts and practitioners over a span of time extending over thirty years. In fact, the preceding sentiment is evidenced by both CBDT's letter dated 19.01.1988 seeking views of the respondent-

Institute on the imposition of a limit and the CAG's Report presented to the Parliament on 19.12.2014 discussed above.

19. Following the dicta of the Constitution Bench of this Court in ***Saghir Ahmad vs. State of U.P., (1954) 2 SCC 399 ("Saghir Ahmad"),*** the burden to establish that the instantiation of the specified number of tax audit assignments was within the purview of the exception laid down in Article 19(6) is on the respondent-Institute. We find that the respondent-Institute has placed ample material before this Court to establish that the legislation comes within the permissible limits of clause (6). But the factual matrix herein is dissimilar to ***Saghir Ahmad,*** wherein this Court had 'absolutely no materials' before it to say in which way the establishment of State monopoly in road transport service would be conducive to the general welfare of the public.

20. In this regard, we place reliance upon ***Sakhawant Ali vs. State of Orissa, (1954) 2 SCC 758 ("Sakhawant Ali"),*** wherein this Court was seized of a challenge to a disqualification from electoral candidature of legal practitioners who were employed on payment, on behalf of the municipality

or to act against the municipality. This Court emphasised upon the salutary object of the disqualification, i.e., the purity of public life, which would invariably be thwarted if there arose a situation where there was a conflict between interest and duty. This Court took note of the possibility of a conflict of interest and duty of a municipal councillor employed as a paid legal practitioner and was alive to the possibility that such a councillor may misuse his position to obtain municipal briefs, get unreasonable fees sanctioned or compromise the interests of the municipality while acting on behalf of private parties. What is of pertinence here is that this Court was alive to the fact that cases of misuse may be an exception because lawyers would be loathe to stoop to such tactics, yet, it upheld the restriction because it sought to prevent a possible abhorrent misconduct and malpractice that would be corrosive to public life. The reasoning in ***Sakhawant Ali*** was to the effect that disqualification of a legal practitioner from contesting elections did not prevent him from practising his profession of law and as such, the right to practice the profession of law under Article 19(1)(g) did not imply the existence of a fundamental right in

any person to stand as a candidate for election to the municipality.

21. Therefore, the present petitioners' assertion that the undertaking of more than a specified number of tax audit assignments would not imperil the integrity and quality of the tax audit does not persuade us because a reasonable possibility of the fall in quality owing to the surfeit of tax audit assignments exists. Therefore, we find it proper to trust the wisdom of the respondent-Institute as it has acted on *bona fide* and genuine recommendations of the CAG and the CBDT. We find no fault in the endeavour of the respondent-Institute to eliminate the possibility of the conduct of tax audits in an insincere, unethical or unprofessional manner.

22. Keeping the aforesaid in mind, there is no difficulty in concluding that by virtue of being a licensee, a privilege is conferred on Chartered Accountants. An elaborate and extensive process of recommendations and policy-making preceded the insertion of Section 44AB in order to achieve the public interest of prevention of tax leakages and more

efficient tax administration. It is in pursuance of this primary goal of public interest that a further privilege under Section 44AB was extended to Chartered Accountants to conduct quality tax audits, so as to enable the interest of the public exchequer.

23. The present discussion would be enriched by a comparative discourse on State regulation of licensed professions as under:

(i) Justice Powell, in ***Ohralik vs. Ohio State Bar Association, 436 U.S. 447 (1978), ("Ohralik"),*** held that the State's interests implicated in the case of regulatory restriction on the practice of a licensed profession are particularly strong. The case pertained to the conviction of an attorney for misconduct on the basis of his in-person solicitation from accident victims. Repelling the attorney's claims regarding the violation of the right to freedom, Justice Powell laid stress on the need for prophylactic regulation to safeguard the interests of the lay public. This is for the reason that the State bears a special responsibility for maintaining standards amongst members of the licensed professions. This view is strengthened

by the reasoning in ***Williamson vs. Lee Optical Co., 348 U.S. 483 (1955), ("Williamson")*** and ***Semler vs. Oregon State Board of Dental Examiners, 294 U.S. 608 (1935), ("Semler").***

(ii) On this point, the dicta from ***Goldfarb vs. Virginia State Bar, 421 U.S. 773, 792, (1975), ("Goldfarb")*** is also instructive and the relevant portion of the judgment reads as follows:

> "….The interest of the States in regulating lawyers is especially great, since lawyers are essential to the primary governmental function of administering justice, and have historically been 'officers of the courts.'"

24. We now look at how this Court has understood public interest in matters pertaining to abridgment of Article 19(1)(g).

(i) A Constitution Bench of this Court, through JC Shah J, in ***Mohd. Faruk vs. State of M.P., (1969) 1 SCC 853,*** held that the Notification issued by the State Government prohibiting the slaughter of bulls and bullocks in premises maintained by a local authority infringed upon the right to freedom of profession under Article 19(1)(g) of the Constitution. This Court had emphasized that even though such a Notification may be issued under the authority of law that was

enacted by a competent legislature, it would nevertheless be liable for directly infringing the fundamental right of the petitioner guaranteed by Article 19(1)(g) unless it is established that it seeks to impose reasonable restrictions in the interest of the general public and a less drastic restriction will not ensure the interest of the general public. It was reasoned that the judicial determination of the validity of the law imposing a prohibition on the carrying on of a business or profession should be informed by:

a. an evaluation of the direct and immediate impact of the prohibition upon the fundamental rights of the citizens affected thereby;
b. the larger public interest sought to be ensured in the light of the object sought to be achieved;
c. the necessity to restrict the citizen's freedom;
d. the inherently pernicious nature of the act prohibited or its capacity or tendency to be harmful to the general public;
e. the possibility of achieving the object by imposing a less drastic restraint; and
f. in the absence of exceptional exigent situations like the prevalence of a state of emergency national or local, the

existence of a machinery to satisfy the administrative authority that no case for imposing the restriction is made out or that a less drastic restriction may ensure the object intended to be achieved.

(ii) A reasonable restriction, within the meaning of Article 19(6) must also be 'in the interests of the general public.' Our Constitution, by establishing a welfare State, emphasises a fine balance between the public interest of the community and the liberties of the individual. Indeed, this is not to say that individual rights and liberties are not a matter of vital public interest but any policy or law may not be struck down at the instance of an individual alone. In other words, there is a basic unity between fundamental rights and the public interest. The public interest inherent in the said individual's exercise of a fundamental right under Part III would need to be delicately balanced with the imminent constitutional imperative of the 'ordered progress of society towards a welfare state,' *vide* ***K. K. Kochuni vs. States of Madras and Kerala, 1958 SCC OnLine SC 12, Pr. 33***.

(iii) In ***Krishnan Kakkanth vs. Govt. of Kerala, (1997) 9 SCC 495, ("Krishnan Kakkanth"),*** this Court held as under:

"27. The reasonableness of restriction is to be determined in an objective manner and **from the standpoint of the interests of general public and not from the standpoint of the interests of the persons upon whom the restrictions are imposed or upon abstract consideration.** A restriction cannot be said to be unreasonable merely because in a given case, **it operates harshly** and even if the persons affected be petty traders (*Mohd. Hanif* v. *State of Bihar* [AIR 1958 SC 731]). In determining the infringement of the right guaranteed under Article 19(1), **the nature of right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied** thereby, the disproportion of the imposition, the **prevailing conditions at the time**, enter into judicial verdict (*Laxmi Khandsari* v. *State of U.P.* [(1981) 2 SCC 600 : AIR 1981 SC 873] ; *D.K. Trivedi and Sons* v. *State of Gujarat* [1986 Supp SCC 20] and *Harakchand Ratanchand Banthia* v. *Union of India* [(1969) 2 SCC 166 : AIR 1970 SC 1453]).

28. Under clause (1)(*g*) of Article 19, every citizen has a freedom and right to choose his own employment or take up any trade or calling subject only to the limits as may be **imposed by the State in the interests of public welfare and the other grounds mentioned in clause (6) of Article 19.** But it may be emphasised that the Constitution does not recognise franchise or rights to business which are dependent on grants by the State or business affected by public interest (*Saghir Ahmad* v. *State of U.P.* [(1955) 1 SCR 707 : AIR 1954 SC 728])."

(emphasis by us)

Therefore, it follows that this Court must consider the public interest involved not only from the perspective of the Chartered Accountants but rather from the perspective of the

general public. In the present cases, it has been contended that public interest manifests as a benefit to the public exchequer in terms of appropriate quality of tax audit reports under Section 44AB.

25. At this juncture, it is useful to reiterate the thread of public interest visible in the 1949 Act since its inception. The Statement of Objects and Reasons of the 1949 Act makes it clear that the Act was brought in to ensure that accountants all over the country, **in discharge of their public duties,** are governed by a central body that is not transitional. Our words should not be mistakenly understood to suggest that the profession of Chartered Accountants is not a private enterprise and is concerned solely with rendering of public duties. We rather only highlight that it is a profession – licensed by the State – that also discharges public duties crucial in public interest.

26. In our opinion, a perusal of the Wanchoo Committee Report, Finance Bill, 1984 and the accompanying Memorandum makes it explicitly clear that the intent of insertion of Section 44AB of the IT Act, 1961, was to facilitate

the process of tax administration to the benefit of the public exchequer. The genesis of the opportunity to conduct tax audits was not regulation of a practice essential to the Chartered Accountant profession *per se* but rather to take assistance of auditors, in discharge of their public duties, for plugging tax leakage and thereby saving the time of the Assessment Officers on presentation of quality tax audit reports in a prescribed format. Therefore, it is for these intents and purposes, the privilege of conducting tax audits was extended to Chartered Accountants by creating a privilege to conduct such audits subject to reasonable restrictions.

27. We must be careful in our delineation between a right and a privilege. As discussed above, the idea of compulsory tax audits was neither an inherent part of the practice of a Chartered Accountant nor an essential function which could be claimed as a fundamental right under Article 19(1)(g). Furthermore, an examination of the nature of the supposed right that was being enjoyed by Chartered Accountants reflects that in practice, an assessee, seeking to comply with the requirements of Section 44AB, would approach a Chartered

Accountant to obtain a certificate of audit. We have already observed and noted that Section 44AB, IT Act, 1961 was inserted to assist the Revenue Department in public. Thereby, it is only through the extension of statutory privilege by the presence of Section 44AB, IT Act, 1961, that a Chartered Accountant gets the opportunity to undertake tax audits under the said section. If the Parliament, in its wisdom, at a certain future date, due to technological developments or any other reason, finds that expeditious and accurate assessments can be ensured without imposing on assessees the burden of additional requirement of tax audit report and thereby deletes Section 44AB from the IT Act, 1961, it could not be possibly argued that the right under Article 19(1)(g) has been abridged. What follows is that when a privilege is being granted, as a privilege by statute, which could be effaced completely, a reasonable restriction could also be imposed, the latter being a restriction of a lesser degree than a complete ban on an activity.

28. On the scope of restrictions imposed to maintain quality of service where a privilege had been extended by the Government to medical officers, this Court, in ***Sukumar***

Mukherjee vs. State of W.B., (1993) 3 SCC 723, ("Sukumar Mukherjee"), held that the restriction was reasonable where the State of West Bengal had, *vide* Section 9 of the West Bengal State Health Service Act, 1990, prohibited private practice by members of W.B. Medical Education Service who were also teaching in medical institutions. It was held that where the State Government had concluded that the regime of permitting private practice of those teaching in medical institutions led to a considerable decline in quality of teaching, such restriction was reasonable and in the interest of general public as the ban on private-practice would make available to the teachers-doctors the time required for reading and research which was absolutely essential for maintaining quality in their main profession as teachers in medicine. Furthermore, where for a brief period, in the facts of that case, private practice by teaching post-holders was also permitted and then withdrawn, this Court held that such an extension was only a privilege extended on people who were regulated by the relevant Act and rules made thereunder and therefore, the revocation of that privilege was not the violation of any right.

29. Where public interest was the genesis of a privilege being extended to Chartered Accountants and not a right, it is reasonable that the respondent-Institute, an expert body, would have the authority to regulate the privilege extended to Chartered Accountants in a reasonable manner deemed appropriate to serve public interest. That the public interest involved in the present petitions being pervasive is evidenced through CAG's recommendation to the Government to insert a provision in the statute book putting a cap on the number of tax audits permissible. According to the CAG, in the matter of revenue, the IT Act, 1961 should have provision to prescribe for quality of tax audit assignments rather than relying on respondent-Institute.

30. It would be apposite at this juncture to refer to the judgment in ***P.V. Sivarajan vs. Union of India, AIR 1959 SC 556, ("P.V. Sivarajan")***, delivered by a Constitution Bench of this Court. Petitioner therein was aggrieved by the rejection of his application as a registered exporter of coir products, on the ground that he had not already exported the minimum specified quantity of 500 Cwts. It was observed by this Court

that Parliament had enacted the Coir Industry Act, 1953, finding it expedient in public interest that the Union should take under its control the coir industry as several malpractices had crept in the export trade such as non-fulfilment of contracts, supplying goods of inferior quality in an industry crucial to the repute of India's products and national economy. With the intent of limiting these losses due to qualitative underperformance, the Central Government, under powers conferred by the statute, framed Rules in 1958. The Rules were assailed by the petitioner therein, contending that they erroneously prescribed a quantitative test for registration of established exporters, when in fact, a qualitative test would be more suitable. This argument was rejected, holding that once it is accepted that regulation of coir industry is in public interest, then it would be erroneous to assert that regulation must be introduced only on the basis of a qualitative test. This Court was mindful of the potential difficulties in introducing and effectively enforcing a qualitative test and thereby held that it would be for the rule-making authority to decide as to which test would meet the requirements of public interest and what

method would be most expedient in controlling the industry for national good. This Court noted as under:

> "7. If it is conceded that the regulation of the coir industry is in the public interest, then it would be difficult to entertain the argument that the regulation or control must be introduced only on the basis of a qualitative test. **It may well be that there are several difficulties in introducing and effectively enforcing the qualitative test.** It is well known that granting permits or licences to export or import dealers on the basis of a quantitative test is not unknown in regard to export and import of essential commodities. It would obviously be for the rule-making authority to decide which **test would meet the requirements of public interest and what method would be most expedient in controlling the industry for the national good**. Besides, even the adoption of a qualitative test may tend to extinguish the trade of those who do not satisfy the said test; but such a result cannot obviously be treated as contravening the fundamental rights under Article 19. **Control and regulation of any trade, though reasonable within the meaning of Article 19, sub-Article (6), may in some cases lead to hardship to some persons carrying on the said trade or business if they are unable to satisfy the requirements of the regulatory rules or provisions validly introduced; but once it is conceded that regulation of the trade and its control are justified in the public interest, it would not be open to a person who fails to satisfy the rules or regulations to invoke his fundamental right under Article 19(*g*) and challenge the validity of the regulation or rule in question.** In our opinion, therefore, the challenge to the validity of the rules on the ground of Article 19 must fail.
>
> 8. The challenge to the validity of the said rules on the ground of Article 14 must also fail, because the classification of traders made by Rules 18 and 19 is

clearly rational and is founded on an intelligible differentia distinguishing persons falling under one class from those falling under the other. It is also clear that the differentia has a rational relation to the object sought to be achieved by the Act. **As we have already pointed out, the export trade in coir commodities disclosed the existence of many malpractices which not only affected the volume of trade but also the reputation of Indian traders;** and one of the main reasons which led to this unfortunate result was that exporters sometimes accepted orders far beyond their capacity and that inevitably led to non-fulfilment of contracts or to supply of inferior commodities. In order to remedy this position the trade had to be regulated and so the intending exporter was required to satisfy the test of the prescribed minimum capacity and to establish the prescribed minimum status before his application for registration is granted. In this connection it may also be relevant to point out that the rules seem to contemplate the granting of exemption from the operation of some of the relevant tests to cooperative societies; and that shows that the intention of the legislature is to encourage small traders to form co-operative societies and carry on export trade on behalf of such societies; and so it would not be possible to accept the argument that the impugned rules would lead to a monopoly in the trade. **It is thus clear that the main object which the rules propose to achieve is to improve the anomalies and malpractices prevailing in the export trade of coir commodities and to put the said trade on a firm and enduring basis in the interest of national economy.** We are, therefore, satisfied that the challenge to the impugned rules on the ground of infringement of Article 14 of the Constitution must also fail."

(emphasis supplied)

31. The further contention that a quantitative test discriminates between persons carrying on business on a large

scale and those who carry on business on a small scale as even the prescription of a qualitative test would also lead to hardship on those who cannot satisfy the test was rejected.

32. We must also now consider further arguments advanced by learned senior counsel and counsel for the petitioners. Heavy reliance placed on ***Institute of Chartered Financial Analysts of India***, in our considered opinion, is misplaced. This case concerned whether acquisition of an additional qualification of Chartered Financial Analyst ("CFA") by a Chartered Accountant could be termed as professional misconduct under Section 22 of the 1949 Act. Holding in the negative, this Court found that enhancement of knowledge, training and ability should be encouraged in an emerging economy and to term the same as professional misconduct would be violative of Articles 14 and 19(1)(g). That case is clearly distinguishable. Neither did this Court find that the restriction placed was in public interest, nor that the acquisition of an additional qualification hurt the quality of statutory responsibilities attributed to a Chartered Accountant.

33. The argument advanced by learned counsel for the petitioners is that as a direct consequence and effect of the ceiling limit, an anomalous situation of discrimination between qualified professionals practicing in metropolitan cities as against those in *mofussil* areas, or those catering to small assessees as against those catering to bigger assessees, must be categorically rejected. The potential effect of the concerned restriction is that practitioners dealing in m*ofussil* areas or catering to small assessees will face a reduction in their income which is violative of their right to freely engage in their profession. We find ourselves unable to agree with this contention. There is no material to suggest that this partial limitation on the practise of the profession would lead to a significant reduction in income. In any case, it is trite law that reduction of income cannot be a ground for holding a reasonable restriction unreasonable *vide* ***Minerva Talkies*** which we shall discuss later. Where the devolution of a privilege is justifiably restricted in public interest and such restriction has a rational nexus with the objects sought to be achieved, the restriction cannot be held unreasonable due to hardship faced by a certain section of professionals.

34. The following judgments of this Court are also apposite:

(a) In ***B.P. Sharma***, clause 17 of the instructions issued in 1979 by the Ministry of Tourism and Civil Aviation, Department of Tourism, Government of India prohibiting the renewal of identity cards to guides who were carrying on the job of conducting tourists to historical monuments and other places of interest and to explain the background and importance of such places as well as acquaint the tourists with the historical facts relating to the monuments and landmarks of the area after they attained the age of sixty years, was assailed. Clause 17 stated that *"when a guide attains the age of 60 years the identity card issued to him or her will not be renewed further".* This was unsuccessfully challenged by way of a writ petition under Article 226 of the Constitution before the Allahabad High Court. But, this Court observed that the freedom guaranteed under Article 19(1)(g) of the Constitution is valuable and cannot be violated on grounds which are not established to be in public interest or just on the basis that it is permissible to do so. For placing a complete prohibition on any professional activity, there must exist some strong reason for the same with a view to attain some legitimate object and non-imposition of such

prohibition might result in jeopardizing or seriously affecting the interest of the people in general. Otherwise, it would not be a reasonable restriction. We do not have any contrary opinion to what has been observed by this Court in the aforesaid judgment but the facts of each case would ultimately decide whether, a complete prohibition, ban or restriction is a reasonable one or not depending upon the public interest it would seek to achieve. In the aforesaid case clause 17 of the instructions was held to be *ultra vires* Article 19(1)(g) and hence, quashed by this Court.

(b) In ***Minerva Talkies,*** Rule 41-A of Karnataka Cinemas (Regulations) Rules, 1971 made under Section 19 of the Karnataka Cinemas (Regulation) Act, 1964 limiting the cinema shows to four per day was held to be neither *ultra vires* the said Act nor violative of Article 19(1)(g) of the Constitution. It was observed that no licensee can claim to have an unrestricted right to exhibit cinematograph films for all the twenty-four hours of the day. Such a claim would obviously be against public interest. The right to exhibit cinematograph films is regulated by the provisions of the Act in the interest of the

general public. The restriction to limit the number of shows to four in a day placed by Rule 41-A is regulatory in nature which clearly carries out the purposes of the Act. In the context of Article 19(1)(g), it was observed that the law placing restrictions on the citizens' right to do business must satisfy two conditions set out in clause (6) of Article 19: firstly, the restrictions imposed by the law must be reasonable, and secondly, the restrictions must be in the interests of the general public. If these two tests are satisfied, the law placing restriction on the citizens' right guaranteed under Article 19(1)(g) must be upheld. While considering the validity of Rule 41-A which had limited the number of films to be exhibit in a day to four shows, it was noted that holding of continuous five shows from 10 am in the morning caused great inconvenience to the incoming and outgoing cine-goers and endangered public safety. A short interval of fifteen minutes between two shows is too little time for cleaning the cinema halls and there was also rush by the cine-goers to occupy the seats. Moreover, licensees would start exhibiting approved films and slides before the cine-goers could occupy their seats, with the result they would not have the benefit of the same. The absence of interval between the shows

resulted in denial of fresh air, ventilation and cleanliness in the cinema halls. In order to remove these maladies, the restriction on the number of shows to four per day was introduced. After analysing the inconvenience that would be caused to the cine-goers and also the fact that if the five shows were exhibited from 10 am to 1 am the next day, there would be great inconvenience caused to the public, the State Government had promulgated the restriction to only four shows in a day. Consequently, the said Rule was upheld by this Court by observing that it was *intra vires* the Act as it carried out the purposes of the Act and it did not place any unreasonable restriction in violation of Article 19(1)(g) of the Constitution. Consequently, this Court dismissed the appeals as well as the writ petitions.

(c) In ***T. Velayudhan Achari***, Section 45-S (1) as introduced by Banking Laws (Amendment) Act, 1983 limiting the number of depositors that can be accepted by individual, firm or unincorporated association, was held to be not violative of Article 19(1)(g) of the Constitution as the said limitation protected larger interest of depositors. It was observed that a ceiling for acceptance of deposits and to require maintenance

of certain liquidity of funds as well as not to exceed borrowings beyond a particular percentage of the net-owned funds had been provided in the corporate sector. But for these safeguards, the depositors would be left high and dry without any remedy. It was held that the restrictions were reasonable and were in the public interest.

(d) In ***B.K. Kamath***, Kurian Joseph J. (as a Judge of the Kerala High Court), observed that the Chartered Accountants Act was enacted for regulating the profession and in the process regulating and maintaining the status of the Chartered Accountants. Therefore, the measures taken, intended to maintain and improve the quality of work and ensure equitable distribution of work among the Chartered Accountants could not be held to be an unreasonable restriction since such restrictions are necessary for maintaining the status of the Chartered Accountants and also for ensuring the quality of the work by them. Comparing the said restriction to Section 224 of the Companies Act, 1956 wherein a Chartered Accountant is permitted to audit only twenty companies in a financial year since the introduction of the said provision in the year 1974, it

was observed that such regulatory measures are provided in view of the onerous and time-consuming nature of the work of the Chartered Accountant requiring accuracy and perfection. The Income Tax Act attributes much importance to the certificate of audit by the Chartered Accountant and therefore, it is in public interest also to introduce certain restrictions on the volume of work lest it would affect professional standards apart from affecting the professional status. We are in complete agreement with the aforesaid observations. In our view, the comparison made between Chartered Accountants and Advocates by the petitioners is also inappropriate.

35. It is also noted that under Section 224 of the Companies Act, 1956 which deals with appointment and remuneration of auditors, there is a bar with regard to appointment or reappointment of any person as an auditor of a company, if such person or firm of auditors is, at the date of such appointment or reappointment, holding appointment as auditor of specified number of companies or more than the specified number of companies. Explanation (1) to Section 224 defines specified number to mean (a) in the case of a person or

firm holding appointment as auditor of a number of companies each of which has paid-up share capital of less than rupees twenty-five lakh, twenty such companies; and (b) in any other case, twenty companies, out of which not more than ten shall be companies each of which has paid-up share capital of rupees twenty-five lakh or more. Explanation-II states that in computing the specified number, the number of companies in respect of which or any part of which any person or firm has been appointed as an auditor, whether singly or in combination with any other person or firm, shall be taken into account.

36. The restriction placed under Section 224 of the Companies Act, 1956 with regard to the number of companies which could be audited by an auditor or firm of auditors is also an instance of regulation of the profession of Chartered Accountants intended by the Parliament so as to ensure that standard and quality in the audit of accounts of companies as defined under Section 3 of the Companies Act, 1956 are maintained. This is to protect the rights and interest of the shareholders as well as the investors in the companies. Any omission or inadvertence in the auditing of such company

accounts would inevitably have an adverse impact not only on the balance-sheets of the companies but also on the potential investments and growth of the companies. There has not been any challenge to the said regulation which is in the form of a restriction. Any breach of the restriction placed on the Chartered Accountants under Section 224 may lead to misconduct under the provision of 1949 Act.

37. It is for the foregoing reasons that we find that questions (i), (ii) and (iii) ought to be held in favour of the respondent-Institute.

Re: Point No.4: Whether exceeding such specified number of tax audits can be deemed to be 'professional misconduct'?

38. During the course of submissions, an alternative plea raised by learned senior counsel and learned counsel for the petitioners was that the respondent-Institute initiated disciplinary proceedings only against a few Chartered Accountants, including petitioners herein, while a majority of the Chartered Accountants who had breached the Guideline are not facing any disciplinary proceeding and have not been proceeded against. Secondly, it was contended that it was only

recently that notices have been issued to the writ petitioners herein to respond to the same and for conducting disciplinary proceedings. That there cannot be a discrimination, so to say, by the respondent-Institute in the matter. That, the impugned Guideline dated 08.08.2008 has been on the statute book, the disciplinary proceedings have been initiated only recently. The impugned Guideline has not been effectively given effect to. Therefore, the disciplinary proceeding may be quashed for the aforesaid reasons. In this regard, it was contended that when the respondent-Institute has remained silent and not acted upon the Guideline, since it was issued on 08.08.2008, all of a sudden there could not have been initiation of disciplinary proceedings only against the petitioners herein and possibly others who may not have approached any court of law, whereas many other Chartered Accountants have not been proceeded against and are virtually scot-free. Therefore, there is discrimination and violation of Article 14 of the Constitution of India herein in the implementation of the Guideline *vide* Notification dated 08.08.2008. Therefore, pending full and effective implementation of the Guideline impugned herein of the impugned proceedings against the petitioners herein for the

alleged misconduct on their part for violating the Guideline may be dropped.

39. It is observed that there has been an uncertainty in law due to a similar Guideline being successfully assailed and during the pendency of the matter before this Court the impugned Guideline being enforced and selective implementation of the same by the respondent-Institute. Relying on the dictum of this Court in ***Chamundi Mopeds,*** the petitioners contended that a stay on the judgment of Madras High Court was only on the operation of the judgment and not a declaration that the judgment was bad in law. As the special leave petition impugning the judgment of Madras High Court was dismissed as infructuous and any action taken by the respondent-Institute on the superseding Guideline dated 08.08.2008 was taken only belatedly, we find force in the submission that there was uncertainty in law only in the context of the pendency of the matter before this Court on there being quashing of the Guideline by the Madras High Court and an interim stay of the said judgment by this Court.

40. In this regard, we may refer to Halsbury Laws of England, [5th Edn. Volume 96 (2018)] dealing with the principle against doubtful penalisation:

> "*774. Principle Against Doubtful Penalisation*
>
> *"It is a principle of legal policy that a person* ***should not be penalised except under clear law,*** *…"*

41. Francis Bennion on Statutory Interpretation (8th Edn, 2020 at Section 26.4) deals with principle against doubtful penalisation in the following words:

> *"It is a principle of legal policy that a person* ***should not be penalised except under clear law****. This principle forms part of the context against which legislation is enacted and, when interpreting legislation, a court should take it into account."*

42. It was borne out during the course of arguments and through the submissions made in the Counter Affidavit that the tax audit monitoring mechanism was firstly, self-regulatory, wherein the disciplinary mechanism would kick in only on a complaint made/information received and not otherwise. Furthermore, the Tax Audit Monitoring Cell was created only after the CAG Report No. 32/2014, and even after that, initially notices were sent only selectively to Chartered

Accountants who had completed more than two hundred audits not to all who had breached the impugned Guideline.

43. As a rule of statutory interpretation, we find that the aforesaid principles, in an equitable legal system, should be applicable to the present circumstances. Thereby, for the limited period of uncertainty, the rule against doubtful penalization as a principle could, in the interest of justice and equity, be made applicable and the benefit of uncertainty be given to those subjected to misconduct proceedings in the instant writ petitions and to also those Chartered Accountants who may have received notices from the respondent-Institute and who may not have approached any court of law or to other similarly situated Chartered Accountants who may not have been proceeded against.

44. Reference may also be made to judgment of this Court in ***Jindal Paper & Plastics vs. Union of India, (1997) 10 SCC 536, ("Jindal Paper & Plastics")*** wherein the question on merits was settled by a judgment of this Court in ***Kasinka Trading vs. Union of India, (1995) 1 SCC 274, ("Kasinka Trading"),*** delivered on 18.10.1994 and a larger bench on

20.12.1996 concluded that the judgment dated 18.10.1994 was good law. This Court allowed the petitioner's prayer therein that for the period of uncertainty in law, i.e., until the law, on merits, was settled by this Court on 18.10.1994, a lesser interest rate of 12% be charged instead of 17.5%, as ordered by the High Court. In these circumstances, this Court held as follows:

> **"4. We are of the view that there was uncertainty about the law until the decision in the case of *Kasinka Trading [(1995) 1 SCC 274 : JT (1994) 7 SC 362]*** was rendered on 18-10-1994, and that, therefore, interest from the date it became payable until 18-10-1994, should be payable at the rate of 12% per annum. Interest for the further period should be at the rate of 17.5% per annum, as ordered by the High Court. Calculations shall be made accordingly and the balance and interest as aforesaid due by the appellants shall be paid to the respondents within 8 weeks."
>
> ***(emphasis supplied)***

45. We, therefore, find much force in the alternative plea made by the petitioners herein. In these circumstances, due to the uncertainty in law owing to quashing of the earlier Guideline and the pendency of the Special Leave Petition filed by the respondent-Institute before this Court and the enforcement of a fresh Guideline, we quash the disciplinary

proceedings initiated against the petitioners herein. This is for the simple reason that only the writ petitioners have been proceeded against, while even according to the respondent-Institute, there were around twelve thousand Chartered Accountants who had breached the Guideline and had undertaken tax audits over and above the specified number but no action whatsoever was initiated against of them.

46. In conclusion, we must also note the dictum in ***Malpe Vishwanath Acharya vs. State of Maharashtra, (1998) 2 SCC 1, ("Malpe Vishwanath Acharya")***, wherein this Court, relying on ***Motor General Traders vs. State of A.P., (1984) 1 SCC 222, ("Motor General Traders"),*** reiterated that a provision which was/is reasonable may with the passage of time become unreasonable. In the context of restriction on the specified audits under Section 44AB of IT Act, 1961, Minutes of the Council of the respondent-Institute reflect that with the passage of time, the number of tax audits to be permitted have been repeatedly deliberated, re-evaluated and increased, subject to final decision taken by the Council. However, it also becomes apparent that decisions of the Council on whether to

increase or maintain the *status quo* have been *ad-hoc,* influenced by several factors such as technological development, number of practicing Chartered Accountants, etc. Since the last revision to sixty tax audits was made a decade ago, we direct the Council to consider if the time is ripe to enhance the specified number of tax audits and to delineate the factors that it may consider in taking such a decision.

47. In that view of the matter, the respondent-Institute is at liberty to enhance the specified number of tax audits that could be undertaken by practicing Chartered Accountants under Section 44AB of the IT Act, 1961. For that purpose, liberty is reserved to the practising Chartered Accountants to make their suggestions to the respondent.

48. We wish to make certain observations before parting with these writ petitions. The Institute of Chartered Accountants of India over a period of time, has received recognition as a premier accounting body, domestically and globally, for maintaining highest standards in technical, ethical areas and for sustaining stringent examination and educational standards. Since its inception in the year 1949, the profession

of Chartered Accountancy and accounting has grown leaps and bounds in terms of the number of members, which now stands at over 3.5 lakhs. The respondent-Institute has also played a significant role in ensuring the dynamism of the Chartered Accountancy course curriculum and the credibility of the examinations. The financial skills of the aspirants are fairly consolidated, at the time of joining the profession itself- this is owing to the robust examination pattern. We commend that the respondent-Institute must be committed towards convergence of accounting, auditing and ethical standards with international practices and for its endeavour towards securing the highest standards of corporate governance. The true test however, lies in application and enforcement of these standards in the Indian context.

49. The power to control and impose taxes is a cornerstone of State sovereignty. Welfare States impose taxes to generate revenue that enables investment in human capital, infrastructure and services for citizens and businesses. The Tax Law landscape in India has been one of the most dynamic areas of law and has witnessed several changes over the last

few decades. The Taxation Systems in India have been periodically assessed and several changes have been brought about from time to time. Such changes have been introduced with a view to either widen the tax base; to simplify and rationalise laws and procedures; to bring about modernization through computerization of tax returns; to enhance efficiency of the tax administration; or to maintain progressivity at such levels as would not induce evasion.

49.1 In relation to direct taxation, we believe that the taxation system must be one that not only incorporates the normative and prescriptive considerations of neutrality, fairness, certainty, efficiency etc. but one that also promotes the virtuous circle of increased trust between tax payers and the tax administration. We call this a "virtuous circle" because it seeks to achieve a dual purpose: it reinforces voluntary compliance while at the same time promoting good governance. Good governance is achieved in an attempt to secure the confidence of the taxpayer. Once a taxpayer is certain that tax revenue is being channelled in an efficient manner, consistent with the objectives of a welfare state, enhanced tax compliance

is likely to follow. It is in this context that we stress on the significance of the role played by Chartered Accountants. They can serve as effective catalysts in securing this circle of trust between the taxpayer and the tax administration. This is because a large proportion of the tax payers in India seek advice of Chartered Accountants to understand the rules of the road. The integrity and standards of Chartered Accountants determine the efficiency in the functioning of the nation's taxation system.

49.2 There are many concepts and processes in the present taxation regime that rest, almost completely, on the vigilance of Chartered Accountants and auditors. The very concept of self-assessment carries with it the requirement of good faith practices. The most recent tax reforms seek to achieve transparent taxation by "Honouring the Honest taxpayer." The success of such initiatives depends, to a very large extent, on the vigilance demonstrated by Chartered Accountants.

49.3 Transparency in accounting is imperative to the economy in many ways. For instance, in the absence of accurate financial reporting, it would become difficult for banks to make

informed decisions about credit allocation. It is the quality, reliability and objectivity of this information which stakeholders rely upon to make informed judgments and allocate resources efficiently. The role of transparent accounting is critical in lending credibility to the financial market transactions. Market participants, investors and shareholders look towards this community for accurate information, which ensures market discipline and fosters confidence of various stakeholders. The onus is on Chartered Accountants to ensure that our Nation's businesses do indeed conform to high corporate governance standards. Further, while the quality of information has immediate and far-reaching implications for a particular enterprise, it eventually permeates to the market and the economy as a whole. It is therefore not surprising to find that the accounting profession is being constantly challenged to meet the demands for quality information. As key providers and verifiers of information, the bottom-line is simple: the higher the quality and integrity maintained by the profession, the stronger and more resilient will our markets be. By providing the foundation for compilation of credible financial statements, the accounting

profession facilitates market discipline, engenders confidence among various stakeholders and reduces the possibility of misleading information that can disrupt stability of financial systems. Therefore, the need for quality assessments particularly under Section 44AB of the IT Act, 1961.

49.4 In the public discourse on governance, we find that the corporate governance agenda garners attention only during times when the Country is faced with the most notorious corporate scams. Shareholder democracy has come to stay and Chartered Accountants are the gatekeepers of this new corporate world which poses challenges as well as unprecedented opportunities. Thus, the importance of integrity of auditing functions for maintaining financial stability is now well-recognised.

49.5 More importantly, Chartered Accountants must themselves comply with the relevant laws and regulations and avoid any conduct that discredits the profession. Needless to specify that Chartered Accountants must refuse to represent clients who insist on resorting to unfair means. Chartered

accountants are relevant not only in securing corporate governance, but governance in broader contexts too.

49.6 Chartered Accountants face many different responsibilities: to the profession; to the tax administration; to the client and to the economy at large. In that context, we stress on the importance of preserving their independence of view and integrity; to separate their client-advisory role from their role as public citizens seeking to improve the functioning of the tax machinery of the Nation. Integrity, objectivity, professional competence and due care and confidentiality must be the doctrines guiding their work ethic.

Conclusion:

50. In the circumstances, we dispose of the writ petitions in the following manner:

a) Clause 6.0, Chapter VI of the Guidelines dated 08.08.2008 and its subsequent amendment is valid and is not violative of Article 19(1)(g) of the Constitution as it is a reasonable restriction on the right to practise the profession by a Chartered Accountant and is protected or justifiable under Article 19(6) of the Constitution.

b) However, the said clause 6.0, Chapter VI of the Guidelines dated 08.08.2008 and its subsequent amendment is deemed not to be given effect to till 01.04.2024.

c) Consequently, all proceedings initiated pursuant to the impugned Guideline in respect of the writ petitioners and other similarly situated Chartered Accountants stand quashed.

d) Liberty is reserved to the respondent-Institute to enhance the specified number of audits that a Chartered Accountant can undertake under Section 44AB of the IT Act, 1961, if it deems fit.

e) Liberty is also reserved to the writ petitioners or any other member of the respondent-Institute to make a representation in the above context which may be taken into consideration in the event respondent-Institute intends to amend the Guideline as per point No.(d) above.

f) The writ petitions as well as all the transferred cases are disposed of in the aforesaid terms.

g) The Registry to intimate the concerned High Courts regarding disposal of the transferred cases accordingly.

h) No costs.

. . . . J.
[B.V. NAGARATHNA]

. . . . . J.
[AUGUSTINE GEORGE MASIH]

New Delhi;
May 17, 2024.