<u>IN THE DISCIPLINARY TRIBUNAL OF THE TAXATION DISCIPLINARY TRIBUNAL</u> **Ref. TBD/2019/03**

THE TAXATION DISCIPLINARY BOARD	**<u>TDB</u>**
-and-	
MR JIWAN VERMA (CIOT 177185)	**<u>Defendant</u>**

DECISION AND REASONS

Date of Hearing	1 – 2 February 2024
Venue	In person on day 1 and virtual using Microsoft Teams on day 2
Tribunal Members	
Legally Qualified Chair	Brett Wilson
Professional Member	Martin Brown
Lay Member	Ian Hanson QPM
Tribunal Clerk	Nigel Bremner
Taxation Disciplinary Board ('TBD')	Represented by Mr Mills of Counsel
Mr Verma	Represented by Mr Yates KC

Background

1. Mr Verma is a member of the Chartered Institute of Taxation ('CIOT').

2. In 2015, the Defendant was engaged by Mr Maduakonam. Mr Maduakonam was an IT specialist and he wanted to form a company. The company was incorporated and it is referred to in the charges as A Ltd.

3. On 19 October 16, the Defendant submitted dormant Company Accounts (Form AA02) to Companies House for A Ltd.

4. Following discussions with Mr Maduakonam, the Defendant prepared a set of Accounts (the 'Accounts') for A Ltd which covered the year ending 31 January 2017 and showed prior year comparative figures for the period from 21 January 2015 to 31 January 2016. These showed that for the year ending 31 January 2017, A Ltd had a turnover of £33,565,898 with a net profit of £18,162,314. For the period ending 31 January 2016 the turnover was stated as £24,867,677 with a net profit of £13,190,005.

5. On or about 9 June 2017, Mr Tekchandani (the Defendant's apprentice at the time) sent the Accounts to Companies House.

6. On 2 October 2017, the Defendant drew up dormant Accounts (Form AA02) for A Ltd for the year ending 31 January 2017 and sent them to Companies House with the word "Amending" handwritten.

7. On 1 December 2017, HMRC issued a determination against A Ltd for the period 21 January 2015 to 20 January 2016 for £19,000,000.

8. On 21 December 2018, HMRC made a complaint to the TDB raising concerns about the Defendant and the Accounts which the Defendant had submitted to Companies House. These were submitted by the Defendant or, more specifically, by his apprentice Mr Tekchandani.

9. The matter was considered by a Disciplinary Tribunal of the TDB. The Defendant appealed that decision and succeeded to the extent that, on 6 May 2021, the Appeal Tribunal set aside the decision in relation to Charges 1.2(a), 1.2(b), 1.3 and 1.4 and remitted them to a freshly constituted Disciplinary Tribunal.

10. On 15 July 2022, an Investigation Committee of the TDB found a prima facie case in relation to those charges.

11. The matter came before the Disciplinary Tribunal for a re-hearing on 1 and 2 February 2024. It was agreed by both parties that Charge 1.1 remained proved. The Tribunal had to consider Charges 1.2, 1.3, 1.4 and 1.5 in their entirety.

Evidence

12. The Tribunal had regard to the bundle of 127 pages, and the Defendant's bundle of 41 pages. On the first day of the hearing, the Defendant provided the Tribunal with a printed copy of a spreadsheet (the 'Spreadsheet'). The TDB had no objections to that document being admitted.

13. The evidence within the bundles included, but was not limited to:

    a. the Accounts;

    b. the forms AA02 for A Ltd for the periods ending 21 January 2016 and 31 January 2017;

    c. correspondence between the TDB and the Defendant;

    d. correspondence between the Defendant and HMRC;

    e. a letter from Mr Tekchandani;

    f. emails and letters exchanged between the Defendant and Mr Maduakonam;

    g. a handwritten note made by the Defendant following a conversation with Mr Maduakonam;

    h. witness statements from the Defendant and Mr Maduakonam.

Procedure

14. The charges (set out in Appendix 1 of this decision) related to the Professional Rules and Practice Guidelines 2018 of the CIOT and the Association of Taxation Technicians

('ATT') (the 'PRPG 2018') in force from 9 November 2018. The sections of the PRPG 2018 referred to in the charges are set out in Appendix 2 of this decision.

15. The TDB made an application to amend Charge 1.2 which was not opposed by the Defendant.

16. As stated hereinabove, Charge 1.1 was found proved by a previous Tribunal, it had not been aside by the Appeal Tribunal and both parties agreed that it remained proved. The Defendant denied the Charges 1.2, 1.3, 1.4 and 1.5.

17. The Defendant did not proceed with an application for the Tribunal to sit in private.

18. The Tribunal heard oral evidence from the Defendant and Mr Maduakonam (who gave his evidence via a video link).

19. The Tribunal received skeleton arguments from counsel for both parties which greatly assisted the Tribunal in identifying the issues, considering the evidence and making its decision.

Directions

20. When considering the evidence and submissions the Tribunal directed itself in the terms set out in paragraphs 21 to 27.

<u>Burden and Standard of Proof</u>

21. The burden of proof rests upon the TDB. The Defendant does not need to prove that he is innocent. The Tribunal was of the view that this overarching principle was of particular importance in this case as it would be wrong to find the charges proved unless the Defendant failed to provide a plausible explanation. The standard of proof is the civil standard which is the balance of probabilities.

<u>Good Character</u>

22. Counsel for the TDB informed the Tribunal that the Defendant had not been subject of any other disciplinary proceedings which entitled him to a 2-limb good character direction.

23. The Tribunal directed itself that:

a. good character is not a defence to the charges.

b. However, evidence of good character counts in the Defendant's favour in two ways:

   i. his good character supports his credibility and so is something which the Tribunal should take into account when deciding whether they believe his evidence (the 'credibility limb'); and

   ii. his good character may mean that he is less likely to have committed the alleged misconduct set out in the TDB's charges (the 'propensity limb').

c. It is for the Tribunal to decide what weight it gives to the evidence of good character, taking into account everything it has have heard about the Defendant.

Dishonesty

24. Charge 1.4 alleged that the Defendant had acted dishonesty. The Panel had regard to the test set out in *Ivey v Genting Casinos* [2017] UKSC 67. The Tribunal would first need to consider the circumstances of the alleged conduct by the Defendant in preparing and also (and as a separate consideration) submitting the Accounts, including what the Defendant knew or believed to be the factual situation. The Tribunal would then need to have that in mind when considering, in light of any understanding of the situation the Defendant D had (or may have had), that on the balance of probabilities, the Defendant's actions in preparing and submitting the Accounts was dishonest by the standards of ordinary decent people. The Tribunal reminded itself that the preparation of the Accounts was a separate act from submission of the Accounts to Companies House. The Tribunal would apply the test to these alleged actions separately and so it was open to the Tribunal to conclude that the Defendant was dishonest in relation to one or the other (i.e. preparation or submission of the Accounts), both in relation to preparation and submission of the Accounts or not dishonest at all.

Lies

25. The Tribunal was of the view that when assessing the evidence, it might find that a witness has been untruthful and therefore it was necessary to direct itself as per *Lucas* (1981) 73 Cr App R 159, CA. The Tribunal reminded itself that if concluded that a

witness has lied, then people lie for different reasons and just because they may have lied on one issue, it does not mean that all of their evidence should be rejected. Further before the Tribunal may use a lie against the Defendant, they must be satisfied of all of the following:

a. that it is either admitted or shown, by other evidence in the case, to be a deliberate untruth: i.e. it did not arise from confusion or mistake;

b. that it relates to a significant issue;

c. that it was not told for a reason advanced by or on behalf of the Defendant, or some other reason arising from the evidence, which does not point to the Defendant's liability in respect of the charges; and that:

d. unless the Tribunal were satisfied of all of the above, the alleged lie is not relevant and must be ignored. If the Tribunal are sure of all of the above, they may use the lie as some support for the TDB's case, but a lie can never by itself prove that a Defendant committed the acts or omissions alleged in a charge.

26. The Tribunal were also mindful about basing its view on the credibility of the Defendant and the reliability of his evidence based on its view of the quality of the evidence of another witness.

Recklessness

27. The Tribunal noted that it had been argued on behalf of the Defendant that a mere single negligent act would not be sufficiently serious to amount to misconduct following the decision in *R (Calhaem) v The General Medical Council* [2007] EWHC 2606 (Admin). The Tribunal recognised that in considering this particular issue in relation to Charges 1.4 (b) and 1.5(c) it might need to consider whether the alleged acts or omissions went beyond mere negligence to the extent of amounting to misconduct or being sufficiently serious to likely bring discredit on the Defendant, his profession or the CIOT or its members. Therefore, the Tribunal reminded itself of the test for recklessness as being a person acts recklessly with respect to:

a. a circumstance when he is aware of a risk that exists or will exist; or
b. a result when he is aware of a risk that it will occur; and

c. it is, in the circumstances known to him, unreasonable to take the risk.

28. In considering the evidence to make findings of fact, the Tribunal cast its net widely to consider all the evidence presented to it. It did not consider evidence in silos. It did not speculate if evidence was absent. It drew reasonable inferences from the evidence. The Tribunal had to make findings as to the Defendant's intention in both the preparation and the submission of the Accounts. In doing so, the Tribunal was of the view that a person intends to cause a result if they act in order to bring it about. 'Intent' is an ordinary English word and distinct from motive.

Findings

Charge 1.2(a)

29. The Tribunal first heard evidence from the Defendant. The Tribunal noted that in his response (dated 19 April 2018) to the correspondence from HMRC, he stated that he had prepared the accounts as:

'projections for a deal that my client was looking at in Africa…We produced detailed reports and analysis for the government backed project so that we could work out how much the client would be looking at…We confirm that the accounts have not been shown to any company and officers or shareholders and the director had no benefit from doing so'.

30. The Tribunal noted that in his written response to the TDB dated 1 February 2019, his witness statement and in his oral evidence, the Defendant maintained that position. In paragraph 6 of his witness statement, the Defendant stated that after a discussion with Mr Maduakonam, he (i.e. Mr Maduakonam) said that he would send an email which he did and which referred to the particular revenue generation that Mr Maduakonam allegedly was going to generate. That was £12.8 million in the first year and £14.7 million in the second year with a projected revenue of £18 million.

31. The Tribunal was provided with a spreadsheet (the 'Spreadsheet') from Defendant on the first day of the hearing. The Tribunal noted that, in response to its questions, the Defendant confirmed that it set out the information that Mr Maduakonam needed in order to understand the financial viability of the project to which he was bidding to a customer

in Africa (the ‘Customer’). However, the Defendant explained that he proceeded to prepare the Accounts because it ‘looked better’ or words to that effect.

32. The Defendant was cross-examined at length on the figures in the Spreadsheet. It was pointed out that he had used rather more precise figures than one might expect if he was preparing a forecast of potential costs for a specific project. One example was the figure used for postage. In the spreadsheet the figure is £434.00. It was argued on behalf of the TDB that if the figures were simply estimates of likely costs, one would have used more rounded figures such £500.00 or £400.00.

33. The Defendant was also asked why the Spreadsheet included a figure of £91,961.35 for VAT when the handwritten note made by the Defendant during or following his meeting with Mr Maduakonam indicates that no VAT would be charged because the Customer was based in Africa.

34. The Defendant was cross-examined about the figures in the Spreadsheet for wages (i.e. £9,654,772) and social security (£4,677,459) and he confirmed that he used formulas in the cells of the Spreadsheet which explained why those figures appeared to be based on a percentage of the turnover.

35. The Tribunal had regard to the email, dated 10 April 2017, sent by Mr Maduakonam to the Defendant. It therefore pre-dated the note (which was made after the meeting on 9 May 2017).

36. In that email, Mr Maduakonam asks the Defendant to prepare a report based on revenue generation of 12.8 million in the first year, 14.7 million in the second year and a projected revenue of 18 million. The Defendant was asked whether there was another spreadsheet in addition to the one which the Defendant had provided to the Tribunal (given that the one before the Tribunal had much higher figures for income). The Tribunal noted that the Defendant was unable to recall saying, ‘I don’t know, it was 6 years ago’. He was asked about the evidence in his witness statement at paragraph 11 and he confirmed his statement was wrong.

37. The Tribunal noted that the Defendant said that he had a meeting with Mr Maduakonam for an hour on 9 May 2017 in which a handwritten note was produced and made available to the Tribunal. The Tribunal considered the handwritten note and the Defendant was

cross-examined on it. The Tribunal observed that the note referred to 'needs projections' and that the wages were the highest overhead. The Tribunal also observed that the handwritten noted stated "NO VAT as O/S client." However, the Spreadsheet included a figure for VAT (described as 'VAT applicable') at £91,981.35. The Panel was of the view that the inclusion of the amount for VAT was inconsistent with the figures in the Spreadsheet (and thereby the Accounts) being intended for internal use by a client in relation to a bid to a customer who was not liable for VAT. The Tribunal was of the view that the inclusion of the VAT figure was more consistent with the figures being an attempt to represent a financial picture for A Ltd for previous years and seeking to portray that the company had incurred a liability for VAT.

38. On 1 June 2017, the Defendant sent Mr Maduakonam an email in which he refers to attaching the projected financial statements for the deal.

39. On 2 June 2017, Mr Maduakonam sent an email to the Defendant stating:

'Thanks for the financial accounting. I thought I proposed something in the region of 25M, 35M or do you think its unrealistic. Also should there be two reports one for – 2015 – 2016, - 2016 – 2017. I would certainly prefer that. Once corrected I can send you the funds'.

40. The Tribunal was not provided with the attachment to the 1 June 2017 email or any reply to the 2 June 2017 email.

41. The Tribunal considered the evidence of the Defendant in relation to the signing of the Accounts. The confirmed that he met with Mr Maduakonam and that Mr Maduakonam signed one page of the Accounts in his presence and went on to say that that Mr Maduakonam could have signed the other paged when the Defendant "popped out to get a coffee."

42. The Tribunal had regard to the point made on behalf of the Defendant in that there were errors in the Accounts. However, the Tribunal noted that whilst there typed remarks and references in the Accounts, there was no written indication that they were not to be relied upon by a third party or that they were mere forecasts for client use only to evaluate the financial viability of a bid.

43. The Tribunal noted that there was no mark on the face of the Accounts or within the document(s) such as 'draft' which a reasonable person may expect to see to indicate that the Accounts were not finalised. There was no mark to indicate that they were for internal use only.

44. The Tribunal considered the questions asked of the Defendant regarding the use of the words, 'financial statements' to describe the Accounts rather than the words, 'management accounts.' The Tribunal noted that the Defendant had relied upon glitches in the software that he used to prepare the Accounts but also noted that there were no marks on the Accounts (by hand or electronic) to show that the figures in relation to historical dates (i.e. 2015 / 2016) were unintentional. The Tribunal was of the view that it would have been a relatively straightforward task to strikethrough the incorrect dates if the intention was for these to be figures to show the financial viability of future years if A Ltd was successful in its bid to the Customer.

45. In addition to concerns regarding the format of the Accounts and the absence of marks or words to indicate that they were not to be relied on, the Tribunal considered the evidence of Mr Maduakonam. The Tribunal found him to be an unconvincing witness. The Tribunal found that he was evasive in response to questions. He would answer a question with a question and seemed to be embarking upon a voyage of self-preservation to avoid allegations of criminality.

46. The Tribunal was careful not to tarnish the evidence of the Defendant by the quality of the evidence of Mr Maduakonam. However, the evidence exposed some stark inconsistencies which the Tribunal had to consider when evaluating the totality of the evidence before it.

47. The Tribunal noted that in Mr Maduakonam's witness statement where (at paragraphs 4 and 5) he stated that he wanted to know whether there would be any profit in the opportunity if his bid was successful. He also stated that he intended the production of the Accounts to be a "purely academic exercise" that would enable him to assess the viability of the government project. He stated at paragraph 6 that he gave the Defendant the figures and that they were an estimation of what the project would cost.

48. However, during oral evidence Mr Maduakonam was insistent that the Accounts were to provide some form of forecast for past years. Neither the Defendant nor Mr Maduakonam

argued that the Accounts showed what previous profits would have been if criteria (e.g. if A Ltd had work) had been satisfied. The Tribunal therefore struggled to see how a forecast of future income can be stated for previous years. It is, in the view of the Tribunal, an oxymoron.

49. The Tribunal noted that Mr Maduakonam insisted that the Accounts were not intended to be the price which A Ltd was suggesting to the Customer for the project. The Tribunal was of the view that this would be consistent with the email of 2 June 2017 when Mr Maduakonam asks the Defendant whether he thinks that the proposals in the region '25M or 35M' were unrealistic. Why would he need to ask the Defendant if they were realistic if they were Mr Maduakonam's proposed bid price?

50. Mr Maduakonam told the Tribunal that he did not have a trading history so the Customer told him to provide a forecast which he did, and that he sent it to the Customer. The Tribunal noted that this is inconsistent with the account given by the Defendant who was clear that the Accounts were not sent to anyone and were the costings for the potential bid to the Customer.

51. The Tribunal noted that the emails and handwritten note provided by the Defendant demonstrate that he had several conversations and exchanges of information with Mr Maduakonam. He had to change the draft (as per the email of 10 April 2017) and, in his oral evidence, he explained that he relied on instructions provided to him over the telephone as much, or even more so, than emails. The Tribunal concluded that this is consistent with a closer degree of working between the Defendant and Mr Maduakonam than the Defendant was seeking to portray.

52. The Tribunal did not accept that the dealings between the Defendant and Mr Maduakonam were at arms-length and it is more likely than not, when taken with the absence of any annotations on the Accounts as outlined above, that in not ending matters with the Spreadsheet (which was sufficient to provide Mr Maduakonam with the information he needed to assess the viability of a potential project) but proceeding to produce the Accounts, on the balance of probabilities, the Tribunal found that the Defendant intended that they would be presumed as being accurate by any third party (whether the Customer or someone else) reading the and therefore found, on the balance of probabilities, that Charge 1.2(a) proved.

Charge 1.2(b)

53. The Tribunal noted that in closing submissions, the TDB confirmed that it did not challenge the letter submitted by Mr Tekchandani. The Tribunal noted that the TDB made no submissions on the weight that the Tribunal should attach to the letter. Mr Tekchandani did not attend the hearing to give oral evidence and his letter is hearsay. However, the Tribunal noted that his letter was signed and he has provided an account of what he did on 9 June 2017.

54. The Tribunal noted that the TDB argued that the Accounts were deliberately submitted to Companies House so that they would have a bar code attached. It was suggested that the presence of a Companies House barcode would, in essence, add weight to the Accounts. It was suggested that the Accounts could be easily downloaded from the Companies House website and sent to another person. The Tribunal was of the view that to accept those submissions would go beyond drawing reasonable inference and stray into speculation.

55. The Defendant explained that he was out of the office but for reasons which were not fully explained to the Tribunal it became urgent to send documents to Companies House. He said that he called Mr Tekchandani who was in the office at the time to send the documents that were in his in-tray to Companies House. The Defendant's evidence is that a sticky note which he had placed on the Accounts (and which would have indicated that they should not be sent to Companies House) had fallen off which resulted in Mr Tekchandani mistakenly sending the Accounts to Companies House.

56. The Tribunal's attention was drawn to the inconsistencies in the Defendant's response to TDB's allegations and his evidence that it was because there was a month-end deadline for another client and further that on 9th June 2017 would not be a usual month-end deadline. However, the Tribunal concluded that overall, the TBD was inviting it to speculate about the timing of the posting of the Accounts to Companies House and noting that the burden of proof resting on the TDB, it simply had not proved its case.

57. The Tribunal was of the view that the Defendant had provided a plausible explanation as to how the Accounts came to be submitted to Companies House and therefore found that Charge 1.2(b) was not proved.

Charge 1.2(c)

58. In relation to Charge 1.2(c), the Tribunal noted that the charge is pleaded in the alternative which required it to form a view on the acts or omissions of the Defendant both in relation to the preparation of the Accounts and their subsequent submission to Companies House.

59. The Tribunal noted that a previous tribunal had found that Charge 1.1 was proved. That confirms that the Accounts were, as a fact, misleading and inaccurate.

60. This Tribunal had found, as per Charge 1.2(a), that the Defendant had prepared the Accounts with the intention that the Accounts would be presumed as being accurate by any third party reading them.

61. The Tribunal had regard to the actions taken by the Defendant in making the Accounts when the information (if the intent was to provide information for Mr Maduakonam only) could have been presented in the Spreadsheet and matters ended there.

62. Instead, the Defendant actively and intentionally proceeded to create the misleading and inaccurate Accounts. As already stated, he failed to mark or annotate the Accounts so that a reader of the documents would be aware of their misleading and/or inaccurate nature or that they were either forecasts or for internal use only, not to be relied upon or intended to create an artificial or fictious representation of the historical financial health of A Ltd. The Tribunal therefore concluded that it must follow that on the balance of probabilities, the Defendant failed to take reasonable steps to prevent the preparation of the Accounts.

63. The Tribunal considered the nature of the Defendant's acts or omissions in relation to the submission of the Accounts to Companies House in light of its acceptance of the plausibility of the explanation provided by the Defendant regarding how the Accounts came to be submitted to Companies House. This rests upon an apparently unreliable sticky note, a panicked phone call without providing specific instructions to a young apprentice and failing to mark documents clearly and more permanently to avoid a junior member of his staff misinterpreting his instructions and leaving the Accounts (which the Defendant was aware were misleading in an unsecure in-tray). Furthermore there was no evidence of a process to review that the correct filings had been made to Companies House. Therefore, the Tribunal concluded that on the balance of probabilities, the

Defendant failed to take reasonable steps to prevent the Accounts from being submitted to Companies House.

64. Therefore, the Tribunal found, on the balance of probabilities, Charge 1.2(c) proved.

Charge 1.3

65. As to Charge 1.3, the Tribunal was of the view that having found that the Defendant did not intend to submit the misleading and inaccurate Accounts to Companies House but failed to take reasonable steps to prevent their submission, it would be perverse to find that in light of an unintentional submission, the Defendant then acted disingenuously to cover his tracks (as suggested by the TDB). Further, the Tribunal was of the view that the Defendant's action in filing dormant accounts for A Ltd in an effort to correct a filing mistake upon discovering the that the Accounts had been submitted, was an equally plausible explanation for his actions. Therefore, the Tribunal concluded that Charge 1.3 is not proved.

Charge 1.4(a)

66. In relation to Charge 1.4(a), the Tribunal had regard to the overall course of dealings which the Defendant had with Mr Maduakonam. The Tribunal noted the emails that they had exchanged which showed that the Defendant was being asked to remodel the Accounts with different levels of income. The Tribunal noted that in those emails, Mr Maduakonam was not merely providing the Defendant with instructions, but he was asking the Defendant for his opinions. The Tribunal concluded that this, taken with the acceptance by the Defendant, of having several conversations with Mr Maduakonam and a meeting in which a note was made, shows that it was more likely than not that they were working closely together on the Accounts.

67. The Tribunal was of the view that it is implausible that with such a close degree of contact, that the Defendant was not aware that the Accounts were not mere forecasts. As stated herein, he could have stopped with the Spreadsheet as that would have provided Mr Maduakonam with the information he would have needed if this exercise was simply to forecast the financial viability of a potential bid.

68. As already stated, Mr Maduakonam was very clear that the Accounts were not a quote or financial proposal to the Customer. The Tribunal found him evasive as to the purpose of the Accounts in describing them as some form of forecast as to the historical performance of A Ltd. However, the Tribunal was of the view that given his remark that he knew that A Ltd did not have a trading history and that he told the Customer that and in response he says that the Customer needed something, it is reasonable to infer that whilst Mr Maduakonam may describe it as a 'forecast' what he was in fact doing is making up a financial picture of A Ltd for the years 2016 and 2017 which was simply fictitious and based on made-up figures.

69. The Tribunal concluded that the facts that the Defendant believed were (i) that the Accounts were intended to be sent to the Customer (and Mr Maduakonam said that they were sent) and (ii) he knew that they were not a true representation of financial health of A Ltd (having previously submitted dormant accounts for A Ltd at Companies House) yet he proceeded to create them and make no annotations about their inaccuracy or misleading nature. The Tribunal concluded that when considering these actions against the standards of ordinary decent people, even when noting that the Defendant is a man of good character, on balance of probabilities his conduct in relation to Charge 1.2(a) was dishonest. The Tribunal therefore found Charge 1.4(a) proved.

Charge 1.4(b)

70. The Panel was of the view that in finding that the Defendant has acted dishonestly in the preparation of the Accounts, this is conduct that is more likely than not that which is so serious as to amount to significant departure from what a member of the public would expect from a CIOT member. It was therefore conduct that would likely bring discredit to himself, the CIOT or to the members or any part of the membership or to the tax profession. Therefore, the Tribunal found, on the balance of probabilities, Charge 1.4(b) proved.

Charges 1.5(a) and (b)

71. In relation to Charges 1.5(a) and (b), the Tribunal concluded that having found Charge 1.2(c) proved both in relation to the preparation and the submission of the misleading and inaccurate accounts, which relates to him failing to take reasonable steps to avoid these outcomes, it follows that the Defendant has breached rule 2.6.1 of the PRPG 2018

by not taking due care and rule 5.1.1 by failing to act with reasonable skill and care. Therefore, the Tribunal found that, on the balance of probabilities, Charges 1.5(a) and (b) proved.

Charge 1.5(c)

72. The Tribunal had found, on the balance of probabilities, that in the preparation of the Accounts, the Defendant had acted intentionally and dishonestly and therefore it is conduct that is so serious that it goes beyond mere negligence. The Tribunal concluded that the failure to take steps to prevent the submission Accounts went beyond mere negligence because the use of sticky note was inadequate given that the Accounts were misleading and inaccurate and would be presumed to be accurate by a person reading them. The Tribunal drew the analogy of a safer container would be needed to transport a dangerous chemical than milk. Therefore, a reasonable person would expect someone in the position of the Defendant to take additional steps to prevent their submission given the serious consequences that could have arisen. In fact, this came about given that HMRC made a determination in relation to A Ltd. Therefore, the Tribunal concluded Charge 1.5(c) proved.

Sanction

73. Having Charges 1.2(a), 1,2(c) 1,4 and 1.5 proved, the Tribunal decided, in accordance with regulation 20.6 of the Regulations, what action, if any it should take.

74. In deciding on the appropriate sanction, the Tribunal considered the guidance contained in the TDB's Indicative Sanctions Guidance of December 2020 (revised January 2022 and May 2023) (the 'Guidance').

75. The Tribunal directed itself that in approaching the task that it should start by considering the least severe sanctions first and only consider more serious sanctions if satisfied that the lesser sanction was not appropriate.

76. The Tribunal noted that the purpose of imposing a sanction upon a member is not to simply discipline the individual or firm for any wrongdoing of which they or it may be culpable, but to protect the public and maintain the reputation of the profession by sending a signal as to how serious the Tribunal decides the conduct to be.

77. The Tribunal was informed that there had been no other findings and sanctions against the Defendant. The Tribunal also had regard to the age of the misconduct (i.e. some 7 years ago).

78. The Tribunal heard submissions on behalf of the TDB on the issue of sanction and heard mitigation on behalf of the Defendant. The Tribunal noted that the Defendant had chosen to contest the Charges and did nor express remorse or reflection. The Tribunal was of the view that the Defendant demonstrated little insight.

79. The Defendant had not provided any character references.

80. The Tribunal noted that the Guidance provided recommendations. As is often said, they were 'guidelines, not tramlines.' The Tribunal had discretion to move within a specific sanction guideline.

81. In relation to the breaches of the PRPG 2018 that arose out of Charge 1.4 (which in turn arose out of the misconduct in relation to Charges 1.1 and 1.2(a)) the Tribunal considered the guidance in Section 4 (7) (Unethical Conduct). The Tribunal had regard to the mitigating features of an absence of other disciplinary proceedings, no loss to a client, and the age of the misconduct. The Tribunal considered whether a significant fine and suspension would reflect the seriousness of the misconduct, but it concluded that that there was no compelling reason in this case to depart from the starting point of expulsion. The Tribunal arrived at this conclusion due to the dishonesty, lack of insight, lack of remorse, no evidence of and steps to prevent a repetition of the misconduct, whilst there was no loss to a client, there was a reliance by HMRC when it made its determination, and a lack of evidence demonstrating that the Defendant pushed back on unethical demands from Mr Maduakonam.

82. In relation to the breaches of the PRPG 2018 that arose out of Charge 1.5 (which in turn arose out of misconduct in relation to Charge 1.2(c)), the Tribunal was of the view that it had dealt with the sanction in relation to the preparation of the Accounts and therefore, in fairness to the Defendant, the Tribunal confined its consideration of sanction to the misconduct in relation to the submission of the Accounts to Companies House.

83. The Tribunal considered the submissions of counsel for the TBD and the Defendant. The Tribunal considered the Guidance at section 4 (4) (Failure to Take Due Care). The

Tribunal had regard to the mitigating features of an absence of other disciplinary proceedings, no loss to a client and the age of the misconduct. The Tribunal considered whether a warning would reflect the seriousness of the misconduct but it concluded that the nature of the Accounts as well as the circumstances by which they came to be submitted to Companies House was more than minor and therefore, there was no compelling reason to depart from the starting point of censure.

Costs

84. The Tribunal had regard to Annex C of the Guidance on the awarding of costs. The Tribunal also had regard to regulations 20.6(f) and 27 of the Regulations in dealing with a Defendant against whom a charge has been proved. The presumption that unsuccessful Defendant should pay costs is based on principle that the majority of professional members should not subsidise the minority who, through their own failing, have brought upon themselves in disciplinary proceedings.

85. The power to award costs is discretionary. The general principle required exceptional circumstances for a Tribunal not to award costs against an unsuccessful defendant. The Tribunal noted that the Defendant did not argue against the general principle of 'loser pays' but considered the Defendant's submissions on the schedule of costs provided by the TDB in relation to this hearing and the previous Disciplinary Tribunal.

86. The Tribunal accepted the Defendant's submissions on the need for an additional Investigation Committee after the Appeal Tribunal's decision. The Tribunal agreed that whilst it might have been a helpful step taken by the TDB, it was not held at the request of the Defendant. Therefore, it would be unreasonable for the Defendant to pay the costs associated with it.

87. The Tribunal also accepted the Defendant's submissions that the TDB had not succeeded on all points and a serious allegation of dishonesty in relation to the submission of the Accounts had not been proved. The Tribunal therefore took a broadbrush approach to the taxation of costs and reduced both cost schedules by 25%. It followed that the Defendant was ordered to pay the costs of the TDB in the sum of £4949.25 for this hearing and £4875 for the previous one. The total to be paid by the Defendant is £9824.25 and this is to be paid within 28 days.

Publication

88. The Tribunal noted the contents of Annex B of the Guidance on the publication of disciplinary and appeal findings and regulation 28 of the Regulations.

89. The Tribunal noted that the general principle is that any disciplinary findings made against the member would be published and the member named in the publication of the finding. The purpose of publishing such a decision was not to add further punishment for the member. It was to provide reassurance that the public interest was being protected and that where a complaint was made against a member of one of the professional bodies covered by the Taxation Disciplinary Scheme, there were defined, transparent procedures for examining the complaint in a professional manner and for imposing sanction upon a member against whom a disciplinary charge had been proved.

90. The Tribunal noted that the Defendant did not object to publication but asked any publication to be delayed until the time in which the Defendant could appeal had expired. The Tribunal agreed with the request.

91. The Tribunal ordered that, in accordance with regulations 28.1 of the Regulations, this order and these findings should be published as soon as practical after the 21-day appeal period which commences on the date on which the decision is sent to the Defendant. The finding would remain on the TDB website for a period of 3 years in accordance with Annex B of the Guidance.

92. This decision will take effect in accordance with regulations 20.9 and 21.1 of the Regulations.

Brett Wilson
Chair, Disciplinary Tribunal
Taxation Disciplinary Board

APPENDIX 1

Charge 1

1.1 On or around 10 June 2017 JV Accountants Ltd ("JVA") submitted a set of unaudited accounts ("the accounts") for A Ltd to Companies House in relation to the period ending 31 January 2017. The accounts were inaccurate and misleading, including in that: the accounts gave the impression of significant business activity by A Ltd for the periods ending 31 January 2016 and 31 January 2017, including recording significant turnover, profit before taxation, assets, and shareholders' funds;

(a) the accounts recorded the distribution of significant dividends;

(b) the accounts contained a report from JVA dated 8 June 2017 stating that the accounts were compiled from accounting records, information and explanations provided to JVA;

(c) the accounts contained a signed report dated 1 June 2017 from the Director purporting to relate to the business activity recorded in the accounts for the period ending 31 January 2017.

(d) Mr Verma: prepared the accounts, or caused the accounts to be prepared, with the intention that the accounts would be presumed as being accurate by any third party reading them; and/or

1.2 Mr Verma

(a) prepared the accounts, or caused the accounts to be prepared, with the intention that the accounts would be presumed as being accurate by any third party reading them; and/or

(b) intentionally caused the accounts to be submitted to Companies House, knowing that the accounts were inaccurate and misleading; or

(c) failed to take reasonable steps to prevent the preparation and/or submission of inaccurate and misleading accounts.

1.3 On a date after 2 October 2017 Mr Verma intentionally caused to be submitted to Companies House an AA02 'Dormant Company Accounts' form for A Ltd in respect of the period ending 31 January 2017, with the intention of giving the false impression that the submission of the accounts on or around 10 June 2017 by JVA had been in error.

1.4 Mr Verma's actions at paragraphs 1.2(a), (b), and/or 1.3 were:

(a) dishonest and in breach of rules 2.1 (the fundamental principle of integrity) and 2.2.1;

(b) in breach of rule 2.1 (the fundamental principle of professional behaviour) and 2.6.2 in that he failed to avoid any action which discredits the profession, and/or performed his professional work improperly to such an extent as to be

likely to bring discredit to himself, the CIOT, or to the members, or any part of the membership, or to the tax profession.

1.5. Mr Verma's actions at paragraph 1.2(c) were:

(a) in breach of rule 2.6.1 in that he failed to take due care in his conduct or professional dealings;

(b) in breach of rule 5.1.1 in that he failed to act with reasonable skill and care;

(c) in breach of rule 2.1 (professional behaviour) and 2.6.2 in that he failed to avoid any action which discredits the profession and/or he performed his professional work or conducted his practice inefficiently or negligently to such an extent as to be likely to bring discredit to himself, to the CIOT, or to the members, or any part of the membership or to the tax profession.

APPENDIX 2

2.1 Overview of the fundamental principles

A member must always comply with the following fundamental principles.

- **Integrity**
  To be straightforward and honest in all professional and business relationships.

- **Objectivity**
  To not allow bias, conflict of interest or undue influence of others to override professional or business judgements.

- **Professional competence and dur care**
  To maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation, techniques and act diligently and in accordance with applicable technical and professional standards.

- **Confidentiality**
  To respect the confidentiality of information acquired as a result of professional and business relationships and, therefore, not disclose any such information to third parties without proper and specific authority, unless there is a legal or professional right or duty to disclose, nor use the information for the personal advantage of a member or third parties.

- **Professional behaviour**
  To comply with relevant laws and regulations and avoid any action that discredits the profession.

In addition to the amplification of these fundamental principles below, a member must also comply with PCRT which provides detailed guidance on the tripartite relationship between a member, their client and HMRC.

2.2 Integrity

2.2.1 A member must always be honest in all their professional work. In particular, a member must not knowingly or recklessly supply information or make any statement which is false or misleading, nor knowingly fail to provide relevant information.

2.6 Professional behaviour

2.6.1 Professional behaviour encompasses a member's business dealing and in certain circumstances as set out below in 2.6.3, conduct in a member's personal life or private capacity.

2.6.2 A member must:

- Uphold the professional standards of the CIOT and ATT as set out in the Laws of the CIOT and ATT;
- Take due care in their professional conduct and professional dealings.

5.1 Duty of care

5.1.1 A member has a duty of care to their client which is recognised in law. A member must exercise reasonable skill and care when acting for a client. An engagement letter or other correspondence with the client may limit or define duty of care.