

**DISCIPLINARY COMMITTEE [BENCH – I (2019-2020)]  
[Constituted under Section 21B of the Chartered Accountants Act, 1949]**

**Findings cum Order under Rule 18(17) and Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007**

**[File No. PR- 50/13-DD/47/2013/DC/458/2016]**

**In the matter of:**

**Shri Raminder Singh Narang,  
S/o Sardar Harbans Singh Narang,  
C-201, Caitriona Apartments,  
Ambience Island, Gurgaon  
Nathupur (67),  
Gurgaon**

**...Complainant**

**Versus**

**CA. Pushpinder Aggarwal (M.No.086262)  
M/s Sharma Aggarwal & Co  
37/18, Lower Ground Floor,  
East Patel Nagar,  
New Delhi – 110 008**

**.....Respondent**

**MEMBERS PRESENT:**

**CA. Prafulla Premasukh Chhajed, Presiding Officer,  
Shri Jugal Kishore Mohapatra, I.A.S. (Retd.) (Government Nominee)  
Ms. Rashmi Verma, I.A.S. (Retd.) (Government Nominee)  
CA. Babu Abraham Kallivayalil, Member  
CA. Dayaniwas Sharma, Member**

**DATE OF FINAL HEARING/ORDER : 23.05.2019**

**PLACE OF FINAL HEARING/ORDER : ICAI, New Delhi**

**PARTIES PRESENT:**

**Complainant : Not Present  
Respondent : CA. Pushpinder Aggarwal  
Counsel for the Respondent : CA. C.V. Sajan**

**FINDINGS:**

1. The Committee noted that on the day of hearing, the Complainant was not present. The Respondent was present along with his Counsel. Since the Complainant was absent without any prior intimation, the Committee decided to proceed ahead with the matter ex-parte the Complainant. The Counsel for the Respondent decided to defend his case. Thereafter, the hearing in the matter commenced. The Counsel for the Respondent made his submissions on the charges. The Committee raised questions to the Counsel for the Respondent. After hearing the final submissions, the Committee decided to conclude the hearing in the matter.

2. The Committee noted that the Complainant had made number of allegations against the Respondent in his complaint but the Respondent was held prima facie not guilty by the Director (Discipline). However, the Board upon consideration of the Prima Facie Opinion did not agree with the prima facie opinion of the Director that the Respondent is Not Guilty of other and/or professional misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule and Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The Board, accordingly, decided to refer the matter to Disciplinary Committee to proceed under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

2.1 As regard the charge which was referred by the Board of Discipline to the Disciplinary Committee for further enquiry, it is noted that the return of income was recently revised by the firm within stipulated period prescribed under the Act, after adding back partners' salary as business profits. The Company also deposited differential tax to correct the apparent mistake committed during return of income originally filed for Assessment Year 2011-12. Although the Respondent made a reference to the same in Form-3CD at point 17 (G) showing the salary credited to partners' account as inadmissible under Section 40(b), yet he did not comment upon the same in the main part of his audit report and, thus, affecting the true & fair view of the financial statements.

3. In respect of above charge, the Respondent through written submissions as well as verbal submissions before the Committee stated that reporting about inadmissible salary to partners under Section 40(b) was duly made in clause 17(g) of Form

No.3CD. As per the Respondent, the word “inadmissible” implies that the tax auditor will have to examine the facts, apply the conditions for allowance or disallowance and accordingly determine the prime facie inadmissibility of the deduction and also quantify the same. However, it is nowhere provided where such expenses are disallowed, the same are also required to be reported in the Audit Report, otherwise, it will affect the True and Fair view. It is not under the aforesaid clause, in none of the other clauses of Form 3CD and the Guidance Note has laid that the disallowance made be also reported in Form 3CA / 3CB.

- 3.1 The Respondent also stated that merely because of any of the transactions recorded in Financial statements was disallowed under the provisions of Income Tax Act, 1961, the same cannot be contemplated as qualificatory in nature or Misstatement emanated due to fraud or error which may affect True and Fair view of Financial Statements. All the issues highlighted in the Annexure 3CD are the subject matter covered under the provisions of the Income Tax Act due to violation of various section of the said act or any other Law and not otherwise which are to be reported.
- 3.2 The Respondent further stated that true and fair view was not affected by not reporting the financial impact in the Audit report as the same was concluded based upon the Substance over Form where the partner’s capital at the year-end remained unaffected by either crediting the capital account through corresponding debit in the name of salary to partners and transferring the profit after partners salary thereafter or transferring the profit without accounting partners salaries, the substance remained the same. None of the partners gained to the loss of the other where Law of Equity prevailed.
- 3.3 Any transactions routed through Profit and Loss Account or Balance Sheet may suffer Income Tax under the provisions of the said Act & merely suffering of Income Tax in respect of certain transactions would not become sole parameter to justify that all such transactions are required to be reported in the Audit Report and impact be quantified because the same are not covered under the ambit of misstatement due to fraud or error which affects true & fair view of Financial Statements.
- 3.4 The observations /comments/discrepancies/inconsistencies required to be reported in Audit Report cannot be put in two baskets one containing all issues which are qualificatory in nature or affecting true and fair view and the other containing the financial figures of all the disallowances under the relevant act to facilitate the

assesse to file the return of Income. The same is also not in line with the Guidance Note issued by ICAI.

4. The Committee after perusal of the submissions on record noted that in clause 17(g) of Form 3CD, the Respondent duly mentioned the amount of salary to partners which was inadmissible under Section 40 (b) of the Income Tax Act, 1961. The Respondent claimed that particulars of every disallowance as reported by the Statutory Auditors in Form 3CD is not required to be reported by the Auditors in his Tax Audit report as it does not affect the true & fair view and reporting format as applicable at that time did not require reporting of disallowance or inadmissible amount of salary in main tax audit report. The Committee agreed with the submissions of the Respondent that format of Tax audit report as applicable at that time in 2011 does not requires auditor to report about the disallowance or inadmissible amount of item as given in the Form No.3CD and in annexure thereto.
- 4.1 Further, it is noted that the format of tax audit report has undergone significant changes in the year 2014 which requires an auditor to mention his observation or qualification in respect of particulars furnished in Form No.3CD also. However, such specific requirement was not applicable for the tax audit for the financial year 2010 - 2011. Hence, keeping in view the reporting requirement applicable in the financial year 2010-11, reporting made by the Respondent in Form No.3CD and in absence of any apparent material misstatement, the Committee is of the view that since there was no specific requirement of reporting in main tax audit report about disallowance or inadmissible amount as furnished in the statement of particulars in Form No. 3CD, the Respondent cannot be held guilty of professional misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule and Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
- 4.2 It is further observed that service of filing return of income is separate professional activity and if revised return of income is filed by the Assessee after adding disallowance of income as reported by the statutory auditor in Form no. 3CD, the statutory auditor cannot be held liable for the same. .

**Conclusion**

5. Thus in the considered opinion of the Committee, the Respondent is **Not GUILTY** of professional misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule and Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
- 5.1 Accordingly, the Committee passes an Order for closure of this case under Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of cases) Rules, 2007.

**Sd/-**  
**(CA. PRAFULLA PREMSUKH CHHAJED)**  
**PRESIDING OFFICER**

**Sd/-**  
**(SHRI JUGAL KISHORE MOHAPATRA, I.A.S. (Retd.))**  
**GOVERNMENT NOMINEE**

**Sd/-**  
**(MS. RASHMI VERMA, I.A.S. (Retd.))**  
**MEMBER**

**Sd/-**  
**(CA. BABU ABRAHAM KALLIVAYALIL)**  
**MEMBER**

**Sd/-**  
**(CA. DAYANIWAS SHARMA)**  
**MEMBER**

**DATE : 03<sup>rd</sup> February, 2020**  
**PLACE : New Delhi.**