

CONFIDENTIAL

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.

[Ref. No.PR-122/14-DD/131/14/DC/563/2017]

In the matter of:

**Shri Uday Narayan Gupta,
208, Pocket D,
Mayur Vihar Phase – 2,
Delhi – 110 091**

.....Complainant

Versus

**CA. Satish Chandra Sharma,
L-103, IInd Floor,
Lajpat Nagar - II,
NEW DELHI – 110 024**

.....Respondent

MEMBERS PRESENT:

**CA. Prafulla Preme Sukh 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 : 28.08.2019

PLACE OF FINAL HEARING : ICAI, New Delhi

PARTIES PRESENT:

Complainant : Shri Uday Narayan Gupta

Counsel for the Complainant : Shri D.C. Atri,

Respondent : CA. Satish Chandra Sharma

Counsel for Respondent : CA. C.V. Sajan

Brief of the Disciplinary Proceedings:-

1. The Committee noted that first hearing fixed on 23rd May, 2019 in the above matter was adjourned due to paucity of time.
- 1.2 On the date of second hearing i.e. 28th August, 2019, the Complainant along with his Counsel was present. The Respondent along with his Counsel was present. The Complainant and the Respondent were put on oath. The Respondent confirmed the receipt of the prima facie opinion in the matter. On being enquired from the Respondent as to whether he is aware of the charges levelled against him, the Respondent replied in affirmative and pleaded not guilty to the same. With the consent of the parties, the Committee decided to continue further in the matter. Thereafter, the Counsel for the Complainant made submissions to substantiate the charges and the Counsel for the Respondent made his submission in defence. The Committee also raised questions to the Complainant and the Respondent. After hearing the final submissions, the Committee decided to conclude the hearing in the above matter.

Brief of the Charges and findings of the Disciplinary Committee:-

2. As regard the facts of the case, the Committee noted that the Complainant had served in M/s Accord Financial Services (hereinafter referred to as the “**Firm**”) as Head of IT from 11.08.2006 to 31.12.2009. During the tenure of his service, the Complainant advanced a loan of Rs 3,60,000/- to the firm on its request. The Complainant left the service of the firm on 31.12.2009 after process of resignation. He was given his final dues along with statement giving details of income and tax deducted as per rules of the Firm on 14.02.2010. The Respondent was the tax auditor of the firm for the financial year 2007-08 and issued the tax audit report on 29th September, 2008. The charge of the Complainant is that the Respondent as the tax auditor of the firm for the financial year 2007-08 did not exercise due diligence and failed to report about the alleged irregularity in the non-payment of loan amount dues from the firm to the Complainant and the payment of conveyance allowance to the Complainant. Also, balance to the tune of Rs.26,000/- was standing as loan and advance recoverable from the Complainant in the Balance Sheet of the Firm for the F.Y. 2007-08.
3. The Committee noted that the Complainant through his verbal as well as written submissions made the following contentions to substantiate the charge against the Respondent:-

3.1 The Complainant stated that the Respondent was tax auditor of the firm and signed the balance sheet of the firm. The Hon'ble High Court of Delhi also did not agree on their submissions on incentive issues. On being enquired from the Complainant as to whether he had submitted copy of the said order, the Complainant replied in negative and stated that he has submitted copy of order of lower court. The Complainant stated that the Respondent has submitted that the firm had given Rs.73,333/- to the Complainant for conveyance reimbursement but the Respondent has given different details before different forums and he has changed the nature of conveyance expenses. Sometimes it has been referred as fixed conveyance or reimbursement of conveyance or conveyance allowance.

3.2 The Complainant stated that it has been admitted by the Respondent that the firm owed an amount of Rs.360000/- including Rs.65000/-. Moreover, an amounts of Rs.22000/- cash, Rs.25000/- have not been treated as refund of loan by the Court. An Amount of Rs.73,333/- has also not been treated as reimbursement of conveyance by the Court. The Complainant stated that as to how the Respondent can sign the balance sheet without verifying vouchers and not mentioning the amount of Rs. 22000/- in tax audit reports.

3.3 The Complainant stated that the fact is that he did not receive Rs.22,000/- in cash and Rs.20,000/- and Rs.18000/- as refund of loan. The amount of Rs. 20,000/- and Rs.18,000/- actually represent the refund of expenditure incurred by the Complainant out of his pocket for purchase of old hardware & tools and website design & development. By not giving explanation, the amount of Rs.89,617/-, Rs.100,950/- and Rs.73,333/- the Respondent has admitted that no vouchers were prepared.

3.4 The Complainant denied that any amount of Rs. 26,000/- is recoverable from the Complainant as on 31.03.2008 and stated that question of recovery of the same through two cheques of Rs.13000/- each does not arise at all.

4. The Respondent through his verbal as well as written submissions made the following submissions to defend his case:-

4.1. The Respondent stated that it is a fact that the Complainant had dispute with his former employer and the said dispute has been settled in the Court and the firm has

obtained order in its favour. The Complainant went on the appeal in the District & Session Court, Saket, Delhi and the said appeal was wholly rejected. Thereafter, the Complainant approached the Hon'ble High Court and the same was also rejected with a cost of Rs.10,000/-.

4.2 The Respondent stated that from the orders of the different Courts and the documents on record, it is clear except Rs. 22,000, all transactions were made through cheques. As regard the issue of pointing out the cash payment under Section 40(A)(3) of the Income Tax Act, 1961, the Respondent stated that since cash payment of Rs.20,000/- was not for expenses, the said payment is not covered under Section 40(A)(3) of the Income Tax Act, 1961. It was a payment of advance to the Complainant which was recovered later. The Respondent also stated that the accounts were prepared on tally and accordingly, vouchers were also maintained in the tally. Hence, no signed vouchers could have been produced in the Court. The Hon'ble Courts has not said that the firm has to pay the money to the Complainant.

4.3 The Respondent stated that as per information provided by the firm, CIT(A)-18, New Delhi had granted relief vide order appeal no.18/10057/2016-17 dated 29.04.2017, by deleting the additions made by the Assessing Officer.

5. After taking into the account the submissions of the parties and after perusal of the documents on record, the Committee observed from the order dated 01.12.2016 of the District & Session Court, Saket, New Delhi that the Complainant had filed a suit for recovery of Rs.1,97,200/- along with future interest @ 18% per annum from the firm. In the suit, the Complainant claimed that he had advanced a loan of Rs.3,60,000/- to the firm. The Complainant admitted in the suit that he had received a sum of Rs.3,37,000/- in partial discharge of the loan and his final settlement towards incentive. The Complainant further claimed that Rs.2,15,000/- had been paid towards partial refund of loan whereas Rs.1,22,000/- had been paid towards the incentives. Thus, according to the Complainant, a sum of Rs.1,45,000/- was due and payable to him.

5.1 On the contrary, the firm submitted before the District & Session Court that the entire loan amount of Rs.3,60,000/- had been fully repaid to the Complainant. The District & Session Court, Saket, New Delhi ordered that no amount is payable by the firm to the Complainant and the appeal of the Complainant was dismissed. The Committee further

noted that the Complainant moved the Hon'ble High Court of Delhi against the order of District & Session Court, Saket, New Delhi and filed appeal against the order. However, the said appeal was dismissed by the Hon'ble High Court of Delhi.

5.2 In view of the above orders of the Hon'ble Courts refusing the claim of the Complainant about his outstanding loan recoverable from the firm, only charge which survives before the Disciplinary Committee was that whether cash payment made by the firm was disclosed in the tax audit report or not. The Respondent stated that only one payment of Rs.20000/- was made in cash and that too was not made against the expenses. The Respondent's defence was that since the amount was given as loan to the Complainant, the same was not required to be disclosed under Section 40A(3) of the Income Tax Act, 1961. The Respondent also brought on record that addition of income made against the firm on account of disallowance of conveyance reimbursement to employees was deleted by the Income Tax (Appeal). In this regard, it is observed that the Complainant could not bring any evidence contrary to the said claim made by the Respondent.

5.3 The Committee observed that the preparation of the financial statement was the primary responsibility of the management of the firm and the Respondent was required to give its report under the provisions of the Income Tax Act, 1961. On perusal of the ledger account brought on record by the Respondent, it is noted that except Rs.22,000/- all other amounts appears to have been received and paid through cheques to the Complainant. It is also seen that there was nothing on record to show that cash payment made to the Complainant of Rs.22,000/- was in the nature of expenses and consequently, the Respondent was required to report the same under Section 40(A)(3) of the Income Tax Act, 1949. Further, it is viewed that the amount under question was not material that would affect the true & fair view of the financial statement. Accordingly, the Committee decided to hold the Respondent not guilty with respect to the charges levelled against him.

Conclusion

6. Thus in the considered opinion of the Committee, the Respondent is **NOT GUILTY** of professional misconduct falling within the meaning of Clauses (7) & (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

6.1 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.))
GOVERNMENT NOMINEE

Sd/-
(CA. BABU ABRAHAM KALLIVAYALIL)
MEMBER

Sd/-
(CA. DAYANIWAS SHARMA)
MEMBER

DATE : 03rd February, 2020

PLACE : New Delhi