

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2019-2020)]

[Constituted under Section 21B of the Chartered Accountants Act, 1949]

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

Ref. No. PR-160/15-DD/151/15/DC/904/18

In the matter of:

**Shri Satish Jagannath Shrivastava,
Prop. M/s. Ajantha Tarders,
Jai Stambh Chowk,
AT & PO Morshi,
Distt. Amravati,
Maharashtra**

.....Complainant

-Vs.-

**CA. Brijesh Wasudeorao Phafat (M.No.112468),
2nd Floor,
Gulshan Arcade,
Railway Station Square,
Amravati - 444601**

.....Respondent

MEMBERS PRESENT:

**CA. ATUL KUMAR GUPTA, PRESIDING OFFICER,
SHRI RAJEEV KHER, IAS (RETD.), GOVT. NOMINEE
CA. RAJENDRA KUMAR P, MEMBER,
CA. CHANDRASHEKHAR VASANT CHITALE, MEMBER**

DATE OF FINAL HEARING : 29.05.2019

PLACE OF FINAL HEARING : ICAI Tower, Bandra Kurla Complex, Mumbai

PARTIES PRESENT:

Complainant : Not Present

Respondent : CA. Brijesh Washudeorao Phafat

CHARGES IN BRIEF:-

1. The Committee noted that the crux of the charges levelled against the Respondent was that that the Respondent who was appointed to appear before the Income Tax Officer and thereafter before Commissioner of Income Tax (Appeals), did not attend the hearings before ITO, Amravati and CIT (Appeals). Further, Revision appeal before the Commissioner of Income Tax (Appeals) was not filed on time. The Respondent was negligent in performing his professional duties and his unethical attitude and working style has placed the Complainant in financial crisis and mental harassment.

BRIEF OF THE PROCEEDINGS:-

2. The Committee noted that the Complainant was not present. The Respondent was present. Since the Complainant was absent without any prior intimation, the Committee decided to continue with the proceeding ex-parte the Complainant. The Respondent was put on oath. On being enquired from the Respondent as to whether he is aware of the charges levelled against him, the Respondent replied positively and pleaded not guilty to the same. The Respondent made his submissions on the charges and the Committee also posed questions to the Respondent. After hearing the final submissions, the Committee decided to conclude the hearing in the matter.

FINDINGS OF THE COMMITTEE

3. In respect of above charge, the Respondent through his written submissions as well as oral submissions before it, stated that the Complainant approached him for submission of Income tax returns only and he has not done work of accounting. The assignment of appearance before the Income tax authority / Appellate Authority as Counsel is different assignment. He stated that mere submission of return does not mean that he had taken all the responsibility of the client for assessment / Appeal and Revision.
- 3.1 The Respondent also stated that the Complainant was required to submit timely all the data and information for disposal of the Assessment but the Complainant did not do the same. The Income tax authority picked up the case under CASS for cash deposit in bank account and to appear before the authority, it was necessary to have the copy of the

bank accounts and sale bills but the same was not made available to him during the course of assessment. The Respondent stated that at the time of last hearing held on 31.10.2011, he could not appear before the Income Tax officer due to surgery of his mother at Nagpur. They preferred the revision appeal U/s 264 of the Income Tax Act and submit the application along with delay condonation but unfortunately on the date of hearing, his father in law died. He informed the said fact to the Complainant on mobile phone. On the next date of hearing, on the way to the place of hearing venue from Nagpur, his vehicle broke down and he could not reach at hearing venue. However, the Assessee (the Complainant) was there and he over phone guided him and the Assessee has submitted all the written submissions.

3.2 The Respondent also stated that he prepared writ petition for high court and the high court allows in favour of the Complainant. The Respondent in his final submissions stated that he complied with all the professional duties but on 2-3 times he was unable to attend due to situations beyond his control and for which he informed the complainant. He also stated that the matter was closed by the department and the Complainant has received back his money and he has no grievance against him.

4. Keeping in view the above submissions and facts on record, the Committee noted that it is a case where the Respondent failed to appear before the Income Tax Officer and Commissioner of Income Tax (Appeal) due to unavoidable circumstances beyond his control and he has informed his inability in attending the hearing due to the aforesaid circumstances. As regard the delay in filing of revision appeal, the Respondent stated that at that time he could not attend his office for the entire year due to his medical treatment. In view of above, though questions may be raised on the conduct of the Respondent due to non-attending of hearing on 2-3 times yet keeping in mind as brought on record by the Respondent that he provided his services in filing writ petition before the Disciplinary and got the favourable order whereby the Complainant recovered his all money, benefit may be granted to the Respondent. Accordingly, the Committee decided to hold the Respondent not guilty to the Respondent.

4.1 However, the Committee is also of the view that in view of the benefit granted in the matter, he needs to be more careful in discharging his professional duties and accordingly, it

decided to issue a letter of caution to the Respondent for the same to be more careful in future.

Conclusion

5. Thus in the considered opinion of the Committee, the Respondent is **NOT GUILTY** of professional misconduct falling within the meaning Clause (7) 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 (Procedures of Investigations of Professional and Other Misconduct and Conduct of cases) Rules, 2007.

Sd/-
(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER

Sd/-
(SHRI RAJEEV KHER, IAS (Retd.),
GOVERNMENT NOMINEE

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-
(CA. CHANDRASEKHAR VASANT CHITALE)
MEMBER

DATE : 16.12.2019
PLACE : NEW DELHI