

**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 (Procedures of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007**

**Ref. No. PPR/P/107/14/DD/81/INF/14-DC/782/18**

**In the matter of Information treated against:**

**CA. Vinod Kumar Bindal,**

503, Dalamal Chambers,

29, New Marine Lines,

**MUMBAI - 400 020**

**.....Respondent**

**MEMBERS PRESENT:**

**CA. ATUL KUMAR GUPTA, PRESIDING OFFICER,**

**CA. AMARJIT CHOPRA, GOVERNMENT NOMINEE**

**CA. CHANDRASHEKHAR VASANT CHITALE, MEMBER**

**DATE OF FINAL HEARING : 25.06.2019**

**PLACE OF FINAL HEARING : ICAI Tower, BandraKurla Complex, Mumbai**

**PARTIES PRESENT:**

**Respondent : CA. Vinod Kumar Bindal**

**CHARGES IN BRIEF:-**

1. Before going through the charge levelled against the Respondent, as regard the brief of the case, the Committee noted that Special Audit u/s 142(2) for A.Y. 2006-07 in respect of FBT assessment of M/s. Jet Airways (India) Ltd. (hereinafter referred to as the “**Company**”) Mumbai was approved by the Hon’ble CIT-5, Mumbai vide letter No. CIT-5/Spl.Audit/142(2A)/2008-09 dated 23.12.2008. The Respondent was appointed as Special Auditor. The terms and conditions for total audit fee and period of completion was decided after negotiation with the Respondent by the Competent Authority. The Special Audit was completed by the Respondent from 02.02.2009 to 23.06.2009 and the report was submitted to the Competent Authority. On the basis of Special Audit Report, the assessment of the Assessee Company for the calculation of Fringe Benefit Tax were reopened u/s 115WE(3) for A.Y. 2006-07, 2007-08 and 2008-09. The Respondent as a Special Auditor in his report for A.Y. 2006-07 has given a categorical finding that the Company has issued 2,48,334 free / concessional tickets to its employees. The Special Auditor has taken the average value of each free/concessional ticket at Rs.5,510/-. Further, Special Auditor has submitted that during the year under consideration, the Assessee has issued total free / concessional ticket 2,48,334. Subsequently, it came to notice that the Respondent submitted a supplementary audit report. As regard the charge, it is noted that the following charge was levelled against the Respondent:-

- i) The Respondent has done professional misconduct by carrying out a supplementary audit without mandate. He clearly violated the term and condition signed with him. Further, the Respondent had not forwarded copy of the report to the Office of Dy. Commissioner of Income Tax or Addl. CIT or CIT.

**BRIEF OF THE DISCIPLINARY PROCEEDINGS:-**

2. The Committee noted that on the day of hearing held on 25.06.2019, the Respondent was present. The Respondent was put on oath. On being enquired from the Respondent as to whether he is aware of the charges, the Respondent replied positively and accordingly, the charges were taken as read on record. The Respondent pleaded not guilty to the charges. The Respondent made his submissions and the Committee posed questions to the Respondent. After hearing the submissions, the Committee concluded the hearing in the above matter.

## **FINDINGS OF THE DISCIPLINARY COMMITTEE**

3. The Committee noted that the charge was that the Respondent carried out supplementary audit without any mandate for the same. In respect of the charge, the Respondent stated that he has not misled the Department of Income Tax as well as the Appellate proceedings before the CIT(A). He stated that in the appellate proceedings before the CIT(A), the Company furnished the details relating to tickets issued at concessional rates which as admitted by the Company, was never shown to the Respondent at the time of audit u/s 142(2A) of the Income Tax Act, 1961. Subsequently, a letter was written by the assessing officer, the DCIT – 5(2), Mumbai holding jurisdiction on the Company to the then CIT (A), Mumbai on 11.07.2012 in response to the remand proceedings pending with him for verification of the details furnished by the Company in the first appellate proceedings.
4. The Respondent stated that in the said letter dated 11/07/2012, the Assessing Officer categorically stated that *“in nutshell, the auditor has found that the assessee Company has issued 2,48,334 concessional tickets valued at Rs.136,83,20,340/-. During the course of audit and assessment proceedings, assessee never produced any breakup of these concessional tickets issued to the employees. During the course of appellate proceedings, the assessee company has submitted that during the course of audit under Section 142(2A) of the Act, the details of free / concessional tickets provided to the employees as submitted to the Special auditors were erroneous since the said data inadvertently included free / concessional tickets issued to agents, tour agents, military discounts tickets, group discount tickets etc. which are not liable to fringe benefit tax....”*
- 4.1 Further, the Assessing Officer of the Company also suggested that fresh evidence / details submitted by the Assessee may be forwarded to the Special Auditor for his comments, for deciding the pending appeals. The aforesaid letter was forwarded by the assessing officer, DCIT through proper channel i.e. through his immediate superior, the Addl. CIT, Range 5(2), Mumbai to the then CIT (A)-9, Mumbai and a copy of the same was also marked to the then CIT-5, Mumbai. Thus, it is absolutely incorrect to presume that the supplementary verification of the said information was undertaken at his end without any authorization from the assessing officer and his superiors in the department. It was well within their knowledge right through the entire exercise. Rather, it was commenced only after the Income Tax Department expressly desired in writing.

4.2 The Respondent also stated that another letter was also written by the then Addl. CIT Range 5(2), Mumbai on 13/07/2012 to the CIT (A), Mumbai bearing reference no. Addl. CIT / R-5(2)/ Remand Report / 2012-13, making a specific request to the CIT (A), Mumbai that in the interest of justice, the appeal of the assessee may kindly be allowed to be decided on merits after receipt of report from the Special Auditor. This letter was also sent to the then CIT-5, Mumbai who never objected to such action of the assessing authority and of his immediate supervising authority. Hence, it was within the knowledge of the departmental officers that a Supplementary Audit Report needs to be obtained by the Company from the Special Auditors after verification of its claim.

5. Upon perusal of the documents on record and submission of the Respondent, the Committee noted that during the course of assessment proceedings, the Assessee pleaded before the DCIT (the Assessing Officer) that certain details of free / concessional tickets were not submitted to the Special Auditor at the time of Special Audit under Section 142(2A) of the Income Tax Act, 1961. Upon hearing such pleading and finding certain deficiencies, the Assessing Officer vide his letter dated 11/07/2102 addressed to CIT(A), Mumbai, suggested that the new facts to be verified by the Special Auditor by way of supplementary auditor report. He sent copy of this letter to CIT-5, Mumbai also for information. It is noted that the Respondent had been appointed as Special Auditor and he submitted supplementary audit report to the Assessee as per provisions of Section 142(2A) of the Income Tax Act, 1961. Accordingly, the Committee is of view that once the appointing officer himself bring on record that fresh evidence / details may be verified by the Special Auditor only, it cannot be stated that the Respondent acted on his own and submitted his supplementary audit report.
6. Apart from above, it has been brought on record by the Respondent that no additional fees has been charged by him for carrying out supplementary audit as per directions of the Assessing Officer. Hence, there was no malafide intention has been proved against the Respondent despite the fact that liability of tax on FBT came down considerably. Thus, the Committee decided to extend benefit of doubt to the Respondent in the instant matter. Accordingly, the Committee decided to hold the Respondent Not Guilty of Professional Misconduct falling within the meaning of

Clauses (5), (6) & (7) of Part I of Second Schedule and Other Misconduct falling within the meaning Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

**CONCLUSION**

7. Thus, taking an overall view of the facts and circumstances of the case and based on the submissions / documents placed on record before it, in the considered opinion of the Committee, the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Clauses (5), (6) & (7) of Part I of Second Schedule and Other Misconduct falling within the meaning Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

7.1. 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. ATUL KUMAR GUPTA)  
PRESIDING OFFICER**

**Sd/-**

**(CA. AMARJIT CHOPRA)  
GOVERNMENT NOMINEE**

**Sd/-**

**(CA. CHANDRASEKHAR VASANT CHITALE)  
MEMBER**

**DATE : 16<sup>th</sup> December, 2019  
PLACE : New Delhi**