

DISCIPLINARY COMMITTEE [BENCH – II (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. [PPR/P/87/14/DD/21/INF/15/DC/658/17]

In the matter of:

CA. M. Gandhi (M. No.022958)
No.-48, Lavelle Road,
Hitnada Building,
Mezzanine Floor,
BANGALORE-560001

.....Respondent

MEMBERS PRESENT:

1. CA. Atul Kumar Gupta, Presiding Officer
2. CA. Amarjit Chopra, Government Nominee
3. CA. Rajendra Kumar P, Member
4. CA. Chandrashekhar V. Chitale, Member

DATE OF FINAL HEARING : 03.07.2019
PLACE OF FINAL HEARING : ICAI, CHENNAI

PARTIES PRESENT:

Respondent : CA. M. Gandhi

Charge in brief:-

1. The only allegation of the Informant (i.e. Income Tax Department, Bangalore) against the Respondent is that he as the Tax Auditor of the assessee Company i.e. M/s. Bhoruka Power Corporation Ltd. for Financial Years 2011-2012 and 2012-2013 had failed to report the instances where assessee Company had deducted the tax at

source under various heads but did not remit the same to the Central Government within the time prescribed under Rule 30 of the Income Tax Rules.

Brief of Proceeding :

2. The Committee noted that the Respondent in person was present and appeared before it. Since this was the first hearing, the Respondent was put on oath. As it was an information case, the office explained the charges to the Respondent and being enquired by the Committee, he plead not guilty and wish to defend the charges.

2.1 The Respondent made final submissions before the Committee in his defense. After recording the submissions of the Respondent, the Committee concluded the hearing in the caption matter.

FINDINGS :

3. The Committee noted that a letter from the Deputy Commissioner of Income Tax, (Circle16/1) Bangalore dated 25/08/2014, addressed to the President, ICAI was received on 05/09/2014, which is the basis of this proceedings against the Respondent.

3.1 The said Deputy Commissioner of Income Tax vide his said letter alleged that the Respondent, a Chartered Accountant based at Bangalore had wrongly certified in Tax Audit Report, Form 3CD that there is no TDS default at the end of the Company for Assessment Years 2012-13 or 2013-14, whereas the Company in question M/s. Bhoruka Power Corporation Ltd. had remitted TDS to the account of the Central Government beyond the due dates.

3.2 On receiving the aforesaid letter, Informant was requested by the Disciplinary Directorate vide letter dated 22nd October, 2014 to file the complaint in prescribed Form '1' in triplicate, duly signed and verified, giving particulars as required in the said form, but the Informant did not file the same in prescribed form to the Directorate despite reminder letter dated 17th December, 2014.

In absence of the formal complaint and on an overall examination of allegations, the matter was treated as “information” within the meaning of Rule 7 of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

3.3 After that in accordance with the provision of Clause (b) of sub-rule (1) of Rule (8) read with Rule 11 of the aforesaid Rules, an “Information” letter dated 15th April, 2015 containing the allegations and supporting documents was sent to the Respondent to submit his written statement. In reply, the Respondent vide his letter dated 07th May, 2015 submitted that:-

“There were several occasions, where assessee Company has deducted taxes under various heads but did not remit the same to the Central Government within the time prescribed under Rule 30 of the Income Tax Rules 2007.

There were few occasions where the tax was deducted and was remitted beyond the due date for which the assessee Company has paid the interest upto the date of the payment on its own and remitted to the Government, which was also shown in the statement. On verification of the records the majority of the TDS remittances were made in time. Based on scrutiny, the Respondent has reported in the form 3CD report that “The assessee has generally complied with the provisions of the chapter” and the Respondent also qualified that based on the selective checking, he has not come across any instance of non-compliance. The Respondent has never said that all TDS Remittances were made in time as prescribed under Rule 30 of the Income Tax Rules.

The Respondent also submits that no opportunity was given to him by Informant before this letter addressed to the President of ICAI. The Respondent also submits that he is not aware about the documents relied upon by the Informant on the basis of which the Disciplinary Directorate has initiated the proceedings”.

3.4 The Committee finds that the Respondent has led positive evidence to the fact that there was a delay in remittance of TDS and the assessee Company in question has also remitted interest for the said delay in payment of TDS.

The Committee finds merits in the argument of the Respondent and thereby held the Respondent not guilty of professional misconduct.

CONCLUSION :

4. Thus, in the considered opinion of the Committee, the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

5. Accordingly, in terms of Rule 19 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passes Order for closure of this case against the Respondent.

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

Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-
(CA. CHHANDRASHEKHAR V. CHITALE)
MEMBER

DATE : 16th December, 2019

PLACE : New Delhi