

**CONFIDENTIAL**

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

**[Constituted under Section 21B of the Chartered Accountants (Amendment) Act, 1949]**

**Findings 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.**

**File No. : [PRP/P/44/15-DD/135/INF/15/DC/686/2017]**

**In the matter of:**

**CA. Vishnu Kant Gupta (M. No. 405904) in Re:  
22/181, Indira Nagar,  
LUCKNOW-226016.**

**.....Respondent**

**MEMBERS PRESENT:**

**CA. Atul Kumar Gupta, Presiding Officer  
CA. Amarjit Chopra, Member (Govt. Nominee)  
CA. Rajendra Kumar P, Member  
CA. Chandrasekhar Vasant Chitale, Member**

**DATE OF FINAL HEARING : 09.07.2019**

**PLACE OF FINAL HEARING : ICAI Bhawan, New Delhi**

**PARTIES PRESENT : CA Vishnu Kant Gupta (Respondent)  
: CA C.V. Sajan (Counsel for Respondent)**

**Charges in Brief:-**

1. The Committee noted that a letter dated 24<sup>th</sup> February, 2015 along with the documents was received from Dr. Mukesh Jain, Dy. Commissioner of Income Tax, containing allegations against CA Vishnu Kant Gupta (Respondent). On receiving the aforesaid letter, the complainant was requested vide letter dated 15<sup>th</sup> may 2015 to file the complaint in prescribed form 'I' in triplicate, duly

signed and verified, giving particulars as required in the said form. But the complainant did not file a complaint in the prescribed form.

2. In the absence of a formal complaint and an overall examination of allegations, it 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. Accordingly, in accordance with the provisions of Rule 11 read with clause (a) of sub-rule(1) of Rule 8 of the aforesaid Rules, an information letter dated 11<sup>th</sup> December, 2015 was sent to the Respondent asking him to submit his Written Statement. In reply, the Respondent vide his letter dated 17<sup>th</sup> December, 2015 submitted his Written Statement.
4. As per the information letter dated 11<sup>th</sup> December, 2015 read with letter of the Informant dated 24<sup>th</sup> February, 2015 the allegations in brief were as under:-

4.1 During the course of assessment proceedings of M/s Edex Display Mart Pvt. Ltd for the Assessment Year 2012-2013, it was seen that the assessee i.e. M/s Edex Display Mart Pvt. Ltd has filed one original return and thereafter revised it twice. The assessee thus filed three returns of income declaring different income and when an explanation was sought for revision, it was stated that the returns was revised in view of auditor’s report.

4.2 Since the assessee Company has claimed that the return has been revised due to the report of the auditor, it is important to note the following facts from the chart below:

S.No.	Date of return	Returned Income	Date of Auditors Report	Audited by
1.	30.09.2012	(-)3,42,25,803/-	25.08.2012	Manish Kumar Mishra (Partner) C/o Manish

				Shashank and Co.
2.	16.12.2013	(-)3,42,25,803/-	25.08.2012	Vishnu Kant(Proprietor)
3.	15.03.2014	(-)61,61,603/-	25.08.2012	Vishnu      Kant (Proprietor)

4.2.1 There are three sets of audited accounts of the same date i.e. 25.08.2012 which implies that though the returns have been revised at a later date but the audited accounts have been back dated. The first audited accounts do not even contain the membership number of the Chartered Accountant. The latter two audited accounts have been prepared by same auditor at the same date, out of which, one contains the registration number and other one does not have registration number.

4.2.2 The figures in the audited accounts vary to a great extent. The share application money received keeps on changing in all three sets as well as depreciation schedule which is different in all the three. Even though the Company is assessed to tax in Mumbai and all its addresses are located at Mumbai, it is surprising that the audit has been completed by the auditors having office at Lucknow. Notes to accounts of company are one the letter head of the Chartered Accountant which is normally on the letter head of the Company.

4.3 The aforesaid charges, if proved, would render the Respondent Guilty of Professional Misconduct falling within the meaning of clause (7) and (8) of Part I of second schedule to the Chartered Accountants Act 1949.

#### **Brief facts of the Proceedings:**

5. On the day of hearing i.e. 09/07/2019, CA Vishnu Kant Gupta (the Respondent) along with his counsel appeared before the Committee. The Respondent was put on oath. Thereafter, the Committee asked the

Respondent whether he wishes the charge to be read out or it can be taken as read. The Respondent stated before the Committee that he was aware of the charges made against him and same may be taken as read. On being asked to the Respondent whether he pleads guilty, he replied in negative. Thereafter, the Committee sought whether he wishes to proceed with his defence. Thereafter, the respondent placed his defence on table. After considering all papers available on record, the Committee decided to conclude the matter.

### **Findings of the Committee**

6. The Committee noted that the allegation on respondent is in context of signing of multiple audit reports of the Company. The respondent submitted in his defence that respondent has never submitted signed or audited the balance sheet of the Company in question i.e. Edex Display Mart Pvt. Ltd in F.Y 2011-12. The respondent further submitted that some other person had connived with the management of the Company and had digitally signed Form 23AC for the financial Year 2011-12 in capacity of Chartered Accountant. However, the name of Respondent has been wrongly declared in the said form as auditor of company for the said financial year. The Committee in this regard, has noted that on examination of documents on the ROC website, it has been noted that Form 23 B, i.e. intimation by the Auditor to the ROC, has been filed by M/s Manish Shashank & Co. for F.Y. 2011-12.

6.1 The committee relied upon the report of handwriting fingerprint expert which on record dated 16<sup>th</sup> march 2019. In the opinion of Mr. Satish Dayal (Handwriting and fingerprint expert) the Signature in dispute has been made by another person. The extract of said report by Mr. Satish Dayal (Expert) is reproduced below:-

*“AS A RESULT of scientific examination and comparison, I AM OF OPINION THAT:-*

- *The disputed English Signature of Vishnu Kant Gupta marked ‘D-1’ to ‘D-12’ HAVE NOT BEEN written by the writer of Standard English Signatures of Vishnu Kant Gupta marked ‘S-1’ to ‘S-7’. The disputed Signatures marked ‘D-1’ to ‘D-12’ and Standard Signatures marked ‘S-1’ to ‘S-7’ HAVE BEEN written by TWO DIFFERENT PERSONS.”*

7. The Committee further noted that the Respondent has not filed any complaint with regard to misuse of his rubber stamp and signatures by the management of the Company. Further, placing reliance upon the Handwriting Expert's Report and Minutes reviewed earlier which specifically states that signatures are not matching and two different persons have signed the impugned documents and also reviewing Form 23B wherein name of Auditor Manish Shashank & Co. was mentioned.

### **Conclusion**

8. Thus, upon consideration of all facts, circumstances, record and law, the Committee is of the opinion that benefit of doubt needs to be extended to the Respondent as alleged role of the Respondent could not be established to such an extent to charge him Guilty of professional misconduct. In terms of the reasoning as above, in the considered opinion of the Committee, the Respondent is held **NOT GUILTY** in under Clause (7) and (8) of Part I of Second Schedule to the Chartered Accountant Act, 1949.
9. Accordingly, the Committee passed 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. RAJENDRA KUMAR P)**  
**MEMBER**

**Sd/-**  
**(CA. CHANDRASEKHAR VASANT CHITALE)**  
**MEMBER**

**DATE: 04-09-2019**

**PLACE: Mumbai**

