

**CONFIDENTIAL**

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

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

**Findings 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. : [PR-134/14/DD/145/2014/DC/727/2017]**

**In the matter of:**

**Shri Surendra Mena, IRS**

Deputy Director of Income Tax (Inv)-III, Chandigarh  
Room No.209,  
Aayakar Bhawan, Sector - 2,  
**Panchkula-134112.**

**..... Complainant**

**Versus**

**CA. Mukund Yeshwant Kulkarni .....(M. No. 035524)**

Office No. 19-23, 4<sup>th</sup> Floor,  
Goldwings S.No.118/A,  
Plot No. 543, Parvati Nagar  
Sinhgad Road,  
**Pune-411030.**

**.....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 : 20.07.2019**

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

**PARTIES PRESENT :**

**Complainant : Not Present**

**Respondent: CA. Mukund Yeshwant Kulkarni**  
**: Shri Somasekhar Sundaresan Deshpande, Advocate**  
**(Counsel for the Respondent)**

**Charges in Brief:-**

1. The Committee noted that in the Prima-Facie Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent is guilty under "Clause 6" of the Part I of the second schedule to the Chartered Accountant Act 1949 which states as under :-  
*"fails to report a material misstatement known to him to appear in a financial statement which he is concerned in a professional capacity"*
2. The issue is in relation to transfer of asset and liabilities through Slump Sale of wind energy business related to M/s Gurjarat Fluro Chemicals Ltd. (GFL) to M/s Inox Renewals Ltd. (IRL) through business transfer agreement dated 30<sup>th</sup> March 2012 wherein the allegation by the Complainant was that the transaction has been materialized after 1st April,2012 and thus the company sought to invade tax on capital gain of Rs. 436.80 crore on which the respondent has not obtained the complete detail of transaction and had not properly audit the accounts of GFL, in respect of, slump sale transaction.

**Brief facts of the Proceedings:**

3. On the day of hearing, the Committee noted that Complainant was not present; on other side, the Respondent with his Counsel appeared before the Committee. The Respondent was put on oath. In the absence of the Complainant and with consent of Respondent, the charges were 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 proceed with the matter.

4. The Counsel of respondent submitted Hon'ble High Court Judgement before the Committee and he also drew attention of the Committee on Income Tax Appellate Tribunal Order (ITAT) both of which are in favour of Respondent.

### **Findings of the Committee**

5. On the matter stated above the Committee reviewed the order of Income Tax Appellate Tribunal (ITAT), Ahmedabad Bench submitted by the Respondent. In Para 67 of the order the ITAT it was held that the transaction has taken place on 30<sup>th</sup> March, 2012. And allowed the appeal of the GFL holding the accounting/tax treatment of the aforesaid transaction. Para 67 states as under:-

*“We have made reference to the decision of Hon'ble Bombay High Court explaining the meaning of section 50D and conditions in which it could be applied. Thus, conditions are missing in the present case. Therefore, neither under section 50B nor section 50D, the AO can replace full value of sale consideration with fair market value. In view of the above discussion, we hold that the transaction has taken place on 30<sup>th</sup> march, 2012. The capital gain on transfer of capital asset by way of slump sale is taxable on substantive in assessment year 2012-13 and not 2013-14. The full value of sale consideration would not be replaced with fair market value. In other words, the AO is directed to accept full value of sale consideration at Rs.1 crore disclosed by the assessee and not fair market value adopted by him. We allow both these grounds of appeal in both the years.”*

6. The Committee also noted that the Income Tax Department filed an appeal to the Hon'ble High Court of Gujarat at Ahmedabad bench wherein the aforesaid contention was also raised in point number '(h)' of the appeal filed. It has been dealt by the Hon'ble High Court in Para 31 and Para 32. The Hon'ble High Court upheld the decision of the ITAT and consequently rejected the appeal filed by Income Tax Department. Relevant extracts of the HC order are reproduced below:-

*“(h) Whether on the facts and in circumstances of the case, the learned ITAT has erred in law and on facts in considering date of transfer of Wind Energy Business of the*

assesse to Inox Renewable Ltd. (IRL) on slump sale as on 30.03.2012 i.e. F.Y.2011-2012, despite the admitted facts that even the process of transferring various assets and liabilities was initiated in FY 2012-13.”

“31. This issue is squarely covered by the decision of this Court in the case of Commissioner of Income-tax Vs. Gauranginiben S. Sodhan Indl. Reported in [2014] taxmann.com 356 (Gujarat), wherein in Paragraphs-11 and 12, the following has been observed:-

11. *Taking the question of ascertaining the fair market value on the date of sale, we notice that section 48, which is also contained in chapter IV of the Act pertains to method of computation of capital gain. A detailed mechanism has been provided for such computation of income chargeable under the head Capital Gains. It provides, inter alia, that the income chargeable under the Head Capital Gains, shall be computed by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset, the amounts mentioned therein that is the expenditure incurred wholly and exclusively in connection with such transfer and the cost of acquisition of the asset and the cost of any improvement thereto. Main thrust of section 48 of the Act, therefore, is the full value of consideration received or accruing as a result of the transfer of the capital asset as reduced by expenditure mentioned therein and the cost of acquisition of the asset. Section 55A, as we have noticed, refers to the reference to DVO for ascertaining the fair market value of a capital asset. Such ascertainment of fair market value with the aid of the DVO's report would have no relevance for the purpose of determining full value of consideration received or accruing as a result of the transfer of the capital asset for the purposes of section 48 of the Act.*
12. *In that view of the matter, the reference to DVO for ascertaining the fair market value of the capital asset as on the date of the sale in the present case would be wholly redundant.”*

“32. The last question proposed by the revenue is whether the date of transfer of the Wind Energy Business of GFL to IRL on slump sale is 30/03/2012. This question is co-related to the question aforesaid and squarely covered by Gauranginiben S. Sodhan (supra)”

**Conclusion**

7. In view of the above the committee is of the opinion that the auditor was not required to qualify his report and thus, there is no failure on his part has alleged by the complainant and hold by the Director Discipline. Accordingly, in the considered opinion of the Committee, the Respondent is **NOT GUILTY** in terms of Clause (6) of Part I of Second Schedule to the Chartered Accountant Act, 1949.
  
8. The Committee records that the Respondent has taken shelter for the decision of the Income Tax Appellate Tribunal and the High Court in this matter. Both the authorities have rejected the Complainant's appeal on the same subject. In the interest of justice, it would have been fare on the part of the Complainant that the said decisions should have been brought to the notice of the Committee.
  
9. 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. RAJENDRA KUMAR P)**  
**MEMBER**

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

**DATE: 04-09-2019**  
**PLACE: Mumbai**