

**CONFIDENTIAL**

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

**[Constituted under Section 21B of the Chartered Accountants (Amendment) 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. : [PR-156/14/DD/180/2014/DC/715/2017]**

**In the matter of:**

**Sh. V. Mahalingam,**  
Commissioner of Income Tax-24  
C-13, Pratyaksh Kar Bhawan  
R.No. 507, 5<sup>th</sup> Floor,  
Bandra Kurla Complex,  
Bandra,  
**Mumbai- 400 051**

**....Complainant**

**Versus**

**CA. Mayur C. Chokshi ... (M. No. 033936)**  
Chartered Accountants,  
Tiberwala House,  
33, Swastik Society, N.S. Road No. 3,  
JVPD Scheme,  
**Mumbai – 400 056**

**.....Respondent**

**MEMBERS PRESENT:**

**CA. Atul Kumar Gupta, Presiding Officer**  
**CA. Amarjit Chopra, Government Nominee**  
**CA. Rajendra Kumar P, Member**  
**CA. Chandrashekhar Vasant Chitale, Member**

**DATE OF FINAL HEARING : 06.01.2020**

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

**PARTIES PRESENT:**

**Complainant: Shri Ujjwal Kumar, JCIT (Rank-31) Authorised Representative**

**Respondent: Shri S. G. Gokhale**

**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 Clause (6) of Part I of the Second Schedule of Chartered Accountant Act 1949. The above Clauses (6) of Part I Second Schedule of Chartered Accountant Act 1949 which states as under :-

*“(6) fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity;”*

2. This case is filed by Shri V. Mahalingam, Commissioner of Income against CA. Mayur C. Chokshi alleged that the Respondent in the report in Form 10CCB on 24.09.2009 for AY 2009-2010 has certified that the M/s. Electroplast Engineers was entitled to deduction under Section 80IB even after 10 years and thereby sided and abetted the assessee to make fraudulent claim..

**Brief facts of the Proceedings:**

3. On the day of hearing, the Committee noted that Complainant's authorised representative was present. The Respondent appeared before the Committee. The Complainant as well as the Respondent was put on oath. In the presence 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. The Respondent made his submissions. After considering all papers available on record and pleadings, the Committee proceeded with the matter.

**Findings of the Committee**

4. The On the date of hearing on 1.8.2018 The Complainant and the Respondent were present and they were put on oath and the Respondent pleaded not guilty. The Directorate directed to furnish certain documents.
  - I. When was the original e-return for AY 2009-2010 filed?
  - II. Whether the Form No.10CCB was accompanied with return of Income ITR-V.
  - III. If Form No. 10CCB was not accompanied with return of income ITR –V when did the Department receive/get the Form No.10CCB?
  - IV. Whether the assessee has claimed that he had based his claim of deduction u/s 80IB under Chapter VIA of the Act, 1961, based on certificate issued by CA Shri Mayur Chokshi
  - V. Whether the assessee was aware that the Respondent had withdrawn the certificate vide Form 10CCB?
  - VI. The Committee has also asked the Department to get information from the assessee by issuing Summons u/s 131 of the IT Act 1961 by using any other provisions of the Act
  
5. The On subsequent date of hearing is on 27.07.2019 the Committee noted that the Complainant has alleged and reiterated in his complaint against the Respondent that he has issued the letter 22.06.2018 it is stated that  
*“The authorised representative of the assessee issued the report in Form No.10CCB on 24.09.2009 for AY 2009-2010 in the case of M/s. Electroplast Engineers (Assessee). Accordingly, the assessee ha filed Return of Income on 26.09.2009 claiming deduction u/s 80IB of Rs.12,24,002. Subsequently, the assessee has filed revised Return Of Income on 15.09.2010 withdrawing the claim of deduction u/s 80IB. The Assessing Officer in the assessment Order dated 30.11.2011 disallowed the claim of the deduction u/s 80-IB as it was wrongly claimed in the Return of Income.”*
  
6. It The Committee noted that the Respondent has withdrawn the original report in Form 10CCB as per Mayur Chokshi, the Respondent letter dated 27<sup>th</sup> March para 8 page 4.  
*“When I came to know that the claim u/s 10CCB has exceeded beyond ten years, I informed to the Assessee to withdraw my certificate and the claim. Accordingly, the assessee has revised the Return on my withdrawing the certificate”*
  
7. The The Respondent further stated that para 6 page 4  
*“The Assessee filed its Return of Income on 23<sup>rd</sup> September, 2009 claiming deduction u/s 80IB. The Return was revised on 15.09.2010 by withdrawing the claim for deduction u/s 80IB. The Assessment was completed based on revised return. Thus*

*the Assessment was not done by relying on the Form 10CCB. For all these activities, I was not the party to it.”*

8. The The Committee also noted that the Respondent issued Tax Audit Report In From 3CD for assessment year 2009-2010 wherein the question in relation to details of deduction of Tax is under Chapter VIA of the Act have been asked on sl. No. 26 of Form 3CD.

9. The Respondent has asked this question as follows: PFO 17 sl. No. 26

Que: Section wise details of deduction, if any admissible under Chapter VIA ?

*Ans: Deduction under section 80IB: The is subjected to limits with reference to cross total income as reduced by other deductions Chapter VIA which we yet to be computed. The Reporting of the deduction under this section is also subjected to transaction recorded in the Books of Accounts under audit only.*

10. The Committee noted that the date of original return of income is 26.09.2009 whereas 10CCB was issued on 24.09.2009. Further it is noted that the Respondent is also withdrawn this report in Form 10CCB once. (letter dated 2.8.2018 page 3 para 2)

*“Informed about the withdrawal of Certificate in March 2014 i.e. at the first available opportunity – Not after thought.*

*I informed as early as March 2014 to the Complainant about the withdrawal of my certificate and about informing the Partners. Thus, informed the Complainant much before the complaint was filed. Accordingly, this cannot be construed as afterthought.*

*It may be noted that it was the first available opportunity to present my case / informing to the Complainant about the same. This is due to the fact, that I was not representing the firm before the Tax Authorities. Further the certificate was neither the subject matter at the time of assessment nor at the time of Penalty proceedings that I was aware of “*

11. It was further informed by the Respondent that he was not representing to the client for the purpose of income tax hearings.

12. The Committee noted that claims for deduction under 80IB was made by the assessee shown in the original report in Form 10CCB was originally issued once, but the Respondent came to know this error, he did withdraw his report in Form 10CCB and informed to the assessee accordingly.

13. It is also noted that the assessee has filed the revised return withdrawing the claim under section 80IB. It was for the assessee to take up corrective action immediately in respect of communication about the withdrawal of 10CCB to the Respondent.

## **Conclusion**

14. In view of the above findings, the Committee is of the view the Committee finds no merit in the complaint filed by the Complainant. Accordingly, in the considered opinion of the Committee, the Respondent is **NOT GUILTY** under Clause (6) and Clause (7) of Part I of the Second Schedule of Chartered Accountant Act 1949. However, the Committee directed to issue a letter of caution that whenever there is an action to withdraw, the said same should be communicated to the client as well as effects to the parties with a proof of such communication in this regard.
15. **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 OFFICER**

**Sd/-**  
**(CA. AMARJIT CHOPRA)**  
**GOVERNMENT NOMINEE**

**Sd/-**  
**(CA. RAJENDRA KUMAR P)**  
**MEMBER**

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

**DATE: 10.02.2020**  
**PLACE: New Delhi**

