

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

INDRAPRASTHA MARG, NEW DELHI – 110 002

REPORT OF THE DISCIPLINARY COMMITTEE [BENCH-III (2018-19)]

Findings under Rule 18(17) read with 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

Case No : DC/581/2017

In the matter of :

**Shri Jagroop S. Gursinha,
Head of Branch, CBI, ACB,
O/o Superintendent of Police,
CBI, LalSagar,
MagraPunjla,
Jodhpur-342304 (Rajasthan)Complainant**

Versus

**CA. Prahlad Kumar Gupta (M.No. 409038)
Plot No.6, Shiv Market
Ganganagar Road,
Near Central Warehouse,
Hanumangarh Town
Jaipur-335512Respondent**

Members Present:

**CA. Naveen N.D Gupta, Presiding Officer
Smt. Anita Kapur, IRS (Retd.), Member (Govt. Nominee)
CA. Shyam Lal Agarwal, Member
CA. Sanjay Kumar Agarwal, Member**

Date of Final Hearing: 4th December 2018

Place of Final Hearing: New Delhi

Parties Present:

(i) CA. Prahlad Kumar Gupta – Respondent





Allegations of the Complainant:

1. The Complainant i.e the Head of Branch, CBI, ACB O/o Superintendent of Police, CBI, Jodhpur has alleged that the Respondent has prepared a tax audit report in favour of Shri Rattan Singh(hereinafter referred to as the "assessee") for the A.Y. 2008-2009 without verifying the genuineness of expenses claimed by the assessee. The acts of omission alleged in respect of said tax audit are as under:

- a) The Respondent allowed depreciation on car worth Rs. 72 Lakhs even when the car was not in the name of Shri Rattan Singh and that there was no document which could show that car was purchased by him.
- b) The Respondent in his tax audit report mentioned Rs. 5,02,00,800/- towards brokerage expenses. The Respondent failed to check and verify the genuineness of the brokerage expenses claimed by the assessee during the year.

Proceedings:

2. At the time of hearing on 21st May 2018, the Committee noted that the Respondent was present alongwith his Counsel to appear before the Committee. However, neither there was any communication from the Complainant department in writing nor any representative appeared on its behalf. In the absence of any communication from the department, the Committee decided to proceed ahead on the merits of the case. The Respondent was put on oath. Thereafter, the Committee asked the Respondent whether he wished the charges to be read out or these could be taken as read. The Respondent stated before the Committee that he was aware of the allegations raised against him and the same may be taken as read. On being asked, as to whether he pleaded guilty, he replied that he did not plead guilty and would defend his case.

3. The Counsel for Respondent made his submissions in the matter before the Committee. The Respondent was examined by the Committee on the submissions made by him. The Counsel for Respondent thereafter made his final submissions in the matter. Based on the documents available on record and after considering the oral and written submissions made by the Respondent before it, the Committee asked the



Respondent to submit a certificate regarding turnover of the assessee for the FY 2006-07 and copy of the Tax Audit Report of the assessee for the FY 2007-08.

4. At the time of last hearing on 4th December 2018, the Committee noted that the Respondent was personally present and the documents as sought for from him had been duly submitted. The Committee thereafter informed the Respondent that since the composition of the Committee had undergone a change, an option of de-novo hearing in the matter was available to him. The Respondent stated that since he had submitted his oral as well as written defense in the matter, the case may be proceeded from the stage where it was left. The Committee agreed to the same and thereafter, considering the documents available on record, the oral and written submissions made by the Respondent, the Committee concluded the hearing in the matter.

Findings of the Committee:

5. The Committee noted that the first charge against the Respondent was that depreciation on car worth Rs. 72 Lakhs was claimed even when the car was not in the name of Shri Rattan Singh and that there was no document on record which could establish that car was purchased by him. It was noted that the Respondent, in this context, had submitted in his written statement that the assessee had taken the physical possession of car and the same was being used for the purpose of the business. He also submitted that he had verified the payment made to BPTP limited from the ABN Amro bank account of the assessee for purchase of used car. He also produced the invoice for the case on record to corroborate his defence.

6. The Committee noted in this context that the assessee had actually made the payment for purchase of used car to BPTP Limited and such a car was being used for the purpose of business only and accordingly the depreciation was claimed as per the provisions of the Income Tax Act, 1961 as observed in Annexure-B to Tax Audit Report of F.Y. 2007-2008. It also noted that as per the Supreme Court decision in the case of Mysore Minerals Ltd. vs. CIT 239 ITR 775 (SC), depreciation could be claimed even if legal title has not been conveyed. The Committee accordingly is of the considered opinion as regard this charge that the Respondent was 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.

7. The second charge emanating out of tax audit report prepared by the Respondent for Shri Rattan Singh for the A.Y. 2008-2009 was that the Respondent had failed to verify the bills based on which brokerage expenses amounting to RS. 5,02,00,800/- were incurred by the assessee for the financial year in question. The Committee noted that the Respondent in this regard had obtained copy of confirmation letter and PAN card of the payee i.e. Shri Dharampal Singh. Besides this, it was also confirmed from the statement given by Shri Dharampal Singh to the CBI, ACB, Jodhpur that he had received the amount from the assessee (W-4). Further it is noted that Respondent had submitted bank statement of ABN AMRO Bank (D-7) wherein an amount of Rs.4 crores was debited on 26.11.2007 vide two entries of Rs. 2 crores each.

8. The Committee in this regard noted on perusal of the documents on records, that it was coming out clearly that the commission was actually paid by the assessee to the said payee. It is however a different matter that the nature of such payment had been later on retracted by the payee for which the Respondent herein cannot be made liable. Thus, the Committee was of the opinion that the Respondent has produced sufficient documents and evidences to corroborate his defence. The Committee also examined the applicability of TDS provisions and compliance with the provisions of chapter XVII-B of the Income Tax Act. It is noted that the Respondent has submitted copy of Tax Audit Report for Assessment Year 2008-09 from which it is clear that financial year 2007-08 was the first year when the tax audit was made applicable on the assessee (clause 27 of Form 3CD). Also from the turnover certificate for the year 2006-07 produced on record by the Respondent as issued by the assessee, it is clearly revealed that the turnover for the said period was NIL. The Committee is thus of the opinion that the assessee an individual being the Respondent's client was under no obligation to comply with the provisions of Chapter XVII-B being the first year of Tax Audit for it. Accordingly, the Committee is of the considered opinion that 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 in respect of the second allegation.

Conclusion:

8. Thus, in conclusion, in the 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.

9. The Committee accordingly passes Order for closure of this case against the Respondent.

Sd/-

(CA Naveen N.D Gupta)
Presiding Officer

Sd/-

(Smt. Anita Kapur,
Member (Govt. Nominee)

Sd/-

(CA. Shyam Lal Agarwal)
Member


Sd/-

(CA. Sanjay Kumar Agarwal)
Member

Date: 11th January, 2019

Place: New Delhi

Certified True Copy



Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002