

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH-III (2018-19)]

[Constituted under section 21B of the Chartered Accountants 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. : [PR-67/2014/DD/108/2014/DC/676/2017]

In the matter of :

**Shri N.S. Yadav,
Head of Branch,
CBI, ACB, LalSagar,
MagraPunjala, Jodhpur
RAJASTHAN -342304**

..... Respondent

-Vs-

**CA. Raj Kumar Bohra (M.No.072985)
39-40,
Ashwini Bazar
UDAIPUR (Rajasthan) - 313001**

.....Complainant

Members Present:

**CA. Naveen N.D Gupta, Presiding Officer
Smt. Anita Kapur, IRS (Retd.), Member (Govt. Nominee)
Shri Ajay Mittal, IAS(Retd.), Member (Govt. Nominee)
CA. ShyamLalAgarwal, Member
CA. Sanjay Kumar Agarwal, Member**

Date of Final Hearing: 12th November, 2018

Place of Final Hearing: New Delhi

Party Present:

- I) Representative of the Complainant: ShriKrishanGopalBhati,SI CBI
II) CA. C. V. Sajan - Counsel for Respondent**



Allegations of the Complainant, Shri N.S. Yadav, Head of Branch, CBI, Jodhpur:

1. The Background of the extant case is that the Govt. of Rajasthan had prepared a Policy for allotment of contract for selling of liquor in Rajasthan in the name of individual person/shop and it was also decided to make tax collection at source (TCS) and deposit the same in the name of individual person only. Shri Mahendra Tak was awarded contract by the Govt. of Rajasthan, and some persons interested to do liquor business formed an AOP on 1st February, 2008 in name of M/s. Om Prakash Mahesh & Party (herein after referred to as "AOP"). The said AOP claimed and was allowed TCS credit on the basis of the TCS certificate belonging to the individual person and granted income tax refund on 31st March, 2010. Hence, though TCS was deposited in the individual name, yet the claim of the TCS was made in the name of Association of Persons (AOP). The Complainant accordingly alleged that the Respondent being the Tax Auditor of the said AOP failed to point out the said irregularity in its audit report for the relevant Assessment Year i.e. A.Y. 2009-10(D-281 to D-311). Further the Complainant alleged that the Respondent did not submit the clear position about the loans taken by the individual members and claim of interest made by the AOP.

Proceedings:

2. At the time of hearing on 21st May 2018, the Committee noted that the Respondent was present in person along with his authorized Counsel to appear before the Committee. As it was the first hearing, the Respondent was put on oath. Thereafter, the Committee asked the Respondent as to 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 opted to defend his case.
3. Thereafter, 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. While making his submissions, the Counsel for Respondent cited the judgment passed by the ITAT, Jodhpur (in case no. ITA No. 398/JODH/2015 dated 04th September, 2015). The Committee considered the oral and written submissions made by the Respondent and his

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Authorized Counsel before it. The Committee thereafter directed the Respondent to make his further written submission in the matter if any, with a copy to the Complainant.

4. At the time of last hearing on 12th November 2018, the Committee noted that the Counsel for the Respondent was present and the documents as sought from him had been duly submitted. The Representative of the Complainant Department was also present. The Committee, thereafter, informed the Respondent's Counsel 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's Counsel 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, considering the documents available on record, the oral and written submissions made by the Complainant's representative as well as Counsel for the Respondent, concluded the hearing in the matter.

Findings of the Committee:

5. On perusal of papers on record, it was noted that in context of the first allegation regarding claim of TCS by the AOP whereas the actual TCS certificates were in the name of individual members, the claim of the Respondent was that as per the agreement of AOP (D-273 to D-280) vide point no. 6 (D-279) all the members had agreed that TDS/TCS in respect of individual's shops allotted in the name of members of AOP would be treated as the TCS/TDS of the main AOP and the credit of these TCS/TDS would be taken by main AOP in its Income tax Return for the respective assessment years. It was further noted that licensee and member of AOP, Sh. Mahendra Tak vide his letter dated 15.09.2009 (D-7) to the Respondent firm had informed that all the purchases and sales in respect of individual's shops awarded in the name of members of AOP, were taken in the AOP and accordingly credit of TCS/TDS certificate was taken by AOP during FY 2008-09. Further, he had also given an undertaking that the members of AOP had not taken any credit of TCS/TDS certificates in their name in their individual income tax return.
6. It was further noted that the said AOP M/s. Om Prakash Mahesh Kumar & Party filed the return of income for AY 2009-10 declaring income of Rs.13,49,620/- on 30th September,



2009 in Circle II, Udaipur and made a claim of TDS/TCS of Rs.2,49,37,944/- and Shri Ravinder Sindhu (S-2), the then ACIT vide letter No. 2474 dated 31st March, 2010 issued a refund manually by Refund Voucher No.762928 dated 31st March, 2010 for Rs.2,63,25,560/- under the guidelines of the Department and refund was issued after obtaining the approval of the CIT.

7. In this regard, the Committee noted that at the time of formation or constitution of the AOP, it was mutually decided among the members of AOP that all shops awarded in the name of members shall be treated as the shops of the AOP and further all the income/revenue and expenditure relating to these shops shall also be treated as income/revenue and expenditure of the AOP. Accordingly as per the terms and conditions of the AOP Agreement, the AOP so constituted, filed application in the name of its members for obtaining contract and after the contract was awarded, to the shop which was part of AOP, the credit of the TCS certificates was claimed in the name of AOP in its income tax return.
8. It further noted that the Hon'ble ITAT vide its Order dated 4th September 2015 had while confirming the order of CIT(A) held that the AOP was eligible to claim credit for TCS that was collected from its members and stated that since the business activities in respect of the shops allotted in the individual names of the members of the AOP were collectively treated as the business activity of AOP, the TCS of these shops was rightly taken by AOP in its return for the relevant financial year. The Committee further noted that a finding was recorded by the Ld. CIT(A) to the effect that the members of AOP had not claimed any TCS in their individual returns, and therefore, the AOP was entitled for TCS Credit in respect of income earned by the AOP. It was noted that the Complainant had also failed to submit any evidence as to show that TCS credit was claimed in the hands of individuals also, as observed by Hon'ble ITAT in paragraph 9 of its Order. Thus, in light of these facts it was noted that there was no double claim of TCS in the hands of AOP or the constituents of AOP. The Committee is of the considered view that Respondent had reported as per prevailing provisions/practice of the law. Hence, the Committee held the Respondent not guilty of professional misconduct with respect to the charge.




9. As regard the second charge relating to loans taken by the individual members and claim of interest made by the AOP, the Committee noted the Respondent's submissions in this regard that AOP obtained loans from the Bank in its name or in the name of its members and used the same wholly and exclusively for the business purpose of the AOP and paid interest directly to the Bank and claimed the interest on such loans as expenses in the P & L Accounts for the Financial Year 2008-09. Further, during the audit, AOP produced the bank settlement, interest certificates and other relevant records for verification of interest expenses on the basis of which the Respondent had verified the interest expenses charged to the P & L Account for the Financial Year 2008-09. The Committee noted that as a tax auditor, the role of the Respondent was limited to the extent of reporting required under Section 44AB of the Income TAX Act 1961 and this charge did not bring out any issue warranting a qualified report. Hence on this charge, the Committee holds the Respondent not guilty of the professional misconduct.

Conclusion:

10. Thus, in conclusion, in the opinion of the Committee, the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Clauses (6), (7) and (9) of part I of Second Schedule to the Chartered Accountants Act, 1949.

11. 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/-

[Shri Ajay Mittal, IAS (Retd.)]
Member (Govt. Nominee)


Sd/-

(CA. Sanjay Kumar Agarwal)
Member

Sd/-

(CA. Shyam Lal Agarwal)
Member

Certified Copy


Ajay Kumar Jain
Deputy Secretary
Disciplinary Directorate

The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002

Date: 11th January, 2019
Place: New Delhi