



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

DISCIPLINARY COMMITTEE [BENCH-I (2020-2021)]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]

ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATION OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

In the matter of:

Joint Director (Legal & Prosecution), SFIO, New Delhi

-Vs-

CA. Akhil Kumar, Lucknow (M.No.079532), Partner, M/s. Akhil Kumar & Company (FRN 010106C), Lucknow
[PR-148/2016-DD/172/16/DC/704/2017]

MEMBERS PRESENT:

CA. Nihar Niranjana Jambusaria, Presiding Officer
Shri Jugal Kishore Mohapatra, I.A.S. (Retd.) (Government Nominee)
Ms. Rashmi Verma, I.A.S. (Retd.) (Government Nominee)
CA. G. Sekar, Member
CA. Pramod Jain, Member

1. That vide report dated 11.01.2019, the Disciplinary Committee has inter-alia held CA. Akhil Kumar (M.No.079532) (hereinafter referred to as the "Respondent") GUILTY of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
2. That pursuant to the said report, an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and communication dated 2nd March, 2020 was addressed to him thereby granting an opportunity of being heard in person and/or to make a written representation before the Committee on 17th March, 2020 at New Delhi.
3. The Committee noted that on 17th March, 2020, the Respondent was not present. However, he vide letter dated 4th March, 2019 made his written representations on the said report.
4. The Committee observed that the Respondent reiterated his submissions as made before the Disciplinary Committee at the time of hearing and requested to drop the proceedings initiated against him. A brief of the representations made by the Respondent is as under:



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i) The Disciplinary Committee has failed in correctly understanding what was stated by the Respondent to SFIO.

ii) The most crucial element and message that was given in answer by the Respondent to SFIO was that the directors were providing their services only for expansion project and hence, it was the management decision to book director salary under preoperative expenses pending allocation.

iii) Capitalisation of director remuneration was a consistently followed accounting method, adopted for continuous 5 years.

5. The Committee has considered the reasoning (s) as contained in paras no.3 to 8 and 11 of the Disciplinary Committee report holding the Respondent Guilty of professional misconduct vis-à-vis written representations of the Respondent on the findings of the Disciplinary Committee.

6. Keeping in view the facts and circumstances of the case, material on record and written representations of the Respondent made before it, the Committee is of the view that the professional misconduct on the part of the Respondent is established and however, keeping in view the circumstances as brought on record by the Respondent, the said misconduct does not qualify for a severe sentence. Accordingly, the Committee orders that **the Respondent, CA. Akhil Kumar (M.No.079532) be reprimanded.**

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sd/-

(CA. NIHAR NIRANJAN JAMBUSARIA)
PRESIDING OFFICER

(approved and confirmed through e-mail)

(SHRI JUGAL KISHORE MOHAPATRA)
GOVERNMENT NOMINEE

sd/-

(MS. RASHMI VERMA)
GOVERNMENT NOMINEE

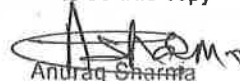
(approved and signed)

(CA. G. SEKAR)
MEMBER

sd/-

(CA. PRAMOD JAIN)
MEMBER

Certified to be true copy


Anurag Chandra

Assistant Secretary,
Disciplinary Directorate

CONFIDENTIAL

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

[Constituted under section 21B of the Chartered Accountants Act, 1949]

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

File No. PR-148/16-DD/172/16-DC/704/2017

In the matter of:

Shri Saud Ahmad

Joint Director (Legal & Prosecution)

Serious Fraud Investigation Office

Ministry of Corporate Affairs, Govt. of India

2nd Floor, Paryavaran Bhavan

CGO Complex, Lodhi Road

New Delhi-110003

.....Complainant

Versus

CA. Akhil Kumar ... (M.No.079532)

M/s Akhil Kumar & Company ... (FRN No.010106C)

Chartered Accountants

D-9, Liberty Colony, Sarvodaya Nagar

Lucknow-226 016

.....Respondent

Members Present:

CA. Naveen N.D. Gupta, Presiding Officer

Shri Ajay Mittal, IAS (Retd.), Govt. Nominee,

Smt. Anita Kapur, IRS (Retd.), Govt. Nominee,

CA. Shyam Lal Agarwal, Member

CA. Sanjay Kumar Agarwal, Member

Parties present:

- (1) Shri Hari Kishan, Prosecutor, SFIO
- (2) Ms. Smati Chaturvedi - Counsel for the Complainant
- (3) CA. Akhil Kumar – Respondent
- (4) CA. C. V. Sajan – Counsel for Respondent
- (5) Shri Atul Choudhary – Witness to the Respondent

Date of Final Hearing : 12th November, 2018

Place of Final Hearing : New Delhi

Shri Saud Ahmad, Joint Director (Legal & Prosecution) -vs- CA. Akhil Kumar

Allegations of the Joint Director (L&P), SFIO, the Complainant:

1. In the extant case, the SFIO had filed a Complaint against the Respondent after the investigation was conducted into the affairs of M/s Basil International Ltd. and its group Companies in pursuance to the Central Government Order dated 4th July, 2012. It was stated that the Respondent was the statutory auditor of M/s Vamshi Chemicals Ltd., a group company of M/s Basil International Ltd. for Financial Year 2009-10. The Complainant had alleged that the Respondent in his Statement of Oath dated 07th December, 2012 had admitted following discrepancies in the financial statement of the Company for the year 2009-10 which were not reported by him in his audit report:

- a) that the Directors remuneration was wrongly booked in preoperative expenses in 2009-10 when the Company was in operation; and
- b) The Respondent had not received direct confirmation from loanee parties, creditors and bankers regarding their balances shown in the financial statements audited by him.

Proceedings:

2. At the time of last hearing held on 12th November 2018, the Committee noted that Representative of the Complainant along with its Counsel and the Respondent along with his Counsel were present. After the parties introduced themselves before the Committee, the Committee ordered to call the Witness who, as per the direction given by the Committee at its previous hearing, was required to be cross-examined by the Complainant. On being asked, the Counsel for the Complainant cross-examined the Witness in the matter and thereafter, the Committee discharged the Witness.

Thereafter, the Counsel for the Complainant as well as that of the Respondent made their final submissions in the matter. Based on the documents available on record and after considering the oral and written submissions made by the Complainant as well as the Respondent before it, the Committee concluded the hearing in the matter.

Findings of the Committee:

3. On perusal of the papers on record, the Committee noted that the Respondent was the Statutory Auditor of M/s Vamshi Chemicals Ltd., a group Company of M/s Basil

International Ltd. for the Financial Year 2009-10, and had been charged for Professional Misconduct on account of charges as per finding no. 8 of Chapter IV, paragraph 4.173 (C-128) of the Investigation Report. In the first allegation, it has been alleged against the Respondent that he had failed to report in his audit report that the Directors remuneration was wrongly booked as preoperative expenses during the financial year 2009-10. The Committee further noted that while answering to question no. 8 in his Statement on Oath dated 13.12.2013 (C-289), the Respondent stated as under:-

“Though the Company was in operation since last several years, but the management decided director’s salary under the head preoperative expenses pending allocation as explained to us. They are providing their service to the expansion of plant, factory etc.”

4. The Respondent in this regard submitted that the entire expenditure relating to expansion/construction of Plant & Machinery situated at Asansol, West Bengal was debited under the head ‘Preoperative expenditure pending allocation’ and the same was done in consistence with the accounting policy of the Company followed during the previous years.

5. The Committee upon perusal of audited financial statements of the Company for the year ending 31st March, 2010, noted that in balance sheet of the Company an amount of Rs.66,12,72,952/- (D-352) was shown as Preoperative Expenditure Pending Allocation . Further, it was observed that under Schedule -14, “Preoperative expenditure pending allocation” (D-357) an amount of Rs.81,12,000/- was in the nature of directors’ remuneration and that in the Profit & Loss Account (D-353) no amount was debited towards Director’s remuneration. However, under Part-B of Schedule 20 containing notes to accounts, Director’s remuneration for the period was reported at Rs. 81,12,000/- (D-363). The Committee, accordingly, noted that effectively the entire amount of Director’s remuneration was capitalized and nothing was routed through the profit and loss account. It was noted that during the period the company had incurred losses so the amount involved was material.

6. The Committee in this regard noted Paragraph 9.1 and 9.2 of AS 10 on 'Accounting for Fixed Assets' which is reproduced below:

"9.1 The cost of an item of fixed asset comprises its purchase price, including import duties and other non-refundable taxes or levies and any directly attributable cost of bringing the asset to its working condition for its intended use; any trade discounts and rebates are deducted in arriving at the purchase price. Examples of directly attributable costs are:

- (i) site preparation;*
- (ii) initial delivery and handling costs;*
- (iii) installation cost, such as special foundations for plant; and*
- (iv) professional fees, for example fees of architects and engineers.*

Further para 9.2 states as under:-

"9.2 Administration and other general overhead expenses are usually excluded from the cost of fixed assets because they do not relate to a specific fixed asset. However, in some circumstances, such expenses as are specifically attributable to construction of a project or to the acquisition of a fixed asset or bringing it to its working condition, may be included as part of the cost of the construction project or as a part of the cost of the fixed asset."

7. From the above, the Committee noted that the basic principle to be applied while capitalizing an item of cost to a fixed asset/project under construction is that it should be directly attributable to the construction of the project/fixed asset for bringing it to its working condition for its intended use. The costs that are directly attributable to the construction/acquisition of a fixed asset/project for bringing it to its working condition are those costs that would have been avoided if the construction/acquisition had not been made. Thus, the principle of avoidance of costs should be used to identify directly attributable cost for the purpose of capitalization. While site preparation, handling cost, installation costs, fees paid for service of architects and engineers directly deployed on the project could be considered as directly attributable costs, administrative and other general overhead cost could not be considered to be directly attributable cost and thus cannot be capitalized.

8. In the instant case, it was observed that the Company was in operation since many years but the entire value of Director's remuneration had been capitalized. In other words, in view of the Committee, such treatment suggested that all directors, to whom such remuneration, was paid were engaged to look after expansion of Plant &

Shri Saud Ahmad, Joint Director (Legal & Prosecution) -vs- CA. Akhil Kumar

Machinery situated at Asansol and none of directors looked after general administration of the company. Further, from the documents on record, it was noted that no evidence was brought on record viz. management representation letter which showed that all such Directors were exclusively engaged for the expansion of said Plant & Machinery. In the absence of any evidence to corroborate the contention of the Respondent, it is viewed that the accounting treatment followed by the Company to include entire value of Director's remuneration as a part of pre-operative expenses and not charging the same or any of its portion to Profit & Loss Account was not correct. It was further noted that although, the primary responsibility for preparation of accounts lies with the Company, however, being statutory auditor of the Company, it was the duty of the Respondent to also report such material discrepancy in his audit report. Accordingly, the Respondent is guilty on this charge in terms of the provisions of Clause (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949.

9. As regard the second charge alleged against the Respondent that he did not receive any direct confirmation from loanee parties, creditors and bankers regarding their balances shown in the financial statements audited by him, it was observed that while answering Q.No. 14 of his Statement on Oath dated 13.12.2012 (C-281), the Respondent had stated as under:-

"We have not obtained confirmation of balances directly from loanee parties, from whom the Company had received Secured and unsecured loan. We have relied on the confirmation obtained by the Company only. For these we have checked the Bank balances, balances from the bank statement produced before us for verification and relied on the confirmation obtained by the Company from the debtors and creditors....."

10. The Committee noted that in context of 'confirmation obtained by the Company', the Respondent in his defense had brought on record an undated letter (D-345) signed by Sh. Atul Chaudhary, the then Commercial Manager of the Company and also the Witness of the Respondent, wherein he had stated that balances of sundry creditors appearing in the books of accounts were correct and were confirmed by the respective creditors. It was noted that the letter was undated and that it was neither on the letterhead of the Company nor was bearing any seal/stamp, and therefore its validity

was questionable. The Respondent, therefore, summoned Sh. Atul Chaudhary as his Witness for deposition before the Committee. The said Witness submitted before the Committee that the said document was given by him to the Respondent during the course of audit when the Respondent had sought confirmation with respect to the balances of sundry creditors as appearing in the books of accounts of the Company. The Committee noted that on being asked as to why the same was not given on the letter head of the Company, the Witness stated that it was not a usual practice for the Company to issue such letters on the letter head of the Company and that he was not in the accounts department but was only co-coordinating with the auditors on behalf of the management of the Company. He had, therefore, procured the files from the accounts department to be shown to the auditors and issued the said letter in response to audit query. The Respondent retained the said letter but returned the files. In light of the above, the Committee noted that the Respondent had followed a verification procedure to seek balance confirmation and the Complainant had failed to point out any discrepancy which leads to material misstatement. Accordingly, it was viewed that Respondent was not guilty of professional misconduct with respect to this charge.

Conclusion

11. Thus, in conclusion, in the opinion of the Committee, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 with respect to first charge.

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. 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

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