

DISCIPLINARY COMMITTEE [BENCH – I (2021-2022)]

[Constituted under Section 21B of the Chartered Accountants 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

Ref. No. PR/81/18-DD/87/18-DC/1387/2020

In the matter of:

Shri Gautam Mandal
64, Kaliprasad Banerjee Lane
Near Yogobani Club, P. S. Bantra
HOWRAH – 711 101

.....Complainant

Versus

CA. Sanjay Kansal (M.No.060528)
P-17, New C.I.T Road, 1st Floor,
Room No.7 (Near Central Metro)
KOLKATA – 700 073

.....Respondent

MEMBERS PRESENT :-

CA. Nihar N Jambusaria, Presiding Officer
Shri Jugal Kishore Mohapatra, I.A.S. (Retd.) (Government Nominee),
Ms. Rashmi Verma, I.A.S. (Retd.) (Government Nominee),
CA. Durgesh Kumar Kabra, Member

DATE OF FINAL HEARING : 22.07.2021
PLACE OF FINAL HEARING : Through Video Conferencing

PARTIES PRESENT:

Respondent - CA. Sanjay Kansal
Counsel for the Respondent - CA. A.P. Singh

BRIEF OF THE DISCIPLINARY PROCEEDINGS:-

1. The Committee noted that on the day of final hearing held on 22nd July, 2021, the Respondent along with his Counsel was present. The hearing in the above matter was commenced from the stage as it was left in last hearing held on 24th June, 2021. The Respondent did not raise any objection to the same. The Counsel for the Respondent made his submissions / contentions on the charges. After hearing the submissions of the Counsel, the Committee decided to conclude the hearing in the above matter.

1.1 In respect of previous hearing held in the matter on 24th June, 2021, the Complainant was not present. The Respondent along with his Counsel was present. Since there was no prior intimation / information from the Complainant for not attending the hearing, the Committee decided to proceed ahead with the hearing ex-parte the Complainant. The Respondent was put on oath. On being enquired about the charges leveled against the Respondent, the Respondent pleaded not guilty to the charges. Thereafter, the Committee decided to adjourn the hearing in the matter.

CHARGES IN BRIEF AND FINDINGS OF THE DISCIPLINARY COMMITTEE:-

2. As regard the background of the case, the Committee noted that the Complainant could not file his Income Tax Returns for the Assessment Years 2011-12 to 2017-18. The Returns of his wife Ms. Nandini Mandal also could not have been filed for the same years due to old age illness. Due to non-filing of Income Tax Returns by the Complainant, the Income Tax Department seized / blocked the Bank Account of the Complainant maintained at Axis Bank. Thereafter, the Complainant in order to file his pending Income Tax returns approached the Respondent. The Complainant was informed by the Respondent that a total amount / expenditure of Rs. 25 lakhs is required to be paid for processing and submissions of his pending Income Tax returns. The above amount of Rs.25 lakhs includes the amount of taxes to be paid to the Income Tax Department. The Complainant at that time was able to arrange Rs.19,80,000/- which he paid by way of cheque to the Respondent. Besides this, he also paid Rs.2.5 lakh in cash to the Respondent. However, the Respondent despite taking the money in advance did not file the Income Tax returns nor did he deposit the tax due on behalf of the Complainant.

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2.1 In view of the aforesaid background, the following charges were levelled against the Respondent:-

i) The Respondent being a professional did not file the pending Income Tax returns of the Complainant and his wife for the Assessment 2011-12 to 2017-18 despite taking advance from the Complainant.

3. In respect of above charge, the Committee noted that the Respondent made following submissions in his defence:-

3.1. The Counsel for the Respondent stated the Respondent was found prima facie not guilty by the Director (Discipline) in this matter but the Board of Discipline while considering the prima facie opinion of the Director (Discipline), did not agree with the observations of the Director (Discipline) and accordingly, decided to refer the matter to the Disciplinary Committee for further enquiry. The Respondent stated that it is settled principle of law that onus of providing any proof or evidence in respect of any allegation lies on the person or the authority making the allegations.

3.2. The Respondent stated that document on page no.D-340 of Prima Facie Opinion is fabricated and it contains number of inconsistencies. The inconsistencies contained in the date and the denial to the settlement between the Complainant and the Respondent by use of the word "not" in the second paragraph of the letter. The Respondent stated that the Complainant had filed various complaints before the law enforcing agencies and had also filed a criminal suit against the Respondent but the complainant has not filed the document contained on page D-340 either before any law enforcing agencies or before the Hon'ble Courts. On the contrary, the report filed by the law enforcing agencies in the court of the Additional chief Judicial Magistrate took cognizance of the withdrawal of the complaint by the Complainant.

3.3. The Respondent stated that it has been held that where matters relating to facts and points of law are identical and such matters is also brought before the courts as well, it would not be appropriate for the disciplinary body to deal with them till such matters are disposed by judicial forums.

4. The Disciplinary Committee observed that the Board of Discipline did not agree with the observations of the Director (Discipline) holding the Respondent prima facie not guilty of the allegations. The Board on consideration of the Prima Facie Opinion noted the submissions of the Complainant that he had paid Rs.19.80 lacs to the Respondent in the month of Nov/Dec 2016 and cash of Rs.2.50 lacs to the Respondent in the month of Jan 2017 for filing of his

income tax returns from the A.Y. 2011-12 to the A.Y. 2017-18. Although, the Respondent denied having receipt of fees in cash of Rs.2.50 lacs, but brought on record copy of bill dated 16th November, 2016 raised by him on the Complainant in respect of preparing and filing of income tax return for the A.Y. 2010-11 to the A.Y. 2015-16 to the tune of Rs.15 lacs, deposit of Rs.9.87 lacs with the Income Tax Department as tax on behalf of the Complainant and the refund of Rs.10 lacs to the Complainant on account of settlement between the two in July, 2018 which reflect that the denial of the Respondent is not tenable. The Board also noted that the Complainant filed the complaint with the Institute in March, 2018 and as per the Respondent, in July, 2018, a settlement was arrived in between the Complainant and the Respondent after refund of an amount of Rs.10 lacs to the Complainant after which the Complainant withdrew the complaint with the Institute which was also not confirmed by the Complainant as he stated in response to the communication from the Disciplinary Directorate that he was forced to sign such letter under exceptional circumstances and he does not have any intention to withdraw the complaint as the amount of Rs.4.50 lacs is still due. Thus, the Board was of the view that the conduct of the Respondent needs to be examined through further enquiry.

5. The Committee noted that the Respondent raised question on the authenticity of letter by stating that it contains a number of inconsistencies and had hand written corrections on it. The Respondent stated that the Complainant did not file such letter denying withdrawal of complaint before any law enforcement agency or any court of law. It is also noted that the Complainant was neither present in any of the hearings nor he submitted his further submissions or the communication regarding his appearance before the Committee. Hence, the Committee was not pleased with the conduct of the Complainant.

6. In absence of any further submissions from the Complainant, the authenticity of the letter dated 09.03.2018 (D-340) was under question. The Respondent also raised the question on the same and called it as fabricated document. The Respondent stated that it has filed the Income Tax returns of the Complainant and his wife and due to his efforts, the Income Tax Department revoked the attachment order and released the attached Saving Bank account of the Complainant maintained with Axis Bank vide letter dated 11th November, 2016. The Respondent also mentioned that he has deposited the tax due on behalf of the Complainant for various years, the details, of which in a tabular form is given as under:

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Date of Payment	Chillan No.	Amount(Rs.)
10.11.2016	00391	23,973.00
10.11.2016	00407	6,243.00
29.03.2017	04615	75,000.00
29.03.2017	04720	1,800.00
08.06.2017	02891	14,680.00
08.06.2017	02998	1,60,980.00
08.06.2017	03107	1,84,750.00
07.12.2016	00003	45,000.00
08.12.2016	00005	45,000.00
09.12.2016	00004	25,000.00
02.12.2016	00007	2,00,000.00
05.12.2016	00051	49,000.00
07.12.2016	00004	45,000.00
08.12.2016	00027	45,000.00
07.12.2016	00004	45,000.00
08.12.2017	00033	21,000.00

6.1. It has also come on record that there was settlement between the Complainant and the Respondent on 09th July, 2018. In the said settlement, it was mentioned that *"differences between us were resolved amicably and the matter was solved. Therefore, both of us have decided to withdraw all complain against each other as the matter has been resolved"*. The said joint-statement has been signed by the Complainant and the Respondent

7. The Committee noted that the Respondent brought on record copy of Income Tax returns of the Complainant and his wife filed by him with the Income Tax Department for Assessment years 2011-12 to 2017-18. In view of above, there was nothing on record to show that the Respondent did not perform his professional duties of filing Income Tax returns. Moreover, the Committee could not find anything which could establish that the Respondent was required to return or pay any amount as alleged against him. Accordingly, the Committee decided to hold the Respondent not guilty with respect to charges of professional misconduct and Other Misconduct falling within the meaning of Item (7) of Part I of Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

Conclusion:-

5. Thus in the considered opinion of the Committee, the Respondent is **NOT GUILTY** of Professional Misconduct and Other Misconduct falling within the meaning of Item (7) of Part I of Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

5.1 Accordingly, the Committee passed an Order for closure of this case under Rule 19 (2) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of cases) Rules, 2007.

Sd/-

**(CA. NIHAR N JAMBUSARIA)
PRESIDING OFFICER**

[approved and confirmed through e-mail]
**(SHRI JUGAL KISHORE MOHAPATRA,
I.A.S.(RETD.)), GOVERNMENT NOMINEE**

[approved and confirmed through e-mail]
**(MS. RASHMI VERMA, I.A.S. (RETD.))
GOVERNMENT NOMINEE**

[approved and confirmed through e-mail]
**(CA. DURGESH KUMAR KABRA)
MEMBER**

Date:- 26/10/2021

Jyotika
प्रमाणित सत्य प्रतिलिपि / Certified true copy

सीए. ज्योतिका ग्रोवर / CA. Jyotika Grover
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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