

CONFIDENTIAL

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

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

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

File No. : [PPR-132/2015-DD/107/INF/2015]-DC/825/2018]

In the matter of:

CA. Gaurav Goyal (M. No. 078271),

38, Arhat Bazar,

Above Canara Bank,

DEHRADUN – 248 001

..... Respondent

MEMBERS PRESENT AS ON 25.06.2021:

CA. (Dr.) Debashis Mitra, Presiding Officer

Sh. Rajeev Kher, I.A.S. (Retd.), Government Nominee

CA. Amarjit Chopra, Government Nominee

CA. Babu Abraham Kallivayalil, Member

DATE OF FINAL HEARING : 25.06.2021 (through Video Conferencing)

PARTIES PRESENT:

Counsel for Respondent : CA. C.V. Sajan

CHARGES IN BRIEF:

1. As per letter dated 17th February, 2015, it was informed that the Respondent was appointed as a Consultant (Finance and Accounts Specialist) vide Service Agreement dated 08/03/2010 for a period of 3 years in Project Management Office of Asian Development Bank. Among others, broadly, the Respondent was responsible to maintain the accounts of the said Project Management Office of Asian Development Bank

(hereinafter to be referred to as "PMO-ADB"). As per the information provided by the informant, the Respondent was also authorized to operate bank accounts of the said project. It is noted from the Information letter that a special audit of the PMO-ADB was carried out wherein various gross irregularities and lapses were noticed on the part of Respondent and thereafter the matter was reported to the ICAI for taking a disciplinary action against its erring member (Respondent) on the following charges: -

- a) The Respondent was supposed to apply for PAN, TAN & Service Tax registration in respect of his client, i.e. PMO-ADB which allegedly he failed to do so.
- b) Second and third charges against the Respondent were that he charged an excessive amount of remuneration as compared to the remuneration decided in the original appointment letter. More specifically, he charged a remuneration of Rs 12,500/- per day with 20% annual increment and by this calculation, he claimed an excessive, unreasonable amount of Rs. 74 Lacs approx. as his remuneration as against the provision of just an amount of Rs. 31,25,250/- which was not even half of the said claimed amount.
- c) The next charge against the Respondent is that he failed to deduct TDS on his own remuneration which he received from PMO-ADB.
- d) In addition to the above, the Respondent is charged to have failed in fulfilling his duties for not maintaining the Cash Book and other required books of Account for the said project for which he was appointed. Moreover, it is pointed out by the Informant that the Respondent never got audited the Accounts of the said project as per the requirements of Terms of Reference (TOR).

BRIEF FACTS OF THE PROCEEDINGS:

2. The Committee took note of the progress in the instant case & understood that it was the fifth hearing in the matter. In the last date on 27th May, 2021,

the matter was partly heard & hence, it continued from the point it was heard earlier. The Committee noted that on this date of hearing, the Respondent's Counsel CA. C V Sajan was present before the Bench through Video Conferencing mode. Thereafter, the Counsel of the Respondent took the Committee through the facts of the case and submitted his line of defense against each and every charge. The Committee after hearing him in length decided to conclude the hearing.

FINDINGS OF THE COMMITTEE:

3. As regards first charge relating to failure of the Respondent in applying for PAN, TAN & Service Tax registration in respect of his client, i.e. PMO-ADB, the Committee noted that PMO-ADB was site office of ADB for its ongoing projects. The Committee noted that CIT (Appeals), Dehradun vide order dated 26.11.2015 allowed the appeal of PMO-ADB that provision of Section 10 of Income Tax Act, 1961 will not create any obligation on bank or those acting on behalf of it to withhold or deposit tax. The Committee accordingly was convinced with the submissions of the Respondent/ his Counsel that PMO ADB being a unit of ADB enjoyed amnesty/ exemption from compliance of all kinds of tax related compliances by virtue of Article 253 of the Constitution of India. Accordingly, the Committee concluded that the Respondent, in the capacity of a finance & accounts specialist of this project office did not fail in any obligation to comply with any of the alleged formalities like obtaining registration numbers under Income Tax Act or Finance Act/ Service Tax Law or to get its accounts audited etc.
4. With regard to second and third charge of making higher claim of salary by the Respondent than what was prescribed in the agreement, is concerned, the Committee observed various documents placed in defence by the Counsel of the Respondent and noted that the approval for enhanced salary to the Respondent is depicting in the e-mails exchanged in August 2010. Further, the Committee on perusal of minutes of Annual review meeting of ADB held on 11-15 July, 2011 noted that the authorities of the PMO-ADB passed revised terms of remuneration. Accordingly, the

Committee was convinced that the approval of higher remuneration was duly approved by the competent authority and there was apparently no higher claim of remuneration by the Respondent.

5. As regards next charges of failure in deducting TDS by the Respondent on his own remuneration which he received from PMO-ADB and not getting accounts audited, the Committee noted that it is already established under previous paragraphs that PMO-ADB was not having any obligation to comply with formalities like obtaining registration numbers under Income Tax Act or Finance Act/ Service Tax Law or to get its accounts audited etc., hence this charge against the Respondent is dropped.
6. As regards last charge the Committee noted that PMO ADB being a unit of ADB enjoyed amnesty/ exemption from compliance of all kind of tax related regulations by virtue of Article 253 of the Constitution of India. The same is also supported by order of CIT(Appeals), Dehradun vide order dated 26/11/2015. Accordingly, the Committee noted that the said Charge is also not maintainable.
7. Keeping in view the facts and circumstances of the case, material on record and submissions of the Respondent's side before it, the Committee decided to conclude the hearing by holding him not guilty of the charges.

CONCLUSION:

8. In view of the above observation, considering the submissions of the parties and documents on record, the Committee held the Respondent **NOT GUILTY** of Professional and/or Other Misconduct falling within the meaning of Item (2) of Part-I of First Schedule and Item (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949 read with Section 22 of said Act.

9. 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 passed order for closing the case against the Respondent.

sd/-
(CA. (DR.) DEBASHIS MITRA)
PRESIDING OFFICER

(approved & confirmed through email)
(SH. RAJEEV KHER, I.A.S. (Retd.)
GOVERNMENT NOMINEE

(approved & confirmed through email)
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

sd/-
(CA. BABU ABRAHAM KALLIVAYALIL)
MEMBER

Date : 19.1.2022
Place : New Delhi

Jyotika
प्रमाणित सत्य प्रतिलिपि / Certified true copy

सीए. ज्योतिका ग्रोवर / CA. Jyotika Grover
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