

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. : [PR/157/14/DD/260/15/DC/828/18]

In the matter of:

Shri Vitthal Machindra Bhosale
Dy. Commissioner of Income Tax
Central Circle 2(2), Pune
4th Floor, C-Wing
Income Tax Office, PMT Building
Shandarsheth Road, Swargate
Pune-411 037

Versus

.....Complainant

CA. Gopal Ramourti... (M. No. 034331)
5-B, Vishesh
252, Sion Main Road
Sion
Mumbai-400022

.....Respondent

MEMBERS PRESENT:

CA. (Dr.) Debashis Mitra, Presiding Officer (Through VC)
Shri Rajeev Kher, Govt. Nominee (Through VC)
Shri Amarjit Chopra, Govt. Nominee (Through VC)

DATE OF FINAL HEARING : 18.10.2021 (Through Video Conferencing Mode)

PARTIES PRESENT :

Respondent : CA. Gopal Ramourti
Counsel for Respondent : Mr. S.G. Gokhale (Advocate)

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CHARGES IN BRIEF:-

1. The Committee noted that present case relates to Twilight Litaka Pharma Ltd. (hereinafter referred to as the "TLPL") which was a public limited company listed on the Bombay Stock Exchange and National Stock Exchange. The Committee noted that a search under Section 132 of the Income Tax Act, 1961 took place on TLPL and its Directors on 13th October, 2011. The Respondent was the Managing Director of TLPL. During the search, it was noticed that the Respondent, who is also a Chartered Accountant was instrumental in manipulating the books of accounts of TLPL of which he was the Managing Director. During the search and seizure and survey actions, it was found that turnover of TLPL was inflated by creating circular transactions through some paper concerns as well as real concerns. As TLPL was public limited company and its shares were listed on both BSE & NSE, the violations found during search were reported to the SEBI.

1.1 The Committee noted that the Respondent was held prima-facie guilty of Professional and Other misconduct falling within the meaning of Item (2) of Part IV of the First Schedule and Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 on the charge that the Respondent was involved in manipulative activities with regard to the fact that real turnover of TLPL for the last 03 years was around 100 to 150 crores whereas as per the published accounts of TLPL, the turnover was more than 1500 crores.

BRIEF FACTS OF THE PROCEEDINGS:

2. On the day of the final hearing on 18/10/2021, The Committee noted that the Respondent was present before it along with his counsel CA. Jayant Gokhale through Video Conferencing mode from Mumbai Office of ICAI. The Committee also noted that the Counsel of the Complainant vide email dated 18th October 2021 sought an adjournment in the matter on account of filing citations and taking instruction from the client. The Office informed the Committee that the said email was duly replied by the Office instantly on same day by advising the Complainant Department to depute other official from their department (who is conversant with the facts of the case) to be present before the Bench at the time of hearing either

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in person or through Video Conferencing mode and make submissions on behalf of their department. The Committee noted that the Office in the said e-mail also clarified to the Complainant Department that in their absence the Committee may proceed further and may decide the case ex-parte.

2.1 The Committee noted that in response to e-mail from the Office neither any communication was received from the Complainant Department nor any person appeared on behalf of Complainant Department in the meeting held on 18th October 2021. The Committee looking into sufficient opportunities given to the Complainant Department by way of adjourning the matter on their request/absence in the past, decide to proceed ex-parte. Thereafter, the Respondent presented his line of defense by presenting the arguments. The Committee also posed question to him. After hearing the Respondent, the Committee decided to conclude the hearing in the instant matter with following directions to the Respondent.

- a. Financial statements, Auditor's Reports, Annual Reports, Tax Assessments of the Company for the years ended 30th June,2010,2011,2012,2013 and 2014.
- b. To submit details of status of loan accounts with various banks after the search and the reasons thereof.
- c. To clarify as to how the Company with a turnover of 500 crores and profit of 30 crores as stated by him could not repay loan of 20 crores of a particular bank which necessitated filing of winding up petition by said bank against the Company.
- d. Copy of petition filed by Bank before Hon'ble High Court for winding up of the Company.
- e. Order of Hon'ble High court relating to winding up as mentioned by him during the course of hearing.

The Office was also directed to inform the Complainant Department to submit their final submissions, if any, with in next 10 days. With this, the Committee decided to conclude the hearing and reserve the Judgement.

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3. Thereafter this matter was placed in meeting dated 27th December 2021 for consideration of the facts and arriving at a decision by the Committee. The case was considered by the same members who earlier heard this case. The Committee noted that as per direction on 18th October 2021 the Respondent had submitted the desired information/ documents. The Committee also noted that no further submissions were received from the Complainant Department. Keeping in view the facts and circumstances of the case, material on record and submissions of the Respondent at the time of hearing, the Committee passed its judgement.

FINDINGS OF THE COMMITTEE

4. The Committee noted that the Counsel of the Respondent in his defence submitted that the allegation against the Respondent by the Income Tax Department is that turnover for two-three years have been inflated by the Respondent. The Respondent/ Counsel for the Respondent denied the charges alleged upon the Respondent and bring attention of the Committee on following evidence(s) to establish that the turnover is genuine.
- a. That turnover reflected in the books of accounts is same as per VAT reports and these were duly accepted by the Sales Tax Authorities reflecting the turnover is correct.
 - b. That turnover as per the books was accepted under block assessment under Income Tax Act has been done for seven years.
 - c. That a parallel complaint against the Respondent was lodged with SEBI. SEBI after detailed enquiry passed an Order saying that turnover is genuine.
5. The Committee noted that as per Income Tax Orders, addition was made on account disallowance under section 80 IC of Income Tax Act only. The Committee in this regard categorically asked the Respondent's Counsel the reason for not preferring any appeal before the ITAT in consequence to the dismissal of appeal before the CIT Appeals which was related to section 80 IC of Income Tax Act. The Counsel mentioned that the Company was already ordered to be wound up by the hon'ble Bombay High Court. He further submitted that the

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petition was accepted in 2014 and dismissal took place in 2016. Hence, by that time the Company was already wound up which is the reason for not preferring any appeal before the ITAT.

6. The Committee noted that SEBI appointed a independent Chartered Accountant firm for conducting Forensic audit of TLPL and the Forensic auditor had submitted report during the year 2012. The main allegation in detailed forensic audit report appears to be that the Company had indulged in "presenting rosy picture" and sales turnover were inflated by entering into circular trading during the period 16.12.2009 to 15.12.2010.

7. The Committee noted that later an order dated 28th February,2019 was passed by the Hon'ble Whole time member of SEBI. Para 26 of the SEBI Order is reproduced as below:-

"26. Further, on a through examination and evaluation of records , I do not find sufficient material either in forensic audit report or in the investigation report to support the allegation of financial irregularity or manipulation of financial statements as alleged in the SCN, through the suspicions drawn from the forensic audit report may have been valid. Also, in the context of the ITD not having passed any adverse orders regarding 'bogus' purchase or sales by TLPL despite having done a detailed assessment of the company's financial statements, the initial complaint forwarded by ITD may not continue to be relevant(Emphasis drawn)

27. the Show cause notice dated June 23,2016 is accordingly disposed of."

The Committee noted from the above order that the SEBI while accepting turnover of the Company did not found sufficient evidence in support of Forensic audit report.

8. Based on above, the material available on record vis-a-vis submissions of the Respondent on record, the Committee was convinced with the explanations/arguments presented by the Counsel for the Respondent. The Committee also noted that Income Tax Assessment Order did not mention about inflation in turnover and was constrained on disallowance of deduction claimed

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under section 80 IC of the Income Tax Act, 1961. The Committee also found that SEBI vide its order while accepted the turnover of the TLPL dropped the Show Cause Notice issued to the TLPL.

9. The Committee noted that the present Bench had given various opportunities to the Complainant Department in past also by adjourning meetings held on 13th July, 2021 and 14th August, 2021. The Committee also noted that despite the same no representative appeared before the Bench on behalf of the Complainant Department. Further, the Committee noted that no written communication/ representation was made by the Complainant Department despite specific direction given to the Complainant Department in meeting held on 18th October 2021. The Committee in absence of the corroborative evidences/ submission from the Complainant Department was convinced with the defence of the Respondent and accordingly decided to drop the charges against the Respondent.

CONCLUSION

10. In view of the above findings stated in above paras the Committee in its considered opinion hold the Respondent is **NOT GUILTY** of Professional and Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule and Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 read with section 22 of the Act.
11. The Committee, in terms of Rule 19 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, passed order for closure of this case against the Respondent.

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

sd/-
(SHRI RAJEEV KHER, IAS RETD.)
GOVERNMENT NOMINEE

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

DATE: 10TH FEBRUARY, 2022
PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित /
Certified to be true copy



अरुण कुमार / Arun Kumar

अनुशासनात्मक निदेशालय / Disciplinary Directorate

इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया

The Institute of Chartered Accountants of India

आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032

ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

Shri Vitthal Machindra Bhosale, Dy. Commissioner of Income Tax, Pune Vs. CA. Gopal Ramourti (M.No. 034331)

