

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/196/16-DD/248/16-DC/912/2018]

In the matter of:

Shri Rajeev S. Velankar
2nd Floor, Building No. 15,
Indira Nivas, Avantikabai Gokhale Street
Girgaum
Mumbai – 400 004

.....Complainant

Versus

**CA. Padamshi L. Shah ... (M. No. 005136) of
M/s Khimji Kunverji & Co. ... (FRN 105147W)**
Chartered Accountants,
Office No. 1/2/16& 17, First Floor,
Neelam Complex, Plot No. 298, Ward 12/B,
Near Grain Oilseeds Merchant Building,
Opp. Dr. C G High School, Gandhidham, Kutch
Gandhidham - 370201

.....Respondent

MEMBERS PRESENT:

CA. (Dr.) Debashis Mitra, Presiding Officer (Through VC)

Shri Rajeev Kher, Govt. Nominee (Through VC)

CA. Babu Abraham Kallivayalil, Member (Through VC)

DATE OF FINAL HEARING : 02.09.2021 (Through Video Conferencing)

PARTIES PRESENT :

Shri Rajeev S. Velankar, Mumbai -Vs.- CA. Padamshi L. Shah (M. No. 005136) of M/s Khimji Kunverji & Co., Chartered Accountants, Gandhidham

Complainant : Shri Rajeev S. Velankar
Respondent : CA. Jayant Gokhale – Counsel for Respondent (along with his Assistant Ms. C. Lohande) and CA. Vishal Lalka (son of the Respondent) to assist the Counsel.

CHARGES IN BRIEF:-

1. The Committee noted that the Complainant has raised various allegations against the Respondent relating to the audit of a Public Trust namely Maharashtra Mandal, Gandhidham (hereinafter referred to as the “Trust/Mandal”). The Committee noted that the Respondent was held Prima-facie guilty of Professional Misconduct falling within the meaning of Clause (7) of Part- I of the Second Schedule to the Chartered Accountants Act, 1949 on following charges:
 - 1.1. That in the books of accounts of the Trust, Depreciation is shown for some years and not for all the years, but no explanation is given by the Respondent in his audit reports of the Trust for the same.
 - 1.2. The Respondent failed to qualify his report with regard to violation of Accounting Standards by the Trust.

BRIEF FACTS OF THE PROCEEDINGS:

2. On the day of the final hearing on 02/09/2021, the Committee noted that the Complainant was present before it through Video Conferencing Mode. From the Respondent side CA. Jayant Gokhale was present before it through Video Conferencing Mode along with CA. Vishal Lalka (son of the Respondent) for his assistance.
 - 2.1 At the outset, the Committee enquired from the parties that since the composition of the Committee had changed further to the previous hearing held on 22nd September, 2020, as to whether they wished to have a de-novo hearing. On the same all parties agreed to opt for de-novo hearing as no practical hearing had taken place in the instant matter. Accordingly, the Complainant was administered Oath.

- 2.2 Thereafter, the Complainant and the Counsel of the Respondent presented their arguments. The Counsel of the Respondent submitted that accounting in books was done on cash basis and reporting was not required to state true & fair view. He also submitted that receipt of rent does not amount to commercial activity as per various judgements. The Committee also sought submission/ clarification from the Respondent on following points:
- a. Judicial pronouncement(s) to establish that receipt of rent does not tantamount to commercial activity.
 - b. Actual name of Trust as per Income tax records and as per Trust Deed.

Thereafter, the Committee gave the direction to the Respondent to submit his submissions/ documents in next 10 days and concluded the hearing by reserving the judgment in the instant matter.

3. Thereafter, this matter was placed in meeting dated 15th September 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 its direction given in meeting held on 2nd September 2021, the Respondent had submitted his submissions. The Committee also noted that the Complainant had also made submissions. Keeping in view the facts and circumstances of the case, material on record and submissions of the parties, the Committee passed its judgement.

FINDINGS OF THE COMMITTEE

4. The Committee noted that the first charge relates to non-providing of Depreciation for certain years and no explanation is given by the Respondent in the audit reports for the same. The Committee in this regard noted from perusal of audited financial statement of the Trust that the depreciation has been duly provided for the year ending 31.03.2009 to 31.03.2013. Further, it was observed by the Committee that the fact of non-providing of depreciation has been recorded by the Trust for the years prior to 2009 i.e. 2002 to 2008 in the note to Balance Sheet as under:

“Depreciation has not been provided on Immovable Properties, Furniture, Fixture & Dead Stock.” (C-91, C-98, C-105, C-112, C-119, C-126, C-133 of prima-facie opinion)

- 4.1 The Committee further noted that for the years 1993 to 2001, the depreciation has neither been provided nor a note to this effect was made in the accounts. The Committee noted that Director (Discipline) in prima-facie opinion had opined that since rental income was earned by the Trust during those years hence providing of depreciation was mandatory as per AS-6 and non-compliance of the same should have been reported specifically by the Respondent in his audit Report. The Committee noted that the next charge also relates to failure of the Respondent in qualifying his report regarding violation of Accounting Standards by the Trust.
5. The Committee noted that the Counsel for the Respondent in this regard had submitted as under:
- a. That the Trust was following cash basis accounting and the matter was reported as format prescribed by the prevalent Law.
 - b. Accounting Standards are applicable only to financial statements prepared on accrual basis of accounting
 - c. Accounting Standards do not apply because the Respondent was on a different reporting framework and complying as required under the law.
 - d. That there was no statutory requirement of providing for depreciation under Bombay Public Trust Act.
 - e. That the Trust is a Charitable Institution and trust has passed the rigorous test of section 11 and 12A of the IT Act.
 - f. Accounting Standards are not applicable on charitable entities.
 - g. That reporting was not required to state true and fair view.
 - h. That there was commercial activity done by the trust.
 - i. He accordingly concluded that he was not required to qualify.
- 5.1 The Committee noted that reliance was placed by the Respondent on various judicial pronouncement that renting out of premises does not lead to the entity

being considered to be carrying on a commercial activity finds force in following decisions:

- a. **DIT (exemptions) v. Lala Lajpatrai Memorial Trust (2016) 383 ITR 345 (Bom)** – wherein it was held by the High Court of Bombay that letting out by the trust of its building consisting of an auditorium did not fall within the ambit of the first proviso to section 2(15) of the Income Tax Act, 1961 which carves out an exception from the definition of “charitable purpose”. Accordingly, it was held by the High Court that benefit of exemption under section 11 of the Income Tax Act, 1961 cannot be denied on the ground that the educational trust had let out its auditorium for educational activities.
- b. **DIT (exemptions) v. Sri Vile Parle Kelavani Mandal (2015) 378 ITR 593 (Bom)** – wherein it was held by the High Court of Bombay that where assessee trust generated income by giving hall and premises of its educational institutional on rent and said income was utilised for educational institution itself, such rental income could not be brought to tax.
- c. **Institute of Chartered Accountants of India v. DGIT (exemptions) (2013) 358 ITR 91 (Del)** – wherein it was held by the High Court of Delhi that even though fees are charged by the petitioner institute for providing coaching classes and for holding interviews with respect to campus placement, the said activities cannot be stated to be rendering service in relation to any trade, commerce or business as such activities are undertaken by the petitioner institute in furtherance of its main object which as held earlier are not trade, commerce or business. Thus, though Institute was charging Fees and is doing lots of activities which appears to be commercial activity, even then Delhi High Court has held said activities cannot be stated to be in relation to any Trade, commerce or business.
- d. Also refer similar decision in case of **ICAI Accounting Research foundation V. DGIT(Exemptions) (2009) 321 ITR 73 (Delhi)** and in **CIT v. Sri Thyaga Brahma Gana Sabha (1990) 188 ITR 160 (Mad)** – wherein the assessee society was owner of a hall and derived rental income from letting out the said hall whenever the same was not used by assessee; it was held by the High Court of Madras that in view of the fact that the object of the assessee society was not to earn profit by letting out hall and profit earned in the past was meagre, assessee was entitled to exemption under section 11 of the Income Tax Act, 1961.

- e. **Sri Ram Samaj v. Jt. DIT (exemptions) (2020) 275 taxman 309 (Mad)** – wherein it was held by the High Court of Madras that where assessee-society engaged in running educational institutions, earned income from running community hall, Kalyana Mandapam and Gnanavapi and utilized surplus income for objects of trust, it was entitled to exemption under section 11 of the Income Tax Act, 1961.
- f. **ITO v. Brahman Karyalaya (2000) 73 ITD 456 (Pune)** – wherein it was held by Pune tribunal that where dominant and primary objects of assessee-trust were charitable in nature and letting out its Mangal Karyalaya was only ancillary and incidental to primary and dominant purpose of charity, it could not be said that assessee was carrying on any business activity. Accordingly, benefit of exemption under section 11 of the Income Tax Act, 1961 was allowed to the assessee trust.
6. The Committee observed in view of the above judicial pronouncements, that a Charitable trust which is not engaged in business, cannot be said to be engaged in or carrying on activities of Commercial nature merely because it is deriving some rental income.
7. The Committee also noted that according to the Preface to the Statements of Accounting Standards issued by ICAI in 1979, Accounting Standards are issued for use in presentation of general purpose financial statements by such “commercial, industrial or business” enterprises as may be specified by the Institute and which are subject to attest function of its members. Since the trust is a Charitable entity and is following Cash basis accounting hence the Accounting Standards were not applicable.
8. The Committee further noted that the Respondent had made requisite disclosure which were prevalent in year 2004. The Committee was hence convinced with the explanations/arguments presented by the Counsel. Accordingly, the Committee decided to drop the charges against the Respondent.

CONCLUSION

9. In view of the above findings stated in above paras vis a vis material on record, the Committee in its considered opinion hold the Respondent **NOT GUILTY** of

Professional misconduct falling within the meaning of Item (7) of Part- I of the Second Schedule to the Chartered Accountants Act, 1949.

10. 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 closure of this case against the Respondent.

sd/-


(CA. (Dr.) DEBASHIS MITRA)
PRESIDING OFFICER

approved & confirmed through email
(SHRI RAJEEV KHER, IAS RETD.)
GOVERNMENT NOMINEE

approved & confirmed through email
(CA. BABU ABRAHAM KALLIVAYALIL)
MEMBER

DATE: 11TH FEBRUARY, 2022
PLACE: NEW DELHI

प्रमाणित सत्य प्रतिलिपि / Certified true copy


मुकेश कुमार मिश्रा / Mukesh Kumar Mittal
असहायक सचिव / Assistant Secretary
अनुशासन-शास्त्रिक विदेशालय / Disciplinary Directorate
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