

CONFIDENTIAL**BOARD OF DISCIPLINE****Constituted under Section 21A of the Chartered Accountants Act 1949****Findings under Rule 14(9) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007**

File No. : PPR/P/29/C/13/DD/23/C/INF/13/BOD/296/2017

CORAM (present in person):

CA. Prasanna Kumar D., Presiding Officer

Ms. Dolly Chakrabarty (IAAS, ret'd.), Government Nominee

CA. (Dr.) Raj Chawla, Member

In matter of:

CA. Krishan Gopal Agrawal (M. No.072528) in Re:

[PPR/P/29/C/13/DD/23/C/INF/13/BOD/296/2017]

.....Respondent

DATE OF FINAL HEARING : 05th August, 2022
 PLACE OF FINAL HEARING : New Delhi/through video conferencing

PARTIES PRESENT (through Video Conferencing):

Respondent : CA. Krishan Gopal Agrawal

FINDINGS:**Background of the case:**

1. The Assessee Shri Bhagwan Agarwal (hereinafter referred to as the 'Assessee') was served notice by the Income Tax Department due to concealment of income and was imposed penalty u/s 271(1)(c) of the Income Tax Act 1961. The Commissioner of Income Tax (Appeals) also confirmed the aforementioned penalty and the Assessee filed an appeal with ITAT against the Order of the Commissioner of Income Tax (Appeals). The ITAT dismissed the appeal of the Assessee vide its Order dated 27th April, 2007. Thereafter, the Assessee filed an appeal before the Hon'ble High Court of Allahabad in Appeal no. 477 of 2007 against the Order of ITAT dated 27th April, 2007. The Hon'ble High Court of Allahabad dismissed the appeal of the Assessee vide its Order dated 17th August, 2010 on the ground that the findings of the ITAT is finding of fact and no substantial question of law arises from the Order of the ITAT. Later, the Assessee filed a miscellaneous application no. 02/Agra/2011 on 24th January 2011 under Section 254(2) of the Income Tax Act 1961 before the ITAT against its Order dated 27th April, 2007. In this application, the

Assessee did not disclose the fact that his appeal against the Order of ITAT has already been dismissed by the Hon'ble High Court of Allahabad. The ITAT after having detailed discussion allowed the miscellaneous application filed by him by rectifying its Order dated 27th April, 2007 and quashed the penalty imposed to him. The Income Tax Department later prayed to the ITAT stating that once the Hon'ble High Court dismissed the appeal of the Assessee, the ITAT cannot adjudicate the matter as it has already been decided by the Superior Judiciary.

Charge Alleged:

2.1 It is alleged against the Respondent that he has deliberately suppressed the material facts about the dismissal of appeal by the Honorable High Court before the ITAT and due to which the ITAT, Agra vide its Order dated 12th July, 2013 recalled the entire Order passed on 27th April 2007. In the said Order, the ITAT has further observed that if the Assessee and his Chartered Accountant would have disclosed the decision of the High Court dismissing the appeal of the Assessee perhaps the Tribunal would not have recalled the entire Order passed on 27th April 2007.

2.2 The Director (Discipline) in his Prima facie Opinion held the Respondent Not Guilty in respect of the charge alleged. However, the Board did not concur with the reasons given against the Charge and was of the view that information related to appeal filed before the High Court was required to be disclosed to the ITAT and by not mentioning the said fact in Misc. Appeal filed with the ITAT, the Respondent has misguided the ITAT members. Accordingly, the Board held the Respondent prima facie Guilty in respect of the charge alleged and decided to proceed further under Chapter IV of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

Brief of Proceedings held:

3.1 At the time of hearing held in the case on 8th January, 2019, the Board noted that the Respondent along with his Counsel was present before it. The Respondent was examined by the Board. On considering the facts of the case and the submission of the Respondent that the client was represented by CA. S. C. Jain before the ITAT on 25th February 2011 when the matter was admitted and heard and that he did not argue or present any point about the case on 15th July 2011, the only day when he appeared in the matter before ITAT, the Board advised the Director (Discipline) to initiate an 'Information' case against CA. S. C. Jain and to have a joint hearing in both the cases. Accordingly, the hearing in the case was adjourned.

3.2 Thereafter, an 'Information' case (bearing file reference number PPR/135/2019/DD/08/INF/2019) was initiated against CA. Suresh Chand Jain (M. No. 070138) in terms of the provisions of Rule 7 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 and the Prima Facie Opinion

formed by the Director(Discipline) in the said case was considered by the Board at its meeting held on 13th July, 2022 wherein the Board while concurring with the reasons given against the charge(s) also noted that although as per the Order sheet in MA no. 2/Agra/ 2011 in ITA no. 468/Agra/2004 - A.Y. 2001-02, the Respondent(member alleged in case no. PPR/135/2019/DD/08/INF/2019) was present on 25th February 2011 on behalf of the Assessee, however, as per the Order dated 28th July 2011 passed by the ITAT on the said MA, the Assessee was, the Assessee was represented by CA. K.G. Agarwal and no observations were made against CA. Suresh Chand Jain. Accordingly, the Board agreed with the Prima Facie Opinion formed by the Director (Discipline) holding the Respondent Not Guilty in respect of the charge alleged and decided to close the case.

- 3.3 Thereafter, the instant case was listed for hearing on 5th August, 2022 wherein the Respondent was present through video conferencing. Since there was a change in the composition of the Board since the last hearing, the Board gave an option to the Respondent as to whether he would like to have a De -Novo enquiry or continue from the last proceedings to which the Respondent stated that he would like to start afresh. Thereafter, on being asked by the Board as to whether the Respondent pleaded guilty in respect of the charges alleged against him, he replied in negative and made his detailed submissions before the Board. The Respondent was examined by the Board. On consideration of the documents and submissions on record, the Board decided to conclude the proceedings in the case.

Brief of the Submissions of the Respondent:

4. The Respondent, in his defense, reiterated his earlier submissions and primarily stated as hereunder:
- 4.1 He is not an ITAT practitioner. MA was filed in 2011 which was led by CA. S. C. Jain, his senior colleague. The Respondent appeared before the ITAT on 15th July 2011 only once but he was not asked any question by the Bench, DR regarding the appeal with High Court and there was no occasion for him even to speak before the Bench as he had not argued or presented any point about this case. CA. S. C. Jain being an ITAT Practitioner represented this matter before the ITAT. He was even not aware what happened in the previous hearing in this case.
- 4.2 Thereafter CA. S. C. Jain pleaded before the authority and a favourable judgement was given. MA was filed by the Department in 2012 after that. This was filed in so much hurry and put the Order date 21st April, 2011 but actual date of filing of this application was 24th January, 2011.

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- 4.3 The assessee has not intentionally disclosed the fact before the ITAT and the same is written in the MA. In the previous date, the Respondent was the representative of the Income Tax Department. CA. S. C. Jain pleaded before the Department who was member and the AO has said in the MA that this fact was concealed by him.
- 4.4 In the second MA of the Income Tax Department where it is written that the Assessee has concealed certain facts, the Respondent as junior Chartered Accountant applied for a copy of the Order and due to the same his name has appeared in the whole matter.
- 4.5 The Income Tax Department vide miscellaneous Application No. 2/Agra/2015 filed a review Application to expunge adverse remarks against the Department. The Respondent on 25.11.2017 submitted Application under Order 1 Rule 10 of Code of Civil Procedure in the said matter.
- 4.6 This was a case where the Assessee on the basis of legal advice from various professionals decided to explore the legal option u/s 254(2) in spite of having exhausted the other option u/s 260A. It is further noted that in terms of provisions of Section 260A of the Income Tax Act 1961, an appeal lies to the High Court from every Order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law. Accordingly, the Hon'ble Allahabad High Court while passing its Order dated 17th August, 2010 did not admit the appeal u/s 260A against the ITAT order dated 27th April, 2007 on the ground that no substantial question of law arises from the Order of the Tribunal and thus, dismissed the appeal.

Observations of the Board:

5.1 On perusal of the documents and submissions on record, the Board observed that in the instant case, the Assessee alleged to have claimed to have purchased 4000 shares of M/s Parnami Habitat Developers Ltd., Gurgaon at the rate of Rs.5.88 per share for a sum of 23,630/-. These shares were allegedly purchased on 09.06.1999 and 15.06.1999 through share broker M/s Rakesh Nagar & Co., R.K. Puram, New Delhi and were claimed to have been sold for a sum of Rs.5,03,772/- through the same broker M/s Rakesh Nagar & Co. The amount of Rs.5,03,772/- was deposited in Capital Gain account for the utilization in the construction of a house and accordingly the Assessee claimed deduction under section 54F of the Income Tax Act 1961. The A.O. observed that the Assessee had in fact taken the benefit of bogus entries through these transactions with the sole motto of converting the black money into white money. Thus, the A.O. issued a Notice dated 26.11.2002 under section 148 of the Income Tax Act 1961 which was served on the Assessee on 28.11.2002. The A.O. observed that the surrender of income made by the Assessee was not voluntary but it was made under compulsion. Accordingly, the A.O. initiated penalty proceedings under section 271(1)(c) of the Act and imposed the minimum penalty under section 271 (1) (c) at Rs. 1,70,459/-.

Further, the following seriatim of events in the captioned case merits consideration:

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Case number	Case filed on	Case filed by	Ground for filing the case/appeal	Date of Order	Details of the Order
132/CIT(A)/ITO 2(4)/Agra 2004-05	--	Assessee(before the CIT(A))	Against Order u/s 271(1)(c) of the Income Tax Act 1961 for imposition of penalty on the Assessee in respect of income for the AY 2001-02	1 st October 2004	CIT(A) confirmed the levy of penalty by AO
ITAT appeal no. 468/Agra/2004	--	Assessee(before the ITAT)	Against the Order of CIT(A) pertaining to AY 2001-02	27 th April 2007	Appeal dismissed - penalty u/s 271(1)(c) of the Income Tax Act 1961 confirmed
Income Tax Appeal no. 477 of 2007	--	Assessee(before the Honorable High Court of Allahabad)	Against the aforesaid ITAT Order of dismissal 27 th April 2007	17 th August 2010	Appeal dismissed - Order of ITAT, Agra dated 27 th April 2007 upheld as no substantial question of law arises from the Order of the Tribunal.
MA 2/A/11	24 th January 2011	Assessee(before the ITAT)	Application filed u/s 254(2) of the Income Tax Act 1961 against the ITAT Order dated 27 th April 2007.	28 th July 2011	Misc Application allowed by rectifying the Order dated 27 th April 2007 and penalty was annulled.
MA 4/Agra/2012	3 rd Feb 2012	Income Tax Department(before the ITAT)	Aggrieved by ITAT Order dated 28 th July 2011 as Tribunal could not adjudicate	12 th July 2013	ITAT Order dated 28 th July 2011 recalled and the ITAT Order dated 27 th April 2007

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			the matter after the decision of the HC dismissing the appeal.		restored
MA 2/Agra/2015	4 th March 2015	Income Tax Department (before the ITAT)	To expunge the remarks in the ITAT Order dated 12 th July 2013	17 th July 2019	MA dismissed-application filed by the revenue seeking rectification of the Order dated 12 th July 2013 is not maintainable

5.2 The Board further noted that the Assessee was not represented by the Respondent in ITAT Appeal no. 468/04 filed before the ITAT, Agra and Income Tax Appeal no. 477 of 2007 filed by the Assessee before the Honorable High Court of Allahabad.

5.3 Further, on perusal of the ITAT Order Sheet in respect of MA 2/A/11, the Board noted that CA. S.C. Jain represented the Assessee and was present for hearing on 25th February 2021. The Respondent represented the Assessee and was present for hearing on 15th July 2021.

5.4 On perusal of the ITAT Order Sheet in respect of MA 4/Agra/2012 filed by the Income Tax Department, the Board also noted that Assessee was represented by Shri Nitish Agarwal, Advocate and CA. S.C. Jain. The Board perused the record of the proceedings on 20th July 2012 and noted that the same provided as hereunder:

"The Assessee has filed reply dated 12th July, 2012, in which it was explained that the Assessee under the legal advice made available to him by his counsel Shri K.G. Agarwal, CA did not disclose the dismissal of appeal before the Hon'ble High Court when M.A. was filed. This fact is also confirmed by the Assessee today present in the Court. In view of the reply of the Assessee, it is necessary to call explanation of Shri K.G. Agarwal, C.A., who was representing the Assessee in the M.A. filed earlier. Issue notice to shri K G Agarwal, CA and he is directed to intimate in writing as to when the Order of High Court was received by the AO and the Ld. CIT (Admn) and why the Order of High Court dismissing the Appeal of the Assessee was not brought to the notice of the Tribunal while hearing the MA in the matter."

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- 5.5 Further, the Assessee in his reply dated 12th July 2012 to the Honorable ITAT, Agra in respect of MA 4/Agra/2012 also stated as hereunder:
"Since the said Order was passed without admitting and hearing the Appeal on merits, and as the Appeal was not admitted and was dismissed at the admission stage itself by the Hon'ble High Court the only effect of such dismissal would be as if no Appeal had been preferred at all and the Order of this Hon'ble Tribunal dated 27.04.2007 remained as it was which could be rectified by the Hon'ble Tribunal by filing MA. Therefore, under legal advice MA no. 02/Agra/2011 was filed before this Hon'ble Tribunal which was allowed by Order dated 28.07.2011.
The Assessee acted purely under legal advice made available to him by his Counsel Sh. K.G. Agarwal, CA."

Also, the ITAT while passing the Order on 12th July 2013 in respect of MA 4/Agra/2012 also observed as under:

"The Order of High Court was available with the AO and Id. CIT, Agra prior to filing of miscellaneous application by the Assessee on 24.01.2011. Therefore, it is also equally their duty to bring correct and material facts to the knowledge of the Tribunal in order to arrive at just decision in the matter."

- 5.6 Further, in terms of provisions of Section 260A of the Income Tax Act 1961, the Board noted that an appeal lies to the High Court from every Order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law. In the instant case, the Hon'ble Allahabad High Court while passing its Order dated 17th August, 2010 did not admit the appeal u/s 260A against the ITAT Order dated 27th April, 2007 on the ground that no substantial question of law arises from the Order of the Tribunal and thus, dismissed the appeal. The Board observed that since the ITAT was also one of the Respondents in IT Appeal no. 477/2007 before the Honorable High Court of Allahabad, the contents of the said Order ought to be within its knowledge. Subsequently, when the MA no.2/A/11 was filed by the Assessee before the ITAT wherein the Income Tax Department was the Respondent, the Board noted that the Respondent(herein) represented the Assessee only once and the representative of the Income Tax Department was also present during the proceedings in the said case who ought to be privy to the said information and thus, could have also specifically brought the same to the knowledge of the ITAT. Thus, the Board was of the view that there is no merit in the allegation that the Respondent deliberately suppressed the material facts about the disclosure of the High Court Order and due to this reason the ITAT recalled the entire Order passed on 27th April 2007 as the fact of the proceedings before the Honorable High Court of Allahabad and the result thereof ought to be in the knowledge of both the parties to the case and its nondisclosure by one party cannot be taken as

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detrimental to its interest. Accordingly, the Board held the Respondent not guilty in respect of the charge alleged.

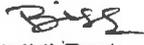
CONCLUSION:

6. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **NOT GUILTY** of 'Other Misconduct' falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the Said Act. Accordingly, the Board passed an Order for closure of the case in terms of Rule 15(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

Sd/-	Sd/-	Sd/-
CA. PRASANNA KUMAR D. Ms.	DOLLY CHAKRABARTY (IAAS,Retd.)	CA.(Dr.) RAJ CHAWLA
(PRESIDING OFFICER)	(GOVERNMENT NOMINEE)	(MEMBER)

DATE: 13th December 2022

सही प्रतिलिपि होने के लिए प्रमाणित
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