

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – IV (2023-2024)]

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

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

File No. : [PPR/P/26/17/DD/15/INF/17/DC/590/2017]

In the matter of:

CA. Diwakar Sharma (M.No.505639), Delhi in Re:

1904 A Gali Matawali Maliwara,

Chandni Chowk,

Delhi – 110 006.

...Respondent

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (in person)

Shri Jiwesh Nandan, I.A.S. (Retd.), Member, Government Nominee (in person)

Ms. Dakshita Das, IRAS (Retd.), Member, Government Nominee (in person)

CA. Mangesh P Kinare, Member (through Video- Conferencing Mode)

CA. Cotha S Srinivas, Member(through Video- Conferencing Mode)

DATE OF FINAL HEARING: 22.03.2023

PARTIES PRESENT:

i) CA. Diwakar Sharma: Respondent (through ICAI Mumbai through VC mode)

ii) Ms. Swasti Agarwal, AD (Law) SFIO : Witness (through VC)

iii) Mr. Lalit Mohan Rana, Sr. Assist. Director, SFIO: Witness (through VC)

CHARGES IN BRIEF:-

1. The Committee noted that in the Prima-Facie Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent was held prima facie **GUILTY** of Professional and/or Other

Misconduct falling within the meaning of Clause (2) of Part-IV of First Schedule and Clause (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act. The said Clause to the Schedule to the Act, states as under:

Clause (2) Part IV of First Schedule:

“(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.”

Clause (7) of Part I of Second schedule:

“(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;”

2. SPECIFIC CHARGES IN BRIEF AGAINST THE RESPONDENT ARE AS UNDER:-

2.1 As per reference received from SFIO, the Respondent was:

- (a) Acting as a mediator in providing accommodation entries in connivance with Jain Brothers (S.K. Jain & V.K. Jain);
- (b) Engaged in money laundering operations with the above Jain Brothers and other professionals;
- (c) Inflation of balance sheet by rotational transfer of funds among the entities controlled by the above Jain Brothers,
- (d) Abetting in defrauding the National Exchequer;
- (e) Placing, layering and integration of unaccounted funds, and
- (f) Abetting in arrangement of false Valuation Report.

BRIEF FACTS OF THE PROCEEDINGS:

3. On the day of final hearing dated 22.03.2023, the Committee noted that the Respondent and witness(es) from SFIO department were present through Video Conferencing Mode for the hearing. Thereafter, they gave declaration that there was nobody present except them in the respective room from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form. ✍

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3.1 The Committee enquired from the Respondent that since the composition of the Committee had changed subsequent to the hearing held on 22nd August, 2017 in this case, whether he wished to have a de-novo hearing or would continue from the stage it was last heard. The Respondent opted to continue and proceed with the proceedings from the stage it was left on 22nd August, 2017.

3.2 The Committee noted that the matter was part-heard and accordingly, asked the Respondent to make his submissions on the merits of the matter. The Respondent made his submissions in the matter stating that he was not connected with allegations and/or Jain brothers and there is no evidence against him, which proved his involvement in this case and it was a case of mistaken identity. Further, he submitted that he is in employment at Mumbai since becoming member of ICAI and he never held certificate of practice. Furthermore, he has provided the documents to the Committee, which reflected that he is salaried employee and has not received any such alleged money in this matter. The Respondent made his final submissions in the matter. The Committee examined the Respondent based on submissions made by him.

3.3 The witness(es) (officials from SFIO department) affirmed that the impugned name of the Respondent appeared in the diary of Jain brothers, which was recovered by the Income Tax Department during search and seizure, could not be identified and correlated with the Respondent present in the meeting, as SFIO department has not investigated the role of Respondent and they have no particular evidence against the Respondent. The witness(es) submitted that the Informant Department never recorded statement of the Respondent nor investigated the role of the Respondent.

3.4 Accordingly, the Committee concluded hearing in the matter

FINDINGS OF THE COMMITTEE

4. At the outset, the Committee noted the submissions of the Respondent that it was a case of mistaken identity of the Respondent and that the Respondent was never involved in the alleged matters. Hence, the Respondent contended that there was no evidence to prove the involvement of the Respondent in the alleged matters.

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4.1 The Committee noted the submissions of the Respondent that SFIO and/or any other investigating agency, never called the Respondent nor even produced any adverse documents or filed any charge sheet for alleged involvement of the Respondent in providing fictitious transactions /accommodation entries in connivance with the Jain brothers. From the aforesaid, it is quite evident that there has been no proper identification of the Respondent in this matter and his identity has not been established with any corroborative evidence for his role against the allegations as contained in the prima facie opinion.

4.2 In this regard, the Committee noted that two judgements had been passed by earlier Disciplinary Committee on similar matters, viz. against CA. Manmohan Gupta and CA. Arun Kumar Jain bearing case no. PPR/P/29/17/DD/18/INF/17/DC/591/2017 and PPR/P/24/2017/DD/13/INF/2017/DC/689/17 respectively, wherein the Committee has dismissed the cases against those Respondents due to mistaken identity.

4.3 The Committee further noted that when the Witness from SFIO, the Informant Department, was asked to establish if the Respondent was the person being referred to in its Investigation report in case of M/s. NKS holdings and its group Companies, the Witness submitted that the Informant Department never recorded statement of the Respondent nor investigated into the role of the Respondent. In fact, the said name of Chartered Accountant was contained in the books/dairies maintained by Jain brothers as seized by the Income Tax Department during search and seizure at the premise of Jain brothers. The Presiding Officer repeatedly asked the witness(es) from SFIO, whether they have any evidence or document to substantiate the charges levelled against the Respondent or to prove his involvement in the matter, and in response to which the witness(es) replied in negative as they had no evidence or document to correlate and substantiate the charges against the Respondent or to prove his involvement in the matter. Further, the witness(es) from SFIO categorically placed on record that they do not have any evidence or document against the Respondent and therefore, did not provide or bring the same on record. The Committee recorded the statement of witness(es) and discharged them.

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5. The Committee also noted the statement of officials of SFIO, who appeared as Witness before it in the captioned matter. The Committee on perusal of documents on record as well as oral submissions including the statement of the Witness(es) made before it, observed that in the extant case, the Informant Department i.e., SFIO had not recorded any statement of the Respondent and not even able to provide any documentary evidence to substantiate the role of the Respondent in the alleged matter. Further, the Committee noted that the allegations contained in present case are similar to cases which had been earlier decided by the then Committee and the reasoning given therein, which are as under:

"In the light of the fact that the SFIO, the Informant Department, was not able to establish the identity of the Respondent being the same person being referred in their investigation Report, the Committee had no option but to drop the case against the Respondent".

6. In view of the above, the Committee observed that mere production of piece of paper/handwritten notes is not suffice to prove the contents thereof. The truth of the contents thereof is required to be proved by adducing independent evidence. In the absence of any such evidence, no liability can be foisted on any person. The Committee further observed that it was the duty of the informant Department to produce evidence in support of the allegations levelled against the Respondent herein. It is evident that even assuming there are correct entries in the books of account, then also the same cannot, without independent evidence of their trustworthiness, fix liability upon a person. There is not an iota of independent evidence to charge the Respondent herein with the accusations levelled, as has been admitted by the witness(es) of informant Department at the time of hearing.

7. The Committee further observed that its role, being a quasi-judicial authority, is to regulate the conduct of its members by inquiry into the alleged professional and/or other misconduct within the framework of the Chartered Accountants Act 1949 based on arguments/evidences produced before it. In the instant case, the informant Department has merely named out certain professionals from the inputs of Income-Tax Department; and it had neither identified the Respondent with evidence for his alleged involvement in fictitious transactions nor investigated the role of the Respondent in such matters. The Committee was of the view that for proper

appreciation of the matter, sufficient documentary evidence is required to be provided by the informant Department so as to corroborate the role of Respondent against the allegations levelled, and without which the instant matter could not be proceeded with further.

8. In view of the fact that the witness(es) from SFIO (Informant Department) was not able to establish the identity of the Respondent being the same person being referred in their letter / Investigation Report of SFIO and also did not produce any evidence or document to substantiate the charges levelled against the Respondent and in the absence of above, the Committee could not proceed further in the matter. The Committee concluded that the present case is a matter of mistaken identity. Accordingly, the Committee concluded hearing in the matter and decided that the Respondent viz. CA. Diwakar Sharma (M.No.505639), Delhi was **NOT GUILTY** of Professional and Other Misconduct falling within the meanings of Clause (2) of Part-IV of First Schedule and Clause (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act, 1949 and the matter be **CLOSED**.

ORDER

9. Thus, present Information case be **CLOSED**.

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Sd/-
(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-
(SHRI JIWESH NANDAN, I.A.S. RETD.)
GOVERNMENT NOMINEE

Sd/-
(MS. DAKSHITA DAS, IRAS, RETD.)
GOVERNMENT NOMINEE

Sd/-
(CA. MANGESH P KINARE)
MEMBER

Sd/-
(CA. COTHA S SRINIVAS)
MEMBER

DATE : 19/04/2023

PLACE: NEW DELHI

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प्रमाणित सत्य प्रतिलिपि / Certified true copy
सीए. सुनील कुमार / CA. Suneel Kumar
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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