

CONFIDENTIAL

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

[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/P/398/2017/DD/172/INF/2018/DC/1378/2020]

In the matter of:

CA. Narinder Gupta (M. No. 097601), Ludhiana in Re:
1st Floor, Deol House,
Opposite Punjab National Bank,
Old Court Chowk, Ludhiana- 141001

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (in person)
Shri Jiwesh Nandan, I.A.S. (Retd.), Government Nominee (in person)
Ms. Dakshita Das, I.R.A.S. (Retd.), Government Nominee (in person)
CA. Mangesh P Kinare, Member (through VC mode)

DATE OF FINAL HEARING : 26th December 2023

PARTIES PRESENT:

Respondent : Not present

1. Background of the Case:

CBI, Anti-Corruption Branch, Chandigarh had registered a case bearing number RCCHG2015A0002 on 15th January, 2015 on the complaint made by Assistant General Manager, Bank of Baroda Regional Office, Jalandhar regarding fraud committed in Cash Credit Limit, Over Draft Baroda Traders Loan (ODBTL) and term loans for housing and car sanctioned in 19 accounts to the tune of Rs 20.31 Crores which were sanctioned to various borrowers either by way of fake/ingenuine financial papers with fake attestation of Chartered Accountants or Fake/ingenuine ITRs &

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VAT returns and thereafter diverting the funds for the purposes other than for which limits were sanctioned. The Respondent has done the tax audit of M/s Quality Lime Products (hereinafter referred to as the "Firm"), for the financial year 2009-10 required under the Income Tax Act, 1961 which has been alleged that the Firm was not in existence. Further, the tax audit of the said Firm was done by two Chartered Accountants, one by the Respondent and the second by CA. Deepak Gupta.

2. Charges in brief: -

2.1 The tax audit report for the financial year 2009-10 of the Firm was prepared by two Chartered Accountants (i.e. the Respondent and CA. Deepak Gupta) and only the name of the auditor was changed in the audit report even though the mobile number of CA. Deepak Gupta was printed on the audit report of the Respondent. Further, the date printed on the concluding page of the tax audit report was 15th June 2011 instead of 15th June 2010. The Respondent had prepared the tax audit report of the Firm for the financial year 2009-10 which was not in existence during the said period. The Respondent has accepted the stock valuations and debtors certified by the Firm without conducting physical verification thereof.

3. The relevant issues discussed in the Prima facie opinion dated 22nd July 2020 formulated by the Director (Discipline) in the matter in brief are given below: -

3.1 As regards the allegation related to preparation of audit report of the Firm by two Chartered Accountants, the Respondent has signed the financial statements of the Firm for the financial year 2009-10 as required for the Tax Audit under section 44AB of the Income Tax Act, 1961 read with Rule 6E of the Income Tax Rules, and has given his Audit Report in Form 3CB dated 15th June, 2010 along with the statement of the particulars that were required to be furnished in Form 3CD. However, it was also observed that CA. Deepak Gupta has also signed the financial statements of the Firm for the financial year ending on 2009-10. Furthermore, from the statement of the Respondent recorded under Section 161 of Cr.P.C. by the CBI, it was observed that the Respondent in this regard has stated that the Firm misled him to get its financial statement audited for the FY 2009-10 was also audited by CA. Deepak Gupta on the same date, i.e., 15th June, 2010. The Respondent in his

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defence has also submitted that even the mobile number of CA. Deepak Gupta mentioned in Form 3CD report of the Firm for FY 2009-10 was due to a clerical error as the same document was created by copying the already existing format of the said Form of the previous year. However, with respect to the clerical error of mobile number mentioned by the Respondent in Form 3CD, it was viewed that it was a clerical mistake, and the said error has not caused any prejudice to any authority. Further, on the perusal of the audited financial statements of the Firm for the FY 2009-10, it was observed that all the figures of the balance sheet as well as the profit and loss account along with its annexure had the same amount which were audited by both the Chartered Accountants, i.e. the Respondent as well as CA. Deepak Gupta, but still it was not a good practice on the part of the Firm to have the accounts audited twice for the same financial year from two different Chartered Accountants and it was also not clear as to why the auditee firm got its accounts audited twice even when there was no change in both the accounts. It was also viewed that a Chartered Accountant while giving his Tax Audit Report for the said financial year cannot get an impression that for the same financial year, the tax audit has already been done by another Chartered Accountant. Moreover, it is the responsibility of the concerned auditee Firm to get its accounts audited for a particular financial year only from one Chartered Accountant.

3.2 As regards the allegation that the date printed on the concluding page of the tax audit report was 15th June, 2011 instead of 15th June, 2010, the Respondent has submitted that the date mentioned as 15th June, 2011 in his tax audit report for the FY 2009-10 instead of 15th June, 2010 was due to a clerical error. Also, on perusal of Form 3CB and Form 3CD, it was noted that the Respondent in his Tax Audit Report on Form 3CB has correctly mentioned the date as 15th June, 2010 while on the statement of the particulars that were required to be furnished in Form 3CD, the Respondent has mentioned the date as 15th June, 2011 which could be on the ground of typing mistake, as only the year has been mentioned wrongly. From the above facts, it was viewed that same was a clerical and unintentional error on the part of the Respondent which has not caused any prejudice to any authority.

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3.3 It was alleged that the Firm was not in existence during the FY 2009-10 during which the Respondent has given its Tax Audit Report. The Respondent in this regard has submitted that for Tax Audit of the Firm for the FY 2009-10, he was provided the financial statement for the financial year ended on 31st March, 2010 that was prepared and duly signed by Smt. Veena Handa and further VAT returns and bank statements were also presented to him bearing the name of the Firm which was sufficient for him to conclude that the Firm was in existence on or before 31st March, 2010, and also that Smt. Veena Handa was the Proprietor of said Firm. Also, on the perusal of PAN No ABTPH4892H of the Firm as mentioned in Form 3CB by the Respondent from the NSDL website, i.e., <https://onlineservices.tin.egov-nsdl.com>, it was observed that the said PAN No. existed in the name of Smt. Veena Handa. Accordingly, it can be assumed that the Firm was running its business by the proprietor Smt. Veena Handa. Further, on perusal of the Bank Statement of the Firm on records, it was noted that the Firm had a Bank Account with Punjab & Sind Bank, Ramgarhia Collage, Phagwara Branch, and Punjab & Sind Bank while opening the said bank account of Firm must have followed due KYC norms & procedures and would have also collected PAN, address proof, etc. documents on records before opening the said bank account to confirm Firm's existence. It was further noted that the Informant in the instant case has failed to provide any concrete evidence that could have corroborated the said allegation that the Firm was a non-existence Firm. Accordingly, in the absence of any substantive evidence on records to corroborate the said allegation raised by the Informant, it was difficult to assume and has remained altogether unestablished that the Firm was not in existence during the FY 2009-10 whereas the Respondent while conducting the tax audit had in his possession various official documents of the auditee firm from which he had gathered sufficient information and evidence to carry out his professional assignment.

3.4 The Director (Discipline) in his Prima Facie Opinion dated 22nd July 2020 has held that the Respondent is prima facie 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. The said Item to the Schedule to the Chartered Accountants Act 1949, states as under:

Item (7) of Part I of the Second Schedule:

"A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he—

(7) does not exercise due diligence or is grossly negligent in the conduct of his professional duties."

3.5 The Prima facie opinion formed by the Director (Discipline) was considered by the Board of Discipline at its meeting on 01st September 2020. The Board of Discipline on consideration of the same noted that there were two tax audit reports for the Firm for the FY 2009-10, one prepared by the Respondent and the other by CA. Deepak Gupta and only the name of the auditor was changed in the audit report and the mobile number of CA. Deepak Gupta appeared in the audit report signed by the Respondent. Also, the figures in both sets of financial statements were the same and also in Form 3CD, the PAN number of the Proprietor was not mentioned. Further, there was no conclusive evidence available on record viz. Income Tax Return filed with the Department, or tax paid for the Firm which showed that the Firm existed. The Firm also did not maintain any stock register. Thus, the Board of Discipline was of the view that there are circumstantial evidence to suggest that the Respondent did not exercise due diligence while carrying out the audit and thus, his conduct needs to be examined through further inquiry. Thus, the Board of Discipline did not concur with the reasons given against the charges and accordingly, did not agree with the prima facie opinion of the Director (Discipline) that the Respondent is prima facie 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 and accordingly, referred the case to the Disciplinary Committee to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The Committee also directed the Directorate that in terms of the provisions of sub-rule (2) of Rule 18, the prima facie opinion formed by the Director (Discipline) be sent to the Respondent

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including particulars or documents relied upon by the Director (Discipline), if any, during the course of formation of prima facie opinion and the Respondent be asked to submit his Written Statement in terms of the provisions of the aforesaid Rules, 2007.

4. Date(s) of Written submissions/Pleadings by parties: -

The relevant details of filing of documents in the instant case by the parties are given below:

S. No.	Particulars	Dated
1.	Date of 'Information' Letter	03 rd August 2018
2.	Written Statement filed by the Respondent	24 th August 2018
3.	Prima facie Opinion by Director (Discipline)	22 nd July 2020
4.	Written Statement by the Respondent after PFO	19 th March 2021

5. Written Statement by the Respondent:

5.1 The Respondent in his additional submissions dated 19th March 2021 has stated that he has prepared Form 3CB on his letter pad and mentioned his correct mobile number with his correct address. The Respondent added that this version was duly considered by the Director (Discipline). The Respondent further stated that he has mentioned in Form 3CB that *"we have examined the same for preparation/extraction of information for Income Tax purpose not for author user. The filing of these statements with the department is the responsibility of the party."* The Respondent stated that this fact mentioned by him in the audit report Form 3CB dated 15th June 2010 makes it different from any other audit report. The Respondent also added that CA. Deepak Gupta has not signed Form 3CB/3CD and was supplied only the

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Balance Sheet, Profit and Loss Account, Fixed Assets, List of Debtors and creditors signed by CA. Deepak Gupta to the Respondent. The Respondent further added that this fact suggests that CA. Deepak Gupta has done only verification/tallying the financial statements with the books of accounts of auditee and such signed, verified and tallied financial statements by CA. Deepak Gupta corroborate, support and rarify the version of the Respondent expressed in Form 3CB "that the financial statements are in agreement with the books of accounts."

5.2 The Respondent further contended that the books of accounts, supportive documents like invoices etc. are the property of the assessee which he is required to keep in his possession to show or produce them before any State Tax department or Income Tax department. The Respondent further submitted that the auditor has to return the documents to the assessee after completion of the assignment. In the present matter, since the issue has arisen after a long time i.e. after 10 years, and when the entire documents of the assessee were taken into the possession by CBI in the raid, the Respondent cannot supply any additional documents. The Respondent has also mentioned that the Firm did not maintain any stock register and maintaining the books of accounts is the responsibility of the assessee and not of the Chartered Accountant/Auditor. The Respondent also submitted that the financial statements are prepared by the auditee and not by the auditor. The auditee presents the same before his auditor alongwith the books of accounts, invoices, bank statements, VAT returns if applicable, etc. and after the completion of the audit assignment, the auditee takes back his books of accounts and records. Further in the year 2009-10, no provision in the Income Tax Act casts duty/obligation on the auditor to file Form 3CB/3CD but casts a duty on the assessee to get his accounts audited and file the same with the Income Tax department. Further, there was no provision then in the Income Tax Act that debars the assessee from appointing any number of Chartered Accountants for getting his accounts audited. Further, there was no mechanism then by which a Chartered Accountant could ascertain the details of the audit of the same assessee if any undertaken by another Chartered Accountant for the same financial year.

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6. Brief facts of the Proceedings:

6.1 The details of the hearing(s) fixed and held/adjourned in said matter is given as under:

Particulars	Date of meeting(s)	Status
1 st time	22 nd May, 2023	Part heard and adjourned.
2 nd time	25 th October, 2023	Part heard and adjourned.
3 rd time	21 st November, 2023	Fixed and adjourned in the absence of the Respondent.
4 th time	14 th December, 2023	Fixed and adjourned in the absence of the Respondent.
5 th time	26 th December, 2023	Hearing concluded and decision taken.

6.2 On the day of the first hearing on 22nd May 2023, the Committee noted that the Respondent was present through Video Conferencing mode for the hearing. Thereafter, the Respondent was put on oath and the Committee enquired from the Respondent as to whether he was aware of the charges; and the same as contained in para 2 above were read out and on the same, the Respondent that he is aware about the charges but pleaded 'Not Guilty' on the charges levelled against him. Thereafter, as per Rule 18 (9) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee adjourned the case to a later date and accordingly, the matter was part heard and adjourned.

6.3 On the next date of hearing on 25th October 2023, the Committee noted the presence of the Respondent via video-conferencing mode. The Committee asked the Respondent to make submissions in the matter. The Respondent submitted that he did not know that the Balance Sheet of the Firm was also signed by another Chartered Accountant. The Respondent further stated that the auditee firm produced before him a bank statement and other documents and based upon that he had examined the balance sheet prepared by the auditee firm. Based on the submissions presented by the Respondent, the Committee directed the Respondent to provide- i) a Copy of the Tax Audit Report of the auditee firm and ii) a Copy of the Balance Sheet with profit & and loss account and its schedules.

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6.4 Thereafter, on the next date of hearing on 21st November 2023, the Committee noted that the Respondent was not present and notice of listing of the case was served upon him. The Committee directed the office to inform the Respondent to appear before it at its next meeting and in case of his failure to appear, the matter be decided ex-parte the Respondent based upon the documents available on record. The Committee adjourned the matter to a later date to extend one more opportunity to the Respondent to defend the charges.

6.5 Subsequently, on the next date of hearing on 14th December 2023, the Committee noted that the Respondent was not present and notice of listing of the case was served upon him. The Committee directed the office to inform the Respondent to appear before it at its next meeting which will be the last and final opportunity, and in case he fails to appear, the matter be decided ex-parte the Respondent based upon the documents available on record.

6.6 On the day of the final hearing on 26th December 2023, the Committee noted that the Respondent was not present and notice of listing of the case was served upon him. The Committee further noted that the Respondent failed to appear before it in the last two hearings, and on 25th October 2023 the Committee directed the Respondent to submit certain documents which the Respondent failed to submit.

6.7 After detailed deliberations, and on consideration of the facts of the case, various documents on record as well as the oral and written submissions made by the Respondent before it, the Committee concluded the hearing in the instant case.

7 Findings of the Committee:

The Committee noted the background of the case and gave its findings as under: -

7.1 The Committee deliberated on the issue related to preparation of tax audit report for FY 2009-10 of the said Firm by two Chartered Accountants i.e. the Respondent and CA. Deepak Gupta. In this regard, the Committee noted that the Respondent has signed the financial statements of the Firm for the financial year 2009-10 as required

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for the tax audit under S. 44AB of the Income Tax Act, 1961, and submitted his audit report in Form 3CB dated 15th June 2010 alongwith the statements of the particulars required to be furnished in Form 3CD. The Committee also noted that the financial statement of the Firm for FY 2009-10 has been prepared and signed by CA. Deepak Gupta. The Committee also considered the statement recorded by the Respondent before CBI and noted that the Respondent has stated that the Firm misled him to get its financial statements audited for the FY 2009-10 that was also audited by CA. Deepak Gupta on the same date i.e. 15th June 2010. The Committee noted the defence of the Respondent, who admitted that the mobile number of CA. Deepak mentioned in Form 3CD report of the Firm for the FY 2009-10 was due to clerical error as the same document was created by copying the already existing format of the said Form for the previous year. The Committee also considered the argument presented by the Respondent that the audit report i.e. Form 3CB dated 15th June 2010 was upon the letterhead of the Respondent's firm which clearly mentioned his correct mobile number with his firm's address, and there was no mechanism to ascertain by a Chartered Accountant as to whether the accounts of an entity have been previously audited by another Chartered Accountant for the same financial year. The Committee opined that it is the responsibility of the concerned auditee Firm to get its accounts audited for a particular financial year by appointing a practicing Chartered Accountant. Thus, the Committee was further of the view that the aforesaid charge against the Respondent is not maintainable.

7.2 As regards the charge of mentioning of wrong date as 15th June, 2011 instead of 15th July 2010 by the Respondent in his audit report of the Firm for the FY 2009-10, the Committee noted that the Respondent has admitted in his written submissions that the date mentioned as 15th June 2011 in his tax audit report for the FY 2009-10 was due to clerical error, and the same was correctly mentioned in the Balance Sheet as well as in the Form 3CB. The Committee was of the view that the same was a clerical and unintentional error on the part of the Respondent which has not caused any prejudice to any authority. Thus, the Committee was of the view that the benefit of doubt be exonerated to the Respondent and the said charge was not tenable against the Respondent.

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7.3 As regards the matter related to existence or not of the Firm during the period under audit, the Committee noted that the Directorate (Discipline) in his Prima Facie Opinion has concluded as under: -

"The Respondent in this regard has submitted that for the purpose of tax audit of Firm for the FY 2009-10, he has been provided the financial statement for the FY ended on 31st March 2010 that was prepared and duly signed by Smt. Veena Handa and further VAT returns and bank statements were also presented to him bearing the name of the Firm which was sufficient for him to conclude that firm was in existence on or before 31st March 2010 and also that Smt. Veena Handa was the proprietor of the said Firm. Also, on perusal of PAN No. ABTPH4892H of the Firm as mentioned in Form 3CB by the Respondent from the NSDL website, i.e., <https://onlineservices.tin.egov-nsdl.com>, it is noted that the said PAN no. existed in the name of Smt. Veena Handa. Accordingly, it can be assumed that the Firm was running into its business by the proprietor Smt. Veena Handa. Further, on perusal of the bank statement of the Firm on records, it is noted that the Firm had a bank account with Punjab & Sind Bank, Ramgarhia College, Phagwara Branch and Punjab & Sind Bank while opening the said bank account of Firm must have followed due KYC norms & procedures and would have also collected PAN, address proof, etc. documents on record before opening the said bank account to confirm Firm's existence. It is further noted that the Informant in the instant case has failed to provide any concrete evidence which could have corroborated the said allegation that the Firm was a non-existence firm. Accordingly, in the absence of any substantive evidence on records to corroborate the said allegation raised by the Informant, it is difficult to assume and has remained altogether unestablished that the Firm was not in existence during the FY 2009-10 whereas the Respondent while conducting the tax audit had in his possession various official documents of the auditee firm from which he had gathered sufficient information and evidence to carry out his professional assignment."

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7.4 As regards the charge that the Firm did not maintain any stock register, the Committee noted that the Respondent in his submissions has asserted that the stock register was not maintained by the Firm and the same fact was mentioned by him in point No. 28-A of the audit report as "No Stock Register maintained." The Committee also considered the argument presented by the Respondent that the responsibility to maintain books of accounts is of the assessee and not of a Chartered Accountant/Auditor. The Committee therefore observed that the Respondent has made disclosure in point No. 28-A in the audit report and was of the view that failure in conduct of physical verification of stock was due to non-availability of the stock register maintained by the auditee Firm. The Committee therefore opined that the Respondent was not negligent in discharging his professional duties, and accordingly held that the Respondent was **Not Guilty** of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act 1949.

7.5 Thus, on consideration of overall facts, submissions and material, the Committee held the Respondent **NOT GUILTY** of Professional Misconduct within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act 1949.

8. Conclusion

In view of the findings stated in above paras, vis-a-vis material on record, the Committee gives its charge wise findings as under:

Charges (as per PFO)	Findings	Decision of the Committee
Para 2 as above	Para 7.1 to 7.4 as above	Not Guilty - Item (7) of Part I of Second Schedule

9. In view of the above observations, considering the submissions of the Respondent and documents on record, the Committee held the Respondent **NOT GUILTY** of Professional and Other Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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10. Order

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 passes an Order for closure of this case against the Respondent.

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(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-

(SHRI JIWESH NANDAN, I.A.S, RETD.) (MS. DAKSHITA DAS, I.R.A.S., RETD.)
GOVERNMENT NOMINEE GOVERNMENT NOMINEE

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(CA. MANGESH P KINARE)
MEMBER

DATE:05/02/2024

PLACE:New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy


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वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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