

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/171/INF/2018/DC/1446/2021]

In the matter of:

CA. Deepak Gupta (M. No. 507088), Punjab in Re:
1st Floor, Dhandwar Market, Street No. 3, Near Head Post Office
Opposite UCO Bank, Central Town, Phagwara (Punjab)- 144401
Phagwara – 144401

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 : CA. Deepak Gupta (through VC)
Counsel for Respondent : CA. Lakshay Gupta (through VC)

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

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papers with fake attestation of Chartered Accountants or Fake/ingenuine ITRs & VAT returns and thereafter diverting the funds for the purposes other than for which limits were sanctioned. The Respondent has falsely prepared/verified the VAT returns of various borrowers.

2. Charges in brief: -

2.1 The Respondent had prepared the tax audit report for the financial year ending on 31st March, 2010 of M/s Quality Lime Products (hereinafter referred to as the "Firm"), Phagwara which was not in existence during the said period and the audit report for the said Firm was prepared by two Chartered Accountants (i.e. the Respondent and CA. Narinder Gupta) for same financial year and were created on the same computer. The only change was in the name of the Auditor, and even the mobile number of the Respondent was printed on the audit report of CA. Narinder Gupta. The Respondent has further 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 31st July 2020 formulated by Director (Discipline) in the matter in brief are given below: -

3.1 The Respondent has signed the financial statements of the Firm for the financial year 2009-10. However, CA. Narinder Gupta has also signed the financial statements for the same financial year i.e. 2009-10. The Respondent in his statement recorded under Section 161 of Cr.P.C. by CBI has stated that:

"I have been shown audited balance sheet of M/s Quality Lime Products for the financial year 2009-10 and 2010-11. I have done tax audit for the above-mentioned financial years of the said firm. During the course of audit, I checked sale tax returns, Bank Statements of the books of accounts, bill vouchers. I further state that during the course of audit of the firm, I visited the office occasionally and interacted with Shri Anil Goel accountant of the said firm and proprietor of the firm. I have taken the stock valuation and debtors as certified by the proprietor of the firm. I have never physically verified the quantities of stock. I

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also found balance sheet of M/s Quality Lime Products for the financial year 2009-10 was audited by Sh. Narinder Gupta, CA. of Ludhiana."

- 3.2 On perusal of the said statement of the Respondent recorded before CBI, it was well within the knowledge of the Respondent that another Balance sheet signed by some other Chartered Accountant was in existence for the same F.Y. 2009-10 but still he went ahead to conduct the audit of the Firm and issued a duplicate audit report for reasons best known to him. The Respondent has failed to submit written statement in the instant matter in spite of giving opportunity under Rule 8(3) read with Rule 11 of the Chartered Accountants (Procedures of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 which not only reveals his scant regard for the Disciplinary mechanism but has also prevented this Directorate from gaining an insight into his defence in the matter.
- 3.3 The admissions made by the Respondent in his statement recorded under Section 161 of Cr.P.C. by the CBI, it was observed that firstly, he was well aware that the financial Statements of the Firm for the Financial Year 2009-10 had already been audited by another Chartered Accountant and secondly, he had accepted that the stock valuation and debtors as certified by proprietor of the Firm and have never physically verified the quantities of stock not only hints upon his suspicious conduct but also reflects upon the way he had failed to exercise due diligence as was warranted under the circumstances whereby he simply relied upon the figures of stock and debtors provided by proprietor of the firm without carrying out an independent examination or verification required during the conduct of audit.
- 3.4 The Director (Discipline) in his Prima Facie Opinion dated 31st July 2020 has held that the Respondent is prima facie Guilty of Professional and Other Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949. The said Items to the Schedule to the Act, states as under:

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Item (7) of Part I of 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."

Item (2) of Part IV of the First Schedule: -

"A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he-

(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."

3.5 The Prima facie opinion formed by the Director (Discipline) was considered by the Disciplinary Committee at its meeting on 07th April 2021. The Committee on consideration of the same, concurred with the reasons given against the charges and thus, agreed with the prima facie opinion of the Director (Discipline) that the Respondent is prima facie GUILTY of Professional and Other Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 and accordingly, decided 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 including particulars or document 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:

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| S. No. | Particulars | Dated |
|--------|---|--|
| 1. | Date of 'Information' Letter | 10 th July 2018 |
| 2. | Written Statement filed by the Respondent | Not filed |
| 3. | Prima facie Opinion by Director (Discipline) | 31 st July 2020 |
| 4. | Further Written Submissions by the Respondent | 05 th August 2021 27 th May 2023 22 nd December 2023 |

5. Written Submissions filed by the Respondent:

5.1 The Respondent in his additional written submissions dated 05th August 2021, 27th May 2023 and 22nd December 2023 has submitted his reply on merits of the case and contended that the statement recorded u/s 161 Cr.P.C. before CBI is not a conclusive piece of evidence and the same does not carry any presumption of truth. The Committee further noted that the Respondent has submitted that the Director (Discipline) had taken an erroneous interpretation of the statement of the Respondent by treating the same as a confession/admission of conducting the audit of the financial statements knowing fully that at the time of signing the statements, he was well within the knowledge that another Balance Sheet signed by some other Chartered Accountant was in existence for the same FY 2009-10 and erroneously went ahead to conduct the audit and issued a duplicate audit report. The Committee also noted that the Respondent in his written submissions has stated that if he had prepared the Balance Sheet subsequently then his phone number would not have appeared on the audited Balance Sheet allegedly prepared by Mr. Narinder Gupta. Hence, the Respondent submits that the actual audit report was prepared by the Respondent prior in time than CA. Narinder Gupta who while putting his seal and signatures on the alleged report overlooked the phone number of the Respondent and merely substituted his name and stamp on the printouts of the soft copy of the audit report provided to the client of their specific demand. The Respondent further stated that in no eventuality the phone number of the Respondent can appear on a document prepared in the office of another Chartered Accountant.

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As regards the allegation that the Respondent has never physically verified the quantities of stock during the conduct of audit, the Committee noted that the Respondent in his written submissions has submitted that he has acted prudently and with due diligence while performing the audit and in point No. 28-A of the audit report, the Respondent has specifically mentioned that "No Stock register maintained."

5.2 The Respondent has further asserted that for determining the period of retention of documents, he referred to SA 230 and SQC 1 alongwith Rule 12 and inferred that mandatory period of retention of documents is 07 years from the date of audit report. That the impugned audit report pertaining to the Financial Year 2009-10 was signed on or before 15th June 2010 and submitted to respective statutory authorities within the prescribed time frame and, the statutory period of retention of audit documents i.e. 7 years from the date of completion of said engagement had lapsed before receipt of intimation regarding impugned information by the Respondent. The Respondent further stated that it was difficult for him to collect evidence which is more than 07 years old from the date of completion of said engagement and had already destroyed the documents related to the impugned engagement.

5.3 The Respondent also contended that he was engaged by the Firm for the purpose of conducting the tax audit for the Financial Year 2009-10. The Respondent had a limited responsibility of issuing tax audit report for the relevant period and therefore, copy of Income Tax Return filed by the Firm after the issuance of the audit report was not required by the Respondent to be collected. The Respondent submitted the copy of tax audit report for the Financial Year 2009-10 relevant to AY 2010-11 and further an affidavit mentioning that he has received Rs. 3200/- in cash as an audit fee for the impugned audit assignment undertaken by him.

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:

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| Particulars | Date of meeting(s) | Status |
|----------------------|---------------------------------|---|
| 1 st time | 22 nd May, 2023 | Part heard and adjourned. |
| 2 nd time | 21 st November, 2023 | Adjourned at the request of the Respondent. |
| 3 rd time | 14 th December, 2023 | Part heard and adjourned. |
| 4 th time | 26 th December, 2023 | Hearing concluded and decision taken. |

- 6.2 On the day of first hearing on 22nd May 2023, the Committee noted that the Respondent was present through Video Conferencing Mode with the Counsel 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 the para 2 above were also read and on the same the Respondent replied 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 later date and accordingly, the matter was part heard and adjourned.
- 6.3 Thereafter, on the next date of hearing on 21st November 2023, the Committee noted that the Respondent vide e-mail dated 20th November 2023 requested for the adjournment as his authorized representative was pre-occupied with personal prior commitments. The Committee acceded to the request of the Respondent and adjourned the matter to a later date.
- 6.4 Subsequently, on the next date of hearing on 14th December 2023, the Committee noted the presence of the Respondent alongwith his Counsel via video-conferencing mode. The Committee asked the Respondent to present his submissions. The Counsel stated that the Respondent has done the tax audit and prepared the audit report of the Firm for the Financial Years 2009-10 and 2010-11. The Counsel further added that the Balance Sheet for the Financial Year 2009-10 was again audited and signed by Mr. Narinder Gupta with only single difference that he has changed his name and copied all the contents of the Respondent's Balance Sheet. The contact

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number of the Respondent was also appearing on the Balance Sheet signed by Mr. Narinder Gupta of the Firm for the Financial Year 2009-10. The Committee directed the Respondent to submit additional evidentiary documents, and affidavit swearing that the Respondent has received the audit fees from the Firm in cash. The matter was part heard and adjourned to a later date.

- 6.5 On the day of final hearing on 26th December 2023, the Committee noted the presence of the Respondent alongwith his Counsel via video-conferencing mode. The Counsel submitted that the Respondent vide additional submissions dated 22nd December 2023 has submitted the tax audit report, additional documents and the affidavit swearing on oath stating that he has received the audit fees from the Firm. The Counsel further stated that it was during the investigation before CBI, the Respondent was shown the Balance Sheet signed by Mr. Narinder Gupta and so came to know that Mr. Narinder Gupta has also signed the Balance Sheet of the Firm for the FY 2009-10. Secondly, regarding the issue that the stock was not physically verified, the Counsel stated that the stock register was not maintained by the auditee client and due to this fact physical verification of stock was not possible.
- 6.6 After detailed deliberations, and on consideration of the facts of the case, various documents/material on record as well as the oral and written submissions made by the Counsel for 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, before dealing with the charges as specified in Para 2 above, noted that the Respondent has raised a preliminary objection in his additional submissions dated 27th May 2023 and took a plea of Rule 12 of the Rules, 2007. The Committee observed that the plea of Rule 12 is not maintainable on the ground that, CBI had already initiated an inquiry and registered a case against the Respondent on 15th January 2015. The Respondent was aware of the fact that an inquiry was ongoing against him and, had also made his statement before CBI U/s 161 of Cr.P.C. on 14th December 2015. The Committee was of the view, that the Respondent had



participated in the investigation proceedings of the matter initiated by CBI, and in view of that the Respondent should be in the possession of the documents of the Firm related to the assignment conducted by him. Further, the Committee also observed that the plea of Rule 12 was not taken by the Respondent at the Prima Facie Opinion stage and took the same by way of written submission of additional documents at the time of hearing before the Committee. Therefore, the Committee observed that the Respondent, being the tax auditor of the Firm, should have retained the documents for the tax audit conducted by him for the financial year 2009-10, in view of ongoing investigation case in the matter. The Committee did not accede to the request of the Respondent and therefore rejected the above plea of the Respondent.

- 7.2 The Committee deliberated on the charges, as outlined in Para 2 above, and the issue that the financial statement of the Firm was also signed by another Chartered Accountant i.e. Mr. Narinder Gupta for the Financial Year 2009-10. In this regard, the Committee examined the appointment letter dated NIL issued by the Firm to the Respondent clearly stating that the task assigned to the Respondent was for conducting the income tax audit under the Income Tax Act, 1961. The Committee noted that pursuant to the appointment letter, the Respondent has conducted the tax audit of the Firm for the relevant period and submitted the audited financial statements for that period. Further, the Committee also took into consideration the statement recorded by the Respondent before CBI and noted that during the investigation by CBI, the Respondent was confronted with the audited Balance Sheet of the Firm for the Financial Year 2009-10 (MR No. 63/15-Item No. 1629/93) & 2010-11 (MR No. 63/15-Item No. 1631) audited by Mr. Narinder Gupta, and he was not aware of the fact that the alleged Balance Sheet was also prepared and signed by another Chartered Accountant. The Committee also considered the argument presented by the Respondent, who contended that he was not in possession of the alleged Balance Sheet prepared by Mr. Narinder Gupta, and there was no mechanism to ascertain by a Chartered Accountant that if the accounts of an entity have been also audited by another Chartered Accountant. The Committee was of the view that a Chartered Accountant, while submitting his tax audit report for the said financial year would not know that for the same financial year, whether the tax audit

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has been conducted by another Chartered Accountant. The Committee further felt that it is the responsibility of the concerned auditee Firm to get its accounts audited for a particular financial year by appointing a particular practicing Chartered Accountant. Thus, the Committee observed that the aforesaid charge against the Respondent is not maintainable.

- 7.3 As regards the matter related to the non-existence of the Firm during the period under audit, the Committee noted that the Director (Discipline) in his Prima Facie Opinion dated 31st July, 2020 has concluded as under: -

"It is further noted from the statement of the Respondent recorded under S. 161 of Cr.P.C. by the CBI that he has accepted checked sale tax returns, Bank statement of the Firm etc. and visited the office occasionally and interacted with Shri Anil Goel accountant of the said firm and proprietor of the firm. Moreover, the Respondent has also place on record copy of the Appointment letter, copy of the management representation letters bearing signature of Proprietor, Smt. Veena Handa while additional documents under Rule 8 (5) of the CA Rules 2007 were sought from him. Further, on inspection of PAN No. ABTPH4892H as mentioned on copy of pan card provided in his additional documents 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 is evident from the documents on record that the firm was running into its business by the proprietor Smt. Veena Handa. 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 and was registered in the name of Smt. Kailash Sharma. 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 and 2010-11 whereas the Respondent while conducting the audit had in his possession various documents of the auditee firm viz. bank account statements, sales tax returns etc. based on which it is logical and reasonable to accept that the Firm was much in existence."

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7.4 In respect of the issue, as contained in the Prima Facie Opinion, that the Respondent never physically verified the quantities of the stock during the conduct of audit, 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 therefore observed that the Respondent has made disclosure in point No. 28-A in the audit report and felt that failure in conduct of physical verification of the stock was due to non-availability of the stock register maintained by the auditee firm and therefore, the Respondent was not negligent in discharging his professional duties. Thus, the Committee held the Respondent Not Guilty of Item (7) of Part 1 of the Second Schedule and Item (2) of Part IV of the first 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 and Other Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule and Item (2) of Part IV of the First 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 and Item (2) of Part IV of the First 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

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the Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

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.

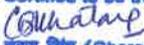
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Sd/-
(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

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

Sd/-
(CA. MANGESH P KINARE)
MEMBER

DATE:05/02/2024
PLACE:New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

चरण सिंह / Charan Singh
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
भारतीय सशुद्ध लेखाकार संस्थान
The Institute Chartered Accountants of India
आर्क्षीएलई बवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032