

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.: [PR/232/2021-DD/257/2021-DC/1603/2022]

In the matter of:

Shri Deepak Mehra

Through Major Gen Kapil Mehra (Retd.),

Power of Attorney holder

18-A, Birbal Road,

Jangpura Extension,

New Delhi – 110014

.....Complainant

versus

CA. Manoj Kumar (M. No. 517186)

M/s Manoj Jagram & Associates,

Chartered Accountants

586-D/7, Second Floor,

Shop 21, C Lal Chowk, Govindpuri,

New Delhi – 110019

.....Respondent

MEMBERS PRESENT:

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

Shri Jiweh 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 (In person)

CA. Cotha S Srinivas, Member (In person)

DATE OF FINAL HEARING : 23rd January 2024

PARTIES PRESENT:

POA holder of Complainant : Major General Kapil Mehra (In person)

Respondent : CA. Manoj Kumar (In person)

1. **Background of the Case:**

An ancestral plot of Shri Deepak Mehra was acquired by the Government under the Land Acquisition Act, 1894. Thereafter, the case for compensation was heard and decided by the Hon'ble High Court of Delhi vide order dated 24.12.2010 wherein the Hon'ble Delhi High Court declared that the market value of the expropriated land could not have been determined by treating the acquired land as an agricultural land. DDA then filed 'Appeal' against the High Court's order in the Hon'ble Supreme Court of India. The Hon'ble Supreme Court dismissed the said Appeal and upheld the findings of the High Court and in addition, had imposed the cost of Rs.1 lakh on DDA for indulging in frivolous litigation. It is further stated that on receipt of compensation, Sh. Deepak Mehra deposited the tax of more than Rs. 4 Crores with the tax authorities. The Respondent had filed the Income Tax Return of Sh. Deepak Mehra for the Assessment Year 2012-13, 2013-14 and 2014-15.

2. **Charges in brief:**

2.1 The Respondent had prepared and filed Income Tax Return (ITR) of Sh. Deepak Mehra on 21.05.2012 for Assessment Year 2012-13. It was alleged that the Respondent showed the plot as 'Agricultural' and claimed refund under Section 10(37) of the Income Tax Act, 1961 knowing fully well, that both Hon'ble Delhi High Court and Hon'ble Supreme Court had declared the plot as non-agricultural. It was stated that due to the wrongdoing of the Respondent, Income Tax Department had issued assessment order dated 17.03.2015 in which Sh. Deepak Mehra was charged for concealing income and a fresh Demand Notice of Rs. 3.11 crores was raised against Sh. Deepak Mehra and penalty proceedings were also instituted against him. Thus, the Respondent had committed the offence by doing the contempt of both High Court of Delhi and Supreme Court of India.

3. **The relevant issues discussed in the Prima facie opinion dated 28th March 2022 formulated by the Director (Discipline) in the matter in brief, are given below:**

3.1 It was observed that the exemption for capital gains towards the compensation received in respect of said plot/land was claimed u/s 10(37) of the Income Tax Act 1961 in the Income Tax Return of Sh. Deepak Mehra for
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the AY 2012-13 filed by the Respondent. Further, Section 10(37) of the Income Tax Act 1961 states that income chargeable under the head of 'Capital Gains' arising from transfer of agricultural land will not be included in the total income of the assessee subject to fulfilment of certain conditions. Thus, the exemption was wrongly claimed under the aforesaid section, which applies on 'Agricultural' land while actually the said land was non-agricultural land.

3.2 In the instant matter, it could not be denied that the Respondent was not aware of the fact that the said plot/land was declared as 'Non-Agricultural' by the Hon'ble High Court of Delhi and Supreme Court of India. But it was surprising that despite being aware of the judgements of Hon'ble High Court of Delhi and Hon'ble Supreme Court of India, the Respondent advised Mr. Deepak Mehra to claim exemption u/s 10(37) of Income Tax Act 1961 which actually speaks about 'Agricultural' land. The Respondent has taken a defence in his Written Statement that various communications were held between him and Mr. Deepak Mehra over e-mails during April 2012 and May 2012 in relation to the alleged matter wherein various queries had also been raised by Mr. Deepak Mehra which had been responded by the Respondent. Thereafter, Mr. Deepak Mehra signed the computation sheet / statement of assessable income clearly mentioning that the exemption u/s 10(37) was to be claimed in respect of compensation received in respect of the plot / land after getting completely satisfied with the responses of the Respondent. However, the instant submission of the Respondent could not be accepted since the professional advice in respect of claiming of exemption u/s 10(37) had only been given by the Respondent and thereafter, the Income Tax Return of Mr. Deepak Mehra was also filed by him against the professional fees of Rs. 60,000/-. Thus, signing of the computation sheet by Mr. Deepak Mehra does not absolve the Respondent in respect of his professional responsibilities in any manner.

3.3 While justifying the good intentions of Mr. Deepak Mehra, it had been stated that Mr. Deepak Mehra himself deposited taxes of more than Rs. 4 crores in respect of compensation received by him against the compulsory acquisition of his ancestral plot. But it was observed that Mr. Deepak Mehra still chose to claim the refund of those taxes paid by him while filing his ITR for the AY

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2012-13 inspite of being he was so sure about the various provisions of relevant sections of the Income Tax Act under which he earlier paid the taxes himself. But, in the instant matter, since the Respondent had failed to provide sufficient documentary evidence(s) justifying his professional advice given to Mr. Deepak Mehra for claiming exemption u/s 10(37) which was also claimed by him while filing Mr. Deepak Mehra's Income Tax Return for the AY 2012-13, it was viewed that the Respondent was prima facie Guilty of Professional Misconduct.

- 3.4 The Director (Discipline) in his Prima Facie Opinion dated 28th March 2022 opined that the Respondent was 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 of the Schedule to the Act, 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 Disciplinary Committee at its meeting held on 10th August 2022 under Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. 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 was GUILTY of Professional Misconduct falling within the meaning of Item (7) of the Second 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 Complainant and the Respondent including particulars or documents relied upon by the Director (Discipline), if

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

| S. No. | Particulars | Dated |
|--------|--|---|
| 1. | Date of Complaint in Form 'I' filed by the Complainant | 19 th August 2021 |
| 2. | Date of Written Statement of the Respondent (at Rule 8 stage) | Dated "Nil" (Received on 10 th November 2021) |
| 3. | Date of Rejoinder filed by the Complainant (at Rule 8 stage) | 24 th November 2021 |
| 4. | Date of Prima facie Opinion formed by Director (Discipline) | 28 th March 2022 |
| 5. | Date of written submissions filed by the Respondent after PFO (under Rule 18) | 01 st November 2022 and 23 rd January 2024 |
| 6. | Date of written submissions filed by the Complainant after PFO (under Rule 18) | Dated Nil |

5. Written submissions filed by the Respondent:

The Respondent vide letter dated 01st November 2022 and 23rd January 2024 filed his written submissions which are summarized as under:

5.1 Submissions made by the Respondent vide letter dated 01st November 2022:

- (i) The Respondent stated that he had many corroborative documents as well as vital information with regard to his fair and professional conduct.
- (ii) It was evident from various submissions that Mr. Deepak Mehra had paid the tax of Rs. 4.02 crores (approx.) considering the compensation as taxable. Mr. Deepak Mehra discussed his case with the Respondent and wrote an

email requesting him to send relevant sections of the Income Tax Act. During discussion of the case, the Respondent's first suggestion to the Complainant was that he could claim exemption under Section 54F of the Income Tax Act which exempts Long Term Capital Gain from payment of taxes subject to certain conditions.

- (iii) Both Mr. Deepak Mehra and the Respondent visited Punjab National Bank and State Bank of India, Jungpura Branch on 06.05.2012 to enquire about opening of "Capital Gains Scheme Account". Thereafter, another email was sent by Mr. Deepak Mehra having details of "SBI Capgains Plus Capital Gains ". Mr. Deepak Mehra informed him that he will open his Capital Gains Scheme Account with State Bank of India and will deposit his funds for the purpose of investment in house property for claiming exemption u/s 54F. According to the Respondent, the intention of Mr. Deepak Mehra was to avoid the payment of taxes.
- (iv) Mr. Deepak Mehra then changed his mind and instead of filing his return by claiming exemption u/s 54 of the Income Tax Act, he asked the Respondent for filing his return and to claim the exemption u/s 10(37) of the Income Tax Act. Mr. Deepak Mehra asked the Respondent to send to him the provisions of Section 10(37) which he adhered to.
- (v) The Respondent claimed that apart from above, he had neither given or issued any professional advice or certificate for filing return of Mr. Deepak Mehra by claiming exemption u/s 10(37) of the Income Tax Act nor had he received any professional payment in respect of that. If the Complainant had any such advice given by the Respondent in any communication between him and Mr. Deepak Mehra, then he must submit the same before the Committee to prove this point.
- (vi) The Respondent further stated that it was very much clear that Mr. Deepak Mehra was having clear intention of avoiding tax payment; and he had multiple options for tax filing of which initially he wanted to file the return and claim exemption u/s 54F of the Income Tax Act. He opened the capital gain account and deposited his funds into Capital Gain Scheme Account to invest later in residential property. But later on, he changed his mind and instructed

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the Respondent for filing his return by claiming exemption u/s 10(37) of the Income Tax Act.

- (vii) The Respondent stated that he and Mr. Deepak Mehra executed an agreement in presence of witness of banker of Mr. Deepak Mehra and fixed their duties and professional fees etc. Thereafter, the Respondent filled the return of Mr. Deepak Mehra under his signatures.
- (viii) That Mr. Deepak Mehra could not be given a shield of being a layman as he was a well qualified engineer having experience of more than 50 years. He asked the Respondent to send relevant provisions of income tax on emails. He purchased capital gain tax book as well and was very much capable of understanding the legal provisions. Having prior written agreement with a professional for filing tax return could not be assumed as a layman act. He also had a vast experience of legal court proceedings during the period 1960 to 2012 from lower court to Supreme Court since his land was acquired by DDA.
- (ix) The Respondent stated that Mr. Deepak Mehra could have filed the revised return within one year of the end of assessment year or before the completion of assessment, but he did not do that.
- (x) The Respondent then argued on the interpretation of Court order as to whether the subject land was agriculture land and taxability of compensation:
- (a) The case in Delhi High Court was fought to decide the true market value of the land and not to decide the taxability of the compensation received. This fact could be verified from 'List of Question framed to be decided on 02.11.1999. In the list 1 to 7, there was no mention as to whether the land in question was agricultural or non-agricultural or whether compensation will be taxable or not under income tax law.
- (b) It was highlighted in the order of the Delhi High Court and Supreme Court that land could not be "treated as agricultural land" for deciding the true market value for "compensation" purpose. The relevant portion of the said order of the Honorable Supreme Court is given as under:
"... the inevitable conclusion is that the market value of the expropriated land could not have been determined by treating it as agricultural land" 

- (c) Section 10(37) of the Income Tax Act had an overriding effect in dealing with compensation received in compulsory acquisitions by the Government with certain conditions. The provisions of Section 10(37) was remedial in nature which exempts the tax payment from compensation received for forceful compulsory acquisition by governments. Grabbing precious land from landowners and taxing compensation received after a tough legal battle of 30-40 years was against the principle of natural justice and great hardship as well. Remedial statute or related court orders, had liberal interpretation, and thus, are not interpreted through strict means against the Complainant.
- (d) Apart from the above, there was a huge mismatch in the compensation awarded by the Delhi High Court at the rate of Rs. 14,974/- per square yard in comparison to compensation claimed by Mr. Deepak Mehra which was at the rate of Rs. 1,04,702/- per square yard and was based on Market Value of the surrounding land. From the above, it could be said that Delhi High Court as well as Supreme Court had not declared the land as agricultural or non-agricultural for taxation purposes, and not prohibited the taking the benefit of Section 10(37) of Income Tax Act 1961.
- (xi) The Respondent then argued as to why the subject 'land' should fall within the exemption of Section 10(37) of Income Tax Act 1961 given for compulsory acquisition of urban agricultural land:
- (a) Section 10 of the Income-tax Act, 1961, relates to incomes which do not form part of total income. In order to provide relief to the farmers, a new clause (37) had been inserted in Section 10 providing exemption on capital gains arising to a Hindu undivided family or to an individual from the transfer of agricultural land, being capital asset within the meaning of Clause (14) of Section 2, by way of compulsory acquisition under any law or under a transfer of such land, the consideration for which was determined or approved by the Central Government or the Reserve Bank of India. Such exemption shall be available where the compensation / enhanced compensation / enhanced consideration or consideration had been received on or after 1st April 2004, and such land, during the period of two years immediately preceding the date of transfer was being used for agricultural purposes by such Hindu undivided family or individual or his parent.

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- (b) The exemption was much needed especially on the background of ever-expanding residential areas of any town or city encroaching the agricultural land area on one hand and the need to raise infrastructures in view of increasing urban population on the other. But the urban agricultural land was taxable, and the compulsory acquisition posed hardship and discrimination for the owners. The purpose of inserting Section 10(37) was to provide relief in case of compulsory acquisition, but tax authorities kept on taxing the same.
- (c) In the present matter, the facts that the land was compulsorily acquired by LAC & DDA, was well established. The Compensation was received on 09.06.2011 i.e., after 1st April 2004. Thus, the first condition of Section 10(37) was complied. When it was cleared that the said land was "agricultural" in nature, it could be of two types, rural or urban agricultural land. In both cases, the compensation received will be exempt. If this is assumed as rural agricultural land, then it will be out of preview of income tax as this land was out of the definition of 'Capital Asset'. In case, the land was treated as urban agricultural land then it will come under preview of Section 10(37) and whole of the capital gain will be exempt from tax.
- (d) As per sale certificate, the said land was purchased by deceased father of the assessee on 21.05.1960. From the sale certificate, it was established that it was a Mango Garden popularly known as 'Shadi Wale Garden'. First time, the land was acquired on 25.03.1983 by land acquisition commissioner under award bearing 83/82-83. From the date of purchase i.e., 21.05.1960 to the date, 25.03.1983, the land was being used by the deceased father of assessee for growing Mangoes. The second notification under Section 4 and 17 of land acquisition act was issued on 19.02.1997. In view of interim order passed by the divisional bench in civil writ petition 1134/1992, the land was maintained as "Green Area" i.e., the Mango Garden was intact as per the affidavit filed by the director (Land Management). Hence, the condition that the land should be used by assessee or any of his parents for agricultural purpose for two or more years got fulfilled.
- (e) The land was compulsorily acquired under Land Acquisition Act 1894 and compensation was received only on 09.06.2011 i.e., after 01.04.2004, hence

fulfilling both the conditions. The compensation received was eligible for exemption u/s 10(37) of the Income Tax Act.

(xii) The Respondent then stated on the documents relied upon supporting that the land in question was urban agricultural land falling u/s 10(37) of Income Tax Act 1961:

- (a) Certificate of sale of land issued by auction department, where the land in question was clearly mentioned as "Shadi Wale Garden" by the Competent authority.
- (b) Order issued by the Office of the Competent Authority, Delhi Urban Land Act, 1976 vide order no. CD/917/76-ULC dated 05.03.1983 in which the fact that the land in question was an agricultural land both as per revenue as well as land use, was established clearly.
- (c) Certified true copy issued on 05.03.2014 of the award no. 83/82-83 which clearly established the fact that land in question was in the ownership of the deceased father of the assessee.
- (d) Certified true copy issued on 13.03.2014 of the Khasra Girdawari of the land in question belonging to the period 1970-71 clearly indicating that there was a Mango Garden at the time of compulsory acquisition of land.
- (e) Certified true copy issued on 05.03.2014 of the Khasra Girdawari of the land in question belonging to the period 2007-11 clearly indicating that there was a Mango Garden at the time of compulsory acquisition of land.

(xiii) The Respondent stated that testing of requirement of Section 10(37) of Income Tax Act 1961 were satisfied fully in the instant case and the available records and documents of the land shows that there was nothing that prevented Mr. Deepak Mehra from taking the benefit of Section 10(37) of Income Tax Act.

5.2 Submissions made by the Respondent vide letter dated 23rd January 2024:

The Respondent submitted the correspondences that took place between him and the Complainant as how the Complainant opted to file his ITR by claiming exemption u/s 10(37) of Income Tax Act, 1961 in lieu of taking exemption u/s 54F of Income Tax Act, 1961. The Respondent further gave
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the reasons for claiming exemption u/s 10(37) stating that it was seen that the Land was acquired by LAC & DDA, and he saw and relied upon 'the certificate of sale of land, order issued by Delhi Urban Land (Ceiling & Regulation) Act, 1976 vide its order no. CD/917/76-ULC dated 05.03.1983, Khasra Girdawari of Land issued on 13.03.2014 and 05.03.2014 and various other documents. The Respondent asserted that he was under strong belief that the land used by assessee was agricultural land, hence, he claimed exemption under Section 10(37) of Income Tax Act, 1961.

6. Written submissions filed by the Complainant:

6.1 The Complainant vide letter dated NIL, filed his submissions in the matter which are summarized as under:

- (i) The Respondent was engaged by Mr. Deepak Mehra to file his ITR for AY 2012-13. Mr. Deepak Mehra had already paid advance tax, self-assessment tax and TDS, which together amounted to more than Rs. 4 Crores, including Long-Term Capital Gain. Based on the data supplied to the Respondent, he was required to project honestly and diligently, the available data in the ITR as per law, to obtain clearance from the Income Tax authority. For this work, the CA had charged and was paid Rs. 60,000/-. The Respondent however, converted a straight-forward and simple Income Tax return into a contentious exercise for his personal interest and personal gain at the expense of the client, Mr. Deepak Mehra. His actions were in violation of his oath of CA. He was in violation of the spirit and substance of CA Act 1949.
- (ii) Mr. Deepak Mehra had already paid a total of Rs. 4.02 crores towards taxes. He did not take any advice from the Respondent and on his own deposited more than Rs. 4 Crores as tax, thereby showing his intention to pay the taxes in any case, as per law.
- (iii) The Respondent had not realized, that after the Supreme Court had graded the plot to be 'Non-Agricultural', his act to claim refund in Income Tax Return, after declaring the plot as 'Agricultural' amounts to Contempt of Supreme Court, which was a serious criminal offence.
- (iv) The Respondent prepared and filed ITR of AY 2012-13 on behalf of Mr. Deepak Mehra on 21.05.2012. In the ITR, the Respondent showed the plot

as 'agricultural' and claimed refund under Section 10(37) of the Income Tax Act knowing fully well, that both the High Court of Delhi and Supreme Court of India had declared the plot 'non-agricultural'. The Respondent maintained that for the purpose of Income Tax, the plot was agricultural, and he had enough 'Case Laws' under his belt to prove his point, but he was wrong.

7. Brief facts of the Proceedings:

7.1 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 | 18 th May, 2023 | Part heard and adjourned at the request of the Complainant. |
| 2 nd time | 18 th December, 2023 | Part heard and adjourned. |
| 3 rd time | 23 rd January, 2024 | Hearing concluded and decision taken. |

7.2 On the day of first hearing on 18th May 2023, the Committee noted that the Respondent was present through Video Conferencing Mode. The Committee also noted that the Complainant vide email dated 17th May 2023 sought adjournment on the grounds of his ill health. Thereafter, the Respondent was put on oath and the Committee enquired from him as to whether he was aware of the charges as contained in Para 2.1 above and the same were also read out. The Respondent replied in affirmative and pleaded 'Not Guilty' to the charges levelled against him. Thereafter, in the absence of the Complainant and in view of 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. Accordingly, the matter was part heard and adjourned.

7.3 On the day of next hearing on 18th December 2023, the Committee noted that the Complainant's Representative was present in person and the Respondent was present through Video conferencing mode. Thereafter, the Respondent made his submissions before the Committee. The Complainant's Representative then stated that the Respondent was engaged to file ITR for Assessment Year 2012-13 and in the said ITR, the Respondent had wrongly showed the land as agricultural land and claimed refund under

Section 10(37) of the Income Tax Act, 1961. The Respondent submitted that the allegations were false and all communications regarding filing and computation of Income Tax were made with Mr. Deepak Mehra (i.e. Complainant) through e-mails. The Respondent further submitted that he had guided the Complainant by giving different options for computation of tax liability and also highlighted the provisions of Section 10(37) of Income Tax Act, 1961 as well as the provisions of the exemption under Section 54 of Income Tax Act, 1961 and communicated to the Complainant through e-mail. The Committee after considering the arguments of the Complainant's Representative and the Respondent, directed the Respondent to provide the sequence of events in chronological order as to how the Respondent had given his professional advice to the Complainant for opting exemption under Section 10(37) of Income Tax Act, 1961. Thus, the case was part heard and adjourned to a later date.

- 7.4 On the day of final hearing on 23rd January 2024, the Committee noted that the Complainant's representative and the Respondent were present in person. Thereafter, the Committee asked the Respondent to present his submissions. The Respondent referred to the provisions of Section 2(14) of the Income Tax Act and explained the definitions of 'agriculture' and 'non-agriculture' land. The Respondent then stated that the instant case falls under Section 10(37) and gave reference of circular no. 24011/1/2009-LRD dated 13th April 2011 issued by the Ministry of Rural Department (Land Reforms Division) titled as "Applicability of Income Tax towards compensation received by the landowners for the land acquired under the Land Acquisition Act and other rehabilitation grants:". The Respondent stated that he assessed the tax treatment based on the above circular including certain other reasons also. The Respondent then referred to the Assessment Order of the Income Tax Authorities and stated that he had advised the Complainant to file an appeal against the said order, but Mr Deepak Mehra did not contest the said order. The Respondent further stated that Mr. Deepak Mehra decided to go for claiming exemption under Section 10(37), and they had entered into a mutual agreement for filing of the income tax return claiming Section 10(37) exemption. The Complainant's Representative also made his submissions giving various references in the matter of

claiming exemption u/s 10(37) of the Income Tax Act 1961 in the Complainant's Income Tax Return.

7.5 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, the Committee concluded the hearing in the instant case.

8. **Findings of the Committee:**

8.1 The Committee thoroughly examined the charges levelled against the Respondent, that he had filed the Income Tax Return (ITR) of Shri Deepak Mehra for Assessment Year 2012-13, and claimed refund under Section 10(37) of the Income Tax Act, 1961 knowing fully well, that both the Delhi High Court and Supreme Court had declared the subject land as Non-Agricultural and consequently, Income Tax Department had issued assessment order dated 17.03.2015 in which Shri Deepak Mehra was charged for concealing income and a fresh Demand Notice of Rs. 3.11 crores was raised against Shri Deepak Mehra and penalty proceedings were also instituted against him. The Committee examined the Income Tax Return as well as computation sheet of Mr. Deepak Mehra filed for A.Y. 2012-13 and observed that the exemption under Section 10(37) of the Income Tax Act had been claimed in the said ITR against the compensation received by Mr. Deepak Mehra towards the acquisition of subject land. The Committee then deliberated on the provisions of Section 10(37) of the Income Tax Act 1961 and observed that Section 10(37) of the Income Tax Act 1961 provides for the exemption of capital gains on compensation received upon compulsory acquisition of agricultural land situated within specified urban limits subject to fulfillment of certain conditions. This exemption is available to individuals and Hindu Undivided Families (HUFs). The Committee also observed that in order to qualify for the exemption under Section 10(37), certain criteria must be met which can be briefed as under:

- The land being acquired must be agricultural land and must be situated within the specified urban limits.
- The land must be compulsorily acquired by the government or a local authority.
- The compensation must be received as a result of compulsory acquisition.

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- The compensation must be received on or after 1st April 2004.
- The land must have been used for agricultural purposes by the taxpayer (or by his parents in the case of an individual) for a period of two years immediately preceding the date of its acquisition.

8.2 The Committee observed that if the above conditions were fulfilled, then the entire capital gain arising on the compulsory acquisition of the agricultural land will be exempt from income tax. In this context, the Committee considered the Respondent's submissions stating inter alia the reasons for believing that exemption under Section 10(37) could be claimed in the case of Mr. Deepak Mehra. The Respondent stated that the land in question was an agricultural land because of the following reason and evidence:

- In the certificate of sale of land issued by auction department, the land in question was clearly mentioned as "Shadi Wale Garden" by the competent authority. The said certificate was also accepted and acknowledged by the Delhi High Court when the same was presented before it by the father of assessee.
- In the Order no. CD/917/76-ULC dated 05.03.1983 issued by the Office of the Competent Authority, Delhi Urban Land (Ceiling & Regulation) Act, 1976, the fact that the land in question (bearing Khasra No. 1300 min old 697 new 12 Bighas i.e., 12096 Sq. Yds. in village Mehrauli, Delhi) was an agricultural land both as per Revenue as well as Land use, was established clearly.
- Certified true copy issued on 05.03.2014 of the Award no. 83/82-83, clearly established the fact that land in question (bearing Khasra No.1300 min old 697 new 12 Bighas ie. 12096 Sq. Yds. in village Mehrauli, Delhi) was an agricultural land both as per Revenue as well as Land use, and in the ownership of the deceased father of the assessee and had trees on it.
- Certified true copy issued on 13.03.2014 of the Khasra Girdawari of the land in question belonging to the period 1970-71 clearly indicated that there was a Mango Garden with 'well' at the time of compulsory acquisition of land.

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- Certified true copy issued on 05.03.2014 of the Khasra Girdawari of the land in question belonging to period 2007-11 clearly indicated that there was a Mango Garden with 'well' at the present date also and after compulsory acquisition of land, the ownership vested with Govt. of India.
- On 26.02.1997, the Director (Land Management), DDA filed an affidavit in the contempt proceedings stating inter alia that the land in question was utilized in respect of a Housing Scheme known as Vasant Kunj Scheme, but in view of the interim order passed by the Division Bench in Civil Writ Petition No. 1134/1992, the land was "maintained as a green area."
- Further, the opening Para of Delhi High Court's order started with "*the appellants are aggrieved by the judgement 24.02.2007 passed by learned Addition District Judge.... they were not entitled to compensate for wells and trees*" clearly indicated that there were wells and trees on the subject land.

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The Committee considered the submissions and the documents given by the Respondent asserting that there was a strong base for believing that this land was described as agricultural land. The Committee also considered the Respondent's another submission contending that the other conditions for claiming the exemption u/s 10(37) were also fulfilled, which are stated as under:

- As per sale certificate, the said land was purchased by deceased father of the assessee on 21.05.1960, and as per the said sale certificate, the fact that it was Mango Garden popularly known as 'Shadi Wale Garden' was also established. First time, the land was acquired on 25.03.1983 by land acquisition commissioner under Award bearing 83/82-83. From the date of purchase i.e., 21.05.1960 till 25.03.1983, the land was being used by the deceased father for growing Mangoes. The second notification under Sections 4 and 17 of Land Acquisition Act was issued on 19.02.1997. In view of interim order passed by the Division Bench in civil writ petition 1134/1992, the land maintained as "Green Area" i.e., the Mango Garden, was intact as per the affidavit filed by the Director (Land

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Management). Hence, the condition that the land should be used by assessee or any of his parents for agricultural purpose for two or more years got fulfilled.

- The land was compulsorily acquired under Land Acquisition Act 1894 and compensation was received only on 09.06.2011 i.e., after 01.04.2004.

8.4 The Committee took note of the Respondent's submissions asserting that all conditions were satisfied in the case of Mr. Deepak Mehra, and this gave a strong reason to him to believe that Mr. Deepak Mehra was eligible for exemption u/s 10(37) of Income Tax Act 1961. The Committee considered all the submissions and material provided by the Respondent and observed that the Respondent had provided ample material to present his defence, and also to justify his actions which he stressed, was based on reasonable care and professional judgement as per his understanding of the matter. The Committee deliberated on the present charge which primarily states that despite being aware of the fact that the subject land was declared as 'Non-Agricultural' by the Hon'ble High Court of Delhi and Supreme Court of India, the Respondent advised Mr. Deepak Mehra to claim exemption u/s 10(37) of Income Tax Act 1961. In the given context, the Committee observed that the role of the Respondent was limited to filing of Income Tax Return of Mr. Deepak Mehra. Therefore, the main aspect, which was required to be seen here, was whether the Respondent had exercised required due diligence before filing the said ITR and claiming exemption u/s 10(37) in the said ITR. The Committee did not consider the matter on the categorization of the subject land. It had only looked into the professional role of the Respondent in regard to filing of ITR and the Committee restrained its findings only on the professional conduct of the Respondent who was a member of ICAI. It was a case which could, at best, be treated as a matter involving interpretation of tax laws between the assessee and Income Tax Authorities, to which the Committee restrained itself to enter into. In this connection, the Committee went on to consider the aspect of due diligence to be applied by a professional in the given circumstances. Accordingly, the Committee deliberated upon the commentary coming under Item (7) of Part 1 of the Second Schedule in the Code of Ethics 2009 of ICAI which states that:

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“Diligence means care; caution; attention and care required from a person in a given situation and the expression ‘due diligence’ means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. A member should maintain updated knowledge and skill for well performing his professional works which is based on the knowledge of appropriate/applicable legislations of the industry in which the client operates its activity. The member should also act diligently in accordance with applicable technical and professional standards. Diligence encompasses the responsibility to act in accordance with the requirements of an assignment carefully and thoroughly.”

- 8.5 The Committee observed that diligence is the embodiment of care, caution, and meticulous attention required in various situations. The term 'due diligence' specifically refers to the level of care reasonably expected from an individual aiming to fulfill obligations. The Committee also noted the further commentary coming under this Item in the Code of Ethics 2009 of ICAI which states that:

“What constitutes professional misconduct:

Professional misconduct on the part of a person practising one of the technical professions cannot fairly or reasonably be found merely on a finding of a bare non-performance of a duty or some default in performing it. The charge is not one of inefficiency but of misconduct. Imputation of certain mental condition is always involved. The test must always be whether in addition to the failure to do the duty, there has also been a failure to act honestly and reasonably.”

“The misconduct implies failure to act honestly and reasonably either according to the ordinary and natural standard or according to the standard of a particular profession.”

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8.6 The Committee observed that professional misconduct involves more than a simple default in performing tasks; it necessitates an examination of whether there has been a failure to act honestly and reasonably in addition to the failure to fulfil duties. The Committee also observed that various communications were exchanged between the Respondent and Mr. Deepak Mehra over e-mails whereby various provisions of Income Tax Act had been analyzed and the propositions were discussed for taking decision on the course of action to be taken for filing the ITR of Mr. Deepak Mehra. Thereafter, Mr. Deepak Mehra signed the computation sheet / statement of assessable income which contained the details of exemption u/s 10(37) claimed in respect of compensation received for the subject land. This shows that the Complainant was satisfied with the professional advice given by the Respondent at the relevant point of time, and it was a conscious decision of the Complainant to claim benefit u/s 10(37) of Income Tax Act 1961. The Committee observed that the existence of order of Hon'ble Delhi High Court and Hon'ble Supreme Court of India was in the knowledge of both Mr. Deepak Mehra (i.e., the Complainant) and the Respondent. The Committee was of the view that if the Complainant was so sure of non-applicability of the provisions of Section 10(37), then he could have advised the Respondent not to claim the exemption under Section 10(37). But the Complainant went ahead and gave the go ahead to the Respondent by signing the computation containing the exemption under Section 10(37) of the Income Tax Act which strengthened the Respondent's assertions of having exercised due diligence before filing the ITR of Mr. Deepak Mehra. The Committee also noted that Mr. Deepak Mehra was also advised by the Respondent to file an appeal against the order of the Income Tax Authorities levying certain penalties for the concealment of the income, but he chose not to contest that order.

8.7 On overall consideration of information, submissions and material on record, the Committee was of the view that even though the exemption under Section 10(37) as claimed in the ITR of Mr. Deepak Mehra, was not accepted by the Income Tax Authorities but it does not in itself prove any lack of due diligence on the part of the Respondent. The Committee considered the submissions and evidence provided by the Respondent and was convinced that reasonable care had been taken by him in the present matter by analyzing various provisions of law. The Committee also observed

that it could be seen from the facts of the present matter, that the decision to file ITR by claiming exemption u/s 10(37) was taken in consultation and with the consent of the Complainant; and the engagement letter dated 20.06.2012 clearly establishes the said stand of the Respondent that claiming exemption u/s 10(37) in the ITR of Mr. Deepak Mehra, was a collective decision.

- 8.8** In view of foregoing discussions and in the absence of any evidence that it was the Respondent who was solely responsible for taking decision for filing ITR of the Complainant by claiming exemption u/s 10(37) or that the Respondent had misguided the Complainant for arriving at such decision. The Committee was of the view that the liability in the instant matter, cannot be fastened on the Respondent especially in view of the documents and submissions provided by him showing exercise of due diligence by him in the matter. Accordingly, the Committee held 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.

9. 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 2.1as above | Para 8.1 to 8.8 as above | Not Guilty - Item (7) of Part I of the Second Schedule |

In view of the above observations, considering the oral and written submissions of the Respondent and material on record, the Committee held 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.

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

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

Sd/-
(MS. DAKSHITA DAS, I.R.A.S. {RETD.})
GOVERNMENT NOMINEE

Sd/-
(CA. MANGESH P KINARE)
MEMBER

Sd/-
(CA. COTHA S SRINIVAS)
MEMBER

DATE: 05.02.2024
PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

सीए श्रुति गर्ग / CA. Shrutti Garg
सहायक निदेशक / Assistant Director
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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