



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

[PPR/P/122/16/DD/327/INF/17/BOD/519/2019]

ORDER UNDER SECTION 21A (3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 15(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007

In the matter of:

CA. Ashwani Kumar Dewan (M.No. 082910), Delhi in Re:

.... Respondent

[PPR/P/122/16/DD/327/INF/17/BOD/519/2019]

MEMBERS PRESENT (in person):

CA. Rajendra Kumar P, Presiding Officer

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

CA. Priti Savla, Member

Date of Hearing and passing Order: 11th January 2024

1. The Board of Discipline vide its Findings dated **2nd November 2022** was of the view that **CA. Ashwani Kumar Dewan (M.No. 082910)** is **GUILTY** of Professional and Other Misconduct falling within the meaning of Item (11) of Part I and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Ashwani Kumar Dewan** and communication dated **4th January 2024** was addressed to him thereby granting him an opportunity of being heard on **11th January 2024** which was duly delivered at his end. However, he chose not to be present before the Board. Keeping in view the provisions of Rule 15(1) of The Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 and the fact that the case was listed for award of punishment on earlier occasions also wherein the Respondent was not present, the Board is of the view that he has nothing more to represent before it and accordingly, decided to consider his case for award of punishment.
3. Thus, upon consideration of the facts of the case and the consequent misconduct of **CA. Ashwani Kumar Dewan (M.No. 082910)**, the Board decided to remove the name of **CA. Ashwani Kumar Dewan (M.No. 082910)** from the Register of Members for a period of 1 (One) Month.

Sd/-

CA. Rajendra Kumar P
(Presiding Officer)

Sd/-

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

Sd/-

CA. Priti Savla
(Member)

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy
Charan Singh
वरुण सिंह / Charan Singh
कार्यकारी अधिकारी / Executive Officer
प्रशासनिक विभाग / Disciplinary Directorate
भारतीय चरणी अकाउंटेंट्स संस्थान
The Institute Chartered Accountants of India
आइसीआईएन, विकास मार्ग, शाहपुरा, दिल्ली-110032
ICAI Bhawan, Vishwa Nagar, Shahdara, Delhi-110032

CA. Ashwani Kumar Dewan (M.No. 082910) in Re:

CONFIDENTIAL

BOARD OF DISCIPLINE

Constituted under Section 21A of the Chartered Accountants Act 1949

Findings under Rule 14(9) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

File No. : [PPR/P/122/16/DD/327/INF/17/BOD/519/2019]

CORAM:

CA. Prasanna Kumar D., Presiding Officer (present in person)
Ms. Dolly Chakrabarty (IAAS, Retd.), Government Nominee (through video conferencing)
CA. (Dr.) Raj Chawla, Member (present in person)

In Re:

CA. Ashwani Kumar Dewan (M.No. 082910), DelhiRespondent

DATE OF FINAL HEARING : 24th June, 2022
PLACE OF FINAL HEARING : New Delhi / through video conferencing

PARTIES PRESENT:

Respondent : CA. Ashwani Kumar Dewan

BACKGROUND OF CASE:

- 1.1 The attention of the Directorate was drawn to newspaper article published in 'Times of India', New Delhi dated 3rd December 2016 under the title 'CA with 15 high end properties arrested' containing allegations against CA. Ashwani Kumar Dewan (M.No.082910), Delhi (hereinafter referred to as the 'Respondent'). On receiving the aforesaid newspaper article, it was observed that the Director General, Office of the Directorate General of Central Excise Intelligence (DGCEI) had taken action against the Respondent who was involved in keeping huge assets involving real estates in the posh location of Delhi and Haryana including Canada and Tanzania and there was no justification of any known source of income. Further, in news report it was stated that Respondent's modus operandi was to float a company, buy property in its name and declare the company sick. The Respondent had been arrested in 2006 in a case related to his textile business in Madhya Pradesh in which he was accused of evading more than Rs. 11 crores in a tax evading case and since then he fled to Canada to run his operations from overseas. He was also accused to float several other companies, declared them sick, purchased properties in the name of some of these companies. He had also sold several properties by allegedly changing the directorship of these companies, evading Government levies, not leaving behind any trail of financial transaction etc.
- 1.2 The Directorate General of Central Excise Intelligence also informed that the Respondent had been arrested by the Enforcement Directorate vide arrest memo dated 01st December, 2016 pursuant to a permanent arrest warrant dated 11th February 2016 issued by the Additional Chief Judicial Magistrate, CBI, and Economic Offences, Indore, MP. A

perusal of the said memo shows that a Central Excise Duty evasion case was booked against M/s C.T. Cotton Yarn Ltd., Bhind, MP, wherein it has emerged that Respondent working in the capacity of Managing Director of M/s C.T. Cotton Yarn Ltd, is mastermind behind the evasion of Central Excise Duty by the aforesaid Company.

CHARGES ALLEGED:

- 2.1 The Respondent in the capacity of Managing Director of M/s C.T. Cotton Yarn Ltd. (hereinafter referred to as the '**Company**') actively participated in manufacturing and clearing of excisable goods clandestinely without payment of Central Excise duty which is violation of the provisions of the Central Excise Act, 1944 and punishable under Section 9 of the Central Excise Act, 1944. Accordingly, a notice dated 28th November, 2006 was issued by the Additional Director General, Directorate General of Central Excise Intelligence, Zonal Unit, Ahmedabad demanding Central Excise duty of Rs. 7,96,97,948/- alongwith applicable interest was imposed on the Company and penalty of Rs. 90,00,000/- was also imposed on the Respondent vide Order dated 31st March, 2010. Further, Criminal Prosecution proceedings were also launched against the Respondent under the provisions of Section 9 of the Central Excise Act, 1944 before the Special Judicial Magistrate, Economic Offences, Indore, MP. Further, the Respondent evaded various Summons of the Hon'ble Court and arrest warrants also could not be served upon him as he was absconding.
- 2.2. The Board also noted that another case was filed by Sh. Ramshan Dagar, Deputy Director of GST Intelligence, Ministry of Finance, wherein certain allegations were made against CA. Ashwani Kumar Dewan which were substantially the same as covered in the instant case. Keeping in view the aforesaid and the fact that the Complainant Department has only brought on record a copy of the Criminal complainant dated 27th July 2012 filed vide criminal case no. 4/12 as documentary evidence to substantiate the case which was sought in the instant case earlier from the said Department and was not provided at that time, the Board decided to club the complaint case with the instant case. The Board also directed to send a copy of the documents now brought on record to the Respondent so as to provide an opportunity to him to defend which was done vide letter dated 03rd March 2020.

Further, when the case was listed for hearing on 17th December 2021, the Respondent was not present before the Board. The Board observed from the documents on record that the Respondent acted as the Managing Director of the company M/s C. T. Cotton Yarn limited during 29th January 2007 to 26th February 2008 besides being in full time practice. Thus, the Board directed the office to seek clarification from the Respondent as to whether necessary permission from the Council in this regard had been sought for being the Managing Director of the company besides being in full time practice as contemplated under Regulation 190A of The Chartered Accountants Regulations 1988. The Respondent vide email dated 23rd December 2021 submitted his reply. Accordingly, the Board examined the conduct of the Respondent in respect of both the charges i.e. charge falling within the meaning of Item (11) of Part I and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act.

BRIEF OF PROCEEDINGS HELD:



3. The Board at its meeting held on 24th June 2022 noted that the Respondent was present before it through video conferencing. The Board further noted that at the time of last hearing held in the case on 25th May 2022, the Officials of the Informant Department who were present before it were requested to provide the following:
 - (a) Status of the case filed by them against the Respondent alongwith the copy of the final Orders passed therein, if any within 15 days with a copy to the Respondent.

The Board noted that none of the Officials of the Informant Department were present before it on the day of final hearing and had sent across an email requesting for three weeks' time to provide the same as the current status of the prosecution was still to be received from their legal branch. The Board noted that the Respondent was also a party to the said proceedings, was present before it and thus, was of the view that the said information can also be provided by him. Accordingly, the Board decided to proceed ahead with the hearing in the case. Thereafter, the Respondent made his submissions before the Board and he was examined by the Board. On consideration of the documents and submissions on record, the Board decided to conclude the proceedings in the case.

BRIEF SUBMISSIONS OF THE RESPONDENT:

The Respondent in his written submissions, inter-alia, stated as under:

- 4.1 The search matter dated 30/11/2016 has been closed by the DGCEI office. The Respondent submitted the report 17/01/2019 of the Senior Intelligence Officer of DGCI Hqrs, New Delhi in the matter alongwith his submissions.
- 4.2. The Criminal case is still in the pre-charge evidence stage and no charges has been made against the Respondent by the Ld. Court. The Writ Petition no. MCRC-970/2017 for quashing of the criminal complaint is still pending with the MP High Court at Indore Bench. The statement of the Respondent as per para 7.4 of the paper book was taken under coercion and retraction has been filed in the Court. He requested the Board to keep the case in abeyance till the decision of the Court.
- 4.3 The Respondent had taken specific approval from the ICAI at the time of his appointment as Managing Director of M/s. Dewan Industries Limited (name changed to A.V. Cottex Ltd.) alongwith holding his COP in the year 1995. He continued to be the Managing Director of the company till 2001. In continuation to that permission, he resigned from A.V. Cottex Ltd. and then was appointed Managing Director of M/s CT Cotton Yarn Limited. However, specific permission was not obtained to act as Managing Director of M/s. CT Cotton Yarn Limited. He had not been into full time professional practice as CA since 1995.

OBSERVATIONS OF THE BOARD:

5. As regard the first charge, at the outset, the Board noted that the Respondent requested that the present proceedings be kept in abeyance till the decision of the Honorable High Court of Indore. In this regard, the Board opined that Disciplinary proceedings are distinct from Criminal proceedings. The proceedings before the Board of Discipline are quasi-judicial in nature where the misconduct can be proved by preponderance of probabilities having regard to the conduct of the Respondent which is distinct from Criminal proceedings where the misconduct has to be proved beyond reasonable doubt. While coming to the

said view, the Board took into consideration the decision of the Hon'ble Supreme Court in the matter of "**Ajit Kumar Nag –vs- General Manager (PJ) Indian Oil Corporation Limited-AIR 2005 SC 4217** wherein the Hon'ble Apex Court held as under :-

"The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rules relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt' he cannot be convicted by a Court of law. In a departmental enquiry penalty can be imposed on the delinquent Officer on a finding recorded on the basis of 'preponderance of probability'."

Similarly in the matter of Capt. M Paul Anthony –vs- Bharat Gold Mines Limited - AIR....1999 SC 1416 the Hon'ble Supreme Court held as under:-

"In Departmental proceedings, factors prevailing in the mind of the Disciplinary authority may be many, such as enforcement of discipline or to investigate level of integrity of delinquent or other staff. The standard of proof required in those proceedings is also different from that required in a criminal case. While in Departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the Charge has to be proved by the prosecution beyond reasonable doubt."

Thus, the Board viewed that the plea raised by the Respondent that the extant case is pending before Court of Competent jurisdiction and the instant disciplinary proceedings be kept in abeyance till the completion of the same cannot sustain. The issue that is to be examined by the Board is whether the conduct of the Respondent arising out of the circumstances as stated in the case records has brought disrepute to the profession and thus, amounting to 'Other Misconduct' as provided under the Chartered Accountants Act 1949.

6. The Board also observed that in the Statement of Respondent dated 13th July 2005 taken during search of the Company under section 14 of Central Excise Act, he had stated that he was one of the Directors in M/s ADB Trade Services Pvt. Ltd and other Director was his wife Mrs. Sunita Dewan. M/s ADB Trade Services Pvt. Ltd was formed in the year 1990 and it was in the business of investments and trading of yarn. M/s ADB Trade Services Pvt Ltd was not registered with Sales Tax/Commercial Tax Department. Payments of yarn sold by the Company into DTA/Merchant Exporters/deemed exports were received in the name of the Company and mostly in account of M/s ADB Trade Services Pvt Ltd. During the search of the office premises of the Company, two ledger note books were recovered and seized by the officers. On being asked about the note books, the Respondent deposed that those were the ledgers maintained in his own handwriting and contained the details of transactions made by him in cash/cheque/Draft for the business of his various companies for the period 2003 to 2005.
7. The Board further noted that Shri Mahendra Sharma, Factory Manager of the Company in his statement recorded on 29th November, 2005 under section 14 of the Central Excise Act in respect to question no. 46 stated that all the activities of the Company are carried out on the instructions of management and he had been regularly intimating all the activities including clandestine clearances to management and Managing Director and Directors of

the Company. It may specifically be noted that Respondent was the Managing Director of the Company.

8. The Board further observed that in the Order no. 08/IND/CEX/Commr/2010 dated 31st March 2010 passed by the Commissioner, CCE, Indore, it was stated therein that the Respondent being Chartered Accountant by Profession, was the managing Director of the Company. He had taken control of the Management of the Company from its earlier management w.e.f. 28.09.01. He appointed Shri Mahendra Sharma to look after all the works related to purchase of raw material, sale of finished goods, procurement of duty free goods etc. During the search operation at M/s. C.T. Cotton/Company, two note books were recovered from the Respondent possession found to be maintained by him only in his own handwriting. He had engineered the modus operandi for evasion of duty with the help of Shri Mahendra Sharma who as per his direction manipulated all documents, even forged the official documents, signature & seal of Central Excise Officials. Investigation revealed that the Respondent had created two firms viz. M/s. ADB Trade Services and M/s. Jas Expoship P. Ltd., both owned and managed by him only. In order to circumvent the law and to Siphon Off the sale proceeds generated out of clandestinely cleared goods, he managed to receive the payments through above named companies. He had been managing the funds, at his own will, between M/s. ADB Trade, M/s. Jas Expoship & M/s. C.T. Cotton Yarn Ltd. Investigation also revealed that the Company procured duty free imported HSD(High Speed Diesel) / SKO(Superior Kerosene Oil). The entire quantity of such duty free imported material was not brought into the factory premises but sold in open market without payment of appropriate duties of customs, without issue of invoice and without accounting in the statutory records. All these activities were done on the direction of the Respondent.

The said Order also provided as under:

"(i) A penalty of Rs. 60,00,000/- (Rupees sixty lacs only) is imposed on Shri Ashwani Deewan under Rule 26 of the Central Excise Rules, 2002."

"(ii) A penalty of Rs. 30,00,000/- (Rupees thirty lacs only) is imposed on Shri Ashwani Deewan under Section 112 of the Customs Act, 1962."

9. The Board also observed that during the course of hearing, the Officials of the GST Department also submitted before it that as per departmental investigation, at the time of search certain documents were seized. From the documents it was seen that clandestine removal of goods has happened on the basis of fake and parallel invoices wherein the Respondent has cleared the goods on payment of duty from their customers. He has collected the duty from his customers but he has not discharged the same with bills etc. All the customers were under the impression that these are not goods which was supposed to be cleared in the DT area only so they paid their duty to them and they were all recording all these entries in their ledgers but the same reflection of those entries in the ledger of the Respondent's company was not there. Secondly, there was non-payment of duty on polyester fibre procured duty free and used in the manufacture of clandestinely removed per se yarn. He was procuring goods under various notification for EOUs and here the goods manufactured by those duty-free products and in local market and evasion of DTA clearances by clearing DTA clearance permission of Development Commissioner also. The factory was given permission for goods worth 2.5 crores in the DTA market but at the time of search 2 certificates were found bearing same control number, same date in which in one of the cases the goods to be cleared in the local market amounted to 50 lakhs and in another certificate bearing the same control number it was 12.5 crores. The factory manager of the company also confessed that it was carried out on the instructions of the Respondent. Since all this evasion had happened at the directions of the Respondent in his

capacity as the Managing Director of the company, a personal penalty was levied upon him under Section 112 of the Customs Act 1962.

10. The Board took into view the provisions of Section 112 of the Customs Act 1962 together with Rule 26 of Central Excise Rules 2002 under which penalty had been imposed on the Respondent. The Board noted that on the one hand, the Respondent had requested to keep the instant disciplinary proceedings in abeyance on account of concurrence of the criminal proceedings and also stated that he had already filed retraction in the Court in respect of his Statement recorded before the Department whereas, on the other hand, he himself admitted before the Board that he did not appeal against the Order levying personal penalty on him in which reference to his Statement was also there and which was the basis of initiating criminal proceedings against him. This indicated that the Respondent in a way accepted the default committed by him.
11. Thus, the Board held that the conduct of the Respondent in the circumstances as entailed above is clearly unbecoming of a chartered accountant and has brought disrepute to the profession. Accordingly, he is held guilty in respect of the charge alleged.
12. As regard the Second Charge, the Board noted that the Respondent admitted that he was the Managing Director of the company M/s Dewan Industries Ltd. (later on name changed to AV Cottex Ltd. and then to Travernior Resources Ltd.) from 1995 to 2008 and obtained specific permission of the ICAI at the time of his said appointment while holding his Certificate of Practice. Subsequently, he resigned from the said company and became a Managing Director in M/s. CT Cotton Yarn Limited for which specific permission was not sought. However, he was not into active practice. The Board perused the Member records of ICAI and noted that the Respondent had informed of his association with M/s A V Cottex Ltd. which as per records continued till 28th December 2008. Thereafter, he held full time Certificate of Practice. The Board also noted that as per records of MCA, the Respondent was the Managing Director of M/s. CT Cotton Yarn Limited from 29th January 2007 to 26th February 2008.

In this regard, the Board noted the Code of Ethics provides the following with respect to the requirement of Item (11) of Part I of the First Schedule:

"The objective is to restrain members from carrying on any other business in conjunction with the profession of accountancy and combining such work with any business which is not in keeping with the dignity of the profession. Another reason for the introduction of such prohibition is that a Chartered Accountant, if permitted to enter into all kinds of business, would be able to advertise for his other business and thereby secure an unfair advantage in his professional practice."

Thus, the Board was of the view that Members of the Institute in practice may engage in the specified categories of business or occupation after obtaining the specific and prior approval of the Council in each case. Since the Respondent did not seek specific and prior approval of the Council for being Managing Director in M/s. CT Cotton Yarn Limited, the Board held the Respondent guilty in respect of the charge alleged.

CONCLUSION:

13. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **GUILTY** of Professional and Other misconduct falling within the meaning of Item (11) of Part I and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act.

Sd/-
CA. Prasanna Kumar D.
(Presiding Officer)

Sd/-
Ms. Dolly Chakrabarty (IAAS, retd.)
(Government Nominee)

Sd/-
CA. (Dr.) Raj Chawla
(Member)

DATE: 02nd November, 2022

प्रमाणित सत्य प्रतिलिपि / Certified true copy
मुकुश कुमार मिश्रा / Mukush Kumar Mittal
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