

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/30/17/DD/46/2017/ DC/1258/2020]

In the matter of:

**Shri Sujit Kumar**

Additional Commissioner of Income Tax,  
Range 24, Room No-328, 3rd Floor,  
CR Building, I.P. Estate  
**NEW DELHI- 110 002**

.....Complainant

**Versus**

**CA Nimish Goel ... (M.No.502101)**

M/s. Nayyar Maniar & Associates (FRN- 019204N)  
B-9, Lower Ground Floor,  
Green Park Main,  
**NEW DELHI- 110 0016**

.....Respondent

MEMBERS PRESENT (In person):

**CA. Ranjeet Kumar Agarwal, Presiding Officer**

**Ms. Dakshita Das, I.R.A.S. (Retd.), Government Nominee**

**CA. Mangesh P Kinare, Member**

**CA. Cotha S Srinivas, Member**

**DATE OF FINAL HEARING : 25<sup>th</sup> August 2023**

PARTIES PRESENT

**Respondent:**

**CA. Nimish Goel (through VC mode)**

**Counsel for the Respondent:**

**Mr. D. Bhattacharyya, Advocate (through  
VC mode)**





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**Background of the Case:**

The case of M/s. Stork Ferro & Mineral Industries Private Limited (hereinafter referred to as "Assessee") was selected for scrutiny assessment under the Income Tax Act, 1961 and notice u/s 143(2) was issued to the Assessee on 28<sup>th</sup> August, 2015 for the A.Y. 2013-14 relevant to the F.Y. 2012-13. The Respondent's Firm was the Tax Auditor of the Assessee under section 44AB of the Income Tax Act, 1961 and the Tax Audit Report was signed by the Respondent for the said period on 12<sup>th</sup> November, 2013. The allegation of the Complainant is that during the year under consideration, there was an increase in authorized share capital of the Assessee and the expenses of the same was treated as revenue expense and the Respondent being the Tax Auditor has stated that there were no expenses of capital nature claimed in the accounts.

**2. Charges in brief: -**

2.1 The only charge in the instant case was that there was an increase in authorized share capital from Rs. 8 Crores to Rs. 15 Crores and the assessee had incurred expenses amounting to Rs. 3,50,000/- and certain share issue expenses amounting to Rs. 5,71,939/- for said increase which were treated as revenue expenses and the Respondent being the Tax Auditor for the Financial Year 2012-13 has stated in Tax Audit Report that there were no expenses of capital nature claimed in the accounts. The said expenses were treated as revenue expenditure by the Assessee in the Balance Sheet and the Respondent had failed to report the said expenses in Tax Audit Report as capital expenses as required to be reported in column 17(a) of Form 3CD of Tax Audit Report.

3. The relevant issues discussed in the prima facie opinion dated 20<sup>th</sup> December 2019 formulated by Director (Discipline) in the matter, in brief, are given below:

3.1 Neither the capital expenditure nor the revenue expenditure has been defined under the Income Tax Act, 1961 or in the Income Tax Rules. Hence, it can be said that there is no clarity as regard which expenses are to be treated as capital expenditure or  
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revenue expenditure under the Income Tax Act, 1961. In view of certain decided case laws for the interpretation of the expenses claimed as capital expenditure or revenue expenditure in Income Tax Act, 1961, it is noted that there are various judicial pronouncements treating expenses incurred for enhancement of authorized share as capital expenditure and also in some cases as revenue expenditure, some of which are mentioned as under in both the categories: -

### 3.1.1 Case Laws treating the expenses relating to share capital as capital expenditure:

- (a) In the decided case law of Brooke Bond India Ltd vs. CIT [1983], the Hon'ble Calcutta High Court decided that where the object of incurring an expenditure is to effect the capital structure as a result of certain incidental advantage flows, the expenditure would be of capital nature.
- (b) On the similar grounds, in the case of Punjab State Industrial Development Corporation vs. CIT [1997], the Hon'ble Supreme Court of India has held that the fee paid to the Registrar for expansion of the capital base of the company was directly related to the capital expenditure incurred by the company and although incidentally that would certainly help in the business of the company and may also help in profit-making, it still retains the character of a capital expenditure since the expenditure was directly related to the expansion of the capital base of the company.
- (c) Similarly, in Groz-Beckert Saboo Ltd. vs. CIT [1986], the Hon'ble Punjab and Haryana High Court took the view that the fee paid under the Companies Act for increasing the share capital was an expenditure of capital nature.

### 3.1.2 Case Laws treating the expenses relating to share capital as revenue expenditure:

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(a) In the decided case law of India Cements Ltd vs. CIT. [1966] the Hon'ble Supreme Court of India has held that it is nature or character that determines the allowability. Just as the expenditure on money borrowed for a capital purpose did not affect the allowance, similarly, the fact that the expenditure contributed to the increase in capital should not make a difference in allowability, if it was otherwise not the capital expenditure. Accordingly, the assessee's claim for deduction was allowable.

(b) Similarly, in Hindustan Machine Tools Ltd. Vs. CIT [1989], the Hon'ble Karnataka High Court held that a sum of Rs 75,600/- incurred by way of filing fee paid to Registrar of Companies in respect of enhancement of the authorized share capital of the company was held deductible as revenue expenditure.

3.2 There has been divergent views with regard to the treatment of an expense incurred on issuance of share capital as 'capital expenditure' or 'revenue expenditure' and merely having a different interpretation cannot be construed as a professional misconduct for which failure to act honestly and reasonably either according to the ordinary and natural standard or according to the standard of a particular profession is an implicit condition which is not the case in the extant matter as the Complainant has alleged neither any failure to perform duty nor any default in performing the same. Only matter which formed basis for raising the allegation against the Respondent is the divergent interpretation being adopted by the Respondent for which firstly, no explicit definition of capital expenditure or revenue expenditure is provided under the Income Tax Act, 1961 and secondly the Hon'ble Supreme Court has also changed its interpretation with time and overruled its own judgments on the same issue.

3.3 The Expert Advisory Committee (hereinafter referred as "EAC" of ICAI) has issued opinion on Query No 36 of Volume XXXIII (Compendium of Opinions) relating to "Accounting treatment of expenditure incurred on stamp duty and registration fees for increase in authorized capital".

The relevant extracts of the opinion of EAC on the said query no.36 are mentioned as below-

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*The Committee is of the view that the expenses incurred on increasing the authorized share capital cannot be termed as 'share issue expenses'. As regards the issue relating to accounting for the expenses incurred on increase in authorized capital, the Committee notes that if an expenditure does not result into acquisition of an asset, it should be recognized as an expense as and when incurred. The Committee also notes that the amount spent towards increase in authorized share capital does not give rise to any resource controlled by the enterprise. In fact, such expenses are only permitting the company to enhance the limit for the paid-up capital of the company which does not ensure any flow of funds to the company. Thus, the amount aggregating to Rs. 47,60,000/- incurred towards stamp duty and fees paid to the Registrar of Companies should be recognized as expense in the statement of profit and loss as per the requirements of paragraph 56 of AS 26.*

*On the basis of the above, the Committee is of the opinion that the expenditure incurred by the company towards increase in authorized share capital (stamp duty and registration fee paid to the Registrar of Companies) cannot be considered as share issue expenses and should be treated as expense and charged off in the statement of profit and loss."*

3.4 The Expert Advisory Committee was of the view that expenses incurred on increase in authorized share capital like stamp duty and fees paid to the Registrar of Companies should be recognized as expense in the statement of profit and loss and accordingly it can be said that the same expenses are treated as revenue expenditure in the accounts of the Company.

3.5 The Director (Discipline) in prima facie opinion dated 20<sup>th</sup> December 2019 had held the Respondent prima facie NOT GUILTY of professional misconduct falling within the meaning of Clause (7) of Part I to Second Schedule to the Chartered Accountants Act, 1949. The said Clause to the Schedule to the Act, states as under:

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4. Date(s) of written submissions/pleadings by parties.

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

S.No.	Particulars	Dated
1.	Complaint in Form '1' filed by the Complainant	24 <sup>th</sup> January 2017
2.	Written Statement filed by the Respondent	20 <sup>th</sup> March 2017
3.	Rejoinder if any	--
4.	Prima facie Opinion by Director (Discipline)	20 <sup>th</sup> December, 2019
5.	Further Written Statement by the Respondent	--
6.	Further Rejoinder by the Complainant	--

5. **Brief facts of the Proceedings:**

5.1 The details of the hearing fixed and held/adjourned in the said matter is given as under:

Particulars	Date of meeting	Status
1 <sup>st</sup> Time	22 <sup>nd</sup> May 2023	Part Heard and Adjourned
2 <sup>nd</sup> Time	26 <sup>th</sup> July 2023	Part Heard and Adjourned
3 <sup>rd</sup> Time	25 <sup>th</sup> August 2023	Hearing concluded & decision taken

5.2. On the first hearing before the Disciplinary Committee held on 22<sup>nd</sup> May 2023, the Respondent was present through Video conferencing mode. The Committee noted that the Complainant was not present and notice of listing of the case has been served upon him. Being first hearing of the case, the Respondent was put on oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges and charges against the Respondent were read out. On the same the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against him. In

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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 later date.

5.3. On hearing held on 26<sup>th</sup> July 2023, the Respondent along with Counsel Advocate Piyush Sharma were present through Video conferencing mode. Thereafter, they gave a declaration that there was nobody present except them from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form. The Committee noted that the Complainant was not present and notice of listing of the case has been served upon him.

5.4. Thereafter, the Committee asked the Counsel for the Respondent to make his submissions in the matter. The Counsel for the Respondent submitted that in this case the Respondent has been held prima facie NOT GUILTY of professional misconduct by the Director (Discipline) but the Board of Discipline had held the Respondent GUILTY of professional misconduct. He submitted that the Complainant had filed another case on identical facts before the ICAI Ref. no. PR/29/2017/DD/42/2017/NG against the other partner in the same firm (i.e. CA. Nirav Maniar) for next financial year i.e. 2013-2014 and the Board of Discipline had accepted the prima facie opinion of the Director (Discipline) holding the Respondent NOT GUILTY in that separate case. He submitted that the case referred to has direct bearing on the instant matter and the same be considered by the Committee. After recording the submissions of the Counsel for the Respondent, the Committee adjourned the case with a view to extend one final opportunity to the Complainant to substantiate the charges against the Respondent and in case of failure to appear in the next hearing, the case be decided ex-parte the Complainant.

5.5. On the date of final hearing held on 25<sup>th</sup> August 2023, the Respondent alongwith Counsel, Advocate D Bhattacharya were present through Video conferencing mode. The Committee noted that the Complainant was not present and notice of listing of the case has been served upon him. The Committee noted that at the last two meetings, the Complainant was not present and subject case was adjourned in their absence. In view of the repeated absence of the Complainant and no intimation/ response received from them, the Committee decided to proceed ex-parte the

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Complainant. The Committee asked the Counsel for the Respondent to make his submissions in the matter. The Counsel for the Respondent referred to the opinion of Expert Advisory Committee of ICAI and submitted that the expenses incurred on increase in authorized share capital like stamp duty and fees paid to the Registrar of Companies should be recognized as expense in the statement of profit and loss and accordingly, it can be said that the same expenses were treated as revenue expenditure in the accounts of the company. There had been divergent judgements of various Courts, wherein fee paid for increasing share capital was treated as expenditure of capital nature and in some other cases, filing fees paid for enhancement of share capital was treated as revenue expenditure. He added that it was a professional judgement of the Respondent involving interpretation of accounting treatment and therefore, there was no case for attraction of professional misconduct in the matter. After this, he submitted that he has nothing more to add in this case.

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

## 6. Findings of the Committee

6.1 The Committee noted that the Respondent in the instant case has been held prima facie not guilty of professional misconduct by the Director (Discipline) however, the Board of Discipline had held the Respondent Guilty of professional misconduct. The Committee noted the Complainant had filed another case on identical facts before ICAI bearing Ref. no. PR/29/2017/DD/42/2017/NG against the other partner of the same firm (i.e. CA. Nirav Maniar) for next financial year i.e. 2013-2014 and the Board of Discipline had accepted the prima facie opinion of the Director (Discipline) holding the Respondent 'Not Guilty' in that separate case having similar/identical facts.

6.2 The Committee observed that the ruling of Hon'ble Supreme Court in the case of India Cements Limited vs CIT, wherein the expenses incurred on the issuance of share capital were considered as revenue expenditure. Further, the Committee noted the opinion dated 22<sup>nd</sup> /23<sup>rd</sup> January 2014 of Expert Advisory Committee of ICAI which provided that the expenses incurred on increase in authorized share capital like stamp

duty and fees paid to the Registrar of Companies should be recognized as expense in the statement of profit and loss and, accordingly, it can be said that the same expenses are treated as revenue expenditure in the accounts of the company.

6.3 The Committee while considering the oral submissions made by the Counsel for the Respondent vis-a-vis various documents on record, noted that the issue involved in the present case related to increase in authorized share capital of the assessee and the treatment of said expenses as revenue expense. The Committee noted that capital expenditure and revenue expenditure has not been defined under the Income Tax Act, 1961 or in the Income Tax Rules. Further there were divergent views of Supreme Court in various decided case laws for the interpretation of the expenses claimed as capital expenditure or revenue expenditure under the provisions of the Income Tax Act, 1961.

6.4 It is pertinent to mention that the Expert Advisory Committee of ICAI responds to the queries on Accounting, Auditing and allied matters, received from the members of the ICAI as per the rules framed for this purpose by the Council. The opinions of EAC are based on the legal position and accounting/auditing principles on the date the Committee finalises the opinion. The Expert Advisory Committee has rendered its opinion in year 2014 clarifying/settling the present issue as stated above. The Committee was of the view that placing reliance on the existing opinion of the Expert advisory Committee on the issue in hand would be more appropriate.

6.5 The Committee observed that the main consideration in the matter should be whether there is a technical or venial breach of the provisions of the statute or deviation from accounting principles or where the breach or deviation flows from a bona-fide belief that the member is not liable to act in the manner specified therein. There are widely divergent views of various courts with regard to treatment of expense on issuance of share capital as capital expenditure or revenue expenditure. The test laid down by Supreme Court in various cases can at best be a guide for determining whether a particular expenditure forms part of revenue or capital expenditure. To put it shortly, there is no straight-jacket formula, and the question will have to be determined in the backdrop of facts of each case. In the case in hand, the Respondent has taken a view based on his professional judgement on the interpretation of law for which there was no clear-cut

guidance or clarifications available. The Committee further observed that the opinion of the Expert Advisory Committee stated that the expenses incurred on increase in authorised share capital like stamp duty and fees to be paid to the registrar of companies should be recognised as an expense in the statement of profit and loss; thereby treating the said expenses as revenue expenditure in the accounts of the company.

6.6 To conclude, the Committee holds that this case clearly covers the opinion dated 22<sup>nd</sup>/23<sup>rd</sup> January 2014 of Expert Advisory Committee of ICAI that the expenses incurred on increase in authorised share capital was in the nature of revenue expenditure. The said opinion was given by EAC of ICAI which gives guidance to the members to determine the nature of expenditure as share capital expenditure or revenue expenditure and in the instant case, the Respondent had discharged his professional duties diligently and the view taken by him on accounting treatment was strictly in line with the opinion of the Expert Advisory Committee. The Committee further observed that the issue in hand pertained to be more of exercising professional judgement by the Respondent and the Respondent had not committed any professional misconduct.

6.7 The Committee further noted that despite giving ample opportunities to the Complainant department, the department did not participate in the proceedings to substantiate their case. The Committee further taking note of the various judicial pronouncements, prima-facie opinion of the Director (Discipline) holding the Respondent 'not guilty' in both the cases, the decision of Board of Discipline in another case having same set of facts for next assessment year as well as opinion dated 22<sup>nd</sup> /23<sup>rd</sup> January 2014 of Expert Advisory Committee, found no merits in the charge, as it is an interpretational issue based upon the professional judgement of the member which cannot be stretched to be brought within the connotation of professional negligence by the Chartered Accountant. Therefore, the Committee found no merits in the charge made against the Respondent and held him **Not Guilty** of professional misconduct.

## 7. Conclusion

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

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Charges (as per PFO)	Findings	Decision of the Committee
Para 2.1 as given above	Para 6.1 to 6.7 as given above	NOT GUILTY- Clause (7) of Part I of Second Schedule

8. 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 Misconduct falling within the meaning of Clause (7) Part – I of Second Schedule to the Chartered Accountants Act, 1949.

### 9. 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.

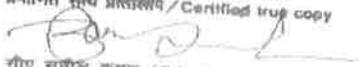
Sd/-  
(CA. RANJEET KUMAR AGARWAL)  
PRESIDING OFFICER

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

Sd/-  
(CA. MANGESH P KINARE)  
MEMBER

Sd/-  
(CA. COTHA S SRINIVAS)  
MEMBER

DATE: 04.01.2024  
PLACE: New Delhi

प्रमाणित सत्य प्रतिलिपि / Certified true copy  
  
सीए सुनील कुमार / CA Suneel Kumar  
उप सचिव / Deputy Secretary  
अनुशासनात्मक विभाग / Disciplinary Directorate  
भारतीय स्वामी लेखाकार संघ  
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