

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. : [PR/G/192/2017-DD/196/2017/BOD/437/2018]**

**CORAM (Present in Person):**

CA. Rajendra Kumar P, Presiding Officer

Ms. Dolly Chakrabarty (IAAS Retd.), Government Nominee

CA. Priti Savla, Member

**In the matter of:**

Sh. Bhola Ram Dewasi

DDIT (Inv.), Unit-4(2), Aayakar Bhawan Annexe,

P-13, Chowringhee Square, 5th Floor,

KOLKATA – 700 069.

.....Complainant

Versus

CA. Ajit Kumar Tulsian (M. No. 053254)

M/s Ajit Kumar & Co.,

Chartered Accountants,

12A, N S Road, 5th Floor, Room No. 11,

KOLKATA – 700 001.

.....Respondent

DATE OF FINAL HEARING : 27<sup>th</sup> July, 2023

**PARTIES PRESENT(in person):**

Counsel for the Complainant Department: Shri Shailendra Prasad Kanaujia, Advocate

Respondent : CA. Ajit Kumar Tulsian

Counsel for the Respondent : CA. A. P. Singh

**FINDINGS:**

**CHARGE ALLEGED:**

1. The Complainant alleged against the Respondent as under:

- a) The Respondent was one of Directors of M/s Cressanda Solutions Limited i.e the Company which is a penny stock company used for providing bogus pre-arranged LTCG/STCL to various beneficiaries in lieu of commission.
- b) The Respondent is involved in financial irregularities by providing pre-arranged accommodation entries of bogus LTCG/STCL to various beneficiaries.
- c) The Respondent had facilitated evasion of taxes by various beneficiaries of pre-arranged accommodation entries through the penny stock of the Company.

**BRIEF OF PROCEEDINGS HELD:**

2.

S.No.	Date of hearing(s)	Status of hearing(s)	Compliance of direction, if any, given by the Board
1.	31 <sup>st</sup> May, 2019	Adjourned at the request of the Complainant Department.	
2.	16th August, 2019	<p>Part heard and adjourned with a direction to the Respondent to submit following documents/information:</p> <p>(i) Whether the Respondent was Director in all 10 Companies (as mentioned in page C6 and C7 of the Prima facie opinion).</p> <p>(ii) Bank statement of all 10 companies where the Respondent was Director of alleged period.</p> <p>(iii) Post survey assessment order of these Companies.</p> <p>(iv) Price of share of M/s Cressanda Solutions Limited in BSE during alleged period.</p> <p>(v) Name and details of persons who were Directors for alleged period.</p> <p>The Board also directed to write to Chairman, CBDT about non-appearance of any officer from the Complainant Department and</p>	<p>• The Respondent submitted his response vide letter dated 21<sup>st</sup> September 2019 as stated hereunder:</p> <p>S.No. 1 : CRESSANDA SOLUTIONS LIMITED                      S.No. 2 : SMART CHAMPS I.T. AND INFRA LIMITED                      S.No. 3 : SMART INFRA PROPERTIES LIMITED</p> <p>(a) The Respondent has not made any investment either directly and/or indirectly in any of the above three companies. The Respondent neither served as the statutory auditor/internal auditor of the said companies nor made any sort of financial transaction with these companies. None of the present &amp; Past Directors of above referred companies are relatives and/or Associate of Respondent.</p> <p>S.No. 4 : ENPEE FINALL SERVICES PRIVATE LIMITED                      S.No. 5 : SRM INFRA PROJECTS PRIVATE LIMITED</p>

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		<p>request for arranging of their appearance at the time of next hearing.</p>	<p>S.No. 6 : DEEPAK SWITCH GEARS PRIVATE LIMITED S.No. 7 : HIL ENGINEERING PRIVATE LIMITED (a) In all the four companies as referred here-in-above the Respondent ceased to be Director in the year 2010 i.e. almost 10 years back and as such Respondent finds himself in difficulty to furnish the requisite information. The Respondent never served as the statutory auditor or internal auditor of the companies. None of the company as referred here-in-above entered into any sort of Financial Transactions with the alleged companies marked as S.No. 1, 2 &amp; 3. The above referred companies doesn't hold any Shares in the companies marked as S.No.1, 2 &amp; 3. S.No. 8 : TULSI ROLLING &amp; FLOUR MILLS PRIVATE LIMITED S.No. 9 : SWISS PROGRESSIVE PRODUCTS PRIVATE LIMITED S.No. 10 : SHREE JAWALA CONSULTANTS PRIVATE LIMITED (a) The Respondent never served as the statutory auditor or internal auditor of the companies referred above. None of the company as referred here-in-above entered into any sort of Financial Transactions with the alleged companies marked as S.No. 1, 2 &amp; 3. The above referred companies do not hold any Shares in the companies marked as S.No. 1, 2 &amp; 3.</p>
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			<ul style="list-style-type: none"> <li>• Letter sent to Chairman, CBDT</li> </ul>
3.	25th September, 2019	<p>Part heard and adjourned with a direction to the Complainant to submit following information:</p> <p>i. Modus operandi in respect of the alleged transactions.</p> <p>ii. Appraisal report in the alleged matter.</p> <p>The Board also directed the respondent to submit following information:</p> <p>i. Shareholding pattern of M/s Cressanda Solutions Limited for the Financial Year 2014-15.</p> <p>The Board directed the Office to provide following documents/information to the Respondent:</p> <p>i. Copy of the CD as mentioned in page no. D4 pf the PFO.</p> <p>ii. Appraisal report after obtaining from the Complainant.</p>	<p>The Complainant vide letter dated 05/12/2022 submitted as under:</p> <p>1. Modus operandi in respect of the alleged transactions: The respondent was one of the directors of M/s Cressanda Solutions Ltd., which is a penny stock controlled &amp; managed by Shri Deepak Patwari. M/s Cressanda Solutions Ltd. do not have any significant business activities of its own and the company is used for providing pre-arranged bogus LTCG/STCL 10 different beneficiaries. Shares of M/s Cressanda Solutions Ltd. are rigged by way of circular trading and price of shares were increased artificially. Initially, beneficiaries are allotted shares of M/s Cressanda Solutions Ltd. at nominal rate of Rs. 10 per share. After holding shares for one year, shares are sold on abnormally higher rate. At this stage, cash received from beneficiaries are deposited to various proprietorship concerns and get it layered through various accounts and finally the fund is transferred to bogus/shell companies who purchase shares from beneficiary concerns.</p> <p>2. Appraisal report in the alleged matter: Appraisal report is prepared on the basis of investigation at this</p>

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			<p>end and later forwarded to central charges for information and necessary action at their end as per provisions of income Tax Act, 1961. Since appraisal report is an internal &amp; confidential document, the same cannot be shared. Vide letter No. DDIT(Inv)/U-4(2)/Kol/SIT/2017-18/334 date 10.04.2018, investigation report in the case of shell/paper entities named as 'Project Bogus LTCG/STCL' along with certified copies of the relevant portion of appraisal report related to this case have already been shared.</p> <p>The Respondent also submitted his response.</p>
4.	12th December, 2022	<p>Part heard and adjourned with the direction to provide the following:</p> <p>The Complainant:</p> <ol style="list-style-type: none"> <li>1. Authorization letter in terms of the provision of Rule 3(2) read with Rule 3(5) of the Chartered Accountants Rules, 2007, by an officer holding a post not below the rank of Joint Secretary or equivalent of the Department.</li> <li>2. To submit the papers/documents/evidence before 29th December, 2022 to establish the role of Respondent.</li> </ol> <p>To Respondent:</p> <ol style="list-style-type: none"> <li>1. Shareholding pattern of M/s Cressanda Solutions Limited for the Financial Year 2014-15.</li> </ol>	

5.	29 <sup>th</sup> December, 2022	Adjourned at request of the Complainant Department.	.....
6.	3 <sup>rd</sup> May, 2023	Part heard and adjourned with a final opportunity to the Complainant Department to provide evidence (with a copy to the Respondent) to the effect that steps have been taken by them to collect the tax from the Respondent in respect of the income which they purport has been earned by him on account of alleged transactions. Also, whether any of the family members of the Respondent are directors in the alleged companies and any action taken by the Complainant Department against them. The Board also asked the Respondent to provide the copy of the Retraction filed with the Income Tax Department of the earlier Statement of CA. Ankit Kumar Agarwal to the Complainant Department with a copy to the Board.	The Complainant Department submitted their response.
7.	27 <sup>th</sup> July, 2023	Heard and concluded.	_____

**BRIEF SUBMISSIONS OF THE PARTIES TO THE CASE:**

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

- i. The Respondent has been held prima facie guilty of other misconduct falling within the meaning of Clause 2 of Part IV of the First Schedule. This clause clearly states that the respondent can be held guilty only if there is an opinion of the Council. The respondent has not been provided any opinion of the Council. Without such an opinion, no member of ICAI can be held guilty under this clause. It may be noted that the word "Council" has been defined under the Chartered Accountants Act, and it means nothing more or less than the Council of the Institute. There is no decision of the Council or a notification by the government of India by which the any such powers of the Council are delegated to the Director(Discipline).
- ii. The Director(Discipline) was not authorised in applying a clause from the Schedules to the CA Act since the complainant had not identified any such clause in Form I.
- iii. All matters of Professional Misconduct against members of the Institute are required to be inquired and investigated in compliance with the contents of Chapter V of the

Chartered Accountants Act and the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The Respondent drew attention to Section 21A of the Chartered Accountants Act, 1949 and Section 21B of the Chartered Accountants Act, 1949. Section 21A of Chartered Accountants Act, 1949. The Section specifically mentions that the Council "shall" constitute "a" Board of Discipline, which means that the Council shall only constitute one Board of Discipline. Having two Board of Discipline at any given point of time, becomes invalid, unconstitutional and goes outside of the purview of what is envisaged in the law prescribed under Section 21A of the Chartered Accountants Act, 1949. Similar provision has been inserted with regards to Section 21B Disciplinary Committee, here the proviso in the Section 218 specifically provides that more Disciplinary Committees can be constituted by the Council. However, no such specific proviso has been given under Section 21A. If at all the law makers would have intended to have more than one Board of Discipline, the same would have been included in the Act itself. This clearly shows that the constitution of more than one Board of Discipline is ultra-vires the provisions of the Chartered Accountants Act, 1949. In Financial Year 2018-2019, the Institute of Chartered Accountants of India had two Boards of Discipline which is illegal and unconstitutional. The said fact has been mentioned in the annual report of ICAI for 2018-19, wherein it has been clearly stated that there were two Board of Disciplines. The report specifically states as follows:

*" Five benches i.e. TWO benches of Board of Discipline and THREE benches of Disciplinary Committee have been constituted for expeditious disposal of pending disciplinary cases under enquiry."*

It is thus evident, and the same may be verified from the records of ICAI that two Boards were existing at the time when this PFO was forwarded to it. The letter from ICAI does not even state which bench of the BOD was presented with this PFO. In any case, constitution of two Boards is beyond the powers conferred by law, and the acts/decisions of any of those Boards would be beyond jurisdiction and ultra vires the law. There are innumerable case laws which establish and settle that if any decision is delivered by a forum that has no jurisdiction and that is not lawfully constituted, the same is not sustainable. Accordingly, this matter cannot proceed any further. The PFO of the DD has not been considered by a lawfully constituted Board. The Respondent thus prays that this inquiry be closed forthwith.

- iv. The complainant has alleged that the respondent was involved in promoting companies engaged with bogus transactions of providing accommodation entries, and thereby assisting in evading taxes. But the Complainant has not provided any proof/evidence relating to the following:
  - a. The complainant has identified only Cressanda as the entity that served the purpose for providing accommodation entries, but there is no documentary proof of the respondent being involved in promoting, running and administering Cressanda.
  - b. The Director(Discipline) has not allowed the respondent to cross examine the persons who had included the name of the respondent in their statements recorded in office of

the ITD; the respondent demanded that CA. Ankit Agarwal be summoned by the Board of Discipline.

c. There is no documentation to support that the respondent was engaged with the administration and running the activities of Cressanda.

d. There is no proof or even the slightest mention by the complainant that the respondent made financial gains from the alleged activities mentioned in a generalised manner in Form I.

e. There is no listing of the "various beneficiaries" mentioned by the complainant.

f. Through the process of the inquiry, the name of only one business entity been mentioned; and the statement of the key person of that entity (Unitech) is the only statement recorded in this respect; that key person has not mentioned that the respondent was involved in providing any accommodation entries.

g. The contents of the documents provided by the complainant vide his letter dated 10th April 2018 have been ignored; they do not contain any mention of the name of the respondent in the activities of providing accommodation entries; the methodology contained in the Appraisal report attached with this letter mentions the names of various other entities, none of which are in any manner connected or concerned with the respondent; the names of other persons who were engaged in the business of providing accommodation entries has been included in the documents attached to that letter, and thus the respondent was in no way involved in the alleged activities (as contained in the complaint).

h. There is no beneficiary who has identified that accommodation entries were provided by/through the respondent.

i. The documents and statements, that constitute proof of other misconduct of the respondent beyond reasonable doubt, relied upon by the Director(Discipline) in arriving his PFO have not been provided.

J. The manner in which the respondent has conducted his affairs by resigning from Cressanda in May 2015, i.e. immediately after being informed that Cressanda may be involved with the business of accommodation entries has been ignored by the Director(Discipline).

v. M/s Smart Champ IT and Infra Limited was incorporated on 11.07.2011. The Respondent was made director on 17.01.2012. He was not promoter director. The scheme of merger of SCIL with Cressanda was approved on 01.01.2012 .e. before he was made director.





- He never participated in banking operations or indulged in any financial transactions of the Company directly or indirectly. He never held single share in SCIL.
- vi. Key person of Unitech Group Shri Shailesh Gupta, despite repeated questioning, never stated that the Respondent was involved in bogus entries or transactions.
  - vii. The Complainant has not even produced copies of his statement recorded in the office of the ITD Unit 2(3) at Kolkata on 16<sup>th</sup> April 2018. The actions taken by the Respondent following such statement are crucial.
  - viii. The statement of Respondent was recorded in the office of ITD on 10<sup>th</sup> December 2018, and although the said statement mentions that the statements of CA. Ankit Agarwal and Sri Ritesh Jain were shown to him, the fact is that those two statements were never produced for the view of the Respondent.
  - ix. The name of the Respondent has not been mentioned in the Appraisal Report as having been involved for any such activity that may be deemed to bring any disrepute to the profession or the Institute.
  - x. whereas the complainant has alleged that the respondent was a Director on the Board of Cressanda Solutions Limited, was involved in irregular irregularities by providing accommodation entries to various beneficiaries and had facilitated evasion of taxes by various beneficiaries through accommodation entries relating to Cressanda Solutions Limited, the Department of the complainant has not found any reason to initiate proceedings for adding income in the hands of the respondent in respect of such bogus/accommodation entries. Any person indulging in running and maintaining such companies, providing bogus accommodation entries and assisting in tax evasion would definitely aim to make financial gains for doing so. The Income Tax department had no reason to believe (and thus initiate proceedings in that respect) that the respondent had made any such income through his involvement with shell companies and bogus/accommodation entries. There is thus no case against the respondent in respect of the allegations levied.

3.2 To substantiate his case, the Complainant, inter-alia, submitted as under:

- i. In his reply to Q.No. 8 of statement dt. 10/12/2016, the Respondent had admitted that he was one of the professional directors of M/s Cressanda Solutions Ltd., which was a penny stock, controlled & managed by Shri Deepal Patwari for providing pre-arranged bogus LTCG/ STCL to beneficiaries concerns. Also, the Respondent has confirmed the statement of Ankit Kumar Agarwal dt. 16/11/2015 and had also admitted that he along with Deepak Patwari had made Ankit Kumar Agarwal, a dummy director of M/s Cressanda Solutions Ltd.
- ii. It is also analysed from statement of the Respondent dt. 12/12/2015 that he was made director of M/s Cressanda Solutions Ltd. in the F.Y. 2012-13 and was heading Audit Committee of the company. Later, the company was listed in BSE in the F.Y. 2013-14 and it is evidentiary from the role of the Respondent that he would have



knowledge of fact that the company is involved in providing accommodation entries in the form LTCG/STCL.

- iii. A search & seizure operation was conducted on 06/10/2015 in the case of Unitech Paper Group of Companies, Kolkata and it is gathered during the course of investigation that some individuals of Unitech Group have claimed Long Term Capital Gain (LTCG) by selling shares of M/s Cressanda Solutions Ltd. during the F.Y. 2013-14 & 2014-15. Name of some individuals were Shri Daya Nand Gupta & Shri Sailesh Gupta.
- iv. On perusal of assessment orders in the case of Late Daya Nand Gupta & Shri Sailesh Gupta for the F.Y. 2013-14 relevant to A.Y. 2014-15, it is found that the assessee had traded in the scrip, Cressanda Solutions Ltd. during the F.Y. 2013-14. Both the assessee had earned long term capital gain and had claimed exemption u/s 10(38) of the Income Tax Act. However, it is found from the assessment order in the case of Late Daya Nand Gupta for the FY 2013-14 that the assessee has shown profit from shares amounting to Rs 52,87,872/- under the head 'Income from Other Sources' in his ITR in response to notice u/s 153A of the I.T. Act. The assessee also paid additional tax as self-assessment on the said profit from shares, instead of claiming it as LTCG. In this respect, the jurisdictional Assessing Officer has submitted following remarks in the assessment order in the case of Late Daya Nand Gupta for the F.Y. 2013-14 :-  
*"The assessee, in spite of all his denials and assertions, has implicitly accepted the fact that the rise and fall in the scrip of Cressanda Solutions Ltd. was managed and the long-term capital gain was bogus, by withdrawing his claim of exemption on the same in his return filed u/s 153A."*
- v. Similarly, in the case of Shri Sailesh Gupta for the F.Y. 2013-14, the assessee has declared profit from shares under the head "Income from Other Sources" amounting to Rs. 53,64,429/- in his ITR in response to notice u/s 153A of the I.T. Act. The assessee has also paid Self-Assessment Tax on profit earned on shares, instead of claiming it as LTCG. The AO has expressed similar comments, as mentioned in above para, thereby representing admissions of the assessee that the alleged rise and fall in the scrip of Cressanda Solutions Ltd. was pre-managed and claim of LTCG made by the assessee was bogus in nature.
- vi. In view of above facts, it is clear that Late Daya Nand Gupta & Shri Sailesh Gupta had claimed bogus LTCG exemption u/s 10(38) of the I.T. Act by trading in shares of Cressanda Solutions Ltd. during the F.Y. 2013-14.

**OBSERVATIONS OF THE BOARD:**

4. On perusal of the documents and submissions on record, the Board observed that the Respondent raised certain technical objections with regard to the admissibility of the case and decided to deal with them before arriving at its Findings.

4.1 As far as the objection of the Respondent as to constitution of two Benches of the Board is concerned, the Board viewed that two Benches of the Board of Discipline were constituted with an avowed object to accelerate the disposal of disciplinary cases and the administrative Ministry i.e. Ministry of Corporate Affairs had also nominated the members as required under Section 21A (1)(b) to the Board of Discipline. On a conjoint reading of the provisions of the General Clauses Act, 1897 (which explicitly states that the words in singular shall include the plural, and vice versa) with the provisions of the Section 21A (1) of the Chartered Accountants Act, 1949(as amended) it is clear that the Council is empowered to constitute more than one Board of Discipline. The Benches so constituted carried out its functions inter-alia by conducting hearings and awarding punishments in disciplinary cases falling within their respective jurisdictions during the relevant period. Besides, the Respondent failed to place any material to show that the constitution of two benches caused any prejudice to him. Also, the Board of Discipline was of the view that it is not the appropriate forum to challenge the constitution of its two Benches.

4.2 As regards the objection of the Respondent regarding the opinion of the Council as stipulated in Item (2) of Part IV of the First Schedule, the Board relied on para 17 and 18 of the Order dated 18th October 2018 passed by the Hon'ble Appellate Authority in the Appeal no. 12/ICAI/2017 and 14/ICAI/2017 - Anil Kumar Aggarwal Vs. The Institute of Chartered Accountants of India and others and Radhey Shyam Bansal Vs. The Institute of Chartered Accountants of India and others as under:

*"17. It is pertinent to note here that this Authority has already dealt with and decided this issue in the Appeals earlier namely Gyan Prakash Agarwal (Appeal No. 08/ICAI/2014), Rajiv Maheshwari (Appeal No. 05/ICAI/2014) and Sameer Kumar Singh Vs. ICAI (Appeal No. 07/ICAI/2014) and has held as under:-*

*"15. Based on the above and by taking note of the written submissions made on behalf of the Institute of Company Secretaries of India, the Institute of Cost Accountants of India and the Institute of Chartered Accountants of India containing the detailed Page 9 of 14 analysis of the issue in question, we are of the considered view that the proper and correct interpretation which can be given to Clause (2) of Part-IV of the First Schedule to the respective Acts, in the light of the principles laid down and having regard to the case laws of various courts and*

*further considering the basic objects, reasons and purpose of the amendment brought in the statutes as quoted above is that, 'Prima facie Opinion (PFO)' formed by the Director (Discipline) in all such complaints / information cases serves the purpose for proceeding further for taking disciplinary action against the errant members as in terms of the amended mechanism for conduct of cases, it is the Director (Discipline) who has to form the first Prima Facie Opinion for the disciplinary proceedings to be initiated. Therefore, the opinion of council as is mentioned in the Clause (2) of Part-IV of the First Schedule to the Act has to be given a purposive meaning and has to be read in consonance with the letter and scheme of the enactment.*

*18. In our considered view, the same shall mutatis mutandis apply in both these Appeals and accordingly, we find no merit in this ground. Thus, we hereby reject this ground of Appeal as taken by the Appellants."*

Hence, the issue had already been decided by the Hon'ble Appellate Authority, and therefore, there is no merit in the argument of the Respondent in this regard.

4.3 As regard the objection of the Respondent that specific clause of the misconduct had not been defined by the Complainant, the Board was of the view that it is trite that a Complainant is required as per law to state the allegations which are to form a factual foundation for an Adjudicating Authority to exercise jurisdiction and even if an incorrect provision of law/no clauses is mentioned by the Complainant in FORM I, that alone cannot be a ground to dismiss a complaint if otherwise the Authority has the jurisdiction to entertain the complaint. Further, though the provision of Rule 3 is couched in a "mandatory form" by use of words such as "shall" and appear to be mandating a procedure that must be necessarily followed. However, mere use of language which suggest or purports to suggest a "mandate" may not alone be sufficient to regard a procedural rule to be mandatory to the extent that its non-compliance could vitiate the entire proceeding.

While coming to the said view the Board took into view the following observations of the Hon'ble Supreme Court in the matter of Uday Shankar Triyar v. Ram Kalewar Prasad Singh and Anr. (Reported in AIR 2006 SC 269) as under:

*" Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection,*

*unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use."*

Thus, non-mentioning of clauses can at the highest be treated as "technical defect." Infact, the procedure to be adopted in case of defective complaint is that the defect, if pointed out, and not cured by the Complainant, it is incumbent upon the Director (Discipline) to form a prima facie opinion of no case and recommend its closure. However, the Board of Discipline is vested with discretion to ignore the recommendation, if it deems fit, and proceed further with the matter.

The onus to formulate a prima facie opinion as to the misconduct rests with the Director (Discipline) and therefore, premised on the pleadings filed which contains the allegations and documents placed on record, it is the Director (Discipline) which has to first formulate a prima facie opinion on the alleged misconduct.

Therefore, notwithstanding the assertions as to the particular clause of misconduct by a Complainant, the Director (Discipline) shall, after perusing the material available, conclude as to existence or otherwise of the misconduct alleged. This is also apparent from the provisions of various sub clauses of Rule 9(2)(a) of the Misconduct Rules, 2007 , which require the Director(Discipline) to place the matter before the Board of Discipline ; if the misconduct alleged falls within the First Schedule and before the Disciplinary Committee , if the alleged misconduct falls within the Second Schedule or both under the First and Second Schedule. This also supports the view that the sifting of the allegations to identify the clauses of misconduct is to be performed by the Disciplinary Directorate.

This issue can also be addressed from the perspective of the status of the Complainant. The requisite provision in the statute or under the Rules does not prescribe as to who can file a complaint under the provisions of the Act alleging misconduct by a member. Therefore, the Complainant can be a statutory authority, a member of the Institute who is well versed with the provisions of the Act or even a member of public who may not be familiar with the provisions of the Act. In such a scenario, to give a pedantic interpretation to the provisions of the Act and the Rules making it incumbent on a Complainant to specify clauses of misconduct would be denying the remedy otherwise available under the statute.If the allegations stated

in the complaint do not fall within any specified clauses of professional misconduct, the same may however be a case of "other misconduct" and the ICAI would be within jurisdiction to proceed further on the allegations. Therefore, non-mentioning of clauses pertaining to "misconduct" does not in any manner vitiate the proceedings.

4.4 Further, as regard the request of the Respondent to summon CA. Ankit Kumar Agrawal as a witness, the Board was of the view that since he was also a member alleged in another disciplinary case before it and apart from his deposition, there were other evidences on record to examine the conduct of the Respondent, the Board did not consider it essential to summon him as a witness to depose before it. Accordingly, the request of the Respondent was not accepted.

4.5 As regard the charge alleged, the Board noted the Complainant Department had recorded a Statement of the Respondent on Oath before DDIT (Inv.), Unit 4(2), Kolkata in connection with an enquiry conducted by Directorate of Income Tax (Investigation), Kolkata under section 131 of the Income Tax Act, 1961 on 10<sup>th</sup> December 2015. The Board further noted that the Respondent retracted the above Statement by way of a notarized sworn Affidavit dated 29<sup>th</sup> May 2017 which had been duly filed with the Complainant Department on the same date.

4.6 The Board also noted that the Complainant Department brought on record copy of the Appraisal Report of Unitech Group which, inter-alia, provided as under:

*"During the search investigation, it was found from the perusal of records that different individuals of Unitech Group have made LTCG by selling shares in the script of particularly Cressanda Solutions Ltd., which is one of the identified scripts used for the purpose of providing accommodation entries in the form of bogus LTCG/STCL Report by the Directorate of Investigation, Kolkata. The names of the two assesses are:*

- i. Dayanand Gupta
- ii. Sailesh Gupta"

The Board further noted that the Complainant Department brought on record copy of the assessment orders of the above stated two assesses for the AY 2015-16. On perusal of the Assessment Order of Shri Shailesh Gupta for the AY 2015-16, the Board noted that Rs. 4,19,54,500/- had been added back to his total income as income from other sources on account of the difference between the FMV of land and the purchase price paid by the assessee by way of acquisition of shares. On perusal of the Assessment Order of Late Shri Dayanand Gupta for the AY 2015-16, the Board noted that Rs. 39,68,921/- had been added to his total income as undisclosed profit from business and Rs. 15,96,630/- had been added to his total income as undisclosed interest income.

Thus, the Board observed that there was nothing to indict the Respondent on the basis of said documents.

4.7 Thus, on a detailed perusal of the submissions and documents on record, the Board was of the view that the Complainant Department has not been able to substantiate with documentary evidence its claim that the Respondent had formed various shell companies for the purpose of providing accommodation entries in lieu of commission. The Complainant Department could not bring on record any Assessment Order to show that commission income has either been added to the income of the Respondent on account of any accommodation entries provided by him, as alleged or bogus income has been added to the income of the beneficiary companies. The Board noted that the primary evidence which the Complainant Department brought on record for the charges alleged against the Respondent is the copy of his own Statement recorded on 10<sup>th</sup> December 2015 which had been subsequently retracted by him. Beyond that, despite opportunities given to the Complainant Department to substantiate the charges alleged against the Respondent, the Complainant Department failed to bring on record any conclusive and/or corroborative evidence to substantiate the charge alleged against the Respondent. In view of the same, the Board held the Respondent NOT GUILTY in respect of the charge alleged.

**CONCLUSION:**

5 Thus, in conclusion, in the considered opinion of the Board, the Respondent is **NOT GUILTY** of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule to

the Chartered Accountants Act, 1949 read with Section 22 of the said Act. Accordingly, the Board passed Order for closure of the case in terms of the provisions of Rule 15 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

Sd/-

CA. Rajendra Kumar P  
(Presiding Officer)

Sd/-


Ms. Dolly Chakrabarty (IAAS, retd.)  
(Government Nominee)

Sd/-

CA. Priti Savla  
(Member)

DATE: 02-02-2024

सही प्रतिलिपि होने के लिए प्रमाणित /  
Certified to be true copy

  
निशा शर्मा / Nisha Sharma  
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
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