

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/243/2017/DD/252/2017/BOD/451/2018]

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. Bhol Ram Dewasi

DDIT (Inv.),Unit-4(2),

Aayakar Bhawan Annexe,

P-13, Chowringhee Square, 5th Floor,

KOLKATA – 700 069.

.....Complainant

Versus

CA. Bajrang Lal Agrawal (M. No. 061690)

M/s. Agrawal Bajrang & Associates,

Chartered Accountants,

9/12, Lal Bazar Street,1st Floor, Block-B, Room No. 3,

KOLKATA – 700 001.

.....Respondent

DATE OF FINAL HEARING : 27thJuly, 2023

PARTIES PRESENT (in person):

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

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

FINDINGS:

CHARGE ALLEGED:

1. The Complainant alleged against the Respondent as under:

- a) The Respondent had formed various paper/shell companies for the sole purpose of providing of accommodation entries and selling of the companies so formed.

- b) The Respondent is involved in financial irregularities by providing of accommodation entries and selling of the companies so formed for the sole motive of facilitating of accommodation entries by the beneficiaries in lieu of commission.
- c) The Respondent had facilitated evasion of taxes by various beneficiaries to whom/ which he provided accommodation entries through the companies controlled and managed by him.

BRIEF OF PROCEEDINGS HELD:

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S.No.	Date of hearing(s)	Status of hearing(s)	Compliance of direction, if any, given by the Board
1.	31st May, 2019	Adjourned at the request of the Respondent.	
2.	16th August, 2019	Part head and adjourned with the direction to the Respondent to submit the following documents/information: i. List of companies wherein the Respondent was Director for alleged period along with details of other Directors. ii. Copy of Bank statement of the Companies for the alleged period. iii. Copy of post enquiry assessment order of the alleged companies. iv. Confirmation/clarification as to whether the Respondent was auditor of these companies for alleged period.	The Respondent submitted his response.

3.	25th September, 2019	<p>Part head and adjourned with the direction to the Complainant to share following documents/ information with the Respondent :</p> <p>(i) Statement of Shri Sanjay Rai.</p> <p>(ii) Relation of Respondent with 7 Companies mentioned in the Complaint.</p> <p>(iii) Who were the beneficiaries from such transaction and their assessment order for financial year 2013-14 of such beneficiaries.</p> <p>(iv) Assessment order of Respondent issued after submission of statement on oath dated 11.07.2013.</p>	<p>The Complainant has filed its submissions vide its letter dated 5.12.2022 as stated hereunder:</p> <p>1. Statement of Shri Sanjay Rai Response: Statement of Sanjay Rai is not readily available at this end.</p> <p>2. Relation of Respondent with 7 Companies mentioned in the Complaint: The Respondent is one of the directors of these 7 companies namely, Salasar Advisory Private Limited, Megha Agro Projects Private Limited, Salasar Infraniketan Private Limited, Basukinath Realtors Private Limited, Essel Trexim Private Limited, Ganadhi Developers Private Limited & Nightangle Projects Private Limited.</p> <p>3. Who were the beneficiaries from such transaction and their assessment order for financial year 2013-14 of such beneficiaries?: In his deposition, the Respondent</p>
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			<p>has discussed about modus operandi about formation of companies and how those companies are sold to beneficiaries. However, names of beneficiaries have not been mentioned.</p> <p>4. Assessment order of Respondent issued after submission of statement on oath dated 11.07.2013:</p> <p>Assessment orders of Bajrang Lal Agarwal (PAN AESPA05270) are not available at this end, as of now and will be provided to you at the earliest.</p>
4.	12th December, 2022	<p>Part heard and adjourned with the following direction to:</p> <p>The Complainant:</p> <ol style="list-style-type: none"> 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. 2. To submit the papers/documents/evidence before 	<p>No response received from the Complainant.</p>

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		6th January 2023 to establish the role of Respondent.	
5.	6th January 2023 –	Adjourned at request of the Complainant.	
6.	3rd May, 2023	Part heard and adjourned with the direction to the Complainant Department to submit (with a copy to the Respondent) copy of the Assessment Order issued to the Respondent under the Vivad Se Vishwas Scheme together with the documents on the basis of which the same had emerged, and/or any other evidence to substantiate the allegations against the Respondent. 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 Complainant Department vide email dated 15th July, 2023 has submitted Notice of Demand under Section 156 of the Income Tax Act, 1961 along with the statement of the Respondent u/s 131 of the Income Tax Act, 1961.
7.	27 th 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 Complainant did not specify the charges of professional misconduct of the Respondent.
- ii. The Director(Discipline) has patently ignored the objections raised by the Respondent in his various communications, and not even bothered to state why the objections were not entertained.

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- iii. The Director(Discipline) has expanded the complaint and has held the Respondent to be guilty under charges in respect of which he was not even given an opportunity to defend himself.
- iv. The Director(Discipline) had moved to the stage of forming his PFO having grossly erred in evaluating the circumstances of this case.
- v. The Director(Discipline) has arrived at his conclusion without even considering that there was no proof/evidence beyond reasonable doubt against the Respondent relating to the allegations.
- vi. The so-called statement recorded by the Income Tax Department cannot be relied upon as admissible evidence, and there is no corroborative evidence produced by the Complainant in support of any of the allegations made.
- vii. The Director(Discipline) has grossly erred in arriving at a conclusion without any proof/evidence in respect of the allegations made without noting that the so called statement identifies neither any beneficiary of the accommodation entries nor any broker/middleman nor any proof for routing cash through these companies.
- viii. The Director(Discipline) has not sought any additional details from the Complainant, which could even remotely corroborate the contention of the Complainant.
- ix. The Director(Discipline) has not even considered it appropriate to question the Complainant about any beneficiaries and then cross examine the individuals/parties who have been identified by the Complainant as the beneficiaries of the business of accommodation entries.
- x. The Respondent has constantly communicated with the Disciplinary Directorate and raised non-negotiable issues to demonstrate that this enquiry cannot be proceeded with, the Director(Discipline) has however preferred to proceed with the same and form his PFO which is not maintainable on the grounds of technicality, facts and circumstances of the case, procedure required to be followed under the Rules and the requirements of law in matters of investigations of this nature.
- xi. The Clause (2) of Part IV of the First Schedule 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.

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- xii. 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, 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 21B 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

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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.

- xiii. Following the recording of the so called statement on 11th July 2013, the respondent has not been questioned by the Income Tax Department in this matter.
- xiv. When reference is made to only these companies in the entire statement (based on which the complaint has been made against the Respondent), it is important to note that these companies are not bogus/shell companies:
- Nightangle projects Pvt. Ltd : There is property at book value Rs. 23 Lakhs held by the company as on 11th July 2013 and such property continues to be owned by the company.
 - Salasar Infraniketan Pvt. Ltd : The company owned land at book value Rs. 33 Lakhs as on 11th July 2013, and the said asset is continued to be held by the company.
 - Salasar Advisory Pvt. Ltd : The company owned property at book value Rs. 2 Crore as on 11th July 2013 and continues to own the same. It also held investments in blue chip companies at Book Value around Rs. 1 Crore as on 11th July 2013.
 - Megha Agro projects Pvt. Ltd : The Company owned Land at book value 71 Lakhs held by the company as on 11th July 2013 and such property continues to be owned by the company.
 - Ganadhi Developers Pvt Ltd : There is a property at book value 1.21 Lakhs held by the company as on 11th July 2013 and such property continues to be owned by the company.
 - Basukinath Realtors Pvt. Ltd : The respondent has ceased to be a Director of the same since 15th January 2015.
 - ALPS Tradecom Pvt. Ltd: The respondent had ceased to be a director of the company from June 2010.
 - Essel Trexim Pvt. Ltd: The respondent ceased to be a director of the company from 20th August 2013. However as at 11th July 2013 the company had made investments in properties for Rs. 35 Lakhs at book value.
 - Surapati Vyapar Pvt. Ltd : The respondent ceased to be a Director of the company in 2008.

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

- i. In the instant case, the Respondent in his statement before the DDIT(inv), Unit 1(3), Kolkata under oath u/s 131 of the Income Tax Act dated 11.07.2013 had admitted that he has formed bogus companies with the motive of providing accommodation entries or selling the companies to various beneficiary concerns in lieu of commission. He has also admitted that he has appointed dummy directors in different bogus companies, and they used to sign all documents viz., balance sheet, returns of income and other documents as per his instructions.
- ii. The Respondent in his reply dt. 11.03.2019, vide para 4(ix) has submitted that the Complainant has not submitted recorded statement. But on the contrary, recorded statement dt. 11.07.2013 was enclosed at the time of filing of vide this office letter dt. DDIT (Inv)/U-4[21/Kol/SIT/2017-18/2327 dt. 03.08.2017.
- iii. The Respondent in his reply dt. 11.03.2019, vide para 7 has submitted that the Complainant has not specified the charges at all. On this ground, it is hereby mentioned that the charges have been mentioned in Form-I.
- iv. In his statement dt. 11.07.2013, the Respondent has also stated following points:-
 - a) He earns commission from providing accommodation entries to different beneficiary companies.
 - b) He has appointed dummy directors in different bogus companies formed by him for providing accommodation entries and selling out the same to various beneficiaries.
 - c) He used to instruct dummy directors appointed by him to sign balance sheet, returns of income and other documents of different bogus companies.
 - d) He received cheques from companies for sale of unquoted shares which are unaccounted and out of regular books of accounts of sold companies.
 - e) Most of companies managed and controlled by him are basically paper companies without any actual business. Main motive of these companies is to provide accommodation entries or to sale companies to various beneficiaries in lieu of commission income.
- v. Sri Sunil Kumar Dokania, Chartered Accountant in his statement recorded u/s 131 of the Income Tax Act on 12/06/2015 has stated that Nightangle Project Pvt. Ltd. is a

24

- paper company which is involved in providing accommodation entries in the form of premium, unsecured loan and LTCG/STCG/STCL.
- vi. The statement of the Respondent in its totality is evidence in which he stated that he was involved in facilitating evasion of taxes by providing accommodation entries.
- vii. In view of above facts & discussions, the Respondent being a chartered accountant by profession was involved in practices ethically and legally against Codes laid down by ICAI. He was well aware of all the financial irregularities involved in providing accommodation entries through companies controlled and managed by him. Therefore, the Respondent has intentionally facilitated evasion of taxes by beneficiary concerns and thereby causing loss of revenue to the exchequer.

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.

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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

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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 As regard the charge alleged, the Board noted the Complainant Department had recorded a Statement of the Respondent on Oath before DDIT (Inv.), Unit 1(3), Kolkata in connection with an enquiry conducted by Directorate of Income Tax (Investigation), Kolkata under section 131 of the Income Tax Act, 1961 on 11.07.2013. The Respondent,inter-alia, deposed as under:

"Q.3. What is your source of Income?"

Ans. I am a chartered accountant by profession. Moreover, I also earn commission from providing accommodation entries to different beneficiary company.

Q.5. Please explain the nature of business done by you.

Ans. As I already stated, a portion of my earnings come from audit fees, tax consultancy etc. Besides that I have commission income from providing accommodation entries to different beneficiaries through companies formed under different dummy directors Sanjay Rai, Dinesh Mishra, Ashok Thakur and Dharma Nath Thakur.

Q.8. Please explain the whole process of forming companies and how they are ultimately sold to the beneficiaries.

Ans. To form a company initially we choose any name and search for availability of the name in ROC website. Once the availability of name is confirmed then we select any two persons mentioned above and do a sort of permutation and combination for the choice of Director in the company. once, Directors are appointed, we approach any company secretary or other professionals who are attached with the company formation formalities who has complete the formalities for my companies. Once the formation of companies take place we apply for PAN card and bank account directly. Once the bank account is opened cross transactions like share capital etc. is brought into the books of account of the company from my own companies to build up capital. Once the capital has been formed, then we file the Income Tax Return.

For selling the companies clients us through brokers/middlemen. There can be more than one middleman in the whole process. Sometimes, the old clients us directly according to their needs. Once the requirements of the clients are known then the rates are fixed for selling the companies. The basis on which the rates are fixed is scrutiny of the u/s 143(3) of the 1. Act, 1961. The companies which have already had scrutiny assessment are sold in higher price vis-à-vis those which have not gone through assessment. The normal market rates for non-assessment companies vary from 5 to 60 paisa and the rates for the assessed companies varies from 75 to 85 paisa. The profit margin varies from 10 to 15 paisa.

Once a company is being sold the first step taken is to change the Directors and at the same time the old directors continue the Directorship. Then the shareholding pattern of the company is being also changed. The new shareholders purchase the share from the old share holders at a very nominal price. Generally, the price of the shares are decided at the face value

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of shares and the premium is not included. The new shareholders are mostly related group companies or of the final beneficiaries.

Money is being received from the final beneficiary mostly in the form of cash which is being utilized for selling unquoted shares shown in the books of a/cs as investment. The unquoted shares are mostly sold to other companies and the money for which is being received mostly in the form of cheques. The said fund thereby is being transferred Make investment in quoted shares, fixed deposits, plant & machineries or purchase of land. In this way the form of investment is changed from being investment in unquoted shares in paper companies to actual utilization of fund."

4.5 The Board further noted that the Respondent retracted the above Statement after 10 days by way of a notarized sworn Affidavit dated 22.07.2013.

4.6 The Board also noted that the Respondent brought on record the details of 7 companies wherein he was a director for alleged period as stated hereunder:

S.no.	Name	From	To
1.	Megha Agro Projects Private Limited	16/09/2012	Till date
2.	Essel Trexim private limited	2/12/2011	20/08/2013
3.	**Salasar Infraniketan Private Limited	15/03/2011	15/03/2017
4.	**Ganadhi Developers Private Limited	16/06/2012	15/03/2017
5.	Nightangle projects private limited	28/09/2012	--
6.	Basukinath Realtors Private Limited	14/06/2011	15/01/2015
7.	Salasar Advisory Private Limited	15/07/2008	Till Date

He also brought on record copy of the audited financial statements for the FY 2013-14 of the aforesaid companies wherein clean audit report had been issued and the Respondent was one

of the directors who authenticated the said Financial Statements (except for Essel Trexim private limited and Megha Agro Projects Private Limited).

He also brought on record copy of the Income Tax Return acknowledgement together with the intimation under Section 143(1) of the Income Tax Act 1961 for the AY 2014-15 in respect of the aforesaid companies. On perusal of the same, the Board noted that except in the following 2 companies, there had been no difference in the returned income and the assessed income:

Name of the Companies	Difference
Megha Agro Projects Private Limited	Deemed Taxable Income u/s 115JB as per the tax payer :-29,035 Deemed taxable Income as per the assessment Order: -23,852
Salasar Advisory Private Limited	Interest liability imposed u/s 234B and 234C of the Income Tax Act 1961

4.7 The Board further noted that the Complainant Department brought on record copy of the Assessment Order dated 31st March 2016 of the Respondent for the A.Y. 2014-15 wherein Long-Term Capital Gain to the extent of Rs. 16,26,315/- and 4,08,500/- respectively had been disallowed and added back to the total income of the assessee as unexplained cash credit u/s 68 of the Income Tax Act 1961 and Short Term Capital loss to the extent of Rs. 1,71,050/- had been disallowed, which had been accepted by the Respondent under the Vivad Se Vishwas Scheme.

4.8 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 has brought on record for the charges alleged against the Respondent is the copy of his own Statement recorded on 11th July 2013 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 that the Respondent had formed various shell companies for the purpose of providing accommodation entries through the companies controlled and managed by him in lieu of commission. 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, ret'd.)
(Government Nominee)

Sd/-

CA. Priti Savla
(Member)

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

मीनू गुप्ता / Meenu Gupta
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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DATE: 02-02-2024