

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-191/2017-DD/195/2017/BOD/453/2018]

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), AayakarBhawan Annexe,

P-13, Chowringhee Square, 5th Floor,

KOLKATA – 700 069.

.....Complainant

Versus

CA. Ankit Kumar Agarwal (M.No.300763)

M/s. Ankit K Agarwal & Associates (FRN No.329063E)

Chartered Accountants

12/2, Gobinda Khatick Road,

Ground Floor, Post Office Building, Near Brindaban Garden,

Kolkata 700046.

.....Respondent

DATE OF FINAL HEARING : 27th July, 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 was associated with various paper/shell entities as dummy director for the sole purpose of providing of pre-arranged accommodation entries of bogus LTCG/STCL.

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b. The Respondent was involved in financial irregularities by facilitating of pre-arranged accommodation entries of bogus LTCG/STCL through M/s. Cressanda Solutions Limited.

c. The Respondent also facilitated evasion of taxes by various beneficiaries by pre-arranged accommodation entries of bogus LTCG/STCL through M/s. Cressanda Solutions Limited.

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.	31 st May, 2019	Adjourned at the request of the Complainant Department.	
2.	16th August, 2019	Part heard and adjourned with a direction to write to Chairman, CBDT about non-appearance of any officer from the Complainant Department and request for arranging of their appearance at the time of next hearing.	Letter was sent to Chairman, CBDT.
3.	25th September 2019	Part heard and adjourned with a direction to the Complainant to provide following documents/ information to the Office: (i) Who were the beneficiaries from such transaction and assessment order for financial year 2010-11 to 2012-13 of such beneficiaries.	The Complainant vide letter dated 05/12/2022 submitted as under: (a) The Respondent was one of the directors of several paper / shell companies including M/s Cressanda Solutions Ltd., which is a

			<p>penny stock. These all paper / shell companies are controlled and managed by Shri Ajit Kumar Tulsian and Shri Deepak Patwari. Shri Ajit Kumar Tulsian is a chartered accountant, and a complaint has been made against him by Income Tax Department Shri Deepak Patwari is a well known entry operator of Kolkata who has admitted before the Income Tax Department that he has floated paper/shell companies for the purpose of accommodation entries.</p>
4.	12th December 2022	Part heard and adjourned with a direction to the Complainant to provide the following:	No response received.

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		<p>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.</p> <p>2. To submit the papers/documents/evidence before 29th December 2022 to establish the role of Respondent.</p>	
5.	29 th December, 2022	Adjourned at request of the Complainant Department.	
6.	3 rd 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.	No response received.
7.	27 th July, 2023	Heard and concluded.	

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BRIEF SUBMISSIONS OF THE PARTIES TO THE CASE:

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

- i. The Director(Discipline) has improved the complaint by introducing charges against the Respondent at his own will.
- ii. The Director(Discipline) has held the Respondent to be guilty under Clause 2 of Part IV of the First Schedule without giving the Respondent an opportunity to defend himself in respect of such a charge. This is against the principles of natural justice.
- iii. The Director(Discipline) has formed his PFO without the Respondent having been given an opportunity to file his written statement in respect of the charge for which he has been held guilty. The objections of the Respondent had been totally ignored and not considered by the Director(Discipline).
- iv. 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.
- v. 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 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

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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.

- vi. The complaint has been filed in June 2017 based on a statement recorded in the office of the Income Tax Department in November 2015. The Respondent is not aware of any information or documents collected by the Income Tax Department related to the enquiry of professional misconduct against the Respondent during these seventeen intervening months. Since no such information/documents has been made available to the Respondent, the Respondent is justified in concluding that there was no additional material gathered during these seventeen months. Accordingly, it is beyond reasoning why the complaint was filed leading to the enquiry against the Respondent after such a long gap.
- vii. Following the recording of the so-called statement on 16th November 2015, the Respondent has not been questioned by the Income Tax Department in this matter. The Respondent has already retracted from his said Statement.

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- viii. The Respondent was a Director of Cressanda for the years 2013 upto May 2017. Cressanda was incorporated in 1985 and the Respondent had no relationship with that company upto 2013. The Respondent became a member of ICAI only in 2011. Having met Shri Deepak Patwari and some of his associates, the Respondent was presented with an opportunity to work with some of the entities controlled and managed by Shri Patwari for accounting purposes. The Respondent had no role whatsoever in any decision making and the Respondent was not involved in any activities in the business of providing accommodation entries or any other financial irregularities. It may be specifically noted that LTCG arises and gets recorded in the books of the investor (outside the accounting framework of the company whose shares are traded); such LTCG transactions are not reflected in the books of accounts of the Cressanda naturally. LTCG arises out of transactions between the owners of the shares, and through transactions involving share brokers. In case of bogus LTCG, there would be an Individual/entity who would be providing the unaccounted money, the registered owner of the shares who would sell the shares at lower, the future buyer of the shares at higher prices, share brokers at the time of purchase and sale, etc. The Complainant has not produced any proof/evidence of any kind of relationship of the Respondent with any person/entity whose unaccounted money could perhaps be routed through the so called bogus LTCG transactions of Cressanda. The Complainant has also not produced any proof/evidence of any relation of the Respondent whatsoever with the buyers and sellers of shares of Cressanda for the so called bogus LTCG transactions. The Complainant has further not produced any proof/evidence of any relationship whatsoever of the Respondent with any of the share brokers involved in such transactions.
- ix. It has been further submitted by the Respondent that:
- a) That the words "various paper/shell entities as included in Allegation No: 1 are not in any manner whatsoever by the Complainant.
 - b) The Respondent was not at all involved or engaged with the formation and promotion of Cressanda.
 - c) The Complainant has not identified any specific transaction in the nature of an accommodation entry with what the Respondent may be alleged to be involved.

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- d) The letter of the Complainant accompanying Form-I (dated 22nd June 2017) (Page C-2 of the PFO) includes the following comments: "A search & seizure operation was conducted by the Directorate of Income Tax (Investigation), Kolkata on 06.10.2015 in the case of Kolkata based M/s. Unitech Paper Mills."
- e) Despite the facts that the search and seizure operations referred above form the roots of this enquiry, the Complainant has not produced even a single statement from the owners of Unitech Paper Mills, or from any key management personnel of that company relating to the involvement of the Respondent.
- f) The Complainant has not produced any proof/evidence of the Respondent having identified or introduced entities with unaccounted money for taking advantages of accommodation entries through Cressanda.
- g) The Complainant has not produced any proof/evidence in respect of the handling of cash (without which the transactions of accommodation entries can never be completed) by the Respondent.
- h) The Complainant has not produced any proof/evidence in respect of the specific share scripts (owners, distinctive numbers, etc) in respect of which the alleged accommodation entries through LTCG/STCL were provided.
- i) The Complainant has not produced any proof/evidence from any broker/middleman regarding the involvement of the Respondent in the accommodation entries business of Cressanda.
- j) The Complainant has not identified any amount of income earned by the Respondent through commission/brokerage or through any other means from the business of providing accommodation entries.
- k) No document is provided by the Complainant that Mr. Deepak Patwari is well known entry operator in Kolkata.
- l) The Complainant has not provided a copy of statement of CA. Ajit Kumar Tulsyan to him.
- vii. The law also requires that in cases where a self-incriminating statement is used against a person for holding him guilty that alone is not sufficient; it must be supported by corroborative evidence. In this case, there is no corroborative evidence of any nature

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whatsoever. There is no proof of any movement of cash, use of brokers or middlemen, layering of transactions, etc.

- viii. Despite the fact that the Complainant has alleged professional misconduct by the Respondent based on activities of providing accommodation entries, there has been no addition of any such income in the hands of the Respondent.

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

- i. In the instant case, the Respondent in his statement before the DDIT(Inv), Unit-4(2), Kolkata under oath u/s 131 of the Income Tax Act dated 16.11.2015 had admitted that he is a dummy directors of paper / shell companies which provides pre-arranged accommodation entries in the form of bogus LTCG/STCL to beneficiary concerns. M/s Cressanda Solutions Ltd., which is a penny stock is one of those paper / shell companies. He had also admitted that all these shell entities along with M/s Cressanda Solutions Ltd. are having no business activities and are controlled and managed by Shri Ajit Kumar Tulsian and Shri Deepak Patwari. Shri Ajit Kumar Tulsian is a chartered accountant and a complaint against him has also been filed before the ICAI on the same issue. Shri Deepak Patwari is a well-known entry operator of Kolkata who has, on various occasions has admitted before the Department that he has floated paper / shell companies for the purpose of accommodation entries in the form of bogus share capital, unsecured loans and pre- arranged bogus LTCG/STCL to various beneficiaries in lieu of commission.
- ii. 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.Y2013-14 & 2014-15. Name of some individuals were Shri Daya Nand Gupta & Shri Sailesh Gupta.
- iii. On perusal of assessment orders in the case of Late Daya Nand Gupta & Shri Sailesh Gupta for the A.Y. 2014-15, it is found that both the assessee had traded in the scrip, Cressanda Solutions Ltd. during the F.Y. 2013-14 relevant to A.Y. 2014-15. 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 A.Y. 2014-15 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 has 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 A.Y. 2014-15 :-

"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."

- iv. Similarly, in the case of Shri Sailesh Gupta for the A.Y. 2014-15, 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. 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.
- v. The Respondent in his reply dt. 26.02.2019 has submitted in para 11 that 'various paper/shell entities' have not been substantiated by the Complainant. But in his reply to question no. 5 & 6 in statement dt. 16.11.2015, the Respondent has stated name of the companies viz., Smartchamp IT and Infra Limited, Smart Infra properties Pvt. Ltd. and Megapix Consultancy Service Pvt. Ltd. in which he is one of the directors and these companies have no actual business and they provide accommodation entries in the form of bogus share capital, unsecured loan and pre- arranged bogus LTCG to beneficiary concerns.
- vi. The Respondent in his reply dt. 26.02.2019 has submitted that he is not at all involved or engaged with formation & promotion of M/s Cressanda Solutions Ltd. But being a chartered accountant by profession and director of M/s Cressanda Solutions Ltd. since 11.02.2013, he was well aware of all the financial irregularities that was happening in the

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company and was involved in providing pre-arranged accommodation entries in the form of bogus LTCG/STCL to various beneficiaries. The shares of penny stock were rigged by way of circular trading and the prices of the shares were jacked up artificially.

vii. In his statement dated 16.11.2015, the Respondent has also stated following points:

- (1) He is a dummy director of Cressanda Solutions Limited, Smartchamp IT and Infra Limited, Smart Infraproperties Pvt. Ltd. and Megapix Consultancy Service Pvt. Ltd.,
- (2) He is engaged in providing accommodation entries in the form of share capital/premium, unsecured loan, pre-arranged bogus LTCG/STLC to various beneficiaries in lieu of commission.
- (3) He used to sign papers on the instructions of Shri Ajit Kumar Tulsian and Shri Deepak Patwari without proper verification of legality/authenticity of the papers and transactions thereon, which is ethically and legally against code laid down by ICAI.

viii. Later, statement of Shri Ajit Kumar Tulsian was recorded on oath u/s 131 of the IT Act on 10.12.2015 and has stated following points:

- (1) He has gone through statement of Shri Ankit Kumar Agarwal recorded on 16.11.2015 and has confirmed the same.
- (2) He along with Deepak Patwari made Shri Ankit Kumar Agarwal one of the dummy directors of M/s Cressanda Solutions Limited.
- (3) He also stated that M/s Cressanda Solutions Limited is a penny stock company which is used for providing pre-arranged bogus LTCG/STCL to various beneficiaries.

ix. In view of above facts and discussions, it is clearly established that the Respondent was intentionally involved in providing accommodation entries to beneficiaries in the form of bogus LTCG/STCL 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

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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

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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,

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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

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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 that 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 16th November 2015, wherein he, inter-alia, deposed as under:

"Q.5 Please state your Business or profession?"

Ans.5 I am one of the dummy directors of the following companies:

- 1. Cressanda Solutions Limited.*
- 2. Smartchamp IT and Infra Limited*
- 3. Megapix Consultancy Services Private Limited*

Q6. Please state nature of business activities of the companies mentioned by you in reply to the above question and also furnish details of other Directors.

Ans. Sir, the above-mentioned companies have no actual business activities and created exclusively by Shri Kumar Tulsian and Shri Deepak Patwari for the purpose of accommodation entries in the form of bogus share capital, unsecured loans & pre-arranged bogus LTCG to various beneficiaries in lieu of commission. Shri Ajit Kumar Tulsian and Ankit Kumar Agarwal and Aman Deep Chaudhry are director in the Cressanda Solutions Ltd. I am director with Ajit Kumar Tulsian in M/s Smart Infra properties Private Limited and M/s Smartchamp IT and Infra Limited. M/s Smartchamp IT and Infra Limited is amalgamated into M/s Cressanda Solutions Ltd.

Q.8 Please state Modus Operandi of business activities of Cressanda Solutions Limited

Ans. Cressanda Solutions Limited is the listed company with BSE. However, no significant business activities are conducted by Cressanda Solutions Limited. However, Shri Ajit Kumar Tulsian and Deepak Patwari who are real operators of this penny stock company. They are controlling and managing all the affairs of these companies.

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Q.11 Please state since when you are the Director of Cressanda Solutions Limited. Also state in which year the company was listed with BSE.

Ans. I am one of the Directors with Cressanda Solutions Limited since 11.02.2013. however, day to day affairs of this company were being taken care by Shri Ajit Kumar Tulsian and Deepak Patwari."

4.5 The Board further noted that the Respondent retracted the above Statement after 7 days by way of a notarized sworn Affidavit dated 23rd November 2015.

4.6 The Board also noted that during the course of hearing the Complainant Department was asked to provide evidence to the effect that steps had 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. However, the Counsel for the Complainant Department confirmed during the course of hearing that the Complainant Department did not have any further documents to substantiate their case before the Board.

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 16th November 2015 before the concerned official of the Complainant Department which had been subsequently retracted by him. The subsequent Statement of the Respondent recorded on 23rd November 2015 did not indicate any admission on the part of the Respondent as alleged. 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

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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

मीनू गुप्ता / Meenu Gupta
परिचय कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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