

BOARD OF DISCIPLINE

(Constituted under Section 21A of the Chartered Accountants Act 1949)

**FINDINGS UNDER RULE 14 (9) READ WITH RULE 15 (2) OF THE
CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF
PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES)
RULES, 2007**

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:

CA. Atul Jain (M. No. 037097), Mumbai, In Re:

Date of Final Hearing : 26th June 2024

Place of Final Hearing : ICAI Bhawan, Mumbai

PARTY (PRESENT IN PERSON):

Respondent : CA. Atul Jain along with his Counsel CA. Alok Saksena

FINDINGS:

BACKGROUND OF THE CASE

1. A search action was conducted in the case of M/s Kaygee Investments Pvt. Ltd. on 23rd December 2014. M/s Kaygee Investments Pvt. Ltd. received share capital with premium from two Kolkata based companies. These two Kolkata based companies did not have any financial credentials to give such a premium amount. During search action in the case of M/s Kaygee Investments Pvt. Ltd. it was found that CA. Atul Jain facilitated this transaction. In the process of the search, a statement of the Respondent was recorded on oath u/s 132(4) of the Income Tax Act 1961 (hereinafter referred to as the "Act"). The relevant part of the statement is reproduced hereunder:

"Q41. In the statement recorded u/s 132(4) in the case of M/s Kaygee Investments P. Ltd. dated 23rd December 2014, the issue of investments made in the shares of M/s Kaygee Investments P Ltd at premium was raised. The relevant portion of the question and answer given by the deponent is reproduced hereinbelow:

"It has been observed that in your company Kaygee Investments Pvt. Ltd. M/s Apsara Trex P Ltd and M/s Shreya Tieup Pvt. Ltd. have subscribed to the shares in FY 2008-09 and 2009-10 at premium of Rs. 17,725/- and Rs. 29,065/- respectively having face value of Rs. 10/-. Total amount received from these two companies on this account is Rs. 17,27,30,125/-and Rs. 9,58,27,305/- respectively. Please explain how do you know these companies.

Ans.

Ans: *I do not know these companies personally. I have been introduced to these companies through Shri Atul Jain. He is practicing chartered accountant in firm M/s GMJ & Co."*

In the answer recorded u/s 132(4) of the Income Tax Act 1961 Shri Prashant Godha have made categorical reference about your involvement in the transaction as above. Please offer your comments.

Ans: *I had introduced these companies to the Godha family as a consultant and Mr. Prashant Godha was the director in M/s Apsara Trex P. Ltd. when the company invested in the shares of M/s Kaygee Investments P. Ltd.*

Q42. *As mentioned by you there were 3 Directors before amalgamation in M/s Apsara Trex P Ltd. and you have been the introducer of this company to Shri Prashant Godha. At the same time Shri Prashant Godha, despite of being the Director stated that he does not know anything about this Company, and everything is known to Shri Atul Jain. Kindly comment.*

Ans: *My shareholding in any company is NIL and I have got only advisory role. I have nothing to offer against the comment made by Shri Prashant Godha.*

Q43. *In view of poor financials of M/s Apsara Trex P. Ltd. and M/s Shreya Tie Up P Ltd. and you being the introducer and Director of M/s Apsara Trex P Ltd. and introducer of M/s Shreya Tie Up P. Ltd. and Shri Prashant Godha's statement that he does not know anything about these companies, why it should not be construed that these two companies were merely paper companies and a tool created to facilitate the routing of unaccounted funds to M/s Kaygee Investments P. Ltd. Please explain the entire modus operandi.*

Ans: *I accept that subscribing companies M/s Apsara Trex P. Ltd. and M/s Shreya Tieup P. Ltd. were brought over by the Godha family at the face value of the shares. The owners of the said companies were compensated outside the books for the agreed value between the Godha family and the owners somewhere equivalent to the amount of reserves outstanding in books of these two companies. I do not have the knowledge of the exact amount of the total out of the books deal. That Godha family may remember, I accepted the post of the Director for the intervening period due to my family relationship with Godha family. I am neither any beneficiary nor own any shares in the company. And the resultant amount available in both the companies were used to subscribe to the share capital of Kaygee Investments Pvt. Ltd."*

2. Pursuant thereto, vide assessment order for the AY 2009-10 u/s 153A read with Section 143 (3) dated 28th October 2016, the income of M/s Kaygee Investments Private Ltd. (hereinafter referred to as "KIPL") was assessed at Rs. 17,60,98,580/-. Further, by assessment order for the AY 2010-11 u/s 153A read with Section 143 (3) dated 28th October 2016, the income of KIPL was assessed at Rs. 9,63,39,100/-
3. Feeling aggrieved and dissatisfied with the aforesaid orders, KIPL preferred two separate appeals (Appeal Nos. CIT(A)-53/IT-276/DCCC-5(2)/2016-17 and CIT(A)-53/IT-277/DCCC-5(2)/2016-17) before the Commissioner of Income Tax, (Appeals). The Commissioner of Income Tax, Appeals, by orders dated 07th March 2018, passed the following orders:

Appeal No. CIT(A)-53/IT-276/DCCC-5(2)/2016-17

"4.14. To conclude, the amount of Rs. 15,53,00,000/- was invested in AY 2008-09 and credited as share application money and thus cannot be considered u/s 68 in AY 2009-10.

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Further, the amounts received as share application money is sourced out of share capital and reserves of the investor company. Such funds as share capital and reserves were raised by the investor much earlier and at a time when it was not under control of Godha family. Even if credence is given to allegation that the Godha family understated the purchase value of shares of the investor and paid out of books to the erstwhile owner/shareholders of the investor companies, remedy lies in taking appropriate action in the hands of the shareholders and not the appellant company. In these facts the addition made of Rs. 17,28,27,575/- u/s 68 of IT Act is deleted. Grounds of appeal No. 1 & 2 are allowed.

5. It is noted that as per the original assessment order the assessed income was Rs. 43,88,290/-. However, the assessing officer has in the re-opened assessment order begun his computation of assessed income with Rs. 32,71,009/- which is the returned income filed in response to notice u/s 153A. The assessing officer is directed to verify the facts and re-compute the assessed income.

6. In the result, the appeal is allowed."

Appeal No. CIT(A)-53/IT-277/DCCC-5(2)/2016-17

"4.13. To conclude, the amount of Rs. 9,58,27,305/- received as share application money is sourced out of share capital and reserves of the investor company. Such funds as share capital and reserves were raised by the investor much earlier and at a time when it was not under control of Godha family. Even if credence is given to allegation that the Godha family understated the purchase value of shares of the investor and paid out of books to the erstwhile owner/shareholders of the investor companies, remedy lies in taking appropriate action in the hands of the shareholders and not the appellant company. In these facts the addition made of Rs. 9,58,27,305/- u/s 68 of IT Act is deleted. Grounds of appeal No. 1 & 2 are allowed.

5. It is noted that as per the original assessment order the assessed income was Rs. 24,96,440/-. However, the assessing officer has in the re-opened assessment order begun his computation of assessed income with Rs. 5,11,796/- which is the returned income filed in response to notice u/s 153A. The assessing officer is directed to verify the facts and re-compute the assessed income.

6. In the result, the appeal is allowed."

4. Being aggrieved by the Orders dated 07th March 2018 passed in Appeal Nos. CIT(A)-53/IT-276/DCCC-5(2)/2016-17 and CIT(A)-53/IT-277/DCCC-5(2)/2016-17), the Income Tax Department filed two separate appeals (No. ITA No. 3539/NUM/2018 and (No. ITA No. 3540/NUM/2018) before the Income Tax Appellate Tribunal (hereinafter referred to as "ITAT"). ITAT disposed of these appeals by a common order dated 31st July 2019, the operative part whereof is extracted hereunder:

ITA no. 3539/Mum/2018 (AY: 2009-10)

The Ld. CIT (A) after considering all these aspects has rightly deleted the additions made by the AO towards share capital received by M/s Apsara Trex Pvt. Ltd., under S. 68 of the Act. We do not find any error in findings of the Ld. CIT (A) and hence, we are inclined to uphold findings of the Ld. CIT (A) and dismissed appeal filed by the Revenue.

ITA No. 3540/Mum/2018 (AY: 2010-11)

The facts and issue involved in this appeal is identical to the facts and issue which we have already considered in ITA No. 3539/Mum/2018 for assessment year 2009-10. The reasons given by us in preceding paragraphs shall mutatis mutandis apply to this appeal also. Therefore, for detailed reasons given by us in ITA No. 3539/Mum/2018, we are of the considered view that Ld. CIT (A) has rightly deleted the additions made by the AO towards share capital received from M/s Shreya Tieup Pvt. Ltd. Hence, we are inclined to uphold findings of the Ld. CIT (A) and dismissed the appeal by the Revenue."

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CHARGE ALLEGED:

5. The Respondent facilitated the transaction with regard to the receipt of share capital with premium by M/s Kaygee Investments Pvt. Ltd. (hereinafter "KIPL") from M/s Apsara Trex Pvt. Ltd. (hereinafter "ATPL") and M/s Shreya Tieup Pvt. Ltd. (hereinafter "STUPL") two Kolkata based companies, whereas during the search by the Income Tax department on 23rd December 2014, it emerged that ATPL and STUPL did not have any financial credentials to pay such huge premium amount.

BRIEF OF PROCEEDING HELD:

6. The details of the hearing fixed and held in the said matter is given as under:

S. No.	Date of Hearing(s)	Status of hearings
1.	26 th June 2024	Matter heard and hearing concluded.

BRIEF SUBMISSIONS OF THE RESPONDENT:

7. The Respondent vide letter dated 15th June 2024 submitted that from the facts and Prima Facie Opinion, it appears that there is no case against the Respondent for facilitating the investment of 17.28 Crores (15.53 Crores in FY 2007-08 and 1.75 Crores in FY 2008-09) from ATPL (where he is a director) to KIPL as ATPL already had net worth and financial credentials of 17.32 to invest in KIPL. The net worth and financial credentials were established much earlier by ATPL (till 2005-06 itself). Therefore, the allegation of Income Tax Department is without any basis and no case is made out against the Respondent and the complaint should be dismissed on this ground alone. It is pertinent to note from the Prima Facie Opinion that CIT(A) and ITAT observations which have been duly considered by the Directorate, the CIT(A) in Para 4.10 of their order in appeal number CIT(A)- 53/IT-276/DCCC-5/ (2)/2016-17 and ITAT in Para 10 of their order in ITA 3539 and 3540/MUM/2018 had mentioned that the investment in KIPL by ATPL and STUPL was genuine and based on the valuation report of Chartered Accountants. Similar observations are being made by CIAT(A) and ITAT for investment of STUPL in KIPL. Therefore, the complaint of Income Tax Department was dealt by CIT(A) and ITAT that Income Tax Department was wrong in holding that ATPL and STUPL did not had the financial credentials to invest in KIPL. Further, the investment in KIPL itself which was based on valuation of M/s Natwarlal Vepari & Co as KIPL had substantial shares of IPCA Laboratories was found to be in order. The income tax Department complaint and allegations was therefore adequately dealt with by CIT(A) and ITAT and therefore consequentially, there is no wrongdoing by the Respondent.
8. Further, it is submitted that the Respondent was a director simplicitor in ATPL, where he does not hold any share in ATPL. Furthermore, the Respondent is neither a director nor a shareholder in KIPL and STUPL and had a very limited role and interest in the transaction ensuring that the investment by ATPL is backed by proper documents and valuation reports which he has ensured.
9. It is also submitted on behalf of the Respondent that the Disciplinary Directorate has put the lens on question number 43 which is recorded in the statement given to the Income Tax Department. In this respect the Respondent submitted that this statement is reference to a transaction of Godha Family acquiring equity shares of ATPL (where CA. Atul Jain is a director) from the shareholders of ATPL. This is a personal transaction between two individuals and the company ATPL is not connected /party to the said transaction and the Respondent is not involved in any manner. This statement was given on Oath u/s 132 (4) of IT Act, 1961 on 24th December 2014 to the Income Tax Department during the search.

Therefore, the full statement was always available with the Income Tax Department. However, the Department has chosen not to file any complaint with ICAI regarding this allegation.

10. The Respondent further submits that the department's allegation, which has been treated as Information under Rule (7) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, has no bearing or connection with this statement. The Information under Rule 7 was related to investment by ATPL and STUPL into KIPL and the statement u/s 132(4) of The IT Act, 1961 is related only to the point of investment and in particular Question 41 where the Respondent has been alleged to be a facilitator. Therefore, question 43, which pertains to the purchase of equity shares of ATPL by the Godha Family from the shareholders of ATPL's was not a subject matter of Information. The Disciplinary Directorate is permitted to only deal with matters which are treated as Information. There appears to be consideration of matters which are not treated as Information and in particular relating to question 43 pertaining to the purchase of shares of ATPL by the Godha Family from shareholders of ATPL. Thus, the Directorate should not have been proceeded against this issue which did not complain by the Department and was also not an Information under Rule 7 of the Chartered Accountant (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
11. The Respondent submits that the Department has refused to share full copy of recorded statement of 14 pages but has shared only selective questions i.e., Q. 41, 42 and 43. The Directorate ought not to have proceeded against the selected statements without having received an entire statement from the Department. It is also not clear whether the answer to Q 43 is complete or not as subsequent page has not been shared by the Department. Relying upon the selective questions without receipt of the full statement is not a proper procedure to hold Chartered Accountant prima Facie Guilty.
12. The Respondent states that question 43 pertains to the poor financials of ATPL and M/s STUPL and why the said two companies should not be construed as paper companies. The facts of the case are totally different as the said companies had sufficient net worth before entering into the said transaction of subscribing shares of KIPL. It should be further noted that answer of the Respondent to Q 43 is totally on a different footing and in his answer, he had not discussed poor financials of ATPL and STUPL and neither he had replied to why the said two companies should not be treated as paper companies. Question and answer both are on totally different tangent and are not at all comparable. Therefore, it clearly shows that answer to Q 43 is not complete and is either in subsequent pages of the statement or elsewhere and therefore the answer cannot be relied upon. The Disciplinary Directorate ought not to have proceeded on Q 43 against the Respondent in view of the glaring infirmity.
13. The Counsel appearing on behalf of the Respondent advanced his argument that leaving out these grave infirmities, even if one looks at the prima facie opinion, it appears that the Disciplinary Directorate has rushed in judging this matter against CA Atul Jain. The same is seen in Para 9.7 and Para 9.9 of the PFO, which are reproduced below:

"9.7. From the forgoing discussion, it is clearly discernible that the Respondent was the Director of ATPL during the relevant period i.e., 22/09/2007 till 25/02/2011. It is also evident from the above that the Godha family members acquired shares in ATPL in the year 2007-08 and thereafter, ATPL invested in the shares of KIPL for an amount of Rs.15,53,00,000/-in A.Y. 2008-09. Meaning therefore, the transaction took place during the period when the Respondent was on the board of ATPL as Director. Now, coming to the statement of the Respondent recorded on oath under S. 132(4) of the Act (A-8),

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wherein the response to Q.43, he inter alia stated that the owners of the said companies (i.e., ATPL and STUPL) were compensated outside the books for the agreed value between the Godha family and owners somewhere equivalent to the number of reserves outstanding in the books of companies. This fact also stands substantiated from a bare perusal of para 4.11 of the order dated 07/03/2018 passed in Appeal No. CIT(A)-53/IT-276/DCCC-5(2)/2016-17 extracted hereinabove, wherein it is stated that there were transactions outside the books in respect of the acquisition of the shares of ATPL. The shares were acquired from November 15, 2007, onwards by the Godha family members. It is seen that these transactions have been sourced by the individuals of the Godha family from their own funds and paid to the shareholders of ATPL."

"9.8 It is established beyond any doubt that the Respondent being the Director of ATPL remained mute spectator of the illegal transactions which took place between the owners of ATPL and Godha family members and did nothing to protect the interest of the shareholders as also stakeholders of ATPL on whose board he was the Director during the relevant period.

As stated above, there is express and unequivocal admission on the part of the Respondent with regard to the fact that there were some transactions between the said companies (i.e., ATPL and STUPL) and the Godha family members wherein the owners of these companies were compensated outside the books. When the instant complaint was lodged against the Respondent alleging his involvement as facilitator in the alleged transactions, he has taken "U-turn" stating in his Written Statement as under:

"During the search at my premises on 24th December 2014, I explained to the search party that I did not have any role in the working of these companies. However, I was put under undue harsh mental pressure and stress and told that the search from my premises will be concluded only on my making certain statements. I also suffer from High Hypertension & Diabetes. I am on medication for the same for the last 20+ years. My doctors have advised me not to handle heavy stress. My family urged me to make whatever statement is required, to ensure closure of the search, so that they can be relieved on the stress. In these circumstances, in spite of not having any active role to play in these companies, I preferred to buy mental peace by giving a statement."

Here, it may be seen that the Director (Discipline) has only concentrated on the statement of Atul Jain that it appears some payment was made outside the books when shares were transferred at Face Value. He has conveniently overlooked the next line of the same statement where Mr. Atul Jain states that "I do not have knowledge of the exact amount of the total out of books deal". This clearly shows that the first part of the statement is contradictory to the second part of the statement where CA. Atul Jain has no knowledge of any transaction. Such contradictory statements have no use as evidence and are termed contradictory and unreliable. The Director (Discipline) has simply jumped to the conclusion in Para 9.9 to hold that CA. Atul Jain is prima facie guilty without analyzing the entire text of the statement. Therefore, the Disciplinary Directorate is simply relying on the first part of the statement without taking into consideration the second part of the statement. Here it may be pointed out that this is a transaction between Godha Family and shareholders of ATPL. ATPL and its director are not involved in the said transaction.

14. The Counsel further states that it may also be pointed out that Disciplinary Directorate has relied upon 4.11 of the CIT(A) order dated 7th March 2018 in appeal no. CIT(A)-53/IT-276/DCCC- 5(2)/2016-17 to substantiate its point that there were some transactions outside the books. In this respect, it is submitted on behalf of the Respondent that CIT(A) has not given such a clear and emphatic finding as claimed by the Disciplinary Directorate. In fact, CIT(A) has stated that "If justified and evidence was found, addition could have been made in the hands of Godha family who acquired the shares of Apsara Trex at less than the fair value-----". Further,

there is an allegation that the Godha family acquired shares of ATPL at par even though its net asset value was more. It is also alleged there were transactions outside the books in respect of the acquisition of the shares of ATPL. Details were given in this regard in respect of shares acquired in ATPL. The shares were acquired from November 15, 2007, inwards by Godha family members. It is seen that these transactions have been sourced by the individuals of the Godha family from their own funds and paid to the shareholders of ATPL. Shri Prashant Godha, Shri Nikhil Prakash Jain and Shri Atul Nirmal Jain became directors of ATPL only in FY 2007-08. There is no role of the appellant company in this transaction. The individuals of Godha family and the appellant company are two distinct legal entities and cannot be treated as one for the purpose of making an assessment. If justified and evidence was found, an addition could have been made in the hands of the Godha family who acquired the shares of ATPL at less than the fair value as alleged by the assessing officer and the shareholders of ATPL. who are alleged to have received consideration not recorded. However, this does not mean that the addition can be sustained on the hands of the appellant company. It may be noted that no such evidence of wrongdoing or outside the book's transaction has been found in respect of these transaction of Godha Family and shareholders of ATPL. The Disciplinary Directorate has completely ignored the observation of CIT(A). Therefore, the reliance on para 4.11 of CIT(A) does not help the Disciplinary Directorate.

15. It is also submitted on behalf of the Respondent that the Disciplinary Directorate has recorded that CA. Atul Jain has not filed any complaint to the Police department or retracted the statement. Here, it may be noted that the statement had no evidentiary value and was a self-contradictory one. Further, the Respondent has no knowledge of the transaction itself to file any police complaint. It was not necessary to retract this self-contradictory statement which has no evidentiary value in proceedings. Further, normally retraction is done if there is some financial stake. In this case, it is nil. So, the question of retraction has not arrived. There is also a comment in para 9.9 that CA. Atul Jain while replying to the directorate on this issue has mentioned that he suffers from hypertension and diabetes, and he has given statement under pressure. It may be noted that the mere fact that the statement for Q 43 is so self-contradictory clearly indicates his frame of mind. It is well known that the Department is habitual in putting pressure while recording statements u/s 132 (4) to end the searches which has been pointed out by the Respondent.
16. While concluding the submissions that he has not violated Code of conduct and has not brought any disrepute to the Profession warranting any action against him the Respondent prayed before the Board that the prima facie opinion of the Director (Discipline) that Respondent is Guilty of Other Misconduct falling within the meaning of Item (2) of Part-IV of the First Schedule to the Chartered Accountants Act, 1949 needs to be dropped.

OBSERVATIONS OF THE BOARD:

17. The Board noted that the Respondent became the Director of the ATPL from 22nd September 2007 till it merged with KIPL on 25th February 2011 and ATPL invested an amount of Rs. 15,53,00,000/- in the shares of KIPL in the AY 2008-09. Respondent's statement was recorded on Oath by the Income Tax Authorities under section 132 (4) of the Income Tax Act and thereby his response to Question No. 43 was that the owners of the ATPL & STUPL were compensated outside the books for the agreed value between Godha family and the owners of the ATPL. Respondent in his written statement stated that he gave above said statement under undue harsh mental pressure and stress. The Board further noted that even though the said transaction

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of Rs. 15,53,00,000/- happened during the directorship of the Respondent but nowhere there is a specific mention of the Respondent being himself complicit with the KIPL regarding the investment of Rs. 15,53,00,000/- and outside book settlement.

18. The Board took heed of two separate appeals filed by KIPL, namely (Appeal Nos. CIT(A)-53/IT-276/DCCC-5(2)/2016-17 and CIT(A)-53/IT-277/DCCC-5(2)/2016-17) before the Commissioner of Income Tax, (Appeals). Further two separate appeals filed by the Income tax department, namely (No. ITA No. 3539/NUM/2018) and (No. ITA No. 3540/NUM/2018) before the Income Tax Appellate Tribunal besides 7 assessment orders of the years 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015 & 2015-2016. In all the said assessment orders the Board noted that there is nothing added in the income of the Respondent on being assessed.
19. Thus, on a conjoint perusal of the above, the Board is of the view that the Respondent has been able to substantiate his stance of being 'Not Guilty' as against the charge that the Respondent facilitated the transaction with regard to the receipt of share capital with premium by "KIPL" from "ATPL" and "STUPL" two Kolkata based companies.

CONCLUSION:

20. 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. Accordingly, the Board passed an 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

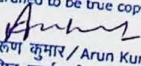
Sd/-

Dolly Chakrabarty, IAAS (Retd.)
Government Nominee

Sd/-

CA. Priti Savia
Member

Date: 27-08-2024

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

अरुण कुमार / Arun Kumar
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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