

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2024-2025)]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]

Findings under Rule 18(17) and Rule 19(2) of the Chartered Accountants
(Procedure of Investigations of Professional and Other Misconduct and Conduct
of Cases) Rules, 2007

File No: PR-G-16/18/DD/47/18/DC/1483/2021

In the matter of:

Shri Rajiv Ratan Singh,
Assistant Commissioner of Income Tax,
Office of the Assistant Commissioner of Income Tax, Circle 5(2),
R. No. G-22C, Central Revenue Building,
I.P Estate,
New Delhi- 110002.

.....Complainant

Versus

CA. Sandeep Garg (M.No.075312)
Partner, M/s. D.C Garg & Co.
Chartered Accountants
67, 2nd Floor,
Navyug Market,
Ghaziabad – 201001.

.....Respondent

Members Present:

CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)
Shri Arun Kumar, IAS (Retd.), Government Nominee (Through VC)
CA. Cotha S Srinivas, Member (Through VC)

DATE OF FINAL HEARING: 28th September 2024

Parties Present: -

Respondent : CA. Sandeep Garg (M.No.075312) (Through VC)



1. **BACKGROUND OF THE CASE:**

- 1.1 The Respondent was the Tax Auditor of M/s Cement Corporation of India Ltd. (hereinafter referred to as the CCI/ Company") for the financial year 2010-11. It is alleged that the Respondent had given incorrect reporting with regard to unabsorbed brought forward business losses.

2. **CHARGES IN BRIEF:**

- 2.1 The Respondent in his Tax Audit Report of M/s Cement Corporation of India Ltd. for the financial year 2010-11 had given incorrect reporting with regard to unabsorbed brought forward business losses. According to the Complainant Department, the unabsorbed brought forward business losses were older than 8 years which were not allowed to be carried forward as per Section 72 of the Income Tax Act, 1961. However, the same were reported as business loss available for set off with the income and the same has resulted in potential loss of revenue to the Complainant Department of Rs 244.02 crores.

3. **THE RELEVANT ISSUES DISCUSSED IN THE PRIMA FACIE OPINION DATED 24th JUNE 2020 FORMULATED BY THE DIRECTOR (DISCIPLINE) IN THE MATTER IN BRIEF, ARE GIVEN BELOW: -**

- 3.1 The Respondent in his defence stated that a Draft Rehabilitation Scheme (DRS) was prepared by the Hon'ble Board of Industrial and Financial Reconstruction (BIFR) and circulated to all the stakeholders on 21/3/2006. After considering the objections/suggestions, the DRS was modified and sanctioned on 03/5/2006. He further submitted that Hon'ble BIFR had sanctioned scheme dated 03.05.2006 with respect to the Company and circulated on the same day with the following directions:

"The duly modified sanctioned scheme is enclosed for implementation by all concerned and would come into force with immediate effect".

Further, para number 9.8(b) of the said Scheme stipulates that CBDT to consider exempting the Company from section 72 of the Income Tax Act, 1961 to carry forward the accumulated business losses beyond a period of 8 years. The said sanctioned scheme was also marked to Director Income Tax (Recovery) New Delhi. No objection from CBDT was received on records at the time of intimation of draft rehabilitation scheme on 21/3/2006 or after the sanctioned scheme was circulated on 03/05/2006 till the date of audit report i.e. 21/09/2011. He further submitted that he relied on the

directions of the sanctioned scheme passed by the Hon'ble BIFR and accepted the benefit of brought forward losses to the Company beyond 8 years and reported accordingly. He further submitted that no loss of revenue has been caused to the Income Tax Department as the Company has availed the benefits of brought forward losses of upto 8 years only as allowed under section 72 of the Income Tax Act, 1961.

- 3.2 The Complainant in his rejoinder stated that the Respondent is referring to a Rehabilitation scheme sanctioned by Hon'ble BIFR on 03/05/2006 with respect to the assessee Company in which various steps had been prescribed for the financial well-being of the assessee-Company that has been declared a sick industrial unit. Point 9.8 of the said Order is reproduced below:

"9.8 Central Board of Direct Taxes

- (a) To consider providing exemption to CCI under section 41(1) of the Income Tax Act.*
- (b) To consider exempting CCI from section 72 of the Income Tax Act to carry forward the accumulated losses beyond a period of 8 years.*
- (c) To consider exempting CCI from Capital Gain Tax on sale of its seven non-operating units i.e., Mandhar, Kurkunla, Akaltara, Adilabad, Nayagaon, Charkhi Adaadri and Delhi Grinding Unit/Bhatinda Unit.*
- (d) To consider waiving of penalties surcharges etc, if any levied in the past."*

- 3.3 A plain reading of above text clarifies that the Scheme document is asking the Central Board of Direct Taxes (CBDT) "to consider" taking some measures laid down by BIFR for the sustainability of the assessee-Company. These are clearly in the nature of suggestions or possible actions that may be taken.
- 3.4 The Complainant further stated that it is pertinent to note that as per records, no amendments to the effect was made in the Income Tax Act, 1961 nor was any Order/Circular/Instruction given by Central Board of Direct Taxes (CBDT) to give effect to the above suggestions. The Complainant further submitted that the Respondent has also failed to produce any evidence to prove that directions had been given by CBDT for the implementation of the sanctioned scheme of BIFR. In such a scenario it is not justifiable as to why the audit was completed as per the sanctioned scheme of BIFR and not as per the provisions of the Income Tax Act 1961.

- 3.5 The Complainant further submitted that Section 44AB of the Income Tax Act, 1961 makes it mandatory for every assessee with gross receipts above Rs 1 crore in a previous year, to get its books of accounts audited by an accountant and submit a report before specified date in the prescribed Form to the Income Tax Department. The accountant qualified to submit such a report has been defined in Section 288 of the Act. Rule 6G of the Income Tax Rules prescribes that the said report shall be submitted in Form 3CB with the particulars of Income entered in Form 3CD. The aforementioned Audit Report has to be in accordance with the provisions of the Act alone. Therefore, in the present case, the reliance placed by the Respondent on the Order of BIFR, instead of the Income Tax Act 1961, is misplaced and flawed. It is a contravention to the provisions of Section 44AB of the Income Tax Act 1961 and it cannot be said that this is an advertent mistake.
- 3.6 The Respondent was asked to provide documentary evidence of no objection was received from CBDT to which the Respondent stated that CBDT did not communicate any objection to the BIFR scheme of sanction dated 03/05/2006 which implied that CBDT has accepted the scheme. Since CBDT did not raise any objection in the scheme which had come in force "with immediate effect", it was considered by him as acceptance of scheme at the time of audit.
- 3.7 There is no evidence to establish that CBDT has given its approval to allow the Company to carry forward the accumulated losses beyond a period of 8 years. The Respondent merely on assumption, that no objection by CBDT is acceptance by CBDT, had submitted in his report by giving benefit to assessee to carry forward losses to auditee company beyond 8 years.
- 3.8 Further, the Respondent in his defence agreed that he relied on the directions of the sanctioned scheme passed by the Hon'ble BIFR but failed to provide evidence of sanctioned scheme by CBDT. The report issued by the Respondent proves his gross negligence and lack of due diligence in the conduct of his duties.
- 3.9 The Director (Discipline) in his Prima Facie Opinion dated 24th June 2020 opined that the Respondent is Prima Facie **Guilty** of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The said Item of the Schedule to the Act, states as under:

Item (7) of Part I of the Second Schedule: -

"A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he:

X X X X X

(7) does not exercise due diligence or is grossly negligent in the conduct of his professional duties."

3.10 The Prima Facie Opinion formed by the Director (Discipline) was considered by the Disciplinary Committee at its meeting held on 27th May 2021. The Committee on consideration of the same, concurred with the reasons given against the charges and thus, agreed with the Prima Facie opinion of the Director (Discipline) that the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part - I of the Second Schedule to the Chartered Accountants Act, 1949 and accordingly, decided to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

4. DATE(S) OF WRITTEN SUBMISSIONS/PLEADINGS BY PARTIES: -

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

S. No.	Particulars	Dated
1.	Date of Complaint in Form 'I' filed by the Complainant.	04.01.2018
2.	Date of Written Statement filed by the Respondent.	25.05.2018
3.	Date of Rejoinder filed by the Complainant.	14.08.2018
4.	Date of Prima facie Opinion formed by Director (Discipline).	24.06.2020
5.	Written Submissions filed by the Respondent after Prima Facie Opinion.	02.09.2024, 17.09.2024
6.	Written Submissions filed by the Complainant Department after Prima Facie Opinion.	-----

5. SUBMISSION OF THE RESPONDENT ON PRIMA FACIE OPINION: -

5.1 The Committee noted that the Respondent in his submissions dated 2nd September 2024 (received via email dated 5th September 2024) and 17th September 2024, in response to the Prima Facie Opinion, inter-alia, stated as under: -

- a) The Respondent referred to the complete Income Tax Return of the auditee for the f/y 2010-2011 wherein the auditee company did not set off or carry forward any

- losses exceeding 8 years for its computation of tax liability. There is no loss to the exchequer.
- b) The draft rehabilitation scheme was considered by the BIFR on 02.09.2005 and sent to the Government of India for approval. It was circulated to all the concerned parties including CBDT for their objection/suggestions.
 - c) The Respondent submitted the reference of Section 19 (2) of the Sick Industrial Companies Act, 1985 and the Circular no. 5/2009 dated 02.07.2009 issued by CBDT-Procedure for representation before BIFR and AAIFR, which states that it will be the responsibility of the DGIT (Admin) to obtain approval of CBDT in every case in which Income Tax Relief/ concessions is sought and to communicate the approval of CBDT to BIFR and the concerned AO.
 - d) No objection from CBDT had been received on records from the time of sanction of Rehabilitation Scheme dated 21.03.2006 till the date of audit report i.e. 21.09.2011.

6. BRIEF FACTS OF THE PROCEEDINGS: -

6.1 The details of the hearing(s) fixed and held/adjourned in said matter is given as under:

S. No.	Particulars	Date(s) of meeting	Status
a)	1 st Hearing	09.06.2023	Part heard and adjourned.
b)	2 nd Hearing	18.09.2023	Adjourned at the request of Respondent
c)	3 rd Hearing	25.07.2024	Adjourned at the request of Respondent
d)	4 th Hearing	20.08.2024	Part heard and adjourned.
e)	5 th Hearing	26.09.2024	Heard and concluded

6.2 On the day of the first hearing held on 9th June 2023, the Committee noted that the Respondent was present through video conferencing mode. The Committee further noted that neither the Complainant was present, nor any intimation was received from his side despite due service of notice. The Respondent was administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges. On the same, the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against him. Thereafter, looking into the fact that this was the first hearing, the Committee decided to adjourn the hearing to a future date.

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With this, the hearing in the case was part heard and adjourned.

- 6.3 On the day of the hearing held on 18th September 2023, the Committee noted that neither the Complainant was present, nor any intimation was received from his end. The Committee further noted that the Respondent vide his email dated 15th September 2023 sought adjournment on grounds of collection of documents and preparation of the case. The Committee looking into the grounds of natural justice acceded to the adjournment request made by the Respondent, and accordingly, the case was adjourned at the request of the Respondent to a future date.
- 6.4 On the day of the hearing held on 25th July 2024, the Committee noted that the Respondent vide email dated 22nd July 2024 and 24th July 2024 sought adjournment from the hearing in the case due to his non availability as he is traveling out of town due to family function. The Committee noted that the earlier hearing scheduled in the case on 18th September 2023 had also been adjourned at the request of the Respondent. However, keeping in view the principle of natural justice, the Committee acceded to the request of the Respondent for adjournment. Accordingly, the hearing in the case was adjourned at the request of the Respondent to provide a final opportunity to him to present his case before the Committee.
- 6.5 On the day of the hearing held on 20th August 2024, the Committee noted that when the case was taken up for hearing, there was no representation from the Complainant Department despite the due service of the Notice for hearing. Since the Respondent was present before it through video conferencing, the Committee decided to proceed ahead with the hearing in the case. The Committee further noted that subsequent to the last hearing held in the case on 9th June 2023, there had been a change in the composition of the Committee. The Committee enquired from the Respondent as to whether he wishes to opt for de-novo hearing in the case to which the Respondent replied in the negative and wished to continue with the hearing in the case. Thereafter, the Respondent presented his line of defence in respect of the charges alleged against him.
- 6.6 On consideration of the submissions made by the Respondent, the Committee posed certain questions to him which were responded to by him. Thus, on consideration of the submissions and documents on record, the Committee directed the Respondent to provide the following within next 10 days with a copy to the Complainant Department to provide their comments thereon, if any: -
- a) Written submissions on the Prima Facie Opinion to defend the charges alleged against him along with the relevant documentary evidence.





- b) Details of set off losses as provided in the audited Financial Statement of the Company for the Financial Year 2010-2011 and in the earlier years and how the unabsorbed loss and depreciation was carried forward to the next/subsequent year.
- c) Copy of the complete audited Financial Statement of the Company for the Financial Year 2010-2011 along with the Tax Audit report, Statement of Particulars in Form 3CD and the Income Tax return (with computation).

The Committee also advised the office to send a specific communication to the Complainant Department to ensure proper representation in the instant case before the Committee so that a logical conclusion can be arrived at in the case.

With the above, the hearing in the case was part heard and adjourned.

- 6.7 On the day of the hearing held on 26th September 2024, the Committee noted that when the case was taken up for hearing, there was no representation from the Complainant Department despite the due service/hand delivery of the Notice for hearing. Since the Respondent was present before it through video conferencing, the Committee decided to proceed ahead with the hearing in the case.
- 6.8 The Committee noted that the Respondent vide email dated 05th September 2024 and 17th September 2024 submitted his response on the documents/information sought from him at the time of last hearing which was shared with the Complainant Department vide email dated 06th September 2024 and 23rd September 2024 respectively. However, no response of the Complainant Department on the same was received. On consideration of the submissions made by the Respondent, the Committee posed certain questions to him which were responded by him. Thus, on consideration of the submissions and documents on record, the hearing in the case was concluded. After detailed deliberations, and consideration of the facts of the case, various documents on record as well as oral and written submissions made by parties before it, the Committee passed its judgment.

7. **FINDINGS OF THE COMMITTEE: -**

- 7.1 As regard the charge against the Respondent that in his Tax Audit Report of M/s Cement Corporation of India Ltd. for the financial year 2010-11 he had given incorrect reporting with regard to unabsorbed brought forward business losses, the Committee noted that the Respondent had reported the following in Form 3CD- Part A under the head- Details of brought forward loss or depreciation allowance, in the following manner to the extent available:

CEMENT CORPORATION OF INDIA LTD.
YEAR ENDED 31ST MARCH 2011
ASSESSMENT YEAR 2011-2012 **ANNEXURE NO. X**
STATEMENT OF UNABSORBED DEPRECIATION AND BUSINESS LOSSES CARRIED FORWARD
(REF ITEM NO. 25 OF FORM 3 CD)

ASSESSMENT YEAR	FINANCIAL YEAR	UNABSORBED DEPRECIATION (in Rs.)	UNABSORBED BUSINESS LOSS (in Rs.)
1989-90	1988-1989	122,31,04,973.00	0.00
1990-91	1989-1990	32,85,16,358.00	0.00
1991-92	1990-1991	44,12,18,085.00	0.00
1992-93	1991-1992	21,09,80,415.00	0.00
1993-94	1992-1993	52,69,82,500.00	0.00
1994-95	1993-1994	48,99,87,304.00	0.00
1995-96	1994-1995	45,32,83,140.00	0.00
1996-97	1995-1996	21,72,03,413.00	0.00
1997-98	1996-1997	17,39,27,852.00	90,70,66,474.00
1998-99	1997-1998	0.00	10,86,67,896.00
1999-2K	1998-1999	2,07,31,127.00	154,17,33,839.00
2000-01	1999-2000	8,39,18,014.00	177,16,26,453.00
2001-02	2000-2001	6,50,49,882.00	181,26,35,741.00
2002-03	2001-2002	4,92,55,777.00	177,16,01,053.00
2003-04	2002-2003	4,10,74,806.00	161,25,65,819.00
2004-05	2003-2004	3,70,87,534.00	37,00,54,685.00
2005-06	2004-2005	6,32,91,544.00	17,35,36,626.00
2006-07	2005-2006	3,01,26,000.00	78,95,811.00
		445,57,38,724.00	1027,73,84,397.00
SET OFF INCOME			
2007-08	2006-07	10,43,05,811.00	49,76,14,606.00
2008-09	2007-08	18,37,26,840.00	44,28,90,964.00
2009-10	2008-09	24,64,81,105.00	20,46,12,761.00
2010-11	2009-10	27,88,25,376.00	32,79,53,537.00
		81,33,39,132.00	147,30,71,868.00
		364,23,99,592.00	880,43,12,529.00

7.2 The Committee noted that it is the case of the Complainant Department that the figure of unabsorbed business loss of Rs. 880.43 crores included the following business loss of Rs. 791.33 crores pertaining to Assessment Years prior to 2002-03 (i.e. Beyond 8 years) which was not available for set off as per the provisions of Section 72 of the Income Tax Act 1961:

AY	FY	Unabsorbed Business Loss (in Rs.)
1997-98	1996-97	90,70,66,474.00
1998-99	1997-98	10,86,67,896.00
1999-2K	1998-99	154,17,33,839.00
2000-01	1999-00	177,16,26,453.00
2001-02	2000-01	181,26,35,741.00
2002-03	2001-02	177,16,01,053.00
Total		791,33,31,456.00

Due to this incorrect reporting by the Respondent as the Tax Auditor of the Company for the Financial Year 2010-11 in Form no. 3CD annexed to his Tax Audit Report dated 21st September 2011, it resulted in undue claim of unabsorbed business loss having potential tax effect of Rs. 244.52 crores as stated hereunder:

Particulars	Amount (in Rs)
Income Tax(@ 30 %)	237,39,99,436.80
Surcharge(@ 3 %)	7,12,19,983.10
Total	244,52,19,419.90

7.3 The Committee further noted that the Respondent, in his defence, primarily submitted as under:

- a) A Draft Rehabilitation Scheme (DRS) was prepared by the Hon'ble BIFR and circulated to all the stakeholders on 21.03.2006. After considering the objections/ suggestions, the DRS was modified and sanctioned on 03.05.2006 circulated on the same day with the following directions:

"The duly modified sanctioned scheme is enclosed for implementation by all concerned and would come into force with immediate effect".

Paragraph number 9.8(b) of the said Scheme stipulated as under:

"CBDT to consider exempting the Company from section 72 of the Income Tax Act, 1961 to carry forward the accumulated business losses beyond a period of 8 years."

The copy of said sanctioned scheme was also marked to Director Income Tax (Recovery) New Delhi.

- b) Circular: No. 576, dated 31-8-1990- Effect of Order passed by Board for Industrial and Financial Reconstruction under scheme for rehabilitation of sick units on determination of losses which provides as under:

"CBDT have been advised that if a sick company fails to file the return of loss within the stipulated time specified in section 139(3), and a scheme made pursuant to an Order under section 17(3) of the Sick Industrial Companies (Special Provisions) Act, 1985 is sanctioned by the BIFR under section 18 of that Act,

specifying a particular tax treatment for the carry forward and set-off of loss incurred by the sick company, the said scheme will have overriding effect over the provisions of section 80 of the Income-tax Act...

It is, however, clarified that BIFR have no authority to pass orders under section 17(2) of the Sick Industrial Companies (Special Provisions) Act authorising a sick company to file its return late or directing the Assessing Officer to allow carry forward of such loss. However, BIFR have the authority to direct any operating agency to prepare a scheme under Section 18 of the said Act. Such a scheme will automatically take into consideration the losses suffered by the sick company and may also lay down that carry forward of loss etc. should be allowed regardless of the fact that the return of income has not been filed within the time allowed under section 139(3). Once the scheme is sanctioned by BIFR, it will have overriding effect over the provisions of the Income-Tax Act, 1961 in regard to the matters covered in Circular No. 523 of 5th October, 1988 and in this Circular..."

- c) Circular no. 5/2009 dated 02.07.2009 Procedure for representation before BIFR and AAIFR, which states that it will be the responsibility of the DGIT (Admin) to obtain approval of CBDT in every case in which Income Tax Relief/ concessions is sought and to communicate the approval of CBDT to BIFR and the concerned AO.
- d) No objection from CBDT on record from the time of sanction of rehabilitation scheme dated 21st March 2006 till the date of audit report i.e. 21st September 2011.
- e) The auditee company having not set off or carry forward any losses exceeding 8 years for computation of its tax liability for the f/y 2010-2011.

7.4 At the outset, the Committee noted that the Circular: No. 576, dated 31-8-1990 - Effect of Order passed by Board for Industrial and Financial Reconstruction under scheme for rehabilitation of sick units on determination of losses as referred to by the Respondent had been withdrawn by the Board with immediate effect vide its letter of even number dated 30th December 1993. Accordingly, the same was not taken into view by the Committee while arriving at its Findings.

- 7.5 Thereafter, the Committee took into view the provisions of Section 19 (2) of the Sick Industrial Companies Act, 1985 and the Circular no. 5/2009 dated 02.07.2009 issued by CBDT which provide as under:

Section 19 (2) of the Sick Industrial Companies Act, 1985, is as follows: -

*“Every scheme referred to in sub-section (1) shall be circulated to every person required by the scheme to provide financial assistance for his consent within a period of **sixty days** from the date of such circulation or within such further period, not exceeding sixty days, as may be allowed by the Board, and if **no consent is received within such period or further period, it shall be deemed that consent has been given.**”*

Circular no. 5/2009 dated 02.07.2009 issued by CBDT: -

The DGIT (Admn) will consider each case of Income Tax reliefs/concessions under the Direct Tax Laws on merits of each individual case for the purpose of consent as contemplated in Section 19 (2) of the SICA, 1985. In cases where the company and the assessing officer have quantified the Income tax reliefs the DGIT (Admn) will communicate the consent or denial of consent to BIFR at the time of hearing itself after obtaining the approval of CBDT.

The Committee noted that a copy of the Board for Industrial and Financial Reconstruction (BIFR) Order dated 3rd May 2006 in case no. 501/96 was marked to Director Income Tax (Recovery) New Delhi also. However, no rejection or objection of the concession by the BIFR/Income Tax Department was provided to the Respondent at the time of his audit.

The Committee also noted that the written submissions of the Respondent during the course of proceedings in the instant case were shared with the Complainant Department also. However, the same was not rebutted. Thus, the Complainant Department failed to bring on record any rejection or objection of the concession by the BIFR/Income Tax Department.

- ✓ 7.6 The Committee also noted that the Respondent was also the Statutory Auditor of the Company for the Financial Year 2010-11. In his Statutory Audit Report which was

annexed to the Tax Audit Report, the Respondent stated that subject to the observations in para 5 and 6 (a to m), the Financial Statements reflect a True and Fair view of the state of affairs of the Company. The relevant portion of some of the observations is:

"(e) The Accounts of the company have been prepared on Going Concern basis despite:

(i) It being declared a sick company within the meaning of clause (O) of section 31 of Sick Industrial Companies (Special Provision) Act, 1985.

(ii) Corporation has accumulated losses far in excess of paid-up Capital & Reserves.

(iii) Under BIFR sanctioned Scheme pursuant to BIFR Order dated 3rd May 2006, sale of its Seven factories (As also two units under Nayagaon expansion).

The Company's ability to remain going concerned is largely contingent on the successful implementation of revival Scheme as envisaged in the BIFR package (also refer Note No.12). The Financial Statement do not include any adjustment relating to recoverability and classification of recorded assets and liabilities that may be necessary if the company is unable to continue as going concern."

Also, in Schedule 20 – Notes on Accounts for the Financial Statement of the Company for the Financial Year 2010-2011, the following was provided:

.....

12. "A reference was made to Board of Industrial & Financial Reconstruction under section 15(1) of Sick Industrial Co. (SP) Act, 1985 vide letter No.SEC/84/96/513 dt.25.4.96. The Company was declared sick vide Hon'ble BIFR letter No.501/96-BENCH IV SOL dt.8.8.96. Hon'ble BIFR in its hearing held on 21.03.2006 has approved the Rehabilitation Scheme prepared by M/s. IFCI (OA) and approved by Govt. of India. The Sanctioned Scheme was circulated by Hon'ble BIFR on 03.05.2006 which inter alia envisaged settlement of secured and unsecured creditors and expansion/technological upgradation of 3 operating plants and closure/sale of remaining 7 non-operating plants. As per the sanctioned scheme closure



has been made at six units and employees have been separated under VSS except Adilabad unit where matter is pending with Hon'ble High Court of A.P. Further, the Sanctioned Scheme is under implementation. -----"

- 7.7 The Committee further on perusal of the Income Tax Return of the auditee Company for the Financial Year 2010-2011 filed on 29th September 2011 (within the due date) submitted by the Respondent noted that the auditee Company did not claim carry forward of business losses beyond Assessment Year 2003-04 for computation of its tax liability as stated hereunder:

Details of Losses to be carried forward to future years									
Sl. No.	Assessment Year	Date of Filing (YYYY/MM/DD)	House Property loss	Loss from business other than loss from speculative business	Loss from speculative business	Loss from specified business	Short-term Capital loss	Long-term Capital Loss	Other sources loss (from owning race horses)
i	2003-04	2003-11-28		532,44,60,333					
ii	2004-05	2004-10-30		646,99,60,034					
iii	2005-06	2005-10-29		23,68,28,170					
iv	2006-07	2006-10-30		3,80,21,811					
v	2007-08								
vi	2008-09								
vii	2009-10	2009-09-25		0					
viii	2010-11								
ix	Total of earlier year losses			1206,92,70,348					
x	Adjustment of above losses in Schedule BFLA (see instruction)			20,26,34,367					
xi	2011-12 (Current years losses)			0	0	0	0	0	0
xii	Total loss Carried Forward to future years			1005,40,70,162		0			0

7.8 The Committee also on perusal of records available on public domain noted that the auditee Company had preferred an appeal before the Income Tax Appellate Tribunal against the Order dated 30th August 2016 passed by the Commissioner of Income Tax(Appeals)-2, New Delhi with respect to the Assessment Year 2011-2012 disallowing the claim of depreciation on the non-operating units in various years. The Income Tax Appellate Tribunal vide its Order dated 20th July 2023 allowed the appeal of the auditee Company and directed the AO to allow the depreciation as claimed by the auditee Company on the block of assets for the relevant assessment years. The Committee also noted that no appeal to the High Court against the said Order of Income Tax Appellate Tribunal in terms of the provisions of Section 260A of the Income Tax Act 1961 was found on public domain. The Committee on perusal of the Order of Income Tax Appellate Tribunal observed that there was no reference to any claim of brought forward of business losses beyond the period of 8 years.

7.9 The Committee also noted that the alleged period of misconduct in the instant case is Financial Year 2010-2011. The Complainant Department filed the complaint in Form 'I' against the Respondent on 4th January 2018, Further, despite the case being listed for hearing on five occasions, the Complainant Department chose neither to ensure representation before the Committee nor filed any written submissions to counter the defence of the Respondent.

7.10 Thus, in view of the above, the Committee was of the view that although the Respondent in Form 3CD - Part A under the head- Details of brought forward loss or depreciation allowance annexed to his Tax Audit Report for the FY 2010-11, included the business losses prior to Assessment Year 2003-04, however, since the Company did not seem to set off or carry forward any business losses exceeding 8 years i.e. beyond AY 2003-04 for computation of its tax liability for the Assessment Year 2011-2012 as per the Income Tax Return filed by the Company and brought on record by the Respondent, the Committee was inclined to give benefit to the Respondent. Accordingly, the Committee decided to hold the Respondent Not Guilty in respect of the Charge alleged against him.

8. CONCLUSION:

8.1 In view of the Findings stated in above paras, vis-à-vis material on record, the Committee gives its charge wise Findings as under: -

Charges (as per PFO)	Findings	Decision of the Committee
Para 2 as given above.	Paras 7 to 7.10 as given above	NOT GUILTY – Item (7) of Part I of the Second Schedule.

- 8.2 In view of the above observations, considering the oral and written submissions of the parties and material on record, the Committee held the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part-I of the Second Schedule to the Chartered Accountants Act, 1949.
9. Accordingly, in terms of Rule 19 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passes Order for closure of this case against the Respondent.

✓

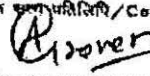
Sd/-
(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-
(MR. ARUN KUMAR, I.A.S., RETD.)
GOVERNMENT NOMINEE

Sd/-
(CA. COTHA S SRINIVAS)
MEMBER

DATE: 30th December 2024
PLACE: NEW DELHI

प्रमाणित सत्य प्रतिस्ति/ Certified True Copy


अंजू ग़ोवर / ANJU GROVER
सहायक सचिव / Assistant Secretary
अनुशासनसमयक विभाग/ Disciplinary Department
भारतीय सारणीकृत अकाउंटन्ट्स इन्स्टीट्यूट
The Institute of Chartered Accountants of India
आइसीएआई बयन, विरमास नगर, इन्डिया
ICAI Bhawan, Vasant Nagar, New Delhi, India