

Before Rajesh Bindal & Harinder Singh Sidhu, JJ.

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA—

Petitioner

versus

VIVEK KAPOOR AND OTHERS—*Respondents*

Civil Reference No.5 of 2012

March 18, 2016

Chartered Accountants Act, 1949—S.21(5)—Disciplinary action for misconduct—Removal of name from register of members for life—Reference by Institute—Grievance of Petitioner that Respondent/Chartered Accountant grossly violated code of ethics for Chartered Accountants, admitted his guilt before Income tax authorities, which resulted in defrauding revenue and thereafter, he left country—Professional, who behaves in this manner, deserves to be dealt with sternly—Conduct of respondent/chartered accountant unworthy of Chartered Accountant, who is expected to maintain high standard of professional conduct—Punishment proposed by Institute in these circumstances is quite light—Such professional deserves to be debarred from practice for life time—Hence, in exercise of powers conferred under Section 21(6) of the Act, appropriate to direct that name of respondent/chartered accountant be removed from register of members of Institute for life.

Held, that a professional, who behaves in this manner, deserves to be dealt with sternly. In our opinion, the conduct of respondent No. 1 is wholly unworthy of a Chartered Accountant, who is expected to maintain high standard of professional conduct. The punishment proposed by the Institute in these circumstances is quite lighter. Such a professional deserves to be debarred from practice for life time. Hence, in exercise of powers conferred under Section 21(6) of the Act, we deem it appropriate to direct that name of respondent No. 1 be removed from the register of members of the Institute for life

(Para 15)

Arun Nehra, Advocate, *for the petitioner.*

None for respondent No. 1.

P. C. Goel, Advocate, for Union of India.

Denesh Goyal, Advocate, for respondent No. 4.

RAJESH BINDAL, J.

(1) This order will dispose of three references bearing Nos. 5 and 6 of 2012 and 1 of 2013 received from Institute of Chartered Accountants of India (for short, 'the Institute') under Section 21(5) of the Chartered Accountants Act, 1949 (for short, 'the Act') in respect of disciplinary action taken against respondent No. 1-Vivek Kapoor, a practising Chartered Accountant at Amritsar.

(2) After receipt of statement of case, notice was issued to respondent No. 1, however, it was reported that he had gone broad, hence, could not be served. Number of efforts were made thereafter for service of respondent No. 1, but all failed. The order passed on 7.8.2013 shows that house of respondent No. 1 was found to be locked. The Process Server was informed that he had sold his house six/seven months ago and had gone to some unknown place. The application for substituted service was allowed. The service was effected by affixation and further by publication in two newspapers (English and Punjabi). Despite that, none appeared for respondent No. 1.

(3) Learned counsel for the petitioner submitted that disciplinary action against respondent No. 1 was initiated on the complaint dated 1.2.2006 received from the Commissioner of Income Tax-II, Amritsar. The allegations against respondent No. 1 were that he was master-mind in a scam of providing accommodation entries to various concerns after charging commission ranging from 1% to 3%. The beneficiaries were shown partners in various exporting concerns by writing forged partnership deeds. Several bank accounts were opened using fake names, photographs and introducers. Respondent No.1 himself was operating all benami bank accounts. After receipt of the complaint, proceedings were initiated against respondent No. 1. Copy of the complaint was sent to respondent No. 1 vide letter dated 2.6.2006 for response, however, the notice was received back undelivered with postal remarks "left country". The matter was considered in the meeting of the Disciplinary Council in its meeting held in November, 2008. Respondent No. 1 was found guilty of professional and other misconduct. The matter was referred to the Disciplinary Committee for enquiry. Even during the course of enquiry before the Disciplinary Committee, despite best efforts, respondent No. 1 could not be served. The Disciplinary Committee submitted its report on 10.6.2010, which was forwarded to respondent No. 1 as well as the complainant. They were informed that the report shall be considered by the Council in its meeting. They were at liberty to file any response thereto. After

considering the submissions of the complainant, the Council accepted the report of the Disciplinary Committee. Respondent No. 1 was held guilty of other misconduct under Section 22 read with Section 21 of the Act. The Council, vide order dated 14.7.2011, decided to recommend to this court for removal of the name of respondent No. 1 from the register of members for a period of 10 years.

(4) The submission of learned counsel for the petitioner is that respondent No. 1 having been found guilty of misconduct and he having failed to avail of the opportunity of hearing afforded at different stages, not only the recommendations made by the Council be accepted, but seeing the conduct of respondent No. 1, he deserves to be penalised by removing his name from the register of members for life. He being a Chartered Accountant was bound to discharge his duties strictly in accordance with law, however, he not only violated the provisions but caused loss of revenue to the State to the tune of lacs of rupees for his undue benefit. He further submitted that respondent No. 1 had, in fact, admitted his guilt before the income-tax authorities later on. After committing the fraud, he left the country.

(5) Learned counsels appearing for Union of India and Income-tax Department supported the case of the petitioner.

(6) Heard learned counsel for the parties and perused the paper book.

(7) Though there are many frauds in which Chartered Accountants are involved, but there are very few cases in which the complaints against them are pursued to its logical end and the Institute take disciplinary action against its members. In the case in hand, the process against respondent No. 1 was initiated with a complaint filed by the Commissioner of Income Tax- II, Amritsar on 1.2.2006, noticing fraud resulting in loss of lacs of rupees as revenue to the Government. The relevant parts of the complaint are extracted below:

“1. Shri Vivek Kapoor who was a whole time practicing Chartered Accountant, practicing mainly at Amritsar, was engaged in the business of giving accommodation entries to various persons after charging commission ranging from 1 to 3% during the period 1997-98 to 2001-02. The said Chartered Accountant had opened, admittedly 15 bank accounts at Amritsar by using fake names, photographs and introducers. He used to operate all these bogus accounts through which the accommodation entries were routed. Cash

was obtained from the beneficiaries and bank drafts/cheques were issued to beneficiaries. In most of the cases, the beneficiaries were shown as partners in various exporting concerns by writing forged partnership deeds. In such cases the drats/cheques received by the beneficiaries were claimed by them as share of profit from such exporting firms. In few other cases the entries were also given to the beneficiaries by way of (i) sales turnover, (ii) share application money and (iii) loans etc. Additional income on account of the above said business of Rs. 42,64,000/- was offered by Shri Vivek Kapoor before the Settlement Commission following enquiries against him for assessment year 1998-99 to 2002-03.

2. The above conduct amounts to professional misconduct in relation to Chartered Accountants in practice as per para 11 of the First Schedule which states that a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he engages in any business or occupation other than the profession of Chartered Accountants unless permitted by the Council so to engage.

3. xx xx xx

4. Shri Vivek Kapoor Chartered Accountant made duplicate partnership deeds, profit and loss accounts and balance sheets on the basis of client records who were genuine exporters available with him in his professional capacity. He had admitted this fact in para 1.3 of the statement of facts (Annexure-II/2) submitted by him before Settlement Commission. This fact is also evident from the affidavits of Shri Ravinder Pal Mehra and Shri Shahsi Pal Mehra (Annexures 3A and 3B) and the petition u/s 273A of Zubin Khurana, Alka Khurana, Vinod Khurana (Annexure 6A, 7A and 8A) and the legal notices sent by Zubin Khurana, Alka Khurana, Vinod Khurana to Shri Vivek Kapoor (Annexure 6B, 7B, 8B).

(5) Shri Vivek Kapoor was advisor of Zubin Khurana, Alka Khurana, Vinod Khurana. These persons have sent legal notice to him (enclosed as Annexure 6B, 7B, 8B), which shows that he did not disclose the true statement of affairs.

(6) The accommodation entries given by him to various

persons as admitted by him in the statement of facts (Annexure-2) and statements given before the Investigation Wing (Annexure 1A, 1B and 1C) as such Shri Vivek Kapoor failed to report a material mis-statement known to him.

(7) The overall misconduct of Shri Vivek Kapoor in giving bogus entries, fraudulently preparing partnership deeds, profit and loss account, balance sheet etc. as detailed in his own statements before the Investigation Wing, Amritsar and in his application before the Settlement Commission clearing being out that Shri Vivek Kapoor was grossly negligent in conduct of his professional duties.”

(8) After receipt of the complaint, copy thereof was sent to respondent No. 1 vide letter dated 2.6.2006 for his response. He did not submit any reply. The matter was referred by the Council to the Disciplinary Committee. Even before the Disciplinary Committee, respondent No. 1 could not be served as he left the country. The Disciplinary Committee submitted its report on 10.6.2010. The findings and the conclusions recorded by the Disciplinary Committee are extracted below:

FINDINGS

10. The Committee considered the submissions made by the complainant and the witnesses who had appeared before the Committee. The Committee also perused the documents placed on record by the complainant.

11. The complaint was received duly filled in Form 8 by the Commissioner of Income-tax-II, Amritsar and it was noted that the respondent has been in full time practice as a Chartered Accountant at Amritsar. The respondent has failed to submit his written statement inspite of regular reminders. The letters were returned undelivered with the postal remarks “Prapt karta desh chor kar chala gaya hai”.

12. The Committee is of the view that the respondent has opened various bank accounts using fake names and photographs. He was also operating all these bogus accounts to route the accommodation entries. The cash was obtained from the beneficiaries and the bank draft or the cheques were issued to the beneficiaries. In most of the cases, beneficiaries were shown as partners in various export concerns by making forged partnership deeds. The cheques received by

the beneficiaries were given to them as the tax free bonds derived from the exports. In few of the cases, the beneficiaries were also given by way of sales turnover, share application and loans. All these have been very well admitted by the respondent in the statement given by him before the income-tax authorities and also in the application made before the Settlement Commission. The Committee also examined the witnesses, namely, Shri Ravinder Pal Mehra and Shri Shashi Pal Mehra who had given the statement on oath before the Commissioner of Income-tax as well. The witnesses also deposed before the Committee that the respondent has misguided them by explaining that the income when would be shown would not be taxable as it is in the form of export profit. Thus, the respondent has performed the acts, which are not expected of a Chartered Accountant.

13. Considering the overall facts stated as above, the Committee is of the view that the respondent had indulged in opening and operating Bank Accounting using fake names and photographs, giving bogus entries, preparing fraudulent partnership deeds. Profit & Loss Account and Balance Sheet and has thereby done cheating with clients and has help clients to defraud the revenue by helping in evading Taxes and, therefore, has committed acts which are unbecoming of a Chartered Accountant. The Committee is thus of the view that the respondent is guilty of "Other Misconduct" under Section 22 read with Section 21 of the Chartered Accountants Act, 1949.

CONCLUSION:

15. Thus, in conclusion, in the considered opinion of the Committee, the respondent is guilty of "Other Misconduct" under Section 22 read with Section 21 of the Chartered Accountants Act, 1949."

(9) On receipt of the report of the Disciplinary Committee, the Council observed as under:

"10. On consideration of the Report of the Disciplinary Committee along with the written representations dated 17th August, 2010, 15th March, 2011, 11th April, 2011, 24th May, 2011 and 30th June, 2011 received from the complainant-Department, the Council decided to accept the report of

Disciplinary Committee and accordingly held that the respondent was guilty of “Other Misconduct” under Section 22 read with Section 21 of the Chartered Accountants Act, 1949.

11. The Council also decided to recommend to the High Court that the name of the respondent be removed from the Register of Members for a period of ten years which shall run concurrently alongwith the same punishment recommended in other two cases i.e., [25-CA (G-11)/2004] and [25-CA(S-27)/ 2005] against the same respondent.”

(10) The case against respondent No. 1 was established on the basis of admissions made by him before Income-tax authorities. The allegations against him were not denied by him at any stage of the proceedings, either before the Council or the Disciplinary Committee. Even before this court, respondent No. 1 remained unrepresented despite service. Some of the admissions made by respondent No. 1 before the Income-tax authorities have been referred to by learned counsel for the petitioner, which are extracted below:

“Statement of Sh. Vivek Kapoor recorded on 15.1.2002

Q.1 Pl. identify yourself.

Ans. I am Vivek Kapoor and am working as Chartered Accountant since 1982. I am educated upto B.A. and as stated earlier have done C.A. I am practicing as income tax consultant for the last 20 years. I am practicing only at Amritsar and not anywhere else. But I am having outstation clients in Delhi only, nowhere else.

Q. 2 It has been noted that you have introduced two accounts in the name of M/s J K Enterprises, Prop. Deepak Kumar in OBC, Putlighar and of Mr. Shiv Kumar in OBC, Civil Lines. Do you accept this.

Ans. It is submitted that I being a good citizen and since my conscious is also picking me I want to tell your good self the whole story. Actually I was being led into the bank entry business by Sh. Ashwani Mittal and Sh. Raj Kumar Gupta. I met Mr. Raj Kumar Gupta first and he introduced me to Sh. Ashwani Mittal. Raj Kumar Gupta is resident of Yamuna Nagar and is practicing C.A. there. Ashwani Mittal is otherwise not in practice and is resident of

Jagadhari-Khera Bazar. I am having his telephone numbers which are 9812078860 (mobile), 47504 (residence) and 42713 (office). They came to me at Amritsar in the year 1997 when Sh. Raj Kumar Gupta had come for some bank audit. During the meeting they asked me to offer accounts in various names at Amritsar so that the accommodation entries may be given at Yamuna Nagar and Jagadhari. They were after getting the entries of export concerns. This was because the export project is tax free. Since I was having some export concerns with me. I was lured by them into sending the export entries to their clients at Yamuna Nagar and Jagadhari.

At Amritsar I was only being sent the cash by this person, i.e., Ashwani Mittal. When the cash being received it was then deposited in various bank accounts at Amritsar which I shall state later on. The cash was sent on the instruction of Sh. Ashwani Mittal with the direction reg only the name blank and the amount of the draft to be prepared. In fact Ashwani Gupta is in the league with the local C.As. at Yamuna Nagar who approach him and he then sends the money to Amritsar. The money received at Amritsar was deposited by me with the help of my employees in the office.

They used to prepare the drafts from the bank and send the drafts to Yamuna Nagar at the address of Ashwani Mittal, Kheri Bazar, Jagadhari by courier service i.e. First Flight, Court Road, Opp. Swami Motors, Amritsar. The detail of the bank accounts used at Amritsar is as follows:

- (1) OBC Putlighar in the name of JK Enterprises Prop. Deepak Kumar, 52626
- (2) OBC Civil Lines in the name of Shiv Kumar A/c No. 13105
- (3) OBC Hall Bazar in the name of J K Enterprises Prop. Deepak Kumar 10350
- (4) OBC Jallianwala Bagh in the name of J K Enterprises
- (5) CBI Civil Lines in the name of J K Enterprises A/c No. 943
- (6) SBOP East Mohan Nagar in the name of A. G. Exports

and M/s R. K. Overseas

(7) State Bank of Bikaner and Jaipur, AG Exports, Rajan Arora HUF, Bee Gee International, Bani Exports

(8) P. S. B. Sindh vidyalaya in the name of Bani Export

(9) P. S. B. Tanda Talab in the name of Jac Bros.

(10) In addition to the above it is also informed that as per my intimation Ashwani Mittal and his association have opened an account in the name of Jac Bros in Central Bank of India Yamuna Nagar or Jagadhri. In this account along with the actual partners of Jac Brother whose photographs were prepared by me (without the knowledge of the actual partners of Jac Bros) Mr. SC Garg, Shallu Gupta, Atul Garg etc. were partners. I am supplying you the detail of the same.

(11) Also it is intimated that the parties have not only taken bank entries but also cash entries straightway and I am furnishing the copy of the account of these persons. These persons have cash entries from R. K. Overseas (without the knowledge of actual partners or in the books of actual partners).

(12) In the banks the entry(s) are also to serve other stations. It is further submitted that all the photos except of Shiv Kumar are also false. I have told everything because I felt that this was not right thing being done by me. I want to clear my consciousness and come out clean before the department. It is submitted that other than the export entries to the partners, some share application money was also sent in favour of T. G. Leisure & Resorts P. Ltd. and also some money was given to Daisy Investments i.e. Awayzet Road, Delhi. Entries worth 60 lacs (approx) were given to them. All of these are done on the instruction given by Ashwani Mittal. Whatever is stated above is true to best of my knowledge and belief and has been stated voluntarily without any coercion.

Q. Please now tell whether the entries which were being given through your banks were for some consideration?

Ans. Yes, this was consideration involved which ranged between one to three percent while there were entries also

on which I did not get any consideration. I am ready to pay taxes on it. My case maybe viewed sympathetically. I have discussed everything. I am ready to pay taxes subject to no penalty and prosecution.

Statement of Sh. Vivek Kapoor recorded on 18.1.2002

xx xx xx

Q.3 Pl. tell who is Deepak Kumar, the prop. of JK Enterprises in the account 52626 in OBC Putlighar.

Ans. Actually nobody in the name of Deepak Kumar exists. Any available photograph was attached. This photograph is not known to me. However the account was operated by me and I used to sign as Deepak on the cheques.

Q.4 Pl tell who is Deepak Kumar on the account opening form of A/c number 10350 in OBC Hall Bazar.

Ans. This account was also operated by me and I used to sign as Deepak Kumar. However the photograph which was picked randomly in this case happen to be that of Manu r/o Gopal Di Haqtti, Swawer Mandi, Amritsar. He happened to be one of my articles.

Similar in the OBC Jalianwala Bagh account in the name of Deepak Kumar prop. J K Enterprises the photograph is of somebody else. But the account was operated by me by signing again as Deepak. The photograph was arranged randomly and I do not know who is the person. Also in the account of J K Enterprises Prop Deepak Kumar in CBI (Central Bank of India) Civil Lines, Amritsar the photograph is of somebody else, and was arranged randomly. However again the account was operated by me by signing as Deepak.

In the Jee Bee International also the signature of Deepak Kumar are done by me but the photograph of Ajay Kumar who is working as an accountant with Sanjay Weaving Co. Verka.

Q.5 Pl tell who is Sameer Arora signing the cheques of AG Exports in SBOP East Mohan Nagar, Amritsar and who is signing as Vicky in the RK Overseas.

Ans. In RK Overseas account with SBOP the account was

opened as a proprietary concern and I used to sign as Vicky on the cheques and operate the same. The photocopy of the cheque No. 0292563 dated 12.11.98 from account No. 1344 of RK Overseas shown to me has been assigned by me and on the reverse of the cheque the application for the issue of demand draft favouring Sushil Gupta has also been written by me. It is submitted that now I recollect that this concern was opened as partnership concern with Kuljit Singh as partner and Vicky. Kuljit Singh was a sham name and I signed as Kuljit Singh.

The AG Exports was also opened as a partnership with SBOP East Mohan Nagar with Sameer Arora and Avtar Singh as partners. The signatures are of Sameer Arora and Avtar Singh but these are not any real persons.

Q.6 What about the account of AG Exports with State Bank of Bikaner & Jaipur.

Ans. This was an account opened as proprietorship in the name of Rajiv Kanth who was a typist with me. He is presently working with Hardayal Singh & Sons, Tarn Taran Road, Amritsar. Though he has signed all the cheques but the same have been done on my instructions. Similarly the account of Bee International was also opened by me as stated earlier. I used to sign as Deepak and I used to sign as Benu. The photograph of the lady is not of somebody known to me but has been just arranged and provided to the bank.

Also the account of Rajan Arora and Bani Exports was also operated by me. The photograph on the Bani Export account is that of Sandeep Singh resident of Chall Mandi and the photograph on Rajan Arora HUF account is of someone not known to me and has been randomly picked.

xx xx xx

In the end I would like to state that all the entries using the names of various export namely RK Overseas, AG Exports, Bani Exports, Jac Bros. Bee Bee International either cash, cheque or draft are not having any basis. This is only a method of converting the unaccounted i.e. black money of the beneficiaries as legitimate accounted money without the payment of income tax.”

(11) Besides this, respondent No. 1 filed application before the Settlement Commission constituted under the Act for settlement of his income tax cases by surrendering undisclosed income. In the statement of facts submitted by respondent No. 1 before the Settlement Commission, he again admitted his *modus operandi*. The same are extracted below:

“Statement of Facts

1.1 The applicant is a whole time practicing Chartered Accountant practicing Company in Amritsar and having a few clients with Branch Offices in Delhi and Karnal as well. The applicant was also auditing the books of account of the following exporter firms u/s 44AB of the Act.

1. M/s AG Exports, Tarn Taran Road, Amritsar.
2. M/s Bant Exports, Tarn Taran Road, Amritsar.
3. M/s R. K. Overseas, Tarn Taran Road, Amritsar.
4. M/s Jac Bros., Tarn Taran Road, Amritsar.
5. M/s Bee Bee International, 62- Bhandari Bridge, Amritsar.
6. M/s Gaurav Arora, 62- Bhandari Bridge, Amritsar.
7. M/s Kiran International, Tarn Taran Road, Amritsar.
9. M/s Parveen Suneja, Bagh Ramanand, Amritsar.

1.2 As already stated the financial position of the applicant was quite weak and the added illness of his old parents was proving burdensome.

1.3 During the financial year 1997-98, the applicant met Shri Ashwani Mittal and a chartered Accountant Shri Raj Kumar Gupta both of Yamuna Nagar, who coerced and prevailed upon him to enter into the business of giving accommodating entries. The *modus operandi* suggested by them was that applicant would provide them with true copies of the Trading, Profit & Loss A/c and Balance Sheets of the genuine exporters for which the applicant was the Auditor on the basis of the actual balance sheets of such genuine exporters, one of them would prepare duplicate profit & loss account, balance

sheets and partnership deeds with deferent set of partners and locate persons interested in buying accommodation entries of tax free export profits. The applicant would then open bank accounts in various banks especially in the bank/ branches where the bank accounts of genuine exporters existed. The accommodating entries were to be routed through the said bank accounts. In pursuance of the said scheme, the following bank accounts were opened.

Name of Bank	Name of Accountant
OBC, Civil Lines, ASR	Shiv Kumar A/c No. 13105
Central Bank of India, Civil Lines, ASR	J.K. Enterprises A/c No. 943
OBC,Putlighar, Amritsar	J.K. Enterprises A/c No. 52626
OBC, Hall Bazar, ASR	J.K. Enterprises A/c No. 10650
OBC, Bagh Jallianwala, ASR	J.K. Enterprises A/c No. 6823
State Bank of Patiala, East Mohan Nagar, ASR	A.G. Exports A/c No. 1338
State Bank of Patiala, East Mohan Nagar, ASR	R.K. Overseas A/c No. 1344
Pb. & Sind Bank, Andhvidalaya	Bani Exports A/c No. 1005
PNB, Green Avenue, ASR	Bee Bee Internatinal A/c No. 1121
State Bank of Bikaner & Jaipur, M.M.M. Road	A.G. Exports A/c No. 288
State Bank of Bikaner & Jaipur, M.M.M. Road	Bee Bee International A/c No. 294
State Bank of Bikaner & Jaipur, M.M.M. Road	Gaurav Arora A/c No. 369

State Bank of Bikaner & Jaipur, M.M.M. Road	Rajan Arora HUF A/c No. 354
Pb. & Sind Bank, Tunda Talab, ASR	Jac Bros., A/c No. 1211
Central Bank of India Guru Bazar, ASR	J.K. Enterprises A/c No. 1502

- 1.4 None of the aforesaid accounts were in the name of the applicant and as such none of the deposits or remittances in the said accounts belonged to the applicant.
- 1.5 After preparation of duplicate sets of Trading and Profit & Loss A/c, Capital are having names of various interested parties and balance sheets, as well as duplicate partnership deeds having names of interested parties as partners and opening of bank accounts, the next step used to be to issue bank drafts interested parties. The bank drafts/cheques were issued under the directions of Shri Ashwani Mittal of Yamuna Nagar. The drafts were issued mainly for outstation parties based in cities like Yamuna Nagar, Panipat, Ponta Sahib, Faridabad and Delhi etc. the applicant knew none of the said parties.
- 1.6 The total funds deposited in various bank account were arranged and given by Shri Ashwani Mittal of Yamuna Nagar. The drafts were made in the names supplied by him.
- 1.7 There were also transfers from the other banks and sometimes cash was withdrawn which was refunded to the parties as directed by Shri Ashwani Mittal.
- 1.8 The applicant also gave certain accommodating entries to the parties in Amritsar, which were known to him only. The applicant also earned commission by using his contracts without various clients for arranging sales turnover. The cash received by way of sale proceeds was remitted to the sellers through cheques issued from the aforesaid bank accounts. A few parties were also given accommodating entries

by way of Share application money.

1.9 The applicant had employed staff for handling cash and for getting drafts prepared. The applicant also incurred various expenses of the nature of conveyance, stationary, photocopying, bank account opening expenses etc.

1.10 The applicant invested the savings cut of commission earned in fixed deposits and also gave private cash loans. The interest earned on the said movements is also being offered for tax.

Assessment Years Involved

Assessment years 1998-99 to 2002-03

Previous Years

1.4.1997 to 31.3.2002

Status

Individual

MANNER IN WHICH INCOME HAS BEEN DERIVED

The applicant has been providing accommodating entries in the form of export profits, loans, creating turn over and share application money. Most of the time, the two persons of Jamuna Nagar mentioned above would refer the parties but, sometimes, the parties desirous of converting their unaccounted money into accounted one would contact the applicant directly. The rates of commission varied. It was 1% of the amount of the entries in respect of the cases referred by Shri Ashwani Mittal of Yamuna Nagar and 3% for the parties contacting directly. A few parties mostly relatives were not charged any commission.

The amount of commission earned was partly spent but was mostly invested in deposits of small amounts or lent in cash on interest to third parties. While computing interest on investment it has been presumed that all the available funds/ savings were deployed for earning interest @ 12% for the whole year.

The applicant after carefully perusing his profit and loss

account filed before the income tax department for the AY. 1998-99 to AY 2001-02, had identified certain expenses that may not have been incurred for the purpose profession and has therefore offered the same to tax before the Hon'ble Settlement Commission. The applicant had also offered to tax for each of the assessment years certain amounts which may have been earned by way of commissions etc. for which no records are available in order to ensure that there is no escapement of income. Neither the commission nor the interest income earned through investments was recorded in the regular books of accounts. There is also no other record of such transactions except the bank accounts. Based on the entries in the bank accounts and on the basis of memory and the unaccounted net wealth, the applicant has prepared the revised computation of income for each of the five years. The revised income and expenditure accounts and the balance sheets that are annexed in Appendix to this application also support them. Revised income and expenditure accounts, capital account and balance sheets for each of the five years are as per appendix. The consolidated utilization statement is as per appendix.

TRUE AND FULL DISCLOSURE

The applicant has disclosed additional income of Rs. 42,64,000/- for all the five years on which the additional tax comes to Rs. 13,32,721/- as per the yearly computations given in the appendices. These disclosures are in addition to regular incomes for these years already disclosed in the regular of income furnished from time to time.

ISSUES TO BE SETTLED

1. Determination of the ownership of the benami bank accounts and the nature of the deposits and withdrawals therein.
2. Determination of the income in respect of each of the assessment years from 1998-99 to 2002-03.

TERMS OF SETTLEMENT

1. Interest under various sections of the income tax act should not be levied or may kindly be waived as the case

may be.

2. Penalty under various sections of the Income Tax Act 1961 should not be charged and should be waived, as the case may be.

3. Immunities from prosecution under the relevant provisions of the Income Tax Act, related sections of the IPC and Central Acts, as may be applicable, may kindly be granted.

4. Grant of installments for the payment taxes as a consequence of the settlement.

5. Permission to bring the undisclosed income in the books of account.

6. Such other relief to the applicant as may be deemed fit by the Hon'ble Commission having regard to the facts and circumstances of the applicant's case may kindly be allowed.

LEAVE TO MODIFY APPLICATION

The applicant craves leave to add, amend or modify this application or any part thereof.

REVISED STATEMENT OF AFFAIRS

The revised statement of affairs as at 31.3.2002 is at Appendix.”

(12) Section 21 of the Act, which is relevant, is reproduced hereunder:

“S.21. Procedure in inquiries relating to misconduct of members of Institute (1) Where on receipt of information by, or of a complaint made to it, the Council is prima facie of opinion that any member of the Institute has been guilty of any professional or other misconduct, the Council shall refer the case to the Disciplinary Committee, and the Disciplinary Committee shall thereupon hold such inquiry and in such manner as may be prescribed, and shall report the result of its inquiry to the Council.

(2) If on receipt of such report the Council finds that the member of the Institute is not guilty of any professional or other misconduct, it shall record its finding accordingly and

direct that the proceedings shall be filed or the complaint shall be dismissed, as the case may be.

(3) If on receipt of such report the Council finds that the member of the Institute is guilty of any professional or other misconduct, it shall record a finding accordingly and shall proceed in the manner laid down in the succeeding sub-section.

(4) Where the finding is that a member of the Institute has been guilty of a professional misconduct specified in the First Schedule, the Council shall afford to the member an opportunity of being heard before orders are passed against him on the case, and may thereafter make any of the following orders, namely:

(a) reprimand the member;

(b) remove the name of the member from the Register for such period, not exceeding five years, as the Council thinks fit:

Provided that where it appears to the Council that the case is one in which the name of the member ought to be removed from the Register for a period exceeding five years or permanently, it shall not make any order referred to in clause

(a) or clause (b), but shall forward the case to the High Court with its recommendations thereon.

(5) Where the misconduct in respect of which the Council has found any member of the Institute guilty is misconduct other than any such misconduct as is referred to in subsection (4), it shall forward the case to the High Court with its recommendations thereon.

(6) On receipt of any case under sub-section (4) or subsection (5), the High Court shall fix a date for the hearing of the case and shall cause notice of the date so fixed to be given to the member of the Institute concerned, the Council and to the Central Government, and shall afford such member, the Council and the Central Government an opportunity of being heard, and may thereafter make any of the following orders namely:

(a) direct that the proceedings be filed, or dismiss the complaint, as the case may be;

- (b) reprimand the member;
- (c) remove him from membership of the Institute either permanently or for such period as the High Court thinks fit;
- (d) refer the case to the Council for further inquiry and report.
- (7)
- (8) For the purposes of any inquiry under this section, the Council and the Disciplinary Committee shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:
 - (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) the discovery and production of any document; and
 - (c) receiving evidence on affidavit.”

(13) As per the scheme of the Act, after following due procedure as laid down, the Council can take action against its members if the removal of name of a member from the register is upto the period of five years. In case the penalty proposed to be imposed is of a period more than five years, then the matter is to be referred to this court. After receipt of the recommendations from the Council, the court is competent to pass any order in terms of powers conferred under Section 21(6) of the Act.

(14) Code of Ethics was introduced for Chartered Accountants, the introduction of which reads as under:

“INTRODUCTION

Financial statements of an enterprise depict the wholesome financial situation of the enterprise for a particular period/ at a particular date. The information in these statements are of vital importance for a large section of the society, which deal with that enterprise. It may be suppliers of material, customers, investors, Banks, Financial Institutions, Insurers, Government, Tax Authorities, employees, collaborators and even their competitors. Keeping in view the importance of these statements and the large section of the society who use these statements for taking many vital decisions, it is necessary that these statements are attested by some person who is expert in this field so that the objectivity, integrity, reliability and credibility of the

information is assured to a large extent. This function of attestation is done by professional accounts, who are Chartered Accountants in our country. It has been however observed that there have been a number of cases in banks and financial institutions wherein due to the erroneous/ambiguous advice tendered by the respective Chartered Accountants, borrowal accounts have had to face quick mortality resulting in loss for the bank. Many a time this has also resulted in vigilance cases being initiated with the allegations of connivance/malafide/gross negligence being attributed to the concerned Bank officials.

1.1 For the succession of the profession of accountancy a self- imposed Code of Ethics is essential to command the respect and confidence of the general public. Chartered Accountants in the service of the affairs of others have responsibilities and obligations to those who rely on their work.”

International Federation of Accountants in its Code of Ethics had given great importance to public interest. It was framed with objectives of credibility, professionalism, quality of service and confidence keeping in view fundamental principles of integrity etc.

(15) From the facts, noticed above, it is clear that respondent No. 1 grossly violated the code of ethics for Chartered Accountants. He admitted his guilt before the Income-tax authorities, which resulted in defrauding the revenue. Thereafter, he left the country. He did not avail of the opportunity afforded to him at different stages to defend the case against him. A professional, who behaves in this manner, deserves to be dealt with sternly. In our opinion, the conduct of respondent No. 1 is wholly unworthy of a Chartered Accountant, who is expected to maintain high standard of professional conduct. The punishment proposed by the Institute in these circumstances is quite lighter. Such a professional deserves to be debarred from practice for life time. Hence, in exercise of powers conferred under Section 21(6) of the Act, we deem it appropriate to direct that name of respondent No. 1 be removed from the register of members of the Institute for life. Ordered accordingly.

(16) The References are disposed of accordingly.