

## CA's name to be removed from membership for carrying out his business while practicing: Delhi HC

**Summary – The High Court of Delhi in a recent case of B.K. Dhingra, (the Assessee) held that Chartered Accountants Act: Where respondent-Chartered accountant did not contest finding of Disciplinary Committee and Council that he was carrying on business of company directly and his claim that he was merely a director in his professional capacity was incorrect, respondent was guilty of professional misconduct**

### Facts

- A complaint had been lodged by the Deputy General Manager, Union Bank of India highlighting that the respondent was a Chartered Accountant of the company which had obtained a term loan from the bank and as per the loan agreement had to raise equity and unsecured loans in sum of Rs. 88.58 lakhs. Neither equity nor unsecured loans came to the company, the respondent certified the balance sheet as on 24-6-1996 confirming that long term funds were credited to the account of the company and relying on the strength thereof the bank released the funds.
- The Disciplinary Committee and Council found that respondent was carrying out business from premises of a company 'I' and was a director of said company.
- The instant reference was filed under section 21(5) against the respondent-Chartered accountant.

### Held

- As per section 21 the inquiry has two stages. At stage one the Council looks into the material and forms a *prima facie* opinion whether case is made out to hold an inquiry. If the decision is that *prima facie* case is made out to hold an inquiry then an inquiry has to be held. The then existing Chartered Accountants Regulations, 1988, pertaining to the instant case period, specify the procedure to be followed. The complaint has to be forwarded to the member of the institute for the written statement of defence by the member to which the complainant is given an opportunity to file a rejoinder. The matter is then re-considered by the Council and if recording of evidence is warranted a Disciplinary Committee is constituted which conducts an inquiry in accordance with Regulation 15 and submit a report as contemplated by Regulation 16. On the basis of the report of the Disciplinary Committee if the Council is of the opinion that a penalty has to be inflicted upon the member, after hearing the member, final decision is taken which is in the nature of a recommendation to the High Court to take the final decision.
- In the instant case aforesaid procedure has been followed, with a blemish which has now been cured, inasmuch since finding *qua* the final recommendations of the Council were *sans* reasons the Court had remanded the matter *vide* order dated 11-11-2013 to the Council which has in its meeting

dated 21-3-2011 taken a decision giving reasons recommending name of the respondent to be removed from the Register of Members for a period of three years.

- Since the respondent has chosen not to appear and assist the Court, the record submitted are gone through.
- The findings by the Disciplinary Committee and the Council bring out something very disturbing. The address of 'I' is the place wherefrom the respondent carries on his business. He has signed various cheques and letters on behalf of 'I'. A letter dated 1-8-1996 issued by the sales tax authorities mentions the dealer as 'B', Director of 'I'. The letter appears as if registration granted to the dealer is in the capacity of the dealer being a sole proprietor. The report brings out that as a Chartered Accountant the respondent is carrying on business directly and his claim that he is merely a Director in his professional capacity is incorrect.
- Since the findings with reasons given by the Council have not been controverted, in that, the respondent has chosen not to contest the instant proceedings, the findings of the Council are not reopened which are detailed and would rest of crystallizing the same as above. Indeed, professional misconduct under clauses 5,6, 7 and 8 of Part I of the 2nd Schedule is made out and it is concurred, and thus penalty of removing respondent's name from the membership register of the Council for a period of three years is inflicted upon.