

CENTRAL ADMINISTRATIVE TRIBUNAL**BANGALORE BENCH****ORIGINAL APPLICATION NO.170/00308/2020**

ORDER RESERVED ON 18.12.2020

DATE OF ORDER:

CORAM:**HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)****HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)**

Ms. Neera Malhotra

Aged about 54 years

Commissioner of Income Tax (DR)-1 (ITAT)

Office at Commissioner of Income Tax (DR) – 1

(ITAT), No. 51, Behind Jal Bhavan

1st Cross, 4th 'T' Block East

Tilak Nagar, Jayanagar Road,

Bengaluru 560 041

....Applicant

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(By Advocate Shri Ajay R. Anneppanavar)

Vs.

1. Union of India,
Ministry of Finance,
Department of Revenue
North Block, New Delhi 110 001
Represented by its Secretary

2. Central Board of Direct Taxes
Office at: PR.CCA, 3rd Floor, Vikas Bhawan,
North Block, IP Estate, New Delhi 110 001
Represented by its Chairman

3. Principal Chief Commissioner of Income Tax
NWR, Aayakar Bhawan, Sector – 17 E
Chandigarh 160 017

4. Principal Chief Commissioner of Income Tax
CR Building, No. 1, Queens Road,
Bengaluru 560 001Respondents

(By Shri M.V. Rao, Senior Panel Counsel)

ORDER

PER: SURESH KUMAR MONGA, MEMBER (J)

The applicant is an officer of Indian Revenue Service. She is presently posted as Commissioner of Income Tax (DR)-1 (ITAT) at Bangalore. She remained posted as Commissioner of Income Tax (Appeals) at Karnal, in Haryana Region from 20.09.2012 to 29.06.2015. At that time she was working under the administrative control of the Chief Commissioner of Income Tax, Panchkula. Vide an order dated 29.06.2015 issued by the Chief Commissioner of Income Tax, Panchkula, she was deemed to be relieved from her duties as Commissioner of Income Tax (Appeals), Karnal and was posted to Bangalore. It has been pleaded that pursuant to an order dated 08.07.2015 issued by the Principal Chief Commissioner of Income Tax, NWR, Chandigarh an administrative inspection was carried out on 13th and 14th July, 2015 for the work done by the applicant. The said inspection was done for the entire tenure of the applicant at Karnal from 20.09.2012 to 29.06.2015. The inspection team found number of discrepancies with respect to appeal disposal register, dispatch register, appeal receipt register, appeal fixation register, disposals, receipt of orders and availability of files etc. It has further been pleaded that on 25.08.2015, the Additional Commissioner of Income Tax (Hq.) (Tech), Chandigarh submitted a detailed report to the Principal Chief Commissioner of Income Tax, North West Region, Chandigarh with respect to the administrative inspection which was carried out in the absence of the applicant. The Principal Chief Commissioner of Income Tax, North West Region, Chandigarh in turn

OA.No.170/00308/2020/CAT/BANGALORE submitted the final report to the Principal Director General of Income Tax (Vigilance), New Delhi with regard to said administrative inspection. It has been stated that on the basis of the said final report dated 25.08.2015, the Under Secretary to Government of India issued a letter dated 04.11.2015 to the Principal Chief Commissioner of Income Tax, North West Region, Chandigarh requesting therein to seek the applicant's version on the inspection report dated 25.08.2015. It has further been stated that on the basis of said letter, the Assistant Commissioner of Income Tax, Hq (Judl.), Chandigarh issued a letter dated 17.11.2015 on behalf of the Principal Chief Commissioner of Income Tax, NWR, Chandigarh wherein the applicant was requested to submit her version to the inspection report dated 25.08.2015. Since the administrative inspection covered a very wide period i.e. 20.09.2012 to 29.06.2015 and stated many findings relating to the registers, reports, files, entries made, disposals, availability of files etc., therefore, the applicant had sought copies of some documents from the Principal Chief Commissioner of Income Tax, NWR, Chandigarh vide her letters dated 04.12.2015, 29.12.2015, 14.01.2016 and 22.01.2016. It has been averred that there was no reply to said letters by the Principal Chief Commissioner of Income Tax, NWR, Chandigarh. Thereafter, again the Under Secretary to Government of India addressed a letter dated 13.04.2018 to the Principal Chief Commissioner of Income Tax, NWR, Chandigarh to seek the applicant's version to the inspection report dated 25.08.2015 within a period of one week failing which the Board shall proceed to initiate the disciplinary proceedings against the applicant. Consequent thereto, the Principal Chief

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Commissioner of Income Tax, Karnataka and Goa Region, Bangalore

addressed a letter dated 24.04.2018 to the applicant with a direction to submit her version to the inspection report dated 25.08.2015. On receipt of said letter, the applicant addressed two letters dated 01.05.2018 and 07.05.2018 to the Principal Chief Commissioner of Income Tax, NWR, Chandigarh requesting therein to provide the documents sought for vide her letters dated 04.12.2015, 29.12.2015, 14.01.2016 and 22.01.2016 in order to submit her version to the inspection report dated 25.08.2015. It has further been submitted that the Deputy Commissioner of Income Tax (Hq) (Judl.), Chandigarh addressed a letter dated 04.06.2018 to Additional Director General of Income Tax, Directorate of Income Tax, (Vigilance) (North), New Delhi and a letter dated 04.06.2018 to the Chief Commissioner of Income Tax, Panchkula requesting therein to provide the requisite documents to applicant enabling her to give her version to the inspection report dated 25.08.2015. However, the requisite documents were not furnished to the applicant and to her utter shock, a memorandum dated 05.04.2019 came to be issued as per Rule 14 of the Central Civil Services (Classification, Conduct and Appeal) Rules, 1965 (hereinafter called as the 'CCS (CCA) Rules') enclosing therewith a statement of Articles of Charges framed against the applicant and the statement of imputation of misconduct in support of said Articles of Charges with the lists of documents and witnesses. The applicant was directed to submit her written statement in her defence within a period of 15 days from the date of receipt of the said memorandum. It has further been submitted that the applicant being

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aggrieved of the said memorandum dated 05.04.2019 submitted an appeal dated 07.05.2019 before the Chairman, Central Board of Direct Taxes, New Delhi requesting therein to rescind the same as no opportunity was given to her to submit her version to the administrative inspection report dated 25.08.2015. It has further been submitted that the Deputy Commissioner of Income Tax (Hq) (JdI.), Chandigarh issued a letter dated 27.05.2019 to the applicant enclosing part of the documents sought for by the applicant in the year 2015/2016 in order to give her version on inspection report dated 25.08.2015. Thereafter, the applicant submitted one more appeal dated 18.06.2019 to the Chairman, Central Board of Direct Taxes, New Delhi stating therein that the memorandum dated 05.04.2019 is premature and is issued without providing opportunity to submit her version to the inspection report dated 25.08.2015 and, therefore, the said memorandum is liable to be rescinded. It has been averred that without considering the appeals filed by the applicant, the respondents have issued the orders dated 19.03.2020, appointing thereby Shri Ramesh Narain Prabat, Principal Commissioner of Income Tax, Bangalore as the Inquiry Officer and Shri Anurag Srivastava, Commissioner of Income Tax, Bangalore as the Presenting Officer to present the case in support of the charges framed against her.

2. Aggrieved by the memorandum of charge sheet dated 05.04.2019 and the orders dated 19.03.2020, the present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985.

3. The respondents by way of filing a joint reply have joined the defence and have opposed the Original Application stating therein that the then Chairperson, Central Board of Director Taxes had pointed out to Director General of Income Tax, New Delhi on 24.06.2015, about the irregularities in the office of the Commissioner of Income Tax (Appeals), Karnal and it was desired that an inspection may be carried out. Accordingly, an administrative inspection of the work done by the applicant during her full tenure as Commissioner of Income Tax (Appeals), Karnal from 20.09.2012 to 29.06.2015, was carried out and a report in this regard was submitted by the Principal Chief Commissioner of Income Tax, North West Region, Chandigarh vide his letter dated 25.08.2015. After examining the said report, *prima facie*, the competent authority observed serious misconduct and accordingly on 04.11.2015 the applicant was requested to submit her version on the inspection report dated 25.08.2015. Instead of submitting her version, the applicant kept on sending the requests for providing some documents and thereafter a decision was taken with the approval of the disciplinary authority for initiation of major penalty proceedings against her under Rule 14 of the CCS (CCA) Rules. It has further been submitted that the said proceedings are at the stage of inquiry and a report into the matter is yet to be received and, therefore, the Original Application being premature cannot be maintained before this Tribunal.

4. On merits, it has been stated that the aforesaid administrative inspection report revealed that the applicant had reported a disposal of 740 appeals during her full tenure from 20.09.2012 to 29.06.2015. However, the

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physical verification of the appeal files showed that only 491 cases had actually been disposed of and the orders were issued therein. Accordingly, the applicant was requested to submit her version on the report dated 25.08.2015. However, the applicant did not submit her version despite reminders and requested for supply of certain documents which probably were available with the applicant as per her letter dated 04.12.2015 in which she herself had mentioned about those documents “served on me” and “submitted by me”. The applicant’s reply dated 07.05.2019 and supplementary reply dated 18.06.2019 requesting therein for rescinding the memorandum were examined by the disciplinary authority and those were found devoid of merit. With all these assertions, issuance of charge memorandum dated 05.04.2019 and the subsequent orders dated 19.03.2020 vide which the Inquiry Officer and the Presenting Officer have been nominated, are sought to be justified.

5. While filing rejoinder to said reply, apart from reiterating the assertions already made in the Original Application, it has further been averred that majority of the discrepancies pointed out in the inspection report dated 25.08.2015 were dropped unilaterally without assigning the reasons and without obtaining the final report from the inspecting authority and it establishes a fact that the inspection report is unreliable and the charges against the applicant have been framed in undue haste. The authority which conducted the inspection does not have the power to inspect and, therefore, all subsequent proceedings pursuant to inspection report are liable to be quashed.

6. The respondents have also filed an additional reply making therein a further assertion that the Central Board of Direct Taxes itself had specifically directed the Principal Chief Commissioner of Income Tax, Chandigarh to carry out the administrative inspection of work done by the applicant. The powers of the Principal Chief Commissioner of Income Tax are wider and include those of the Chief Commissioner of Income Tax as well. The Principal Chief Commissioner of Income Tax being the immediate superior to the Chief Commissioner of Income Tax is also reviewing authority for Commissioner of Income Tax (Appeals).

7. Heard learned counsels for the parties.

8. Learned counsel for the applicant while drawing our attention towards the CBDT Instructions No. 16/2008 dated 04.11.2008 submitted that the administrative inspection of the Office of the Commissioner of Income Tax (Appeals) can only be carried out by the concerned Chief Commissioner of Income Tax and in the applicant's case it was the Chief Commissioner of Income Tax, Panchkula. Whereas, in the case in hand the said inspection was carried out pursuant to the order issued by the Principal Chief Commissioner of Income Tax, NWR, Chandigarh who was not the competent authority and, therefore, the inspection report dated 25.08.2015 cannot be sustained. Learned counsel further submitted that the Instructions dated 04.11.2008 issued by the CBDT have the binding effect and the authorities working under the supervision of the Central Board of Direct Taxes, are bound to follow them. In support of his argument, learned

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counsel has placed reliance upon the judgments of the Hon'ble Supreme Court in **Union of India and others vs Arviva Industries India Limited** 2014 (3) SCC 159 and **Union of India and Others Vs Muralidhara Menon and Another** 2009 (9) SCC 304. Learned counsel further argued that the charge memorandum dated 05.04.2019 is premature and the same could not have been issued by the disciplinary authority before submission of the applicant's version to inspection report dated 25.08.2015. Since the respondents failed to supply the requisite documents enabling the applicant to submit her version to the inspection report, therefore, their actions cannot be sustained being contrary to the principles of natural justice.

9. Per contra, Shri M.V. Rao, learned counsel for the respondents, argued that the Principal Chief Commissioner of Income Tax, NWR, Chandigarh had proceeded to order an administrative inspection pursuant to the directions issued by the Central Board of Direct Taxes and accordingly after getting the inspection report from the inspection team headed by Shri Manish Sareen, Additional Chief Commissioner of Income Tax (Hq.) (Tech), Chandigarh it was found that the applicant had been misreporting about the disposal of appeals during her tenure as Commissioner of Income Tax (Appeals), Karnal. For the said lapse on the part of the applicant, the competent authority has rightly proceeded to issue a charge memorandum dated 05.04.2019. Learned counsel further submitted that though no appeal is maintainable against the said charge memorandum, still the applicant had been submitting the appeals dated 07.05.2019 and 18.06.2019 just to prolong the inquiry proceedings. Shri Rao while referring to the judgments of

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the Hon'ble Supreme Court in **Union of India and others Vs. Upendra Singh** 1994 (3) SCC 357, **Transport Commissioner Madras Vs. A. Radha Krishna Moorthy** 1995 (1) SCC 332 and **Dy. Inspector General of Police Vs. K.S. Swaminathan** 1996 (11) SCC 498 further submitted that this Tribunal cannot go into the exercise of examining the correctness of charges and, therefore, the Original Application deserves to be dismissed.

10. We have considered the rival contentions of learned counsels for the parties and have also perused the record.

11. The applicant herein remained posted as Commissioner of Income Tax (Appeals) at Karnal from 20.09.2012 to 29.06.2015. The then Chairperson, Central Board of Direct Taxes, New Delhi pointed out to Director General of Income Tax (Vigilance), New Delhi about various irregularities in the office of the Commissioner of Income Tax (Appeals), at Karnal and it was desired of an inspection to be carried out for verification of said irregularities. Accordingly, an Office Order was issued deputing a team headed by Shri Manish Sareen, Additional Chief Commissioner of Income Tax (Hq.) (Tech), Chandigarh to carry out the administrative inspection of the work done by the applicant during her tenure as Commissioner of Income Tax (Appeals), Karnal. In the meantime, on an order of transfer, the applicant was relieved from Karnal by the Chief Commissioner of Income Tax, Panchkula vide order dated 29.06.2015, enabling her to assume the charge on the post of Commissioner of Income Tax (DR)-1, (ITAT), Bangalore.

12. The record reveals that the aforesaid Inspection team visited the office of Commissioner of Income Tax (Appeals), Karnal on 13th and 14th July, 2015 to carry out the administrative inspection for the entire tenure of the applicant at Karnal from 20.09.2012 to 29.06.2015 and it transpired that the applicant had reported a disposal of 740 cases during the financial year 2012-13, 2013-14, 2014-15, 2015-16 (till May, 2015). However, the physical verification of the appeal files showed that she had disposed of 491 cases only out of those 740 cases. The report submitted by the inspection team further revealed that out of 165 files lying in the room of the Commissioner of Income Tax (Appeals), Karnal, in 142 cases last hearing had been concluded long back but no appeal orders had been passed. The said inspection report was duly forwarded by the Principal Chief Commissioner of Income Tax, NWR, Chandigarh to Principal Director General of Income Tax (Vigilance), New Delhi vide letter dated 25.08.2015. Taking a serious note of the irregularities in the applicant's office during her tenure at Karnal, the Chairperson, Central Board of Direct Taxes directed the Principal Chief Commissioner of Income Tax, NWR, Chandigarh to call for the applicant's version and accordingly, the applicant was requested to submit her version.

13. Instead of submitting her version to said inspection report, the applicant opted to write a letter dated 04.12.2015 to the Principal Chief Commissioner of Income Tax, NWR, Chandigarh to supply certain documents. A perusal of letter dated 04.12.2015 reveals that the documents which were demanded by the applicant, were either submitted by her to the vigilance team or were served upon her for carrying out the vigilance

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inspection. The letter dated 04.12.2015 was followed by letters dated 29.12.2015, 14.01.2016 and 22.01.2016 seeking some more documents.

14. On 13.04.2018, the Central Board of Direct Taxes again requested the Principal Chief Commissioner of Income Tax, NWR, Chandigarh to seek the applicant's version on the inspection report dated 25.08.2015. Accordingly, the applicant was again requested by the Principal Chief Commissioner of Income Tax, NWR, Chandigarh vide letter dated 02.05.2018 to submit her version to inspection report. But still the applicant, instead of submitting her version, opted to write a letter dated 01.05.2018 for supply of documents which were demanded by her through letters dated 04.12.2015, 29.12.2015, 14.01.2016 and 22.01.2016. The disciplinary authority, however, on the basis of material available, issued the memorandum dated 05.04.2019 to the applicant along with statement of imputation of misconduct supporting the Articles of Charges framed against her. Though under the CCS (CCA) Rules, there is no provision for filing an appeal against the memorandum of charges but still the applicant submitted an appeal dated 07.05.2019 before the Chairman, Central Board of Direct Taxes, New Delhi making therein a request to rescind the charge memorandum dated 05.04.2019 being premature.

15. As per the provisions of Rule 14 of the CCS (CCA) Rules, no order imposing any of the penalties classified in clauses (v) to (ix) of Rule 11 can be passed except after an inquiry held. Sub-rule (2) of rule 14 contemplates that a disciplinary authority is required to form an opinion that there are grounds for inquiring into the truth of any imputation of misconduct or

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misbehaviour against a government servant. Sub-rule 4 (b) further stipulates that, after receipt of articles of charges, it is required from the government servant to submit his/her written statement of defence if he or she so desires. Sub-rule 5 (a) makes a provision that on receipt of the written statement of defence, the disciplinary authority may itself inquire into the articles of charges or, if it considers it necessary to do so, may appoint an inquiring authority for the purpose.

16. Following the aforesaid procedure as prescribed in Rule 14 of the CCS (CCA) Rules, the disciplinary authority has proceeded to issue the charge memorandum dated 05.04.2019. We do not see any provision in the rules with regard to an appeal against the said memorandum of charges. Nothing prevents the disciplinary authority to form an opinion to inquire into the truth of any imputations of misconduct even if the delinquent does not submit his/her version before issuance of the charge memorandum, as Rule 14 (4) (b) of the CCS (CCA) Rules stipulates the written statement of defence by the delinquent officer after issuance of the charge memorandum only. There is no provision to file a second appeal, which in the case in hand was filed by the applicant on 18.06.2019 making therein a request to disciplinary authority to rescind the charge memorandum.

17. The disciplinary authority in the case in hand opted to appoint an inquiring authority vide order dated 19.03.2020 strictly in terms of sub rules 2 and 5 (a) of Rule 14 of the CCS (CCA) Rules. On the same very day, a presenting officer was also appointed by way of a separate order.

18. In our considered view, the course of filing the appeals against the charge memorandum dated 05.04.2019 was adopted by the applicant just to prolong the disciplinary proceedings, as in law no such appeals are maintainable.

19. We even do not find any error in the process of issuance of the charge memorandum dated 05.04.2019 and subsequent appointment of Inquiry Officer as well as the Presenting Officer vide orders dated 19.03.2020 as the competent authority has formed an opinion to issue those orders after examining the administrative inspection report submitted by a team headed by Shri Manish Sareen, Additional Chief Commissioner of Income Tax (Hq.) (Tech), Chandigarh pursuant to the directions issued by the Central Board of Direct Taxes in terms of Sections 119 (1) and 120 of the Income Tax Act, 1961.

20. This Tribunal cannot sit in appeal over the decision of the disciplinary authority whereby an opinion has been formed in terms of Rule 14 (2) of the CCS (CCA) Rules to issue the charge memorandum dated 05.04.2019. Even otherwise a categoric plea raised by the respondents in their reply statement to the effect that the applicant had reported disposal of 740 appeals and, whereas, on physical verification of the appeal files it showed that only 491 cases had actually been disposed of; has neither been denied by the applicant nor it is sought to be justified while filing rejoinder to said reply statement. In such a situation, process of forming an opinion to issue a charge memorandum dated 05.04.2019 by the disciplinary authority cannot be faulted with.

21. The Hon'ble Supreme Court in **K.S. Swaminathan** (*supra*) has held that at the stage of framing of the charges, the statement of facts and chargesheet are required to be looked into by the Court or the Tribunal as to the nature of the charges, i.e. whether the statement of facts and material in support thereof supplied to the delinquent officer would disclose the alleged misconduct. This Tribunal, therefore, will not be justified in going into the charges at this stage. Whether the applicant herein can negate those charges or not, whether the respondent department would be able to prove the charges or not, the situation to this effect will arrive only when the Inquiry Officer completes his inquiry and a report is submitted to this effect before the disciplinary authority.

22. So far as the truth and correctness of the charges is concerned, it is not a matter for this Tribunal to go into, more particularly, at a stage prior to the conclusion of the disciplinary inquiry. The principle to this effect has been enunciated by the Hon'ble Supreme Court in **A. Radha Krishna Moorthy** (*supra*). In **Upendra Singh** (*supra*), the Hon'ble Supreme Court has also ruled that the Tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Even after the conclusion of the disciplinary proceedings, if the matter comes to this Tribunal, it will have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority. The function of the Court/Tribunal is one of judicial review. Para 6 of the report reads thus:

6. *In the case of charges framed in a disciplinary inquiry the*

tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum- Assessing Authority, Kamal v. Gopi Nath & Sons⁵. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para 8):

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

23. The Hon'ble Supreme Court in **Ministry of Defence Vs Prabhash Chandra Mirdha** 2012 (11) SCC 565 while relying upon various other judgments including the one in **Upendra Singh (supra)** has summarised the law on the issue to the effect that the chargesheet cannot generally be a subject matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate disciplinary proceedings.

24. In the case in hand it is not the plea of the applicant that the

chargesheet has been issued by an incompetent authority. The Hon'ble Supreme Court has further ruled that neither the disciplinary proceedings nor the chargesheet can be quashed at an initial stage as it would be a premature stage to deal with the issues. In view of the principles enunciated by the Hon'ble Supreme Court, we are of the firm opinion that the charge memorandum dated 05.04.2019 issued to the applicant herein being at a preliminary stage cannot be quashed.

25. The argument of learned counsel for the applicant, that since the applicant was not supplied the requisite documents and she remained unable to submit her version to administrative inspection report and, therefore, the issuance of charge memorandum dated 05.04.2019 is premature, does not find favour with us. It appears from the record that certain irregularities in the office of the Commissioner of Income Tax (Appeals), Karnal were noticed by the Central Board of Direct Taxes and, therefore, the Principal Chief Commissioner of Income Tax, NWR, Chandigarh was directed to undertake an exercise of administrative inspection and consequent thereto a committee headed by Shri Manish Sareen, Additional Chief Commissioner of Income Tax (Hq.) (Tech), Chandigarh was constituted. During administrative inspection on 13th and 14th July, 2015, the irregularities noticed by the said committee were reported to the Central Board of Direct Taxes and the disciplinary authority has formed an opinion to issue the charge memorandum dated 05.04.2019 in terms of Rule 14 (2) of the CCS (CCA) Rules. There is no provision in the rules to hold that the charge memorandum will be premature if the

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delinquent officer does not submit his/her version before issuance of said charge memorandum for any reason whatsoever. It is just an opinion, not that the charges are proved merely by issuance of a charge memorandum. The applicant can very well seek the inspection of relevant record and can also obtain the copies of relevant documents to project her defence. The Inquiry Officer in any case is bound to follow the provisions of the CCS (CCA) Rules as well as the principles of natural justice during the course of inquiry proceedings. In these circumstances, we find ourselves unable to hold that the charge memorandum dated 05.04.2019 issued by the disciplinary authority is premature.

26. The reliance of the applicant's counsel upon **Prabhash Chandra Mirdha (supra)** is highly misplaced as in the said case the delinquent had challenged the chargesheet primarily on the ground that it had been issued by the authority not competent to do so. In the said case, the Tribunal had quashed the impugned order on the ground that the Deputy Director General of Ordnance Factory was the appointing authority of the delinquent and competent to impose the penalty referred to under the statutory rules. The chargesheet had been issued by the authority subordinate to him and it was construed that the same was not issued by the competent authority. The Hon'ble High Court of Andhra Pradesh had concurred with the findings recorded by the Tribunal. Since the order of authorization to authority subordinate to the appointing authority of the delinquent or any rule permitting the competent authority to delegate its power for conducting the inquiry was not produced, therefore, the issue in question therein before the

Hon'ble Supreme Court was left open and the question of law which cropped up, remained undecided and the Hon'ble Supreme Court even did not proceed further with the appeal on merits.

27. Equally untenable is the plea of learned counsel for the applicant when he argued that the Principal Chief Commissioner of Income Tax, NWR, Chandigarh was not the competent authority to undertake the exercise of administrative inspection in the office of the Commissioner of Income Tax (Appeals), Karnal. According to learned counsel, as per the instructions dated 04.11.2008 issued by the Central Board of Direct Taxes, the Chief Commissioner of Income Tax, Panchkula was the competent authority to undertake the said exercise. Since the administrative inspection was undertaken by an incompetent authority, therefore, the inspection report could not have been relied upon by the disciplinary authority to form an opinion for issuance of the charge memorandum dated 05.04.2019. The argument of the learned counsel at the first instance appears to be attractive, but the same cannot be accepted.

28. A perusal of the CBDT instructions dated 04.11.2008 divulges that consequent upon restructuring of the Income Tax department, the system of inspections was introduced in the year 2002. Its' focus was on inspection of a Range in two selected fortnights and it included inspection of a few selected assessments made by the Assessing Officers. However, the said concept of Range as an assessment unit could not be implemented in its entirety due to various constraints in the department. In order to fulfil its desired objectives, the Central Board of Direct Taxes had, therefore,

OA.No.170/00308/2020/CAT/BANGALORE appointed a committee under Sri K. Vasudevan, DGIT (Systems) to examine the current system of inspections and to recommend changes so as to bring it in tune with the current structure and work practices of the department. The report submitted by the committee was examined by the Board and the Instructions dated 04.11.2008 came to be issued in order to revamp the existing system of inspections. Under revised procedure, the inspections involved an annual comprehensive inspection of the concerned office and it was made incumbent upon the inspecting officer to examine and comment upon the overall functioning of the office. As per the said instructions, the Chief Commissioner of Income Tax of the region concerned has been assigned the duty to undertake the administrative inspection in the office of the Commissioner of Income Tax (Appeals).

29. Though, in the case in hand the Chief Commissioner of Income Tax, Panchkula was the authority to undertake the exercise of administrative inspection in the office of the Commissioner of Income Tax (Appeals), Karnal, but we do not find any error, if on noticing some irregularities, the Central Board of Direct Taxes, while exercising its powers under Sections 119 (1) and 120 the Income Tax Act, 1961, directed the Principal Chief Commissioner of Income Tax, NWR, Chandigarh to carry out the administrative inspection and consequent thereto, a committee headed by Shri Manish Sareen, Additional Chief Commissioner of Income Tax, (Hq.) (Tech), Chandigarh was constituted and after taking report from the said committee, it was forwarded to the Central Board of Direct Taxes for its consideration.

30. Learned counsel for the applicant has laid much of the stress on the judgments of the Hon'ble Supreme Court in **Arviva Industries India Limited** (*supra*) and **Muralidhara Menon** (*supra*) in order to set up his case that the instructions dated 04.11.2008 are binding on all the authorities of the department and since the administrative inspection was carried out by an authority having been not vested with the power as per the said instructions, therefore, the inspection report dated 25.08.2015 is liable to be ignored.

31. There is no quarrel with the proposition that the circulars issued by the Central Board of Direct Taxes are required to be followed by all the authorities in the department. But in the case in hand, the Central Board of Direct Taxes, which is a supervisory authority for whole of the department, has exercised its power strictly in terms of Sections 119 (1) and 120 of the Income Tax Act, 1961 while issuing the directions to Principal Chief Commissioner of Income Tax, NWR, Chandigarh to carry out the administrative inspection, who in turn constituted a committee to do so. We do not find any fallacy in the exercise of said power.

32. In the conspectus of discussions made in the foregoing paragraphs, we hold that there is no error committed by the disciplinary authority while issuing the charge memorandum dated 05.04.2019 to applicant and the subsequent orders dated 19.03.2020 vide which the Inquiry Officer and the Presenting Officer have been nominated to convene the inquiry proceedings. The Original Application being devoid of merit is, therefore, liable to be dismissed.

33. Accordingly, the Original Application is hereby dismissed. However, there shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)

MEMBER (A)

(SURESH KUMAR MONGA)

MEMBER (J)

/ksk/

