

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

OA No.246/2014

This the 07th day of January, 2021

**Coram : Hon'ble Shri J.V.Bhairavia, Member (J)
Hon'ble Shri A.K.Dubey, Member (A)**

Shri Dharmendra Kumar Mishra
A/4, Income Tax Flats,
Opp. Old High Court,
Navrangpura, Ahmedabad 380 009.Applicant.

(By Advocate: Mr.Vaibhav A.Vyas)

Versus

1. Union of India
(Notice to be served through
The Secretary (Revenue)
Ministry of Finance,
Department of Revenue,
Central Board of Direct Taxes,
North Block, New Delhi : 110 001.
2. Director General of Income Tax, (Vigilance),
First Floor, Dayalsingh
Public Library Building,
1, DeenDayal Upadhyay Marg, New Delhi : 110 002.
3. Chief Commissioner of Income Tax,
Aaykar Bhavan, Ashram Road,
Ahmedabad : 380 009..... Respondents

(Advocate : Ms. M.M.Bhatt)

O R D E R – ORAL

Per : Hon'ble Shri J.V. Bhairavia, Member (J)

In the instant OA, aggrieved by the impugned order dated 23.01.2014 (Annexure A-1) issued by the respondent No.1 whereby it was decided that the disciplinary proceedings in the matter against

the applicant would continue from the stage where the proceedings stood before Charge Memorandum dated 29.10.2003. The applicant has filed the present OA seeking the following reliefs :

- (A) *Set aside the impugned Office Memorandum dated 23.01.2014 as well dated 29.10.2003 (Re-issued) issued by the Opponent No.1.*
- (B) *Declare that the OM dated 23.01.2014 as well dated 29.10.2003 (Re-issued) is without authority of law, non-est, void-ab-initio as the principal based on which the Office Memorandum is issued is not applicable to the case of the Applicant.*
- (C) *Direct the Opponent to forthwith withdraw the Office Memorandum dated 23.1.2014 as well dated 29.10.2003 (re-issued), as the same is illegal and arbitrary.*
- (D) *Pass such other and further orders as may be deemed just and proper in the facts and circumstances of the case.*

2. Today, the OA has been taken up for final hearing. Standing Counsel for the respondents, Ms.M.M.Bhatt bring to the notice of this Tribunal that the applicant had filed SCA No.9357/2014, as also CA No.02/2018 whereby the order passed by the Tribunal in OA No.164/2010 dated 27.3.2012 was challenged. The Hon'ble High Court vide its Order dated 18.01.2019 in CA No.02/2018 in SCA No.9357/2014 disposed of as withdrawn. The relevant operative part of the order dated 18.01.2019 passed by the Hon'ble High Court is as follows :

- "10(a).....*
- 10(b)...The concerned authority shall endeavour to conclude the proceedings as expeditiously as possible, preferably within 04 months.*
- 10(c)*

10(d) The applicant shall take steps to withdraw/ to get disposed of the application filed by him before learned Tribunal."

3. It is further submitted by the counsel for the respondents that applicant himself had filed affidavit before the Hon'ble High Court and by accepting the same, the Hon'ble High Court vide its order dated 18.1.2019 had directed the Disciplinary Authority to conclude the pending disciplinary proceedings expeditiously and also ordered that the applicant shall take steps to withdraw/ to get disposed of the application filed by him before the Tribunal. Therefore, the applicant is required to withdraw this OA.

4. On the otherhand, counsel for the applicant, Shri Vaibhav A.Vyas submits that as such, he had filed MA No.166/2019 for disposal of this OA by declaring that the impugned OM dated 23.01.2014 was just a formal approval of the Office Memorandum (Charge sheet) dated 29.10.2003 by the Disciplinary Authority and the Disciplinary Authority did not intend to continue the proceedings from the stage at which the same stood before the OM dated 29.10.2003. However, the said MA No.166/2019 was disposed of by this Tribunal vide order dated 25.4.2019 and the OA was directed to be placed for final hearing. It is further submitted that as such the applicant wish to withdraw the present OA in the light of the contention stated by the respondents in their Affidavit-in-Reply dated 25.11.2014, in para 06 of it.

5. Para 6 of the reply filed by the respondents reads as under :

"6. It is submitted that from the above chronology, it is clear that it is the penalty order dated 30.5.2007 which has been quashed and set aside by this Hon'ble Tribunal and not charge sheet dated 29.10.2003. Therefore, the OM dated 23.1.2014 conveyed the approval of the charge sheet dated 29.10.2003 by the disciplinary authority and the approval of the disciplinary authority for continuation of the disciplinary proceedings from the stage where the proceedings stood before the Charge Memorandum dated 29.10.2003 was formally approved and was issued pursuant to the decision of the Hon'ble Supreme Court dated 05.9.2013 in the case of Shri B.V.Gopinath and others.

On certain facts, the DA on 22.3.2003 had approved initiation of major penalty proceedings in the case of Shri D.k.Mishra, DCIT as mandatorily required under rule 13 of CCS (CCA) Rules, 1965. However, the draft charge sheet was approved by the DGIT (vig.), New Delhi.

The DA has now noticed that the charge sheet dated 29.10.2003 has been issued on the similar facts as submitted before him for taking approval for initiating major penalty proceedings, therefore, to deliver justice to the applicant, the technical infirmity (arising in view of the decision of Apex Court in the case of B.V.Gopinath & Others and considering the liberty granted by the CAT) was removed by the DA by formally approving the memorandum of charge dated 29.10.2003 on 08.01.2014. The same was conveyed to the applicant vide OM dated 23.01.2014. Thus, no injustice is done with the applicant."

6. In view of above submission and in the light of reply filed by the respondents, we accept the request of the learned counsel for the applicant for withdrawal of the OA. Thus, the OA stands disposed of as withdrawn. No order as to costs.

(A.K.Dubey)
Member (A)

(J.V.Bhairavia)
Member (J)

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