

(2006) 09 DEL CK 0055

Delhi High Court

Case No: Writ Petition (C) No. 14558 of 2006

DaIjeet Singh Anand

APPELLANT

Vs

Institute of Chartered
Accountants of India

RESPONDENT

Date of Decision: Sept. 15, 2006

Citation: (2008) 299 ITR 353 : (2006) 157 TAXMAN 497

Hon'ble Judges: Anil Kumar, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Anil Kumar, J.

CM No. 11433/2006

Allowed, subject to all just exceptions.

W.P. (C). No. 14558/2006 & CM. No. 11432/2006

1. The petitioner has impugned the order dated 18-5-2005 of the Institute of Chartered Accountants of India whereby on consideration of the

complaint of the petitioner, written statement of the Chartered Accountants, respondent Nos. 2 and 3 and the rejoinder of the petitioner, the

Institute Council was prima facie of the opinion that the Chartered Accountants, respondent Nos. 2 and 3 are not guilty of any professional or

other misconduct and, Therefore, the complaint had not been proceeded further and an amount of Rs. 100 deposited by the petitioner along with

the complaint was ordered to be refunded.

2. The petitioner filed the complaint with the Institute of Chartered Accountants of India on the ground that respondent Nos. 2 and 3 committed

blatant misconduct with respect to Income Tax proceedings by ignoring the provisions of Section 184(2) of the Income Tax Act, 1961, while

preparing the Income Tax return of respondent No. 4 pertaining to the financial year 2001-02 which contemplated filing of the copy of instrument

of partnership certificate in writing by all the partners,

3. The petitioner contended that respondent Nos. 2 and 3 accepted the illegal dissolution of partnership firm on the basis of alleged notice of

dissolution which was never served on the petitioner and did not bother to ask for an acknowledgement of the receipt of dissolution on behalf of

petitioner and illegally filed the Income Tax return of M/s. Anand Super Service Station in two parts, one return having six partners for the period

1-4-2001 to 17-2-2002 and another return having three partners for the period 18-2-2002 to 31-3-2002. The petitioner also relied on the show-

cause notice dated 31-1-2005 from the Income Tax Officer, Ward 20(3), New Delhi, claiming that though the change in partnership has been

contended but a copy of dissolution deed has not been submitted and the copy of partnership deed annexed to the return is not certified by all the

partners.

4. The case of the petitioners firm was selected for scrutiny as there were petitions that the firm was wrongly shown as constituted of three partners

instead of six, however, the assessment was done and interest was demanded under Sections 234B and 234C of the Income Tax Act.

5. From the facts disclosed, it is apparent that the partnership firm constituted of six partners and it was claimed that the partnership firm stood

dissolved on the basis of notice and consequently the respondent Nos; 2 and 3 filed the return of the partnership having three partners. While filing

the returns, respondent Nos. 2 and 3 were neither to determine nor adjudicate whether the partnership firm was dissolved in accordance with the

provisions of Partnership Act and whether the new partnership was duly constituted. The plea of alleged illegal dissolution by some of the partners,

no blatant misconduct can be attributed and imputed against respondent Nos. 2 and 3 nor it can be inferred that they failed to discharge their duties

and were negligent. The negligence and misconduct cannot be imputed in the present facts and circumstances to the Chartered Accountants on account of disputes between the partners.

6. The respondent No. I has considered the complaint of the petitioner and the reply of respondent Nos. 2 and 3 and the rejoinder filed by the petitioner to the reply of the respondent Nos. 2 and 3 and comments of the respondent Nos. 2 and 3 and after due consideration has not found respondent Nos. 2 and 3 guilty of any professional or any other misconduct and has not proceeded further with the complaint.

7. Considering the facts and circumstances, there is no illegality, irrationality or such procedural unreasonableness which will entail interference by this Court under article 226 of the Constitution of India against order dated 18-5-2005 of the Council of Institute of Chartered Accountants of India.

8. Consequently, the writ petition is without merit and is dismissed.