

BOARD OF DISCIPLINE

(Constituted under Section 21A of Chartered Accountants Act, 1949)

Findings under Rule 14(9) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

File No. : PR-272/2013-DD/286/2013/BOD/201/2016

QUORUM:

**CA. Nilesh S Vikamsey, Presiding Officer
Shri R K Tewari, Government Nominee
CA. (Dr.) Debashis Mitra, Member**

In the matter of:

**CA. Anil Kumar Agarwal (M.No. 077457)
Shop No. 15, Old Nirala Nagar Market,
I.T. Crossing,
Lucknow - 226020**

v/s

..... Complainant

**CA. Ankur Agarwal (M.No. 410826)
H-128, Janakipuram Garden,
Behind Canara Bank,
Khursi Road, Sector- J
Lucknow - 226021**

.....Respondent

DATE OF HEARING: 18.09.2017

PLACE OF HEARING: New Delhi

PARTIES PRESENT:

Respondent : CA. Ankur Agarwal

Findings:

1. The Board noted that the charge against the Respondent is that he did not communicate with the Complainant being previous tax auditor of M/s Tirupati Traders before accepting the tax audit assignment for the financial year 2011-12 and 2012-13.
2. The Board noted that the Complainant was not present before it at the time of hearing inspite of the due service of the notice of hearing.
3. The Board heard the submissions made by the Respondent and duly considered the submissions/documents available on record.

4. The Board noted the submission of the Respondent that he had sent a letter to the Complainant by hand seeking NOC through his staff but the Complainant misbehaved with him and refused to provide NOC. It was further contended by the Respondent that the client was in some family problems and wanted audit of his financial statements at the earliest without any delay. So after taking all due care the Respondent accepted the audit. The Respondent had sent the NOC letter to M/s. Anil Bhagat & Associates by Registered post and also provided the copy of the registered post receipt.

5. In this regard, it may be mentioned that in terms of the Code of Ethics, Incoming Auditor should always communicate with the retiring auditor in such a manner as to retain in his hands positive evidence of the delivery of the communication to the addressee. In the opinion of the Council, communication by a letter sent through "Registered post Acknowledgement due" or by hand against a written acknowledgement would in normal course provide such evidence.

6. The Board noted that the Respondent merely produced the postal receipt of the communication done by him through registered post. However, the acknowledgement of the Complainant of having effectively received the said communication seeking his NOC was not brought on record by the Respondent. Thus, the Board was of view that the requirement of effective communication as prescribed under clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 has not been met by the Respondent.

CONCLUSION:

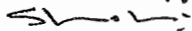
7. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **GUILTY** of "Professional Misconduct" falling within the meaning of Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

-Sd/-
(NILESH S VIKAMSEY)
PRESIDING OFFICER

-Sd/-
(R K TEWARI)
GOVERNMENT NOMINEE

-Sd/-
(DEBASHIS MITRA)
MEMBER

DATE: 17th JANUARY, 2018
PLACE: NEW DELHI

Certified True Copy

Shashi Mahajan
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002



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(Set up by an Act of Parliament)

ORDER UNDER SECTION 21 A(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 15(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

Anil Kumar Agarwal, Lucknow

....Complainant

-Vs-

CA. Ankur Agarwal (M.No.410826), Lucknow

.....Respondent

[PR-272/13-DD/286/2013/BOD/201/2016]

CORAM:

**CA. Atul Kumar Gupta, Presiding Officer
Shri Arun Kumar (Government Nominee)
CA. Prasanna Kumar D, Member**

1. That vide findings dated **17th January, 2018** the Board of Discipline was of the opinion that **CA. Ankur Agarwal** is guilty of Professional Misconduct falling within the meaning of Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

2. That an action under Section 21A(3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Ankur Agarwal** and communication dated **16th February, 2018** was addressed to him thereby granting him an opportunity to make written representation. Further, vide letter dated **19th December, 2018** **CA. Ankur Agarwal** was granted an opportunity to represent himself in person & make his representation before Board on **7th January, 2019**. Again, vide letter dated **9th April, 2019** **CA. Ankur Agarwal** was granted an opportunity to represent himself in person & make his representation before Board on **29th April, 2019**.

3. That **CA. Ankur Agarwal** appeared before the Board on **29th April, 2019** and also made his oral submission.

4. This Board has carefully gone through the facts of the case including the oral submission made before it on **29th April, 2019** and written submission made by **CA. Ankur Agarwal** vide letter dated **19th April, 2019**.

5. As per the findings of the Board dated **17th January, 2018** **CA. Ankur Agarwal** was found guilty due to non-communicating with the previous tax auditor of M/s



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Tirupati Traders before accepting the tax audit assignment for the financial year 2011-12 and 2012-13.

6. The Board noted that **CA. Ankur Agarwal** during hearing stage had provided postal receipt of communication done by him through registered post only and had failed to provide the acknowledgement of the Complainant of having effectively received the said communication seeking his NOC.

7. The Board further observed that in matter of R.M. Singhai & Associates vs. R.V. Agarwal - Page 155 of Vol.VI(2) of Disciplinary Cases - decided on 15th, 16th and 17th December, 1988, it is decided that the requirements of Clause (8) of Part I of the first Schedule can be considered to have been complied with only:

- (i) if there is evidence that a communication to the previous auditor had been by R.P.A.D.
- (ii) if there was positive evidence about delivery of the communication to the previous auditor.

In the absence of both, the member should be found to have contravened this Clause.

8. The Board was of the view that **CA. Ankur Agarwal** failed to adhere the requirement of effective communication as prescribed under clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

9. Upon consideration of the facts of the case, the consequent misconduct of **CA. Ankur Agarwal**, and keeping in view his written and oral submissions, the Board was of the view that the ends of justice shall be met if lower punishment is awarded to him.

10. Accordingly, the Board ordered that **CA. Ankur Agarwal** be reprimanded.

Sd/-
(ATUL KUMAR GUPTA)
PRESIDING OFFICER

Sd/-
(ARUN KUMAR)
GOVERNMENT NOMINEE

Sd/-
(PRASANNA KUMAR D)
MEMBER

DATE : 29.04.2019
PLACE : New Delhi

Certified True Copy

R.S. Srivastava
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002