

**DISCIPLINARY COMMITTEE [BENCH – II (2019-2020)]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]**

**Findings cum Order under Rule 18(17) and 19(2) of the Chartered Accountants
(Procedure of Investigations of Professional and Other Misconduct and
Conduct of Cases) Rules, 2007**

[File No. PR- 130/13-DD/125/2013/DC/468/2016]

In the matter of:

CA. Lalji Kunvarji Haria

503, 5th Floor

Ashirwad Premises

Ahmedabad Street

Carnac Bunder

MUMBAI – 400 009.

...Complainant

Versus

CA. Ashit Kishorkumar Shah (M. No. 100156)

3/F, National Pearl Star

High School Junction

Edappally

KOCHI – 682 024.

.....Respondent

MEMBERS PRESENT:

CA. ATUL KUMAR GUPTA, PRESIDING OFFICER,

CA. AMARJIT CHOPRA, GOVERNMENT NOMINEE,

CA. RAJENDRA KUMAR P, MEMBER

CA. CHANDRASHEKAR VASANT CHITALE, MEMBER

DATE OF FINAL HEARING/ORDER : 09.05.2019

PLACE OF FINAL HEARING/ORDER : ICAI, MUMBAI

PARTIES PRESENT:

Complainant : Not Present

Respondent : CA. Ashit Kishorkumar Shah

FINDINGS:

1. The Committee noted that the crux of the complaint was that the Respondent had certified the copy of Hemant Savla's Capital Account, Balance Sheet, Computation of Income, Statement of long term and Short term gains, Statement of Investment and Acknowledgement copies of Income Tax return for the period 1999-2011 "as photocopy conforms to the original documents which had not been altered in any way" (referred as **Indian documents**). The aforesaid certified copies were submitted in the US court in the matter of divorce proceedings between Mr. Hemant Savla and the Complainant's daughter, Mrs. Nina Savla. The Complainant alleged that the copy certified by the Respondent had certain handwritten corrections / scribbling which was not separately certified by the Respondent. The Respondent did not mention that certified copy of documents is the photocopy of which documents. It was also alleged that the Respondent did not exercise due care while certifying the Indian documents as Indian documents were carrying certain discrepancies. The Complainant also alleged that the Respondent entered into partnership with brother of Mr. Hemant Savla on the next day of certification which indicates his ulterior motive for certification.

2. On the day of hearing i.e. 9th May, 2019, the Committee noted that the Complainant was not present. The Respondent was present. The Complainant vide his e-mail dated 6th May, 2019 had requested to take documents submitted by him on record and decided the case accordingly. In view of above, the Committee decided to proceed ahead with the matter ex-parte the Complainant. Thereafter, the Respondent was put on oath. On being enquired from the Respondent as to whether he is aware of the charges levelled against him, the Respondent replied positively and pleaded not guilty. Thereafter, The Respondent made submissions and stated that he had already made his submissions in early hearing. The Committee posed some questions to the Respondent. After hearing submissions, the Committee decided to conclude the hearing in the above matter.

3. Upon perusal of the documents submitted by the Complainant, it is noted that the Complainant stated therein that Mr. Hemant Savla whose documents were certified by the Respondent in his deposition in U.S. court mentioned that "*the actual copy of he is pretty sure it did not have handwritten corrections*". The aforesaid statement of Mr. Hemant Savla clearly demonstrates that what documents the Respondent

certified are not the photocopies of the original documents. Besides corrections / cancellation / scribbling, Indian documents do not have the signature of Mr. Hemant Savla or the initials or endorsement of the person who prepared the financial statements nor does it have the acknowledgement or endorsement or stamp of the Income Tax Department. The Complainant also stated that the Indian documents be considered / used in determining the amount of financial compensation / alimony to be paid to his daughter.

3. As regard the first charge related to certification of Indian documents, the Committee upon perusal of copy of documents certified by the Respondent noted that the Respondent certified the Indian documents on 31.03.2012 as the photocopy conforms to the original documents which has not been altered in any way. He had not expressed any opinion in respect of documents certified by him as photocopy of the original documents. He only certified as true copy of the documents which were produced before him for certification. The Committee also noted that Indian documents certified by the Respondent includes income tax return of Mr. Hemant Savla, Statement of Income, Capital Account, Balance Sheet, Statement of Interest on Loans, Statement of dividend, Statement of short term capital gain/ (loss), Statement of interest on securities, Statement of investment in shares of Mr. Hemant Savla. It is also noted that some of the documents do not carry signature of Mr. Hemant Savla and some of the documents are carrying handwritten corrections/ scribbling as claimed by the Complainant.

- 4.1 As regard handwritten corrections/ scribbling, the Committee noted the submissions of the Respondent that handwritten correction/ scribbling were there in the original documents (office copy) itself and hence, the photocopy of documents, certified by him also carries the same. He also stated that after making correction as having in the office copy, a fresh copy was submitted to the Income Tax Department. He stated that the Complainant failed to understand the difference between the audit and certification. He merely certified the Indian documents as maintained by the client. He also added that if he carries out any modification or changes then there was no meaning of certifying as true copy of the documents. The Committee also noted that there was nothing on record from the Complainant which could not explain the difference between the original documents filed with the Income Tax Department and Indian documents certified by the Respondent. Even after affording time to the Complainant to submit copy of documents filed with the Income Tax department

which are claimed to be different from the documents certified by the Respondent, the Complainant could not submit the same and explained his inability by stating that he visited the Income Tax Department to find out the procedure for obtaining the said documents but the Income tax officer verbally told him that this being personal information they cannot share the said documents with him nor can the said information be made available to him under RTI application as this being personal and confidential information the same is exempt under RTI.

4.2 In view of above, there was nothing on record which can establish that there were difference between the office copy of the documents and Indian documents as certified by the Respondent. In respect of responsibility of the Respondent in certification of India documents, it is noted from the Guidance note issued on audit report and certificates for special purpose that a certificate is a written confirmation of the accuracy of the facts stated therein and does not involve any estimate or opinion. It is also noted that handwritten correction / scribbling were already there on the office copy maintained by Mr. Hemant Savla and based on the same, the Respondent certified the Indian documents as true copy of the original documents. Since there was nothing on record to show the difference between the Indian documents and original copy of Indian documents, the Committee decided to extend benefit to the Respondent in respect of the first charge. Though in absence of original documents, it is not proved that there was no scribbling and handwritten correction in the original, yet the Committee is also of the view that the Respondent needs to be more careful in future while performing various professional duties, accordingly, it decided to issue a letter of caution to the Respondent for the same.

5. As regard the second charge related to becoming a partner with CA. Mulesh Savla, who was brother of Mr. Hemant Savla, the Complainant stated that Hemant Savla in his deposition in the US mentioned that his Indian accounts and tax return were prepared either by his brother CA. Mulesh Savla or under his guidance by someone at his bother's office. The Complainant also stated that CA. Mulesh Savla did not certify the Indian documents, the Respondent certified the Indian documents on 31.03.2012 and on the very next day, after certification, the Respondent became a partner with CA. Mulesh Savla. The Complainant stated that this act of the Respondent shows his ulterior motive for carrying out certification of Indian documents. In this regard, the Respondent stated that he had become a partner of

CA. Mulesh Savla but that has nothing to do with the certification of Indian documents. They were residing in the same locality and were friend for many years.

5.1 In respect of above charge, the Committee is of the view that the Complainant only made his apprehension that only due to certification of Indian documents, the Respondent became partner with brother of Mr. Hemant Savla and the said act indicates Respondent's ulterior motive for certification of Indian documents. However, it is noted that the Complainant could not bring on record any evidence to prove that the certification was improper and was an act of indirect gratification only for getting an opportunity of becoming a partner with CA. Mulesh Savla. Accordingly, the Committee decided to hold the Respondent not guilty with respect to above charge.

CONCLUSIONS:

6. Thus in light of above, in the considered opinion of the Committee, the Respondent is held **Not Guilty** of Professional Misconduct falling within the meaning of Clause (2) of Part IV of First Schedule and Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 [as amended by the Chartered Accountants (Amendment) Act, 2006].

6.1. Accordingly, the Committee passes an Order for closure of this case under Rule 19(2) of the Chartered Accountants (procedure of Investigations of Professional and Other Misconduct and Conduct of cases Rules, 2007.

Sd/-
(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER

Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-
(CA. CHANDRASHEKHAR VASANT CHITALE)
MEMBER

DATE : 06.08.2019
PLACE : New Delhi