

CONFIDENTIAL

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

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

PPR/207/15/DD/77/INF/16/DC/1129/19

In the matter of:

CA. C. G. Pankajakshan (M.No. 020512)
T.C. 9/2610-1, E-3,
Sahasaram,
Elankom Gardens,
Sasthamangalam, Thiruvananthapuram- 695010

.....Respondent No 1

CA. Rajeev R. (M.No. 211277)
T.C. 9/2610-1, E-3,
Sahasaram,
Elankom Gardens,
Sasthamangalam, Thiruvananthapuram- 695010
and

.....Respondent No 2

CA. Christy Abraham (M.No. 226264)
Vadasseril House,
Chengalam SPO,
Kottayam 686 022

.....Respondent No 3

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
Shri Ajay Mittal, Member (Govt. Nominee)
CA. Chandrashekhar Vasant Chitale, Member
CA. Manu Agrawal, Member

Date of Final Hearing: 20th August, 2020 through Video Conferencing

PARTIES PRESENT:

- (i) CA. C.G. Pankajakshan – the Respondent No. 1 (appeared from his office at Kochi)
(ii) CA. Rajeev R. – the Respondent No. 2 (appeared from his office at Kochi)
(iii) CA. Christy Abraham – the Respondent No. 3 (appeared from his office at Kochi)
(iv) CA. C V Sajan – Counsel for the Respondents (appeared from his office at New Delhi)



Brief background and the Allegations of the Informant:

1. The Informant was the Former Secretary of the Trivandrum Club (hereinafter referred as the “Club”) for the year 2014-2015 which was a social club registered under the Travancore-Cochin Literary Scientific and Charitable Societies Registration Act, 1955. As per the Informant, M/s Grant Thornton India LLP (hereinafter referred as “GT”) was engaged for carrying out a Special Review of checks and controls over payments made for a few specified items of capital expenditure and submitted their Review Report dated 17th November, 2014 (A-4 to A-45) wherein it had reported various discrepancies and lapses in its Review Report. However, the Informant has raised allegations against the Respondent firm only in respect of the three matters for the years 2012-13 and 2013-14, which are as under:

- a) The payments to the tune of Rs. 29 Lakhs were made during 2012-13 without the invoices and such irregularities were not mentioned in the Audit Report by the Respondent firm (A-50 and A-51).
- b) The cash payments were made to a few persons in F/Y 2013-14 to the tune of Rs. 9 Lakhs without deducting TDS in violation of Income Tax Rules but the same was not reported by the Respondent firm in its Audit Report.
- c) The changes in the accounting policies were not qualified by the Respondent firm in its Audit Report for the year 2012-2013.

Proceedings

2. At the outset on 20th August 2020, the Committee noted that the Respondents along-with their Counsel were present during the hearing. Thereafter, they gave a declaration that there was nobody except them in their respective room from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form. Being the first hearing, the Respondents were put on oath. Thereafter, the Committee asked the Respondents whether they wished the charges to be read out or it could be taken as read. The Counsel for the



Respondents stated before the Committee that they were aware of the charges made against them and the same might be taken as read. On being asked, as to whether the Respondents pleaded guilty, their Counsel did not plead guilty and opted to defend the case.

Thereafter, the Counsel for the Respondents made his submissions on the allegations. Based on the documents available on record and after considering the oral and written submissions made by the Counsel for the Respondents before it, the Committee concluded hearing in the matter.

Findings of the Committee

3. At the outset, the Committee noted the Director (Discipline) had in his prima facie opinion dated 12th July, 2019 held the Respondents not guilty of the alleged charges. The Board, at its 122nd meeting held on 11th-12th Sept, 2019, considered the said *prima facie* opinion along with the Information Letter, Written Statement and its annexures as available on record. The Board was of the view that the role of the Respondent(s) needs to be examined in view of the comprehensive reporting done in the Review Report dated 17th November, 2014, and accordingly, the Board did not agree with the prima facie opinion of the Director (Discipline) that the Respondents are NOT GUILTY of Professional Misconduct falling within the meaning of Clauses (5), (6) and (7) of the Part I of the Second Schedule to the Chartered Accountants Act, 1949 and, decided to refer the matter to the Disciplinary Committee to proceed under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. Accordingly, the Committee held the enquiry on the date of hearing on all the three allegations discussed in paragraph (1) above.

4. As regard the first charge, wherein the Informant had alleged that the payments to the tune of Rs.29 Lakhs were made during 2012-13 without the invoices and such irregularities were not mentioned in the Audit Report by the Respondents (A-50 and A-51), the Committee noted the submissions of the Respondents. The Counsel for

the Respondents submitted that it was factually incorrect to state that the payments were not fully supported by the invoices. The Counsel informed that detailed explanation was made available on record in respect of the specific Work Orders (**B-19 to B-20**) in relation to which payment of Rs. 29.81 Lakhs was made to M/s. Ambience. Further, bills, invoices and claim statements in respect of the same were available with the club which could have been explained to the Informant, if it would have been discussed with the office-bearers who were in charge of governance of the club. He also stated that there was no case of any discrepancy with regard to the payment of the amounts to contractors and their proper accounting in the books of the club was done and there was no misstatement in the financial statements of the club audited by the Respondents.

4.1 The Committee in this regard on perusal of documents available on record noted that the Respondents had given a detailed explanation on record in respect of the Work Order (**B-19 to B-20**) relating to the payment of Rs. 29.81 Lakhs made to M/s. Ambience to counter the observations of the GT. It further noted that the Respondents had stated that the original contract for Rs. 21 lakhs was for three works and subsequently 5 more additional works were awarded for a total amount of Rs. 8,81,112/- (**B-19**) being approved by the EC, thus the aggregate payment was for Rs. 29,81,112/- (**B-20**) and that such payments were made by cheques after deducting TDS which were duly supported by claim statement / invoices. THE Committee was accordingly, of the view that the Respondents had exercised due diligence while verifying the documents during the course of the statutory audit of the Club for F/Ys 2012-13 and 2013-14 and the same had not missed their attention and thus held them not guilty of the alleged misconduct.

5. As regard the second charge about non-reporting about cash payments aggregating to Rs.9 Lakhs made during F/Y 2013-14 without deducting TDS which was in violation of Income Tax Rules, the Committee noted that the Counsel for the Respondents submitted that the audit report being alleged upon were not pertaining to Tax Audit instead it was in relation to statutory audit conducted by them. So, the

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said non-compliance was not reported in the alleged statutory audit report. He further stated that the financial liability on the club for non-deduction of tax at source on the sum of Rs.9 Lakhs was only Rs.90,000/- and hence such non-compliance was not be considered to be material enough for reporting in statutory audit report. The Counsel for the Respondents submitted to have reported the same in Tax Audit Report for FY 13-14 (AY 2014-15) which was also submitted on record subsequently.

5.1 The Committee in this regard on perusal of documents available on record noted that the Respondents, in the capacity of being the Statutory Auditor of the Club were not required to report violation of provisions of Income Tax Act, 1961 until or unless they are material enough to affect the true and fair view of the financial statements. It was noted that the matter about making payments without deducting TDS was required to be reported in the Tax Audit report and not in the statutory audit report which has been duly reported as such. Further, the Committee noted that the income of the Club for F.Y. 2013-14 amounted Rs. 1,065 lakhs (A-86), and thus the matter of non-deduction of TDS on payment of Rs.9.00 lakhs, being immaterial amount did affect the true and fair view of the financial statements of the Club. Further, on perusal of Tax Audit report which was certified by the Respondent no 2, it was noted that non deduction of TDS was duly reported in the Tax audit report. Thus, it was viewed that considering all the facts in entirety, it was established that the said non-compliance had not escaped the Respondents' attention, but was the result of a considered decision based on the auditor judgment that the subject matter merited coverage only in tax audit report and not in statutory audit report. Accordingly, the Committee held that the Respondents were not guilty for the extant charge as well.

6. As regard the third charge wherein the Informant has alleged that the changes in the accounting policies were not qualified by the Respondent firm in its Audit Report for the year 2012-2013, the Committee noted the submissions of the Respondents. The Counsel for the Respondents in this regard submitted that since there was no

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change in accounting policy, there was no requirement to disclose the effect of such change in the financial statements or for the auditor to draw attention to it.

6.1 The Committee in this regard on perusal of documents available on record noted that the Respondents have submitted that there was no change in the accounting policy with regard to accounting income by the way of facilities usage fee in 2012-13 as compared to the year 2011-12. It was only a re-grouping or re-classification of income on account of 'Facilities Usage Fee' pertaining to the year 2011-12 shown as previous year's figures in the accounts for the year 2012-13. In the audited accounts for the year 11-12, this income was included under the head 'Subscription from members, while in the audited accounts of 12-13, it is shown separately. Thus, It was only a re-grouping or re-classification of income and the Committee was of the considered opinion that the change in classification cannot be treated as the change in accounting policies. Thus, the Committee held that the Respondents were not guilty of this allegation also.

7. The Committee also noted that the Informant vide his letter dated 27th August 2018 (C-1) had requested for withdrawing the extant case against the Respondents stating that the issues raised in his allegation letter were deliberated in detail at the General Body Meetings of the Club and the required explanation had been furnished by the Management and thereafter, the accounts of the Club audited by the Respondents for the F.Y. 2012-13 and 2013-14 were duly approved. Thus, he had no complaint in respect of the said accounts against the Respondents. In this regard, the Committee was of the view that the Informant did not attempt to gain proper understanding of the facts and chose to raise uncorroborated allegations against the Respondents merely on the basis of special review report of GT dated 17th November 2014 which was limited to special review of the checks and controls exercised by the Club while making payments under certain identified projects. Thus, in the considered opinion of the Committee, the Respondents, being the statutory auditor of the Club could not be held responsible for failing to exercise due diligence in conduct of his professional duties in respect of allegations made against them. The alleged misconducts were, therefore, not maintainable against them.

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Conclusion :

7. Thus in conclusion, in the considered opinion of the Committee, the Respondents are held **NOT GUILTY** of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule of Chartered Accountant Act 1949.

8. The Committee, accordingly, ordered the closure of this case against all the three the Respondents.

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Sd/-
[CA. Atul Kumar Gupta]
Presiding Officer

Sd/-
[Smt. Anita Kapur]
Member, (Govt. Nominee)
(approved & confirmed through e-mail)

Sd/-
[Shri Ajay Mittal]
Member, (Govt. Nominee)
(approved & confirmed through e-mail)

Sd/-
[CA. Chandrashekhar Vasant Chitale]
Member
(approved & confirmed through e-mail)

Sd/-
[CA. Manu Agrawal]
Member
(approved & confirmed through e-mail)

Date: 16th December, 2020 (passed through VC)

Certified to be true copy
Mohita Khanna
CA. Mohita Khanna
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Disciplinary Directorate
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