



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

PPR/P/99/16/DD/139/INF/16/BOD/348/2017

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.

In the matter of:-

CA. Suman Kumar (M.No. 515980), Faridabad in Re:
[PPR/P/99/16/DD/139/INF/16/BOD/348/2017]

MEMBERS PRESENT:

CA. Prasanna Kumar D., Presiding Officer
Mrs. Rani Nair, (IRS, Retd.), Government Nominee
CA. Durgesh Kumar Kabra, Member

Date of final hearing: 9th March 2020

1. The Board of Discipline vide Report dated 16th December, 2019 was of the opinion that **CA. Suman Kumar** is guilty of "Other Misconduct" falling within the meaning of Clause (2) of Part-IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Suman Kumar** and communication dated 26th February, 2020 was addressed to them thereby granting them an opportunity of being heard in person and/or to make written representation before the Board on 9th March, 2020.
3. **CA. Suman Kumar** appeared personally before the Board on 9th March 2020 and made his submissions thereat.
4. **CA. Suman Kumar** in his written representation dated 9th March, 2020, inter-alia stated as hereunder:-
 - (a) The Respondent brought on record the Statement which Sh. Subhash Chand, proprietor M/s Global Tech Co. gave in CBI Court, Panchkula and stated that he wanted to take revenge from the ITO as he was the same person who had done his assessment for the last year and he admitted that he gave bribe to settle the case and used the Respondent as scapegoat to take revenge from ITO.

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- (b) The client had a tendency to get his work done and not pay fees. He used Respondent's services from 01/08/2016 to 08/08/2016 (just before the raid) and did not pay his fees. Earlier also he paid only 50% of the fees when the Respondent audited his accounts.
- (c) When the client called the Respondent to take his fees, he agreed but the client falsely implicated the Respondent under the garb of pending fees which he never intended to give it the Respondent.

5. The Board has carefully gone through the facts of the case and also the oral and written representation of CA. **Suman Kumar**. The Board noted that during the hearing, the Respondent was asked to provide the copy of the Statement claimed to be made by his client in the CBI Court which he did not provide at that stage and brought on record now after conclusion of the hearing as a part of his written representation. The Board on perusal of the said Statement of the Respondent's client dated 26th July 2018 deposed before the Special Judge(CBI), Haryana, Panchkula as stated hereunder noted that the same did not support the case of the Respondent :

"It is incorrect to suggest that accused(Respondent) was called in the office in order to falsely implicate him. It is further incorrect that accused had never demanded any bribe from me. It is incorrect to suggest that accused was called in a private place in order to falsely trap him in a trap case. It is incorrect to suggest that Varun Shyokand had forcibly along with other CBI officers caught hold of accused and put pressure upon him to catch hold of ITO Radhey Shyam. It is incorrect that at that time accused told that he had come to take his legal fees. It is incorrect that under the grab of legal fees accused when refused to implicate ITO Radhey Shyam was involved in the present case. It is incorrect to suggest that no post trap proceedings were never conducted. It is incorrect that immediately when accused reached the office thereafter he was taken to ITO Income Tax Office and I was accompanied with Varun Shyokand and two CBI officials. It is further incorrect that from there when ITO Radhey Shyam was not found then phone call was made to CBI office, Chandigarh and then from the directions of some official post trap proceedings were done against the accused forcibly. It is incorrect to suggest that the accused had given complete explanation but the same was never recorded by any CBI officials. It is incorrect to suggest that the accused is victim of false implication. It is further incorrect to suggest that to achieve my goal and satisfy my ego against ITO Radhey Shyam due to his previous conduct, Suman Kumar accused has been implicated in the present case. It is further incorrect to suggest that the grab of the fees which I never intended to pay of the work done after the scrutiny proceedings and provisional balance-



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sheet which were prepared about 2-3 days ago prior to false implication. It is further incorrect to suggest that I have deposed falsely."

6. The Board was of the view that, as per the findings of the Board as contained in its report, it has already been conclusively proved that the Respondent is Guilty of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule of the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

7. Upon consideration of the facts of the case, the consequent misconduct of CA. Suman Kumar and keeping in view his representation before it, the Board decided to impose a fine of Rs.10,000/- (Rupees Ten thousand only) upon CA. Suman Kumar (M.No. 515980) payable within a period of 60 days from the date of receipt of the Order.

LSK

Sd/-
CA. PRASANNA KUMAR D.
(PRESIDING OFFICER)

Certified to be true copy

R.S. Srivastava

R.S. Srivastava
Assistant Secretary,
Disciplinary Directorate

The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

BOARD OF DISCIPLINE

Constituted under Section 21A of the 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. : PPR/P/99/16/DD/139/INF/16/BOD/348/2017

QUORUM:

CA. Sushil Kumar Goyal, Presiding Officer
Mrs. Rani Nair (IRS, Retd.), Government Nominee
CA. Durgesh Kumar Kabra, Member

In the matter of:

CA. Suman Kumar (M.No. 515980)

B-532, 2nd Floor,
Nehru Ground, NIT,
Faridabad – 121 001

.....Respondent

DATE OF HEARING : 11th July, 2019

PLACE OF HEARING : New Delhi

PARTIES PRESENT:

Respondent : CA. Suman Kumar
Counsel for the Respondent : CA. Arush Gupta

Findings:

1. The Board noted that the charge against the Respondent is that he demanded the bribe amount of Rs. 2 Lakh in lieu of settlement of Income Tax Assessment matter of his client Shri Subhash Chand (hereinafter referred to as the 'client'), proprietor M/s Global Tech Co., pending with Shri Radhey Shyam Sharma, ITO, ward no.2(4), Faridabad. However, the Respondent was caught red handed by Central Bureau of Investigation (CBI) and was arrested on 9th August 2016 while accepting a bribe amount of Rs. 60,000/- as the first installment out of the total settled amount of Rs. 1.5 Lakhs and a mobile handset.

2. The Board noted that the Respondent along with his Counsel was present before it at the time of hearing.

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3. The Board considered the submission of the Respondent that a notice was served by the Income Tax Department with respect to the A.Y. 2014-15 on his client and he was helping his client in the proceedings after receipt of notice. The client was associated with the Respondent for the last two years as his auditee and his fees was also due from the last two years. When the client received the scrutiny notice from the Income Tax Department, he informed the client that his audit fees is still pending plus scrutiny charges are also there. After discussion about the consultancy charges, the Respondent agreed to help him. The Respondent helped the client in submission of documents before the Income Tax Department. After this incident, the client called the Respondent to falsely implicate the ITO in the matter and on the pretext of payment of fees he called him to his office and thereafter, the matter was reported to CBI. In total, Rs. 60,000/- was reported to be received in cash out of which Rs. 30,000/- was audit fees which was due and Rs. 30,000 was the amount which the Respondent had asked for scrutiny proceedings. The CBI tried to forcefully put the money in his pocket on the insistence that they will leave him if he hands over the money to the ITO and he will be made an official witness. The CBI wanted to catch the ITO. However, the ITO had left India, two or three days before only. Since ITO was not present in India at that time, the Respondent was implicated. Since there were no evidence against the ITO, no action was initiated against him. The Client has used the Respondent as a tool to settle his grudge against the ITO. He also stated that the client in his statement before CBI has stated that he was implicating the Income Tax Officer as he had taken the bribe from him for the assessment of the last two years also. Considering the submissions of the Respondent and the documents on record, the Board had directed the Respondent to provide the status of case in CBI Court along with the copy of the statement claimed to be made by his client in the CBI Court within 7 days. However, the same have not been provided by the Respondent.

4. The Board on perusal of transcript of the telephonic conversation between the Respondent and his client and the statement of the witness, as provided by the CBI noted that the same confirmed the settlement of Income Tax Assessment of the Respondent's client for Rs. 1.5 Lakhs and a mobile handset on behalf of the Income Tax Officer.

5. Also, the Board perused the copy of the Computation of total income and tax thereon of the Respondent's client for the A.Y. 2014-15 filed with the Income Tax Department and noted that an amount of Rs. 25,000/- was reflected as audit fees. The Board further noted that the Respondent had raised an invoice dated 21st July 2016 amounting to Rs. 60,000/- on his client with the particulars '*advance for Professional services towards representation before Income tax officer for pending case against proprietor Subhash Chand under section 143(3) of Income Tax Act*'. *The Board observed that the contention of the Respondent as stated at para 3 above as regards the receipt of audit fees was contrary to the said documents both in terms of the amount of fees and its nature. The Board was of the view that even if, it is assumed for the sake of argument that the amount was an advance, then by no means an invoice can be raised for the same as on receipt of advance, normally a*

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Receipt is issued and not an invoice. Also, the invoice is dated 21st July 2016 whereas the Respondent has been caught red handed with the receipt of same amount of Rs.60,000/- in cash on 9th August 2016. Thus, technically, a receipt cannot be issued in advance for an amount to be received in cash later.

6. The Board also categorically noted that the Inspector CBI ACB, Chandigarh @ Faridabad in his verification report dated 9th August 2016 provided as under:

"Sh. Suman told the Complainant that during his discussion with Sh. Radhe Shyam a bribe of Rs. 2 Lakh has been demanded to settle the Issue. It is further stated that on 01.08.2016, a discussion was held between Sh. Suman, Chartered Accountant, Sh. Radhe Shyam Sharma, ITO and Complainant (the client herein) in the office of suspect ITO. During that discussion, the Complainant came to know that Sh. Suman was demanding the said bribe on behalf of Sh. Radhe Shyam. Sh. Suman, in the presence of Sh. Radhe Shyam, repeated the demand of Rs. 2 Lakh. Sh. Radhe Shyam also threatened the Complainant that though he has no lathi like police but he can punish the Complainant by addition in ITR. The Complainant requested Sh. Radhe Shyam to reduce the bribe amount but he stuck to his demand of Rs. 2 Lakh. On 08.08.2016, Sh. Suman, CA telephonically called the Complainant and asked about the arrangement of bribe money and Complainant told Sh. Suman that he cannot pay bribe amount of Rs. 2 Lakh. It is also stated that the Complainant has also recorded the conversation held on 01.08.2016 and the same is available in the mobile phone of the Complainant.

During the conversation, Sh. Suman fixed the amount of bribe to Rs. 1.5 Lakh and one mobile handset. The Complainant told that he is not able to arrange Rs. 1.5 Lakh and he only has Rs. 60,000/- with him at present. On this suspect Sh. Suman agreed to collect the bribe amount of Rs. 60,000/- as first Instalment from shop of the Complainant after about 2 hours. The Complainant asked the suspect Sh. Suman to make a call before departing for the shop of the Complainant."

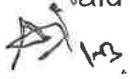
7. The Board also noted that despite an opportunity given to the Respondent to provide evidence to prove his innocence, the Respondent failed to do so.

8. Thus, on consideration of the submissions and the documents on record, the Board opined that the conduct of the Respondent in the aforesaid scenario, has clearly brought disrepute to the profession and thus, the Respondent is guilty of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act.

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CONCLUSION:

9. Thus, in conclusion, in the considered opinion of the Board, the Respondent is held **GUILTY** of 'Other Misconduct' falling within the meaning of Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

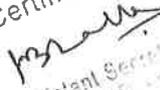


Sd/-
CA. SUSHIL KUMAR GOYAL
(PRESIDING OFFICER)

Sd/-
MRS. RANI NAIR (IRS, RETD.)
(GOVERNMENT NOMINEE)

Sd/-
CA. DURGESH KUMAR KABRA
(MEMBER)

DATE: 16th DECEMBER 2019
PLACE: NEW DELHI

Certified Copy

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