



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

[PR-266/16/DD-285/2016/BOD/469/2018]

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:-

Shri Vikash Kumar Saw,
Sai Niwas Near sati Mandir,
Ward No. 10,
Chakardharpur,
West Singhbhum – 833102

....Complainant

-Vs-

CA. Padmakesh Dubey (M.No.403892),
Kedar Bhumi, Toklo Road,
Ward No. 6,
Chakardharpur,
West Singhbhum – 833102
[PR-266/16/DD-285/2016/BOD/469/2018]

....Respondent

MEMBERS PRESENT:

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

Date of hearing: 10th September, 2020

1. The Board of Discipline vide Report dated 16th August, 2019 was of the opinion that **CA. Padmakesh Dubey** 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. Padmakesh Dubey** and communication dated 02nd September 2020 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 10th September, 2020.



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3. **CA. Padmakesh Dubey** appeared before the Board through video conferencing and since it was the first time that he appeared before it, he was put on oath. Thereafter, he made his oral representation before the Board.

4. The Board noted that in his written representation dated 04.09.2020, **CA. Padmakesh Dubey**, inter-alia, submitted as under:-

4.1 The Board relied on a certificate brought on record by the Complainant which was dated 30.09.2019 issued by Canara Bank. This itself shows the fraudulent nature of the Complainant who submitted during the proceedings of Board held on 16.08.2019, a false certificate which was post-dated 30.09.2019.

4.2 In Para 10 – Conclusion of Findings of Board of Discipline under Rule 14(9), the Board has concluded that the Respondent is Guilty of Other Misconduct falling within the meaning of Clause (2) of Part I of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act. The Respondent as member of the Institute has never paid or allowed or agreed to pay or allow any share, commission or brokerage in the fees or profit or professional business to any person who is not a member of the Institute. The Respondent has neither done any such act nor there is any complaint in this regard.

4.3 The complaint is regarding a cheque of Rs.5,19,293/-, cheque No. 69685 issued by Mr. Vikash Kumar Saw. This was the payment of the Respondent's fees for various professional works done during the 2 financial years for 5 files of his group which include the Complainant, Mr. Vikash Kumar Saw himself in his personal capacity PAN ASOPS-4085K, his father Mr. Bhagwan Das Saw, PAN AEIPS-5120H, his mother Lakhi Devi PAN AIMPD-8315R, his wife Sangita Devi PAN AINPD4875D, a partnership Firm, M/s. Laxmi Enterprises PAN AABFL 7993G wherein one of the partner was Mr. Vikash Kumar Saw, i.e. the Complainant and the other partner was Mr. Bhagawan Das Saw, father of the Complainant. The cheque was dated 29.09.2011 and at first instance it was deposited on 03.10.2011 but bounced due to insufficient funds. The cheque was then returned to the Complainant with a request to make alternate payments. But after some days, he again returned the same cheque on 15.10.2011. This time with as precautionary step, a cheque with covering letter was obtained so that if it once again bounces legal steps may be taken. But this time, the cheque was cleared. After that the Complainant closed all the files in the Respondent Office and discontinued all professional



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assignment with the Respondent's Office. The Respondent's Canara Bank Pass Book substantially proves the events. It shows 3 entries of the same cheque No.69685 amounting to Rs.5,19,293/-. First entry is of credit on 03.10.2011 which relates to first lodging of cheque. Second entry is of debit on the same date which relates to cheque dishonour. Third Entry is of credit on 17.10.2011 which relates to second lodging of same cheque. After a detailed and time taking search of the Respondent Office old records, the Respondent found the documentary evidence which finally establishes that the said amount is not for payment of any income tax i.e. the cheque covering letter given and signed by the Complainant Mr. Vikash Kumar Saw himself, when he gave the same bounced cheque on second instance with a request to re-lodge the cheque.

4.4 In view of the above submissions, the Respondent pleaded for Mercy to the Board of Discipline and that he is not guilty of any professional or Other misconduct under the Chartered Accountants Act, 1949 and prayed to pass such an Order under section 21A(3) of the Chartered Accountants Act, 1949 that does not cause economic hardship to him during such COVID 19 as the CA is his profession and only source of livelihood to him and his family.

5. The Board has carefully gone through the facts of the case alongwith the written and oral representation of **CA. Padmakesh Dubey**.

6. On perusal of the written representation of the Respondent, the Board was of the following view:

6.1 As per the documents brought on record by the Complainant at the time of filing the complaint, the alleged cheque bearing no. 069685 in question had been issued by **M/s Maheshwari Minerals** whereas the Respondent has brought on record a letter dated 15th October 2011 from **M/s Laxmi Enterprises** stating that the cheque was for payment of fees which is not acceptable.

6.2 In para 8 of its findings, the date of the alleged certificate is 30th May 2019 and has been inadvertently written as 30th September 2019. Further, the Respondent has been held 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 and in para 10 of its findings, the use of the word Part I instead of Part IV was an inadvertent



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typographical error. However, these do not in any way effect the efficacy of the findings of the Board.

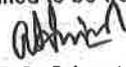
7. The Board was of the view that as per the findings of the Board as contained in its report ,inter-alia, stating that the Respondent had defrauded the Complainant Firm and misused the amount of Rs. 5,19,293/-by not depositing the said amount towards Income Tax, it has already been conclusively proved that **CA. Padmakesh Dubey** 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.

8. Upon consideration of the facts of the case, the consequent misconduct of **CA. Padmakesh Dubey** and keeping in view his oral and written representation before it, the Board decided to remove the name of **CA. Padmakesh Dubey (M.No.403892)** from the Register of Members for a period of one (1) month and also imposed a fine of Rs.1,00,000/- (Rs. One Lakh Only)upon him payable within a period of 60 days from the date of receipt of the Order.

Sd/-

CA. PRASANNA KUMAR D.
(PRESIDING OFFICER)

Certified to be true copy


R.S. Srivastava
Assistant Secretary,
Disciplinary Directorate

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



BOARD OF DISCIPLINE (BENCH-II)

(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

Shri Vikash Kumar Saw, West Singhbhum

-Vs-

CA. Padmakesh Dubey (M.No.403892), West Singhbhum

[PR-266/16/DD-285/2016/BOD/469/2018]

CORAM:

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

In the matter of:

**Shri Vikash Kumar Saw,
Sai Niwas, Near Sati Mandir,
Ward No.10 (New),
Chakradharpur
WEST SINGHBHUM - 833102**

.....Complainant

Versus

**CA. Padmakesh Dubey
Kedar Bhumi, Toklo Road,
Ward No.06,
Chakradharpur
WEST SINGHBHUM - 833102**

.....Respondent

**DATE OF FINAL HEARING : 16.08.2019
PLACE OF HEARING : KOLKATA**

PARTIES PRESENT:

Counsel of Complainant : CA. Natbar Lal Jha

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Findings:

1. The Board noted that the Respondent was held guilty by the Director (Discipline) of Other Misconduct falling within the meaning of Clauses (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 on the charge that he was given a cheque in his name amounting Rs. 5,19,293/- for payment of liability of Income Tax of M/s Maheshwari Minerals, but he failed to pay Income Tax despite said amount was debited from the Bank account of M/s Maheshwari Minerals.
2. The Board noted that the Respondent did not appear before it despite due service of notice. The Board also noted that hearing in this case was earlier held on 31st May, 2019 and the said hearing was adjourned due to absence of the Respondent so as to provide him one more opportunity.
3. Looking into repetitive absence of the Respondent, the Board in this regard took reference to Rule 14 of the aforesaid Rules relating to "Procedure to be followed by the Board of Discipline" whereby as per sub rule (7) and (8) it is mentioned as under:

"(7)On the date of hearing, if the respondent, inspite of the service of notice, under sub rule (6) does not appear either in person or through his authorised representative the Board of Discipline may proceed ex-parte and pass such orders as may think fit or direct fresh notice to be served.

(8)The Board of Discipline may on such terms as they think fit and at any stage of proceedings adjourn the hearing:

Provided that such adjournment shall not be given more than one stage at any stage of the proceedings."

The Board accordingly decided to take up the matter ex-parte the Respondent.

4. The Board accordingly heard the submissions made by the Counsel of the Complainant and duly considered the submissions/documents available on record.
5. The Board noted that M/s Maheshwari Minerals had issued a cheque drawn on State Bank of India bearing No. 069685 dated 29th September, 2011 in favour of Mr. Padmakesh Dubey (i.e. The Respondent) (C-4). The Board also noted that

that as per Bank statement of M/s Maheshwari Minerals the said cheque was cleared through clearing on 17th October, 2011 (C-5).

6. The Board noted that according to the Complainant the said cheque was issued for payment of Income Tax but the same was not deposited in the account of the Income Tax Department. The Board in this regard noted from copy Acknowledgement issued by Income Tax Department (C-23) that the tax liability of M/s Maheshwari Minerals was exactly Rs. 5,19,293/-. Further, the said figure was also certified by the Respondent in statement of Computation of the Income (C-15 and C-22). Hence, the Board accepted the submission of the Complainant that said cheque was issued for payment of Income Tax.
7. The Complainant had brought on an undated letter appointing the Respondent firm as the Tax Auditor of their firm for the F.Y. 10-11 which also bears the stamp of the Respondent firm (R3).
8. The Board further noted that the Complainant had brought on record a certificate dated 30th September, 2019 issued by Canara Bank to the Complainant Firm stating that State Bank of India's cheque no. 69685 dated 29th September, 2011 for Rupees 5,19,293/ has been credited to account no. 03291010050231 in the name of Shri Pandmakesh Dubey on 17th October, 2011 through clearing.
9. The Board hence noted that it is proved that the Respondent had misused the said amount by not depositing the amount towards Income Tax. Accordingly, the Respondent defrauded the Complainant Firm and the said act had clearly brought disrepute to the profession.

CONCLUSION:

10. Thus, the Board concluded that the Respondent is held **GUILTY** of Other Misconduct falling within the meaning of Clause (2) of Part I of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of said Act.

Sd/-
(ATUL KUMAR GUPTA)
PRESIDING OFFICER

Sd/-
(ARUN KUMAR)
GOVERNMENT NOMINEE

Sd/-
(PRASANNA KUMAR D)
MEMBER

DATE :16.08.2019
PLACE : KOLKATA

AD

Certified True Copy



Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate

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