



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

ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT 1949 READ WITH RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATION OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

File No. : [PR/227/2013/DD/78/2014/DC/504/2016]

In the matter of:

Major. Unnikrishnan A
Attending SC-69,
Defence Service Staff College,
Wellington, Nilgiris,
TAMIL NADU

.....Complainant

Versus

CA. K. Suresh(M.No.023554)
M/s. Isaac & Suresh,
Chartered Accountants,
First Floor, NRA-52, Tennala Towers,
Nandavanam Bakery Jn. Road, Palayam,
THIRUVANANTHAPURAM - 695 033.

.....Respondent

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: 7th September 2020 through Video Conferencing
Place of Hearing: New Delhi

Party Present:

CA. K Suresh: the Respondent (appeared from his residence in Thiruvananthapuram)

1. Vide report dated **10th February 2020 (copy enclosed)** the Disciplinary Committee was of the opinion that **CA. K. Suresh (M.No.023554)** was **GUILTY** of Professional Misconduct falling within the meaning of Clause (2) of Part IV of First Schedule and Clause (7) of Part I of Second Schedule to Chartered Accountant Act 1949 with respect to audit of Azhakath Sreekarna Dharmasthanam Trust (herein after referred to as he '**Trust**') that being a member of the Trust as well as that of its audit committee, he had acted as an auditor of the said trust and used the name of his firm during the financial years 2003 to 2005.



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It is noted that the Respondent is held guilty under Clause (2) of Part IV of First Schedule and Clause (7) of Part I of Second Schedule which states respectively as under:-

“in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.” and

“does not exercise due diligence, or is grossly negligent in the conduct of his professional duties.”

2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 24th August 2020 was addressed to him thereby granting him an opportunity of being heard in person and/or to make a written representation before the Committee on 7th September 2020 through video conferencing.

3. The Respondent appeared before the Committee on 7th September 2020 through video conferencing from his personal location to make oral submissions and also submitted his Written Submissions vide e-mail dated 8th August 2020 wherein he had inter-alia stated that as per Clause VIII of the scheme approved by Hon’ble Sub-Court, Kollam, the accounts of the Trust for each year was subjected to audit and three members were to be appointed to the audit Committee by the General body from its members for the said purpose. Since, the Respondent was a member of the General body and not the governing body (Executive Committee), he was eligible to be appointed as the member of the Audit Committee to audit the accounts of the Trust. He further stated that the audit of accounts of the Trust by members of the audit Committee was not a practice of the Trust but was as per the scheme approved by the Hon’ble Sub Court and the audit Committee formed out of General body members did not have the same meaning as that of the Companies Act.

4. The Committee considered the oral submissions as well as the written submissions made by the Respondent and noted that the charge in the extant matter was that despite being member of the Trust, the Respondent carried out the audits of the accounts of the Trust between 2003 and 2009 as a member of three Members Audit Committee and used the name of his firm during the years 2003 to 2005, meaning thereby that the audit was conducted by the Respondent in his professional capacity. The Committee further noted that the Respondent allowed his firm name to be used along-with the two other non-chartered accountants while being a member of the audit committee of the said trust which is in violation of the Code of Ethics of the ICAI. Further, it is noted the Commission report dated 07th September, 2009 which was appointed by the Honourable Sub Court Kollam to look in to



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the mismanagement of the Trust and observed that it had reported fraudulent activities as well as misappropriation of the funds of the Trust which have not been reported by the Respondent in his Report as a member of the Audit Committee. Had he conducted his audit with due diligence, the said fact would have been reported by him. Further, though his position as an auditor of the Trust does not strictly fall within the meaning of substantial interest as contained in Clause (4) of Part-I of the Second Schedule but keeping in view the above findings of the Commission and other facts as available on record it is observed that his close relatives were accused of misappropriation of funds which he failed to report in the Audit Report, as a member of the Audit Committee signifies that his independence was effected and with malafide intentions the correct facts were not reported.

5. The Committee was thus of the opinion that the misconduct on the part of the Respondent has been held and established within the meaning of Clause (2) of Part IV of First Schedule and Clause (7) of the Part I of Second Schedule of Chartered Accountant Act 1949 and keeping in view the facts and circumstances of the case as aforesaid, ordered that the Respondent be reprimanded and a fine of Rs. 25,000/- (Rupees Twenty Five Thousand Only) be imposed upon the Respondent.

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

Sd/-
[Smt. Anita Kapur]
Member, (Govt. Nominee)

Sd/-
[Shri Ajay Mittal]
Member, (Govt. Nominee)

Sd/-
[CA. Chandrashekhar Vasant Chitale]
Member

Sd/-
[CA. Manu Agrawal]
Member

Date: 7th September, 2020



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CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2019-2020)]

**[Constituted under Section 21B of the Chartered Accountants
(Amendment) 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.**

File No. : [PR/227/2013/DD78/2014/DC/504/2016]

In the matter of:

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THIRUVANANTHAPURAM - 695 033.

.....Respondent

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer

CA. Amarjit Chopra, Member (Govt. Nominee)

CA. Chandrasekhar Vasant Chitale, Member

DATE OF FINAL HEARING : 15.10.2019

PLACE OF FINAL HEARING : ICAI Bhawan, Chennai



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PARTIES PRESENT:

Complainant: Not Present

Respondent: CA. K Suresh

Counsel for Respondent : Shri Anil D. Nair, Advocate

Charges in Brief:-

1. The Committee noted that in the Prima-Facie Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent is guilty under Clause (2) of Part IV of First Schedule which states as under :-

“(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.”

And Clause (7) of Part I Second Schedule of Chartered Accountant Act 1949 which states that:-

“(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;”

2. In this case allegation against the Respondent, briefly is that the Respondent being a member of Azhakath Sreekarna Dharmasthanam Trust (AST), sold 6.5 Acre of land which belonged to the said trust, fraudulently and even the consideration of Rs.17,80,763/- from the sale of said land was not remitted to the account of the Trust. It is further alleged that the Respondent in spite of being member of the trust as well as its audit committee, had been auditor of the said trust and did not bring to the light the above facts.

Brief facts of the Proceedings:

3. On the day of hearing, the Committee noted that Complainant was not present. The complainant asked for the adjournment. However, this case was heard on 30-07-2019 and adjourned on many earlier occasions. Therefore, the Committee



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decided to proceed with hearing by following the proviso to Rule 18(18) which states that as follows :-

“The Committee may, at request of any of the parties before it or due to other reasons, and on such terms as it thinks fit, and at any stage of the proceedings, adjourn the hearing.

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

Explanation – For the purpose of this rule, inability of the complainant, advocate, authorized representative or witness, to appear shall not be treated as a valid reason for adjournment of a hearing”

4. The Respondent appeared before the Committee along with Counsel. In the absence of the Complainant and with consent of Respondent, the charges were taken as read. On being asked to the Respondent whether he pleads guilty, he replied in negative. Thereafter, the Committee sought whether he wish to proceed with his defence. The Respondent was already on oath as matter was partly heard on 30th July, 2019. After considering all papers available on record and pleadings, the Committee proceeded with the matter.

Findings of the Committee

5. On the matter stated above, the Committee enquired from the Respondent about the above allegation wherein the Respondent submitted that his firm was never appointed in a professional capacity as external or statutory or internal auditor. He further stated that audit of accounts of the trust by the member of the Audit Committee has been practice of the Trust. The members of the Audit Committee themselves use to audit the financial statements and use to give reports to the management of the trust, Accordingly, The Respondent along with his two members of the Trust were appointed as members of the audit committee. The said audit committee conducted the audit and submitted report to the management of the Trust.
6. The Committee viewed the financial statement submitted by the Complainant. This financial statement was confirmed by the Respondent. The Respondent had signed the audit report as partner, M/s Issac and Suresh, Chartered Accountants [C-11 to C-14 of PFO]. The Committee also noted that the notarized copy of accounts of the trust is also submitted in the Court, Kollam along with disclosure



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that the Respondent carried out the audits of the accounts between 2003 and 2009 as a member of Three Members Audit Committee and used the name of his firm during the years 2003 to 2005, thus implying that the audit was conducted in his professional capacity by the Respondent. The Committee noticed into these facts.

7. The Committee noted that the charge related to the audit of the Trust being conducted by the Respondent in spite of the fact that the Respondent has substantial interest in the Trust. The Respondent is working as the maker and also the checker of the balance sheet prepared by him along with two other audit Committee members who are not chartered accountants. This Committee of the Trust is conducting the audit of the above said Trust.

Conclusion

8. In view of the above findings, the Committee is of the view of the fact that the Respondent allowed his firm name to be used alongwith the two non-chartered accountants as audit committee of the above said trust is in violation of the Code of Ethics of the ICAI and is grossly negligent in performing his professional duties and bringing disrepute to the profession by not performing his professional assignments diligently. Accordingly, in the considered opinion of the Committee, the Respondent is **GUILTY** under Clause (2) of Part IV of First Schedule and Clause (7) of the Part I of Second Schedule of Chartered Accountant Act 1949.

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

Sd/-
(CA. AMARJIT CHOPRA)
CHITALE)
GOVERNMENT NOMINEE

Sd/-
(CA. CHANDRASEKHAR V.)
MEMBER



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DATE: 10th February, 2020
PLACE: New Delhi