



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. : PPR/20/S/13/DD/12/S/INF/2014]/DC/732/2017

In the matter of:

CA. S. Lakshminarayanan (M. No.012024) ----- Respondent
Lakshya , 1056/1,
Avinashi Road,
Coimbatore- 641018

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: 10th September 2020 through Video Conferencing
Place of Hearing: Gurugram

Party Present:

CA. S. Lakshminarayan – Respondent (Appeared from his residence)

1. Vide report dated 10th February 2020 (copy enclosed) the Disciplinary Committee was of the opinion that **CA. S. Lakshminarayanan** (M. No.012024) was **GUILTY** of Professional Misconduct falling within the meaning of Clauses (5), (7), (8) and (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 with respect to statutory audit of M/s CG-VAK Software and Exports Ltd. (herein after referred to as the '**Company**') for Financial Years 2006-07 to 2010-11 wherein Financial Reporting Review Board of ICAI had raised allegations of violation of certain Accounting standards as well as reporting obligations of the auditor in respect of general purpose financial statement of the Company for the said financial years.

It is noted that the Respondent is held guilty under Clause (5), (7) (8) and (9) of Part I of Second Schedule which state as under:-

“(5) fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity;

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

(8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;

(9) fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances;”



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2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 28th 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 10th September 2020 through video conferencing.

3. The Respondent appeared before the Committee on 10th September 2020 through video conferencing from his personal location, and made oral submissions before the Committee. He also submitted his Written Representations dated 4th September 2020. The Respondent, inter-alia, submitted that the lapses pointed out by the FRRB and examined by the Disciplinary Committee were very technical in nature and the Committee while arriving at a conclusion had not considered the independent appraisal of the contention of the Respondent. The main issue in the case was on account of internal dispute between the directors of the Company which resulted in this matter being raised. The observations so made were not material and could not have impacted any of the stakeholders as the errors were more in the nature of technical deficiencies in presentation/disclosure requirement. He also stated that the errors occurred due to oversight and not due to negligence and this had not impacted the 'true and fair' view of the Financial Statements.

4. The Committee considered the oral and written submissions made by the Respondent and viewed that the Respondent, in extant case, not only failed to comply with the requirements of CARO, 2003, he also failed to report about violations of various requirements of accounting standards notified under Accounting Standard Rules, 2006 viz AS-3, AS-5, AS-11, AS -13, AS-15, AS-17, AS-18, AS -22, AS-26 non-compliance of mandatory provisions of Schedule VI and provisions of Sec 205A of the Companies Act 1956. It was viewed that there were non-disclosure of material information as required under various accounting standards including the fact that accounting policies disclosed were not as per the said accounting standards and even led to misstatement of profit and cash as reflected in profit and loss account and cash flow respectively. The fact that the Respondent failed to report the said non-compliances relating to various Accounting Standard as well as Schedule VI to Companies Act, 1956 indicates that Respondent has not only failed to obtain sufficient information to express his opinion on financial statements but also exercised gross negligence while discharging his duties as auditor of the Company.

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 (5), (7), (8) and (9) of Part-I of Second Schedule to the Chartered Accountants Act, 1949 and keeping in view the facts and circumstances of the case as aforesaid, ordered that the name of the Respondent **CA. S. Lakshminarayanan (M. No.012024)** be removed from the Register of members for a period of 1 (One) Year along with imposition of a fine of Rs. 50,000/- (Rupees Fifty Thousand Only).

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: 10th September 2020



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. : [PPR/20/S/13/DD/12/S/INF/2014/DC/732/2017]

In the matter of:

CA. S. Lakshminarayan (M. No.012024)

“Lakshya”
1056/1,
Avinashi Road
COIMBATORE – 641018.

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer
CA. Amarjit Chopra, Government Nominee
CA. Chandrashekhar Vasant Chitale, Member

DATE OF HEARING : 15.10.2019

PLACE OF HEARING : ICAI Bhawan, Chennai

PARTIES PRESENT:

Respondent : CA. S. Lakshminarayan alongwith CA. L. Rajesh

Charges in Brief:-

1. The Respondent was the statutory auditor of M/s CG-VAK Software and Exports Ltd. i.e. the Company for Financial Years 2006-07 to 2010-11. FRRB of the ICAI had raised allegation (explained at para 3 below including its sub paras) of violation of certain Accounting standards and reporting obligations in general purpose financial statement of the Company for the said financial years.

Brief facts of the Proceeding:



2. On the day of first hearing i.e. on 18/05/2019, the Committee noted that the Respondent was present and appeared before it and was put on oath. The Respondent admitted that he is aware of the charges against him but pleaded not guilty.

2.1 The Respondent made his submissions and after recording the submissions of the Respondent, the Committee concluded the hearing in the captioned matter with directions that he may file final submissions (if any) within 15 days time.

2.2 Thereafter, this case was considered on 15/10/2019 and the Committee noted that a detail hearing was conducted in this case on 18/05/2019 and the Respondent was directed to make final submissions (if any) within 15 days time. Accordingly, as per directions of the Committee, the Respondent had filed submissions dated 28/05/2019.

2.3 The Respondent appeared before the Committee and submitted that he had already made submissions to defend the charges and has nothing more to add in this case.

The Committee recorded the plea of the Respondent and based upon papers/submissions before it, concluded this case.

Findings:-

3. Based upon documents on record and submissions of the Respondent, the Committee gives its findings, which are as under:-

3.1 As regards the charge of non-Compliance of the requirements of Para 31 of AS22 – Accounting for Taxes on Income notified under the Companies (Accounting Standards) Rules 2006, it has been pointed out that mere opening Balance of deferred tax along with provision for the year has been given under the schedule of Deferred Tax, neither the major components of deferred Tax Asset and Liabilities have been disclosed as per the requirements of para 31 of AS 22 nor the accounting policies for recognizing Deferred Tax & Liabilities have been disclosed. The nomenclature Deferred Tax Reserve is not in line with AS 22 which uses the nomenclature of Deferred Tax Asset/Liability.



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The Respondent in his defence submitted that initially it was a general practice to report only movements in the deferred tax asset/liability. From 2011-12 onwards component wise breakup has been furnished as part of the notes forming part of accounts. It has been inadvertently mentioned as Deferred Tax Reserve in the earlier years, which has since been corrected.

In this regard, the Committee noted that since a disclosure requirement of paragraph 31 of AS 22 has not been complied and no disclosure of the accounting policy as regards deferred tax asset and liability has been made, the Respondent as an auditor should have reported the same in his audit report.

Accordingly, the Respondent is held GUILTY of professional misconduct falling within the meaning of clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

- 3.2 As regards the charge of non disclosure of the security against which secured loans were taken in the financial statement of the Company for the F.Y. 2006-07, 2007-08, 2008-09 and 2009-10 , the Committee noted that the Respondent submitted that the encumbrances on the assets of the Company have been fully disclosed. Additional comfort given to the bank by way of personal guarantee is only an additional information and does not compromise the disclosure in the financial statements. In spite of this the Respondent has made such disclosure for better understanding of the financial statements from the year 2010-11 onwards.

It is noted that disclosure about the first charge had been made in the schedule of Secured loans. Since information about the second charge over current assets and personal guarantee of the directors had not been provided in the financial statement of the Company for the F.Y. 2006-07, 2007-08, 2008-09 and 2009-10 leading to non compliance with the requirements of Schedule VI, the same should have been reported by the Respondent.

Accordingly, the Respondent is held guilty of professional misconduct falling within the meaning of clauses (5) and (7) of part I of the Second Schedule to the Chartered Accountants Act 1949.



3.3 As regards the charge of classifying the software owned by the Company as fixed assets and including it as plant and machinery in the financial statement of the Company for the F.Y. 2006-07, 2007-08 and 2008-09 and difference in the WDV of the fixed assets as reported in the books of accounts and that reported in Balance Sheet for the F.Y. 2008-09, the Respondent submitted that it was a general practice in all software Companies to report software as plant & machinery and therefore it was reported as such.

After the requirement to separately disclose intangible assets in the Revised Schedule VI, appropriate disclosure was made. Further, the Exhibit No.28 is a list of fixed assets furnished to the bank and is not a fixed asset register. There were few items wrongly classified while furnishing this statement to the bank. On 22nd June 2009 itself the Company communicated the revised fixed asset details to the bank which is in agreement with the fixed asset register.

In this regard, attention is drawn to para 6.1 and para 7 of AS 26 – Intangible assets which provides as under:

“6.1 An intangible asset is an identifiable non-monetary asset, without physical substance, held for use in the production or supply of goods or services, for rental to others, or for administrative purposes.

7. Enterprises frequently expend resources, or incur liabilities, on the acquisition, development, maintenance or enhancement of intangible resources such as scientific or technical knowledge, design and implementation of new processes or systems, licences, intellectual property, market knowledge and trademarks (including brand names and publishing titles). Common examples of items encompassed by these broad headings are computer software, patents, copyrights, motion picture films, customer lists, mortgage servicing rights, fishing licences, import quotas, franchises, customer or supplier relationships, customer loyalty, market share and marketing rights.”

Thus, it is evident that software is an intangible asset and should have not been classified as plant and machinery forming part of the fixed assets of the company since the nature of the asset is different.

Also para 63 and para 65 of AS 26 provides as under:



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63. The depreciable amount of an intangible asset should be allocated on a systematic basis over the best estimate of its useful life. There is a rebuttable presumption that the useful life of an intangible asset will not exceed ten years from the date when the asset is available for use. Amortisation should commence when the asset is available for use.

65. Given the history of rapid changes in technology, computer software and many other intangible assets are susceptible to technological obsolescence. Therefore, it is likely that their useful life will be short”

3.3.1 On perusal of the Notes forming part of the accounts of the company for the F.Y. 2006-07, 2007-08 and 2008-09, the Committee noted that depreciation has been charged on straight line method as per the rates specified under Schedule XIV of the Companies Act 1956. As per the abstract of Exhibit 28, the plant and machinery constituted of only the software and the value of plant and machinery constituted around 50 % of the fixed assets of the company. Thus, the amount of depreciation charged in the P & L A/c is bound to be less and the profit/loss not reflective of the correct financial position of the company. Thus, necessary reporting as regards non compliance with the requirements of AS 26 should have been done by the Respondent. Accordingly, he is GUILTY in respect of this charge.

3.4 As regards the charge of not adjusting the interest and dividend income from cash generated from operations and showing interest paid separately under the head cash flow from operating activities and not as from financing activities, similarly, with regard to wrong classification of cash flows arising on account of interest income, the Respondent submitted that Interest received was mainly interest received from funds advanced to the wholly owned subsidiary and therefore is not interest received from investing activity but funds advanced in the interests of the business activity of the Company and hence treated as source from operating activity. Dividend being not material amounting to Rs.800 and when reported in lacs is immaterial to the reporting of cash flows.

The Committee noted that submission of the Respondent as regards interest income and was of the view that it is not acceptable as para 12 of AS



3 specifically provides that cash flows from operating activities are primarily derived from the principal revenue-producing activities of the enterprise. Further para 32 of AS 3 provides that it is more appropriate to classify interest and dividend received as funds received from investing activities as they are basically return on investments.

Further, the Respondent's submission as reduction in unclaimed dividend is not acceptable as remittance to investor protection fund involves cash outflow. Thus, the Respondent is held guilty on this count.

3.5 As regards the charge of showing cash flows arising due to movement in taking or repaying loans on net basis, the Committee was of the view that the Respondent's submission at para 4.8(b)(iv) of PFO cannot be accepted because as per para 22 of AS 3 such adjustment is allowed only if such cash flows reflect the activities of customers or its turnover is quick which was not applicable in extant case. Thus, the Respondent is held guilty on this count.

3.6 As regards the charge of non-compliance with Sec 205A of the Companies Act 1956 in respect of the financial statement of the Company for the F.Y. 2006-07, the Committee was of the opinion that the Respondent's submission at para 5.8(c) of PFO is not acceptable as even after the alleged transaction of remittance to the Government of India account, there is a balance of Rs 58,795/- in the said account. However, no separate line item of Unpaid Dividend Account appears in the schedule of cash and bank balances.

Thus, the non-compliance in this regard ought to be reported by the Respondent. Accordingly, he is GUILTY in respect of this charge.

3.7 As regards the charge of showing loans to subsidiaries as cash flow from financing activities instead of cash flow from investing activities, the Committee considered the Respondent's submission at para 4.8(d) of PFO and was of the view that same are not acceptable as paragraph 15 of AS 3 specifically states that cash flows from investing activities include payments made / receipts due to loans and advances made to third parties which was a subsidiary in extant case.



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Thus, the non-compliance in this regard ought to be reported by the Respondent. Accordingly, he is GUILTY in respect of this charge.

3.8 As regards the charge of non-classification of investments as per the requirements of AS 13 and Schedule VI and incomplete disclosure of accounting policy, it was noted by the Committee that the Respondent's view was that such classification is required only under Revised Schedule VI which is not acceptable because an accounting policy defines the principles adopted for recognition and determination of value. Thus, it was a non-compliance of AS 13 and the Respondent failed to report the same. Accordingly, he is GUILTY in respect of this charge.

3.9 As regards the charge of not specifying whether the debts are fully secured or otherwise, the Respondent in his response at pt. 4.12 of PFO admitted the omission and stated the same were unsecured.

It was viewed by the Committee that it was a serious omission and that non-compliance of Schedule VI in this regard ought to be reported by the Respondent. Accordingly, he is GUILTY in respect of this charge.

3.10 As regards the charge of not specifying whether the loans and advances to subsidiaries are fully secured or otherwise, the Respondent in his response at pt. 4.13 admitted the omission and stated the same were unsecured. It was viewed that it was a serious omission and that non-compliance of Schedule VI in this regard ought to be reported by the Respondent. Accordingly, he is GUILTY in respect of this charge.

3.11 As regards the charge of non disclosure regarding movement under the head reserve on consolidation, the Committee after perusal the Respondent's submission at para 4.17 of PFO was of the view that these are unacceptable since separate principles have been laid down in AS 11 for dealing with such translation which requires separate line disclosure alongwith disclosure of accounting policy followed for the same. Hence, the Respondent should have reported such non-compliance. Accordingly, he is GUILTY in respect of this



charge. Accordingly, the Respondent is held prima facie guilty with respect to this charge.

3.12 As regards non-disclosure of the sources from which unsecured loans were taken, it was noted that the Respondent has accepted omission of such information. Accordingly, the Respondent is GUILTY with respect to this charge.

3.13 As regards the charge that using 'Cost of Services' as the only head to include all nature of costs therein is not in line with the requirements of Schedule VI, the Committee observed the Respondent's submission at para 4.21 of PFO that such head includes only the salary and incentive paid to staff. However, it was noted by the Committee that such expenses are also required to be disclosed as per clause 3(x)(f) of Part II Schedule VI.

Hence, such deviation should have been reported by the Respondent. Accordingly, he is held GUILTY in respect of this charge.

3.14 As regards the charge of non –disclosure of accounting policy in respect of contribution to PF and ESI, the Respondent's submission at para 4.30(b)(i) of PFO were that it would be complied with in future indicates that policy adopted for it was not disclosed nor the Respondent reported non-compliance of AS 15 in his report.

Accordingly, he is held prima facie GUILTY in respect of this charge.

3.15 As regards the charge of providing for gratuity liabilities in Profit and Loss Account but not disclosing same in the balance sheet, the Respondent has submitted that it is included under the head Current Liabilities. The Committee was of the view that such presentation is not acceptable since by nature current liabilities are different from provisions. Hence, such presentation leads to misstatement of facts and ought to be reported by the Respondent. Accordingly, he is GUILTY in respect of this charge.

3.16 As regards the charge of non disclosure of change in accounting policy as regards gratuity liability in the F.Y. 2008-09 from cash to accrual basis and its



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impact, the Respondent's submission at para 4.31 of PFO were considered by the Committee and not accepted the same as para 32 of AS 5 specifically requires disclosure of change in accounting policy which has not been done and the Respondent has failed to point out the noncompliance of AS 5 to that effect. Accordingly, he is GUILTY in respect of this charge.

- 3.17 As regards the charge of contradiction between the information contained in the Balance Sheet and Profit & Loss Account from that given in the Cash Flow Statement with respect to income tax and interest expense, the Respondent's submission at para 4.33 of PFO is not accepted by the Committee as interest expense if paid in cash are required to be shown separately under the head cash flow from financing activities. There is non-compliance of AS 3 which has not been reported by the Respondent.

Accordingly, he is held GUILTY in respect of this charge.

- 3.18 As regards the charge of non reporting of the disclosures required under para 40(c) to (g) of AS 17 – Segment Reporting, the Respondent's submission at para 4.34(a) and (b) of PFO is not accepted as a specific requirement of the Accounting Standard 17 has not been complied with and which has not been reported by the Respondent.

Accordingly, he is held GUILTY in respect of this charge.

- 3.19 As regards the charge of non reporting of the non compliance with the requirements of AS 18 –Related Parties, i.e. party wise information w.r.t the transactions with the relatives of the Key Management Personnel and the amount of fixed deposits in this respect and names of KMP, the Respondent's submission at para 4.35(a) and (b) were accepted except to the extent that Mrs. Latha's relationship has been wrongly printed as that of the lessor during the year 2009-10. The Committee was of the view that such mistake misled the users of financial statements.

Accordingly, he is held GUILTY in respect of this charge.

- 3.20 As regards the charge of non-disclosure of the requirement of clause 32 of the Listing Agreement with respect to financial year 2010-11, the Respondent in



his response pointed out the disclosure made in Schedule 10 – Loans and Advances and also in the Notes to Accounts as required as per the requirements of AS -18. On perusal of “Significant accounting policies” point 12 (e), the Committee noted that loan to subsidiary i.e. CGVAK Software USA Inc has been disclosed. Thus, the said charge against the Respondent was dropped by the Committee.

- 3.21 As regards the charge of non availability of information on reserve on consolidation and non-existence of foreign currency translation reserve in the consolidated financials.

The Committee noted the submissions of the Respondent at points 4.39 (b) & (c) and was of the view that same are not sufficient to exonerate him from non-compliance para 29 of AS 11. Accordingly, he is held GUILTY in respect of this charge.

- 3.22 As regards, the charge of not reporting non-compliance with various requirements of accounting standards notified under the Companies (Accounting Standards) Rules, 2006, it was noted from above paras that after due consideration of various submissions of the Respondent, still there were serious non-compliance with the requirements of AS 3, AS 11 and AS 22. Hence, not reporting the same is non-compliance of SA 700. Accordingly, he is GUILTY in respect of this charge.

- 3.23 As regards the charge of non compliance with the para 4(1)(b) of CARO 2003, keeping in view the response of the Respondent at para 4.42 of PFO, it is opined that since the terminology used by the Respondent had been different and he failed to report on the frequency of verification of fixed assets carried out by the management , he ought to have been more prudent while reporting the matters in the audit report and thus, is held GUILTY in respect of this charge.

- 3.24 As regards the charge of non compliance with the requirements of para 4(x) of CARO 2003 , keeping in view the response of the Respondent at para 4.46 of PFO and the clarification of the director of the Company brought on record by



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him, it is held that the Respondent ought to have been more careful in this aspect. Such errors in the Respondent's report lead to wrong reporting in context of CARO requirements which indicates the casual approach adopted by him while carrying professional duties. Accordingly, he is held GUILTY in respect of this charge.

3.25 As regards the charge of recognizing investments in shares of foreign subsidiary at the rate prevailing on the date of remittance rather than that of transaction.

It was viewed by the Committee that generally, such transactions are entered before remitting the foreign currency hence the Respondent's submission that such investments were translated at the rate prevailing at time of actual remittance is not in line with principles enunciated in AS 11. Accordingly, he is GUILTY in respect of this charge.

Conclusion:

4. Thus, in the considered opinion of the Committee, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Clauses (5), (7), (8) and (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Sd/-

(CA. ATUL KUMAR GUPTA)

PRESIDING OFFICER

Sd/-

**(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE**

Sd/-

**(CA. CHANDRASHEKHAR V. CHITALE)
MEMBER**

**DATE : 10.02.2020
PLACE : NEW DELHI**