



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

DISCIPLINARY COMMITTEE [BENCH-I (2021-2022)]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]

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.

In the matter of:

Shri V. Srivijay, Dy. Director of Income Tax (Inv.) unit III(3), Visakhapatnam
-Vs-
CA. Sanjay Khandelwal (M.No.054451), Kolkata
[PR/G/312/17/DD/311/2017/DC/1070/2019]

MEMBERS PRESENT (THROUGH VIDEO-CONFERENCING MODE):
CA. NIHAR N JAMBUSARIA, PRESIDING OFFICER
MS. RASHMI VERMA, I.A.S. (RETD.) (GOVERNMENT NOMINEE)
CA. ANUJ GOYAL, MEMBER (IN- PERSON AT ICAI, NEW DELHI)
CA. DURGESH KUMAR KABRA, MEMBER

1. That vide findings under Rule 18 (17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Disciplinary Committee was inter-alia of the opinion that **CA. Sanjay Khandelwal (M.No.054451)** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of Clause (7), (8) and (9) of Part I of the Second Schedule to the Chartered Accountants Act 1949.

2. That pursuant to the said findings, an action under Section 21B(3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and communication was addressed to him thereby granting an opportunity of being heard in person and/or to make a written representation before the Committee on 23rd August, 2021.

3. The Committee noted that on 23rd August 2021, the Respondent was present at ICAI Kolkata Office and made his verbal representations before the Disciplinary Committee on the said findings. The Respondent stated that forgery has been done in his name by Shri Vaddi Mahesh and by the Company and he had filed the police complaint for the same. While concluding his submissions, he requested the Committee to take lenient view in his case.



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4. The Committee has considered the reasoning as contained in findings holding the Respondent Guilty of professional misconduct vis-à-vis verbal representations of the Respondent on the findings of the Disciplinary Committee.
5. Keeping in view the facts and circumstances of the case, material on record as well verbal representations of the Respondent before it, the Committee is of the view that the professional misconduct on the part of the Respondent is established, Hence, the Committee is of considered view that ends of justice can be met if reasonable punishment is given to the Respondent. Accordingly, the Committee decided to **impose a fine of Rs.10,000/- (Rupees Ten Thousand only) upon the Respondent i.e., CA. Sanjay Khandelwal (M.No.054451), to be paid within 3 months of receipt of the order.**


Sd/-
(CA. NIHAR N JAMBUSARIA)
PRESIDING OFFICER

[approved and confirmed through e-mail]
(MS. RASHMI VERMA, I.A.S. (RETD.))
GOVERNMENT NOMINEE

[approved and confirmed through e-mail]
(CA. ANUJ GOYAL)
MEMBER

[approved and confirmed through e-mail]
(CA. DURGESH KUMAR KABRA)
MEMBER

DATE : 26.10.2021

समाहित सत्य प्रतिलिपि / Certified true copy

सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

DISCIPLINARY COMMITTEE [BENCH – I (2020-2021)]

[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

Ref. No. PR/G/312/17/DD/311/2017/DC/1070/2019

In the matter of:

Shri V. Srivijay,
The Deputy Director of Income Tax (INV),
UNIT III (3), Room No.512, 5th Floor,
Direct Tax Building,
Double Road, MVP Colony,
Visakhapatnam – 530 0017

.....Complainant

Versus

CA. Sanjay Khandelwal,
329, Jessore Road, 1st Floor,
Green Park,
Block – A,
Kolkata – 700 055

.....Respondent

MEMBERS PRESENT (Through Video Conferencing):

Ms. Rashmi Verma, I.A.S. (Retd.) (Government Nominee), Presiding Officer,
CA. G. Sekar, Member,
CA. Pramod Jain, Member

DATE OF FINAL HEARING : 29.01.2021

PLACE OF FINAL HEARING : Through Video Conferencing

PARTIES PRESENT (Through VC):

Complainant - Shri V. Srivijay, DDIT (Inv.), Unit III, Visakhapatnam

3/

BRIEF OF THE DISCIPLINARY PROCEEDINGS:-

1. On the day of hearing held on 29th January, 2021, the Committee noted that the Complainant was present. The Respondent was not present. Since in previous hearing, the Respondent was not present and this time also, the Respondents was not present without any valid reasons, the Committee decided to continue with hearing ex-parte the Respondent in the matter. The Complainant explained the charges against the Respondent. The Committee also posed questions to the Complainant. After perusal of the documents on record and hearing the submission of the Complainant, the Committee decided to conclude the hearing in the above matter.

CHARGE IN BRIEF AND FINDINGS OF THE DISCIPLINARY COMMITTEE:-

2. It was alleged that the Respondent has issued Form 15CB in favour of shell companies without exercising due diligence thereby enabling Shri Vaddi Mahesh and his group companies to siphon off valuable foreign exchange. It is reported that an FIR has already been lodged against Shri Vaddi Mahesh and other few Chartered Accountants and simultaneously a complaint has been lodged with the Enforcement Directorate for violation of FEMA and PMLA.

3. The Complainant in his submissions stated that during the course of enquiries it was noted that substantial amounts from two bank accounts based in Visakhapatnam during the period 01.04.2015 to 31.03.2017 was transferred from India to countries like Hong Kong, China and Singapore ostensibly in the guise of import of customized software. On the basis of this information of tax evasion, a search and seizure action u/s 132 of the Income Tax Act was conducted in the residential premises of Shri Vaddi Mahesh (Director of the Company), his father's residence and other business premises on 9th May, 2017. During the course of search, the residential premises of Vaddi Mahesh, sole statement was recorded from him u/s 132 (4) of the Income Tax Act wherein he categorically stated that the Companies floated by him and his associates have not actually imported any sort of software from foreign companies. The Complainant stated that the Company floated by Shri Vaddi Mahesh were remitting substantial amount of foreign exchange abroad in the guise of import of customized software. The fact that import of customized software was non-genuine was re-iterated many times by the director in his own statement.

4. Upon perusal of the submissions of the Respondent, it is noted that the Respondent in his submission stated that at the time of recording his statement u/s 131 of the Income Tax Act, 1961, he was not allowed to see the alleged documents that he had signed. When they questioned him about the Company, Lavender, he thought about another company named Lavender that he has audited. The Respondent stated that coercive tactics were adopted by the Investigating Authority to falsely implicate him in this case. They made him to sign documents without seeing the alleged documents. The Respondent also stated that he is sure that signatures and stamp used in the alleged documents were not his signatures and stamp was forged. He stated that his signature has been forged by somebody to certify the documents.

5. On perusal of the documents on record, the Committee observed that the Respondent has issued one certificate in Form 15CB wherein he certified total foreign remittance of Rs.97.97 lac and no deduction of TDS was made from the amount remittance to outside India. The Committee also observed that the Respondent denied to have certified Form 15CB and stated that forgery has been done in his name. The Respondent stated that he had lodged a police complaint before Officer in charge, Lake Town Police Station, Kolkata vide GDE no.89 dated 02.02.2018 against fraudulent use of his letter head, signature and stamp pad. The Committee noted that the Respondent while giving statement on oath under Section 131(1A) of Income Tax Act, 1961 on 08/9/17, in response to question 9 of the Complainant department, the Respondent had stated that he know M/s Lavender Esystems Pvt Ltd. which is the same company for which the Respondent had digitally signed Form 15 CB certifying the foreign remittance on 6th April 2016. On perusal of same it is noted that the Respondent has certified the form which stated as under:

"I have examined the agreement (wherever applicable) between M/s Lavender Esystems Pvt Ltd with PAN/TAN AACCL8605R and M/s Super Access International Limited requiring the above remittances as well as relevant documents and books of accounts required for ascertaining the nature of remittance and for determining the rate of deduction of tax at source as per provisions of Chapter XVII-B"

6. The Respondent in response to question posed to him from sl. No.12 to 17 regarding details of documents verified by him before issuing the certificate, the Respondent had categorically replied that he has not gone through any such documents necessary for

certifying in Form 15CB for foreign remittance of M/s Lavender Esystems Pvt Ltd on the reference and instructions of Marodia Khanna and associates he did the certification. He has further in his response to question no 19 has accepted his involvement in the act of certifying the foreign remittance without verifying the details and knowing well the consequences of doing such illegal business.

7. Although the Respondent in his submissions stated to have misunderstood the name of Company in the extant case with some other company named Lavender but, it is pertinently noted that he has neither brought on record any detail of such another company nor any evidence of having conducted its audit. The misuse of the digital signature of a professional and using them for certification of documents being submitted to Income tax department is a matter which has to be viewed seriously. Further, filing of police complaint appears to be an afterthought act on the part of the Respondent as the same was filed after substantial time in spite of the fact that the Respondent was well aware of the said certification being done in his name using his digital signatures while he was questioned during search and seizure operation under section 132 of the Income Tax Act 1961 on 9th May 2017 and also when a copy of the extant formal complaint from the Income Tax Department was received by him from the Disciplinary Directorate. Further, the copy of the complaint letter dated 2nd February 2018 brought on record by the Respondent reports only about Signature and stamp being misused in the letter dated 6th April 2016 nowhere in the complaint, the Respondent has referred to his digital signatures being misused in certifying Form 15CB which should have posed a serious concern to him as a professional. Hence, it would not be wrong to derive a conclusion that the Respondent had no grievance as regard the certification of Form 15CB being done using his digital signatures and he had his accord/approval to the same.

7.1 Further, it appears that the Respondent has never filed any retraction of the statement alleged to have been taken using coercive tactics. Moreover, Shri Vaddi Mahesh in his statement on oath dated 09/5/17 had stated that Chartered Accountant (CA) never verified any software at any point of time. In view of above, the defence taken by the Respondent that his signature has been misused is not acceptable at all. Accordingly, the Committee is of the view that the Respondent did not exercise due diligence while certifying Form 15CB and appears to have relied upon the information provided by the Company without verifying the relevant documents and information. Moreover, the Respondent failed to bring on record that

software was downloaded. In view of above, the Committee decided to hold the Respondent Guilty of professional misconduct falling within the meaning of Clauses (7), (8) and (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

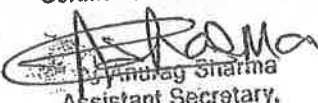
Conclusion:-

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

[approved and confirmed through e-mail]
(MS. RASHMI VERMA, I.A.S. (RETD.))
GOVERNMENT NOMINEE

sd/-
(CA. G. SEKAR)
MEMBER,

sd/-
(CA. PRAMOD JAIN)
MEMBER

Certified to be true copy

Anurag Sharma
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahrda, Delhi-110032