



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

PR-26/2019-DD/73/2019/BOD/586/2020

ORDER UNDER SECTION 21A(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. Saurendra S. Shah (M. No. 011027)
M/s S. S. Shah & Co.,
Chartered Accountants
Ahmedabad

...Complainant

-Vs.-

CA. Samirkumar Vijaykumar Shah (M. No. 159546)
Ahmedabad

...Respondent

[PR-26/2019-DD/73/2019/BOD/586/2020]

MEMBERS PRESENT:

CA. Prasanna Kumar D., Presiding Officer

(Physically at ICAI Bhawan, IP Marg,
New Delhi)

Mrs. Rani Nair, (IRS, Retd.), Government Nominee

(Through video conferencing)

CA. Satish Kumar Gupta, Member

(Through video conferencing)

Date of Final Hearing: 6 August, 2021

1. The Board of Discipline vide Report dated 11th February, 2021 held that CA. Samirkumar Vijaykumar Shah (M. No. 159546) is guilty of "Professional Misconduct" falling within the meaning of Item (8) of Part-I of the First Schedule of the Chartered Accountants Act, 1949.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. Samirkumar V. Shah and communication dated 29th July, 2021 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 6th August, 2021.
3. CA. Samirkumar V. Shah appeared before the Board on 6th August, 2021 and made his oral representation.
4. The Board has carefully gone through the facts of the case and also the oral representation of CA. Samirkumar V. Shah.
5. As per the Findings of the Board as contained in its report, the Respondent accepted the tax audit of M/s. Premchand Dahyabhai Shah (Client) for the Financial Year 2017-18 without first communicating in writing with the Complainant being the previous auditor. There was no evidence to show that there was direct communication between the Respondent and the Complainant as regards seeking the no-objection from the Complainant. Whatever communication was there was with client.

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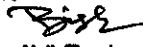
The Board was of the view that the Code of Ethics casts the responsibility of communication with the retiring auditor on the incoming auditor and the incoming auditor is not expected to pass on the same to the client. Thus, it has already been held that **CA. Samirkumar V. Shah** is Guilty of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule of the Chartered Accountants Act, 1949.

6. Upon consideration of the facts of the case, the consequent misconduct of **CA. Samirkumar V. Shah** and keeping in view his oral representation before it, **the Board decided to Reprimand CA. Samirkumar Vijaykumar Shah (M. No. 159546).**

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

Date: 10th January, 2022

सही प्रतिलिपि होने के लिए प्रमाणित /
Certified to be true copy


बिष्व नाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुरासनात्मक विदेशालय / Disciplinary Directorate
इंस्टिट्यूट 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

CONFIDENTIAL

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. : [PR/26/2019/DD/73/2019/BOD/586/2020]

CORAM:

- CA. Prasanna Kumar D., Presiding Officer (attended physically from ICAI, BKC, Mumbai)
Mrs. Rani Nair (IRS, Retd.), Government Nominee (attended through VC)
CA. Durgesh Kumar Kabra, Member (attended physically from ICAI, BKC, Mumbai)

In the matter of:

CA. Saurendra S. Shah (M. No. 011027)

....Complainant

M/s S. S. Shah & Co.,

Chartered Accountants

206, Harikrupa Shopping Centre,

Nr. City Gold Cinema, Ashram Road

Ahmedabad-380009

-vs-

CA. Samirkumar V. Shah (M. No. 159546) in Re:

28, Aryavrat Society,

B/H Hatkeshwar Mahadev

Maninagar East,

Ahmedabad-380008

....Respondent

DATE OF FINAL HEARING :

29th January, 2021

PLACE OF HEARING :

Through video conferencing /Physically

PARTIES PRESENT

Respondent

: CA. Samir Kumar V. Shah (M.No. 159546)

FINDINGS:

1. The Board noted the charge against the Respondent that he accepted the tax audit of M/s Premchand Dahyabhai Shah (hereinafter referred to as the "Client") for the financial year 2017-18 without first communicating in writing with the Complainant being the previous auditor.

2. The Board noted that Complainant vide his email dated 28th January, 2021 stated that he will not appear for the hearing and the case can be decided on the basis of facts. Thus, the Board decided to proceed ahead with the hearing in the case ex-Parte the Complainant.
3. The Board on perusal of the documents on record noted that the Respondent in his submissions stated that he had communicated with the Complainant vide letter dated 15th September, 2018, however the letter remained unsigned by mistake. He relied upon the general NOC given by the Complainant vide letter dated 30th December 2017 to the Client that all the assignments till date are completed, nothing was pending from his side and he is not willing to work due to his growing age. The Board observed that the letter dated 30th December 2017 was addressed by the Complainant to the client. Further, the unsigned letter dated 15th September 2018 addressed by the Respondent to the Complainant seeking his no-objection was given by the Client to the Complainant on 11th November 2018. Also, the said letter was not signed by the Respondent and thus, cannot be considered to be a valid letter. Further, the Respondent did not bring on record the copy of the tax audit report of client for the financial year 2017-18 to show the date of signing and issuing the audit report.
4. The Board observed that in terms of Item (8) of Part I of the First Schedule to the Chartered Accountants Act 1949, a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he:-
accepts a position as auditor previously held by another chartered accountant or a certified auditor who has been issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing;

Further, the Code of Ethics 2009 also clearly provides that the incoming auditor should always communicate with the retiring auditor in such a manner as to retain in his hands positive evidence of the delivery of the communication to the addressee. In the opinion of the Council, communication by a letter sent "Registered Acknowledgement due" or by hand against a written acknowledgement would in the normal course provide such evidence. However, in the instant case, there was no evidence to show that there was direct communication between the Respondent and the Complainant as regards seeking the later's no-objection. Whatever communication was there, it was through/with the client. The Board was of the view that the Code of Ethics casts the responsibility of communication with the retiring auditor on the incoming auditor and the incoming auditor is not expected to pass on the same to the client. Accordingly, the Board decided to hold the Respondent guilty of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

CONCLUSION:

5. Thus, the Board of Discipline, in view of the above, is of the considered opinion that the Respondent is **Guilty** of Professional Misconduct falling within the meaning of Item (8) of Part I of First Schedule to the Chartered Accountants Act 1949.

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

Certified to be true copy



Mukesh Kumar Mittal
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shadra, Delhi-110032