



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

PR/25/18/DD-77/18/BOD/462/2018

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. Nitin Mittal

...Complainant

-Vs.-

CA. Sushant Beri (M.No. 514345)
M/s. VAS & Associates, Ludhiana

...Respondent

[PR/25/18/DD-77/18/BOD/462/2018]

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: 6th August, 2021

1. The Board of Discipline vide Report dated 11th February, 2021 held that CA. Sushant Beri (M.No. 514345) 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. Sushant Beri 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. Sushant Beri appeared before the Board through video conferencing and made his oral representation.
4. CA. Sushant Beri in his written representation, inter-alia, submitted that the Complainant has already withdrawn his complaint filed against him through letter dated 22/12/2020 addressed to the Director (Discipline) making it clear that Complainant has no objection to the Tax Audit assignment done by him and also there are no dues pending of any previous year towards the Complainant. The Respondent further prayed that there was no malafide intent on his part and the mistake happened inadvertently.
5. The Board has carefully gone through the facts of the case alongwith the oral and written representation of CA. Sushant Beri.

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6. As per the Findings of the Board as contained in its report, **CA. Sushant Beri** categorically accepted his guilt that he did not communicate with the Complainant prior to acceptance of tax audit of M/s. Baz Cycle Industries (Firm) for the FY 2016-17 and thus, it has already been held that **CA. Sushant Beri** 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.

7. Upon consideration of the facts of the case, the consequent misconduct of **CA. Sushant Beri** and keeping in view his oral and written representation before it, **the Board decided to Reprimand CA. Sushant Beri (M.No. 514345).**

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

Date: 10th January, 2022

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

Arun Kumar

अरुण कुमार / Arun Kumar
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आई सी एच आरटी भवन, विश्वास नगर, शाहपुरा दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahpura 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/25/18/DD-77/18/BOD/462/2018]

CORAM:

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

**(In Person)
(Through Video-
Conferencing)
(In Person)**

CA. Durgesh Kumar Kabra, Member

In the matter of:

**CA. Nitin Mittal
154/3, Rani Jhansi Road,
Civil Lines,
Ludhiana-141001**

....Complainant

-Vs-

**CA. Sushant Beri (M.No. 514345)
M/s. VAS & Associates,
1237, Link Road,
Dholewal Chowk,
Ludhiana-141001**

....Respondent

**DATE OF FINAL HEARING : 22nd December, 2020
PLACE OF HEARING : ICAI Bhawan, IP Marg, New Delhi/ Through Video
Conferencing**

PARTIES PRESENT (Through video Conferencing):

**COMPLAINANT : CA. Nitin Mittal
RESPONDENT : CA. Sushant Beri**

FINDINGS:

1. The Board noted that the charge against the Respondent that he conducted the Tax Audit of M/s. Baz Cycle Industries (Firm) for the Financial Year 2016-17 without first communicating with the Complainant (being previous auditor of the Firm) in writing. The Complainant submitted that he conducted the Tax Audit of the Firm till Financial Year 2015-16 and the audit fee/ other consultancy services were duly paid by the said Firm. The Complainant further disclosed the said position to the Respondent vide his letter dated 13/11/2017. The Complainant further submitted copy of Form No. 3CB (Audit Report under Section 44AB of the Income Tax Act, 1961) dated 02/08/2017 issued by the Respondent and copy of Form No. 3CB (Audit Report under Section 44AB of the Income Tax Act, 1961) dated 05/10/2016 issued by the Complainant/ Complainant Firm with Income Tax Department with respect to said Firm to strengthen the charge alleged against the Respondent.
2. During the hearing held on 22nd December, 2020, the Board noted that both the Complainant and the Respondent duly appeared before the Board through video conferencing. The Respondent submitted his oral submissions which were duly countered by the Complainant.
3. The Board took into view the provision of Item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949 which provides as under:-
"(8) 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"
4. The Board observed that the Respondent, in his defence submitted that the Client/ Firm approached the Respondent for Tax Audit for FY 2016-17 and due to some reason he was unable to approach the Complainant. However, that there was no malafide intent on his part. The Complainant during the proceedings submitted that he wrote a letter to the Respondent 3 years' back which the Respondent not even responded and the Respondent even failed to make a telephone call.
5. Thus, in view of the clear admission by the Respondent that he did not communicate with the Complainant prior to acceptance of tax audit of the Firm for the FY 2016-17, the Board is of the considered view that the Respondent has committed an act of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.



6. The Board also noted that subsequent to the conclusion of the hearing and arriving at a finding of guilt in the case on 22nd December, 2020, an e-mail dated 22nd December, 2020 was received from the Complainant at 4:52PM stating that he wishes to withdraw his complaint made against CA. Sushant Beri (M.No.514345) which was placed before it at its meeting held on 17th January, 2021 wherein the Board held that since the proceedings in the case had already been concluded, the request of the Complainant for withdrawal of the case cannot be entertained.

CONCLUSION:

7. 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, Shahrda, Delhi-110032