



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

PPR/P/400/2017-DD/199/INF/2018/BOD/572/2020

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. Adhyapak Jayant Dattatraya (M. No. 038672), Navi Mumbai in Re:

[PPR/P/400/2017-DD/199/INF/2018/BOD/572/2020]

MEMBERS PRESENT:

CA. Prasanna Kumar D., Presiding Officer	(In person)
Mrs. Rani Nair, (IRS, Retd.), Government Nominee	(Through video conferencing)
CA. Satish Kumar Gupta, Member	(Through video conferencing)

Date of Final Hearing: 11th February, 2022

1. The Board of Discipline vide Report dated 8th February, 2022 held that **CA. Adhyapak Jayant Dattatraya (M. No. 038672)** is Guilty of "Other Misconduct" falling within the meaning of Item (2) of Part IV of First Schedule to the Chartered Accountants Act 1949 read with Section 22 of the said Act.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Adhyapak Jayant Dattatraya** and communication dated 8th February, 2022 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 11th February, 2022. **CA. Adhyapak Jayant Dattatraya** made his written representation vide email dated 10th February, 2022 on the Findings of the Board.
3. **CA. Adhyapak Jayant Dattatraya** appeared before the Board on 11th February, 2022 through video conferencing and made his oral representation thereat.
4. **CA. Adhyapak Jayant Dattatraya** vide email dated 10th February, 2022 reiterated his earlier submissions and further submitted as under:-
 - a. He reiterated that the initiation of proceedings before Board is time barred by limitation under Rule 12 of the Chartered Accountants Rules, 2007.
 - b. Primary evidence in this case is Micro Cassette on which, the conversation was recorded. The said conversation was copied on CD also as informed to him. Micro Cassette as well as CD are absolutely not audible.

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- c. The only evidence available in this case is transcript Panchnama which cannot be relied upon. Other evidence cited are, Panchnama, Statement of Complainant and Statement of One of the Witnesses which are only Prima Facie Allegations and not the evidences. The said allegations are yet to be proved in the Court of Law.
- d. With respect to the decision of the Hon'ble Supreme Court regarding standard of proof, the Respondent submitted that they have not said that only allegations are sufficient to hold some one guilty. Proof/ Evidence is any way required.
- e. The Respondent is held guilty based on the secondary and defective evidence after 15 years of the incident. Law makers view is, generally after seven years of the incident, reliable evidences cannot be obtained to convict a member or in defense of the Respondent which is absolutely true.
- f. If he would have not given the adverse report (payment of remuneration to husband by wife) as required under section 40(A)(2)(b) of the Income Tax Act, probably, this incidence might have not taken place. He has worked sincerely to discharge his duty of factual reporting in Tax Audit Report and he is being held Guilty of professional misconduct for that by his own Institute.
- g. He further prayed for a sympathetic view in his case.

5. The Board has carefully gone through the facts of the case and also the oral and written representation of **CA. Adhyapak Jayant Dattatraya**. The Board viewed that the contentions of the Respondent that the case is barred by limitation, documents/ evidences upon which reliance was placed and other issues raised by him in his representation have already been dealt with by the Board while arriving at its Findings holding the Respondent Guilty.

6. As per the Findings of the Board as contained in its report, on the Complaint made by Shri. Samraj C Naikar (i.e. husband of the assessee) to the Informant Department (CBI), a trap was laid at the chamber of ITO and it was found that ITO and his tax assistant (Shri Prakash G Nevrekar) accepted the illegal money from Shri Samraj C Naikar allegedly at the behest of **CA. Adhyapak Jayant Dattatraya**. The Board perused the transcript of the conversation recorded between the ITO and the Complainant (i.e. husband of the assessee) and observed that although the negotiation for the bribe amount was being done by the Complainant(i.e. husband of the assessee) himself, however, the ITO telephoned the Respondent and also the Respondent was continuously being referred to in their conversation as regards delivery of the AO, delivery of the bribe amount etc. Also, the Board perused the transcript of the conversation recorded between the Respondent and the Complainant (i.e. husband of the assessee) and observed that the Respondent was saying that if the amount has been settled, it is better to pay the same and if the same is delivered in his office, he can pay the same. Also, particles of Phenolphthalein powder in Sodium Carbonate Solution was found from the Respondent, for which Chemical Examination Report dated 4th May, 2007 gave result of positive test for presence of Phenolphthalein and Sodium Carbonate. The Board observed that throughout the

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proceedings, the major defence of the Respondent had been that the amount of bribe was negotiated and paid by the Complainant himself and that too for his personal Income Tax proceedings which were not represented by the Respondent. He went to the Income Tax Department from a place which was approximately 30 Km away from it on the call of the ITO and the Complainant as a Goodwill gesture to the Official and since the Complainant was known to him, being the husband of his client. The Board, on consideration of the corroborative and circumstantial evidences on record, was of the view that since **CA. Adhyapak Jayant Dattatraya** was present in the Income Tax Officer's room when the amount of bribe was handed over by the Assessee to the Income Tax Officer, the ignorance pleaded by him is not acceptable. Thus, it has already been held that **CA. Adhyapak Jayant Dattatraya** is Guilty of "Other Misconduct" falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

7. Upon consideration of the facts of the case, the consequent misconduct of **CA. Adhyapak Jayant Dattatraya (M. No. 038672)** and keeping in view his oral and written representation before it, the Board decided to Reprimand **CA. Adhyapak Jayant Dattatraya (M. No. 038672)** and also imposed a Fine of Rs. 5,000/- (Rupees Five Thousand only) upon him payable within a period of 60 days from the date of receipt of the Order.

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

Date: 11th February, 2022

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

अरुण कुमार / Arun Kumar
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / 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, Shahdara, 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. : PPR/P/400/2017-DD/199/INF/2018/BOD/572/2020

CORAM:

CA. Prasanna Kumar D., Presiding Officer (In Person)
Mrs. Rani Nair (IRS, Retd.),
Government Nominee (Through Video Conferencing)
CA. Satish Kumar Gupta, Member (In Person)

In the matter of:

CA. Adhyapak Jayant Dattatraya (M. No. 038672),
Navi Mumbai in Re: ...Respondent

DATE OF FINAL HEARING : 1st February, 2022
PLACE OF HEARING : New Delhi/ Through video conferencing
PARTIES PRESENT : (Through Video Conferencing)
Respondent : CA. Adhyapak Jayant Dattatraya
Counsel for the Respondent : Sh. Devendra H. Jain, Advocate

Findings:

Background of the case:

1. The Superintendent of Police, CBI, Anti-Corruption Branch, Mumbai had filed a case RC BA01/2007/A0001, Mumbai on 2nd January, 2007 on the basis of complaint made by Shri. Samraj C Naikar, Mumbai on the facts that Smt. Laxmi S Naikar w/o Shri Samraj C Naikar (herein referred to as "Assessee") had filed Income Tax Return for A.Y. 2004-05 through the Respondent and this return was taken for scrutiny assessment by Shri D K Putharan, ITO (herein referred to as "Income Tax Officer/ ITO") and the ITO time to time issued notices to the Assessee to attend the Income tax Office and to submit certain documents. The Assessee submitted certain documents through the Respondent After submission of documents, the ITO started harassing and demanded illegal gratification from the husband of the assessee as a motive or reward for finalizing the scrutiny assessment. Further it is stated by the Informant Department that ITO abused his official position and demanded Rs.40,000/- in September, 2006 and accepted Rs

15,000/- in first week of December, 2006 and further demanded remaining Rs 25,000/- on 2nd January, 2007 but agreed to reduce it to Rs 20,000/- and accepted the same on 3rd January, 2007. On the Complaint made by Shri. Samraj C Naikar (i.e. husband of the assessee) to the Informant Department, a trap was laid at the chamber of ITO and found that ITO & his tax assistant (Shri Prakash G Nevrekar) accepted the illegal money from Shri Samraj C Naikar on the behest of Respondent.

Charge alleged:

2. Against the aforesaid background, the Charge alleged against the Respondent is as under:-

- a) The Respondent was involved in illegal gratification on behalf of Shri D. K. Putharan, ITO ("Income Tax Officer/ ITO") as a motive or reward for finalizing the Scrutiny Assessment of Income Tax file (for AY 2004-05) of Smt. Laxmi S Naikar w/o Shri Samraj C Naikar (Assessee).

Brief of Proceedings held:

3. At the time of hearing held in the case on 10th January 2022, the Board noted that the Respondent alongwith his Counsel was present before it through video conferencing, they confirmed that they have read and understood the contents of the modalities and protocols of e-hearing and follow them. The Respondent was put on oath. The charges alleged against the Respondent were taken as read with his consent. On being asked by the Board as to whether the Respondent pleaded guilty in respect of the charges against him, he replied in negative and his Counsel made his detailed oral submissions before the Board. The Respondent was examined by the Board.

On consideration of the documents and submissions on record, the Board decided to adjourn the hearing in the case with the direction to the Respondent to provide the following :

- (a) To substantiate as to whether he was present in the room of the Income Tax Officer when the bribe amount was handed over to the Income Tax Official on behalf of the Respondent's client by her husband.

Thereafter, at the time of hearing held in the case on 1st February 2022 wherein the Respondent alongwith his Counsel were present before the Board through video conferencing, the Board noted that the Respondent had submitted his further written submissions as asked at the time of the last meeting. The Counsel for the Respondent made his further submissions before the Board. The Respondent was examined by the Board.

On consideration of the documents and submissions on record, the Board decided to conclude the proceedings in the case

Brief submissions of the Respondent:

4. The Respondent, in his defence, inter-alia submitted as under:-
 - a. Out of the Document Sr. No. A127 to A146 cited in the paragraph 7 of letter of the Institute, Charge sheet is the only relevant document in the


matter. Charge Sheet contains only allegations which are to be proved with evidence in the Court of Law. At present (since over 13 years) the case is continuing in the Court of Law. None of the charges stated in the Charge Sheet has been proved in the Court.

- b. The Complaint has been filed before the police and in that case the Respondent is neither the party to the Complaint nor he was abetted to the Complaint. The Respondent is only a witness in that case.
- c. The Complaint was made against the ITO not against him and the Respondent was not involved in the extant matter.
- d. He was handling the assessment of Mrs. Lakshmi Samraj Naikar u/s 143(3) of the Income Tax Act for A Y. 2004-05. The assessment was completed before the time barring date of 31.12.2006 and Order was also received by the Respondent being the power of attorney holder, on 29/12/2006.
- e. The charge of CBI that Complainant Mr. Samraj also attended assessment proceedings is false as not a single signature of Mr. Samraj is recorded on proceeding sheet maintained by the ITO.
- f. There is no evidence of harassment by ITO as well as evidence of Mr. Samraj having paid Rs. 15000/- to the ITO through the Respondent in December 2006. In fact, nothing was paid to ITO as claimed by the Complainant, Mr. Samraj. If one refers to the pages of Transcript Panchanama of conversation between the ITO and the Complainant (while negotiating the alleged bribe amount), there is no reference whatsoever of the said part of the bribe paid just in the preceding month i.e. December 2006. The reason being, it was not at all paid.
- g. After completion of assessment, about a week back, it is highly unlikely that the ITO who is on the verge of retirement, will telephonically demand illegal gratification of Rs. 25000/- threatening to increase the tax liability. That too from a person whom he had never met. No evidence is cited for the same.
- h. If one refers to Transcript Panchanama Page 665, one can get to know that ITO himself admits that he did not recognize Mr. C Samraj.
- i. If one refers to the same Page 665/ 666 of Transcript Panchanama of conversation between the ITO & Mr. Samraj, one can get to know, that the Respondent was not present on the first occasion when Mr. Samraj met ITO for the first time on the date of trap in which it appears that they discussed about illegal ratification.
- j. This very clearly proves that Respondent was neither connected nor interested in the so called settlement.
- k. The Respondent was occupied in Vikrikar Bhavan, Mazgaon, Mumbai about 30 KM away from Vashi, Navi Mumbai and ITO telephoned and told the Respondent to come to his office. There is a charge that the Respondent told the Complainant to leave the alleged bribe amount in his

office. If the ITO was asking the Respondent to come to his office, why the Respondent would ask Mr. Samraj to leave the bribe amount in his office?

- l. If one refers to the same Transcript Panchanama, Page 665 to Page 669, one can get to know that there is no discussion on Scrutiny assessment of Mrs. Lakshmi Somraj whatsoever. All the time, ITO was asking Mr. Samraj as to whether he filed his return of income.
- m. The reason being, the assessee, Mrs. Samraj had paid Salary of Rs. 2.40 lakhs to Mr. Samraj without deduction of tax at source in FY 2003/04 which was reported by the Respondent in Tax Audit Report. ITO wanted him to pay tax on the same. ITO was of the view that if Mr. Samraj voluntarily pays tax on remuneration received by him from Mrs. Samraj, then he does not have to issue notice to him U/S 148 of the Income Tax Act for reopening of assessment.
- n. That time, Mr. Samraj was working with Maharashtra State Electricity Board (MSEB) as Informed to the Respondent which is considered as Government employment and probably he could not report additional salary from the other employer in his return of income.
- o. In the Return of Income filed for Mrs. Samraj, a tax refund of about Rs. 12 thousand was claimed. The scrutiny assessment resulted in the tax demand of about Rs 25 thousand. It is apparent that no tax favours were extended to Mrs. Samraj nor such reference is found in Transcript Panchnama.
- p. The claim of tax by the ITO from Mr. Samraj, on remuneration received by him from Mrs. Lakshmi Samraj was valid as per law and therefore the Respondent conveyed ITO's message to him. Hence, if at all any, it was a matter between Mr. Samraj and ITO and the Respondent was not connected as he had never done tax compliance work of Mr. Samraj earlier and he was never Respondent's client.

q. As the Respondent was telephonically called by the ITO in his office on 03/07/2007, the Respondent had to honour his request. Similarly, Respondent's reason for going to Income Tax Office was also the request by Mr. Samraj who was the husband of client of the Respondent.

r. First of all, the Respondent didn't accept that this Transcript Panchanama is a True Extract of telephonic conversation recorded between the two persons. It is false, fabricated and altered to the advantage of Complainant and the Investigating Agency. The Respondent has the following reasons for his contention: 

- i. At number of places, in Transcript Panchanama itself, it has been stated, "Voice Not Clear". It is obvious that the portions of recorded Micro Cassettes were not audible even in few hours after the recording.
- ii. Now the period of 14 years has elapsed. The Respondent had already stated in his earlier submission that Court had Ordered for hearing of the said Micro Cassettes in presence of Registrar of the Court who had given adverse remarks about its audibility. The copy of the report of Registrar has not been received from the Court so far.
- iii. Thereafter Micro Cassettes were played in the open Court in front of the Hon. Judge which were absolutely inaudible. That time, Investigating Agency accepted Registrar's Report and dropped their demand of hearing the Micro Cassettes in the open Court. These are the reasons for which Micro Cassettes / CDs on which, the data was later on transferred were not given as evidence by the Informant to ICAI.
- iv. If one closely looks at the said so called Transcript Panchanama, one can get to know, that it was prepared on 13/09/2007. That is about eight months and ten days later from the date, the incident took place. The reasons for delay are best known to the Complainant and the Investigating Agency and are left to the judgment of those who are doing justice in the matter.
- v. It appears that Micro Cassettes were played and it was ensured that Transcript Panchanama was as per the recording on the said Micro Cassettes by the two witnesses and the Complainant as it was signed by three of them. It is apparent that none of the accused was present when the recording was played to ensure that Transcript Panchanama corresponds with the recording of actual telephonic conversation.

s. In spite of all this, the Respondent has to answer the allegation. There is an allegation based on Page 671 of Panchnama, that, Respondent had asked Mr. Samraj to leave the bribe amount in his office so that he could hand it over to the ITO.

t. The claim of tax by the ITO from Mr. Samraj, on remuneration received by him from Mrs. Lakshmi Samraj was valid as per law and therefore the Respondent conveyed ITO's message to him. Hence, if at all any, it was a matter between Mr. Samraj and ITO and the Respondent was not connected as he had never done tax compliance work of Mr. Samraj earlier and he was never Respondent's client.

u. On Page No 672 of Transcript Panchanama, of conversation between the Respondent & Mr. Samraj, the first sentence the Respondent say "If you have any other work, do it and come. I will reach office and give a call to you." The Respondent's statements have been totally misinterpreted to suit the plot of his involvement in the matter.

Since the assessment was already completed and Order was also received, with additional tax liability as stated herein above, there could not be a case for illegal gratification unless it was framed in such a manner.

v. There is an allegation against the Respondent that "*I had enquired with the Complainant whether he had brought the required bribe amount which he confirmed in affirmative.*" At that point of time, upon the direction of CA Adhyapak, he paid the tainted notes to the ITO. In support of the said allegation, Exhibit B13 to B15 which are Sr. No. 6 to 8 of Statement of the Complainant - Mr. Samraj have been quoted.

If one refers to the Transcript Panchanama, Page No. 674 to Page No.676 which is the last Micro Cassette recording in the ITO's cabin, one can get to know that excepting the preliminaries on Page 674, the Respondent has not uttered a single sentence in the said communication regarding paying bribe on Page 675 between the ITO and the Complainant.

Secondly, if Complainant claims that he had himself finalized the bribe amount with ITO, (Page 665 to Page 669 of Transcript Panchanama) why the Respondent will ask him whether he brought the bribe amount and why he will wait for Respondent's directions to pay bribe to the ITO?

w. Similarly Exhibit 16 to 19 are Sr. No. 35 to 38 of the Statement of Shri Sanjay Shivarn Mohite, one of the witnesses.

He has repeated the same allegation that upon the indication of the Respondent, Complainant paid the bribe amount to the ITO. This all happened in ITO's cabin. He being the witness, was not present in the cabin of ITO. He just repeated what the Complainant said. Statements of the Complainant and witnesses are not necessarily supported by any evidence. Therefore they are Cross Examined in the Court of Law. The Respondent sternly deny the Statements by the Complainant and one of the witnesses being not supported by any evidence.

x. Coming to the allegation of particles of Phenolphthalein powder found on palm of the Respondent as per Chemical Examination Report, the Respondent had already clarified in his earlier submission that since he had not touched the tainted currency notes which is claimed to have been paid as bribe by the Complainant to the ITO, there is no question and Issue of particles of Phenolphthalein powder found on his palm.

y. The so called bribe amount was directly paid by the Complainant to the ITO even as per Panchanama Page 25 and as per the Statement of Complainant Mr. Samraj Page 8. Since there was no other way of involving the Respondent, they said, on Respondent's direction, the said amount was paid to the ITO. If one has paid the bribe of Tainted Notes, It's a confirmative test that particles of Phenolphthalein powder are found on his palm. Just because the particles of Phenolphthalein powder were found on Respondent's palm, it does not necessarily mean that the Respondent have paid the bribe. It's a primary test that if you dip your fingers in Sodium Carbonate solution, and if the Phenolphthalein powder particles are deposited on your fingers, the color of the said solution changes as seen with the naked eyes. Last paragraph of Page 26 of Panchanama clearly states that on Respondent's dipping of right and left fingers in Sodium Carbonate liquid, as seen with the naked eyes, the color of liquid did not change at all. This proves that whatever particles of Phenolphthalein powder

were found on Respondent's palm, were so negligible in number that they were not capable of changing the color of Sodium Carbonate Solution which they did in case of ITO.

z.As stated in Respondent's earlier communication, it was 03/01/2007 (the day of Trap) when the Respondent first time met Mr. Samraj in new year. It is stated on Page 24 of Panchnama, that the Respondent greeted Mr. Samraj (shook hands to wish Happy New Year).On Page No 8 of the Statement of Complainant, Mr. Samraj himself admits that he greeted me. At that time negligible number of particles of Phenolphthalein powder must have been deposited on Respondent's palm.Therefore, the Respondent sternly deny the charge of his involvement in the alleged bribery case just because particles (may be very negligible in number) found on his fingers as per the report of Central Forensic Science Laboratory.

aa.Such proceedings should not have been undertaken as the matter is sub-judice and the result of the case is awaited.

ab.The Respondent also provided the copy of the following documents to further defend himself:

1. Copy of Complaint filed with CBI
2. Copy of Acknowledgment of Assessment Order
3. Copy of Notice of Demand
4. Copy of Tax Calculation
5. Copy of Tax Audit Report in form 3CB & Form 3 CD with all enclosures.

Observations and Findings of the Board of Discipline:

The Board, upon overall examination of the facts of the case, submissions and documents on record observed that the Respondent raised certain technical objections with respect to the instant 'Information' case and decided to deal with the same before arriving at its findings on the conduct of the Respondent as under:-

5. As regards the contention of Respondent that the case is barred by limitation of time as per Rule 12 of Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Board was of the view that Rule 12 is attracted in a situation / circumstance where on account of time lag, the Respondent faces any difficulty in securing proper evidence for his/her defence and it does not *ipso facto* render the complaint/ information as not maintainable. However, in the instant matter, the case is already pending trial before the Ld. Court of competent jurisdiction against the Respondent and the Respondent brought on record documentary evidences to defend himself. Merely on account of elapse of time of more than 7 years from the period of misconduct does not in itself render the complaint/Information non-entertainable. Further, the plea of the Respondent regarding applicability of Rule 12 of CA Rules, 2007 in the instant matter had already been denied at the Prima Facie stage. Accordingly, the plea of the Respondent was not accepted. (14)

6. As regard the plea of the Respondent that the Criminal proceedings are sub-judice, the Board was of the view that Disciplinary proceedings are distinct from Criminal proceedings and the same cannot be stalled, merely on the ground that the Criminal proceedings are pending. The proceedings before the Board of Discipline are quasi-judicial in nature where the misconduct can be proved by preponderance of probabilities having regard to the conduct of the Respondent which is distinct from Criminal proceedings where the misconduct has to be proved beyond reasonable doubt. While coming to the said view, the Board took into consideration the decision of the Hon'ble Supreme Court in the matter of "Ajit Kumar Nag –vs- General Manager (PJ) Indian Oil Corporation Limited-AIR 2005 SC 4217 wherein the Hon'ble Apex Court held as under :-

"The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rules relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt' he cannot be convicted by a Court of law. In a departmental enquiry penalty can be imposed on the delinquent Officer on a finding recorded on the basis of 'preponderance of probability'."

Similarly in the matter of Capt. M Paul Anthony –vs- Bharat Gold Mines Limited - AIR....1999 SC 1416 the Hon'ble Supreme Court held as under:-

"In Departmental proceedings, factors prevailing in the mind of the Disciplinary authority may be many, such as enforcement of discipline or to investigate level of integrity of delinquent or other staff. The standard of proof required in those proceedings is also different from that required in a criminal case. While in Departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the Charge has to be proved by the prosecution beyond reasonable doubt."

The issue that is to be examined by the Board is whether the conduct of the Respondent arising out of the circumstances as stated in the case records has brought disrepute to the profession and thus, amounting to 'Other Misconduct' as provided under the Chartered Accountants Act 1949. Accordingly, the plea of the Respondent was not accepted. Accordingly, the case was dealt with on its merits by the Board of Discipline, keeping in view, the submissions and other documents placed on record.

7. The Board perused the copy of the complaint dated 2nd Jan 2007 made by Shri Samraj C Naikar to the SP, CBI wherein he stated that M/s Shree Laxmi Electricals, proprietorship of his wife was converted into a Ltd. Company in 2003-2004, the business of which was being looked after him. The case of M/s Shree Laxmi Electricals was taken up for scrutiny in 2006 wherein he attended the assessment proceedings alongwith his Chartered Accountant. The Board also noted that admittedly the Respondent was the Tax Auditor of the said partnership firm for the F.Y. 2003-04 and has also brought on record the Tax Audit report dated 21st Oct 2006

2004 issued by him. The Board also perused the acknowledgment of the Assessment Order dated 26th December 2006 issued by Shri D. K. Putharan, ITO which was received by the Respondent on 29th December 2006.

8. The Board observed that the Informant Department brought on record copy of the Charge sheet wherein it is coming out that the ITO (Co-accused) had demanded illegal money from Shri Samraj C Naikar (i.e. Complainant) as motive or reward for finalizing the scrutiny matter of Income Tax file of assessee for AY 2004-05, the proceedings of matter was duly attended by the Respondent on behalf of Complainant as and when directed by the ITO. Further on receipt of complaint from the Complainant against the ITO, a trap was laid at the chamber of ITO wherein ITO and his assistant was found Guilty of accepting the bribe amount from the Complainant and it is alleged that the same was as per the direction of the Respondent.

9. The Board on perusal of Panchnama of Trap Proceedings observed that Respondent was aiding & abetting the ITO in extracting the illegal gratification from the Complainant as there was clearly telephonic conversation between the ITO, the Respondent and the Complainant. During the conversation, the Respondent assured that he will reach the office at about 2:15 pm and also confirmed his presence at the Chamber of ITO. Further, the Respondent enquired with the Complainant that whether the required bribe amount was brought by him and on the direction of the Respondent, the bribe money was handed over to ITO and his assistant. Also, particles of Phenolphthalein powder in Sodium Carbonate Solution was found from the Respondent, for which Chemical Examination Report dated 4th May, 2007 gave result of positive test for presence of Phenolphthalein & Sodium Carbonate.

10. The Board observed that as per panchnama of Trap Proceedings, conversation between Shri Samraj Naikar, Shri D.K. Puthran (co-accused) and the Respondent was recorded by the Investigating Officer, wherein it is mentioned as under:

"After about 5 minutes Shri Adhyapak (Respondent) came. I greeted him and thereafter we went to the 3rd Floor of tower No.6 by lift. On reaching the third floor, we moved towards the office cabin no.7 of Shri D.K. Puthran, ITO (Co-accused). Shri Adhyapak, CA (Respondent) peeped inside and on finding Shri Puthran busy with someone, he told me that we should wait since Shri Puthran was busy..... Thereafter, Shri Adhyapak, CA (Respondent) enquired with me whether I had brought the required bribe amount to which I confirmed in affirmative. At that point of time, upon the direction of Shri Adhyapak, CA (Respondent), I took out the tainted bribe amount of Rs.20,000/- from my left side shirt pocket with my right hand and extended it towards Shri Puthran, ITO (Co-accused) who in turn accepted the same in the presence of Shri Adhyapak, CA (Respondent) with his right hand. Thereafter Shri Puthran, ITO wrapped the said tainted bribe amount in a piece of paper by suing his both bands and kept the same in a file which was lying on his table."

(B)

11. The Board also perused the transcript of the conversation recorded between the ITO and the Complainant and observed that although the negotiation for the bribe amount was being done by the Complainant himself, however, the ITO telephoned the Respondent and also the Respondent was continuously being referred to in their conversation as regards delivery of the AO, delivery of the bribe amount etc. Also, the Board perused the transcript of the conversation recorded between the Respondent and the Complainant and observed that the Respondent was saying that if the amount has been settled, it is better to pay the same and if the same is delivered in his office, he can pay the same.

12. The Board also observed that the Respondent was arrested on 4th Jan 2007 and released on bail on 6th Jan 2007.

13. The Board observed that throughout the proceedings, the major defence of the Respondent had been that the amount of bribe was negotiated and paid by the Complainant himself and that too for his personal Income Tax proceedings which were not represented by the Respondent. He went to the Income Tax Department from a place which was approximately 30 Km away from it on the call of the ITO and the Complainant as a Goodwill gesture to the Official and since the Complainant was known to him, being the husband of his client.

14. Thus, on a consideration of the corroborative and circumstantial evidences on record, the Board was of the view that since the Respondent was present in the Income Tax Officer's room when the amount of bribe was handed over by the Complainant to the Income Tax Officer, the ignorance pleaded by him is not acceptable. The Board was also of the view that giving bribe to a Public Servant to perform public function is a serious offence and in the instant case, the Respondent himself became a facilitator to the said Act and thereby has brought disrepute to the entire Profession. Accordingly, the Respondent is held Guilty in respect of the charge alleged.

CONCLUSION:

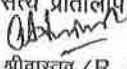
15. Thus, in conclusion, in the considered opinion of the Board, the Respondent is GUILTY of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act.

Sd/-

**CA. SATISH KUMAR GUPTA
(PRESIDING OFFICER)**

Date: 8th February, 2022

प्रमाणित सत्य प्रतिलिपि / Certified true copy


आर. एस. श्रीवास्तव / R. S. Srivastava
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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