



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

[PR/382/2019/DD-346/2019/DC/1420/2021]

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. : PR/382/2019-DD/346/2019-DC/1420/2021

In the matter of:

CA. Mahesh Agarwal

B-Hive 11B-2/11

Mohan Cooperative Industrial Estate,

New Delhi – 110 044

.....Complainant

Versus

CA. Kailash Kumar M (M.No.206166)

424, D B Road,

Red Rose Towers,

R S Puram

COIMBATORE – 641002

.....Respondent

Members present:

CA. Aniket Sunil Talati, Presiding Officer

Smt. Anita Kapur, Member (Govt. Nominee)

Shri P.K. Srivastava, Member (Govt. Nominee)

CA. Vishal Doshi, Member

CA. Sushil Kumar Goyal, Member

Date of Hearing: 08.04.2022 through Video Conferencing

Place of Hearing: New Delhi

Party Present:

(i) **CA. Kailash Kumar M – Respondent (appeared from his personal location)**

1. That vide report dated 17th December, 2021 (copy enclosed), the Disciplinary Committee was of the opinion that **CA. Kailash Kumar M (M.No. 206166)**, was **Guilty** of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule and Item (1) of Part-II of Second Schedule to the Chartered Accountants Act, 1949 with respect to tax audit of M/s Amba Pipe & Sanitary and M/s Prince Marketing for Financial Year 2017-18 accepted by the Respondent without communicating with the Complainant when the undisputed audit fees of the Complainant was pending.

It was noted that Item (8) of Part I of the First Schedule states as under:-

"PART I : Professional misconduct in relation to chartered accountants in practice

A



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

[PR/382/2019/DD-346/2019/DC/1420/2021]

A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he-

....
(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”

It was further noted that Item (1) of Part- II of Second Schedule

“Professional misconduct in relation to members of the Institute generally:

A member of the Institute, whether in practice or not, shall be deemed to be guilty of Professional misconduct, if he-

(1) contravenes any of the provisions of this Act or the regulation made thereunder or any guidelines issued by the Council”

2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 25th March, 2022 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 8th April, 2022 through video conferencing.

3. The Respondent appeared before the Committee on 8th April 2022 through video conferencing and made his oral submissions before the Committee. The Committee considered the oral as well as his written representation dated 24th February, 2022. The Respondent, at the outset, pleaded to the Committee to provide him the opportunity to place before the Committee its defense in person. He further submitted that indeed he had spoken to the Complainant while the latter was in Singapore and considering the urgency of the matter the Client had approached him for carrying out the Tax Audit for FY 2017-18. In view of the urgency of the matter, the fact that oral consent was received from the Complainant as well as the fact that the Complainant was corresponding with the client on its mail id and was also cooperating with the finalisation of the survey proceedings being well aware of the fact that the Respondent had taken over the assignment, it was presumed that the Complainant had accepted the Respondent position as auditor instead of him. Regarding the matter of pending fee, the Respondent stated that the matter was resolved with the Client. Based on subsequent reconciliation of his books and their books, it was confirmed that there were no dues relating to the fees pending. The only pending payment was relating to the amount he had financed in the form of tax to the partner. It was on 11th September 2019 the Respondent was in receipt of whatsapp message received from the Complainant stating about pending payment which primarily pertained to the Tax challan payment of one of the partners Mr. Prakash Sharma which was done by the Complainant for Rs 76,610 and Rs 8500 which was not reimbursed and lended for interest. The said tax was reimbursed to the Complainant. Hence, there was no pending fee issue and it was just the reimbursement of tax issue and the same was resolved.

4. The Committee considered the oral as well as written submissions made by the Respondent. It was viewed that the extant hearing was held for limited purpose of providing an opportunity to



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

[PR/382/2019/DD-346/2019/DC/1420/2021]

the Respondent to give his representation before awarding the punishment. Accordingly, the matter was proceeded with. It was noted that as per the Code of Ethics- 2009, 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 extant case, the Respondent failed to produce such evidence. Even if the Complainant was outside the country, there were other means to communicate in writing viz email. Accordingly, the plea of the Respondent about deemed communication could not sustain.

4.1 As regards the issue of pending fees of the Complainant, the Committee noted that it was on receipt of the complaint filed by the Complainant with ICAI on 12th November 2019, the Respondent came to know that the pending fee of the Complainant was not settled whereas the Respondent had submitted his tax audit reports in respect of both the Companies not later than 28th February 2019, which again signify that he had not bothered to obtain evidence regarding non-pendency of undisputed fees. Thus, it was well established on record that the Respondent had accepted the appointment as Tax auditor of both the Companies in violation of the provisions of Chapter VII of the Council General Guidelines 2008 though later on the Complainant wrote to the Committee informing that it was on intervention of the Respondent that the matter of his dues was resolved.

5. The Committee thus viewed that the misconduct on the part of the Respondent has been held and established within the meaning of Item (8) of Part I of the First Schedule and item (1) of Part- II of Second Schedule to the Chartered Accountants Act, 1949 read with Chapter VII of the Council Guidelines, 2008. Thus the Committee, keeping in view the facts and circumstances of the case as aforesaid, ordered the Respondent **CA. Kailash Kumar M (M. No. 206166)** be reprimanded.

Sd/-
[CA. Aniket Sunil Talati]
Presiding Officer

Sd/-
[Smt. Anita Kapur]
Member (Govt. Nominee)


Sd/-
[Shri P.K. Srivastava]
Member (Govt. Nominee)

Sd/-
[CA. Vishal Doshi]
Member

Sd/-
[CA. Sushil Kumar Goyal]
Member

Date: 14/06/2022

Place: New Delhi


प्रमाणित सत्य प्रतिलिपि / Certified true copy

सीए. ज्योतिका ग्रोवर / CA. Jyotika Grover
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, Shahdara, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – III (2021-22)]
[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

File No.: PR-382/19-DD/346/2019-DC/1420/2021

In the matter of:

CA. Mahesh Agarwal
B-Hive 11B-2/11
Mohan Cooperative Industrial Estate,
New Delhi – 110 044 **.....Complainant**

Versus

CA. Kailash Kumar M (M.No.206166)
424, D B Road,
Red Rose Towers,
R S Puram
COIMBATORE – 641002 **.....Respondent**

MEMBERS PRESENT:

CA. Nihar N Jambusaria, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
CA. Chandrashekhar Vasant Chitale, Member
Shri Ajay Mittal, Member (Govt. Nominee)

Date of Final Hearing: 11th August 2021 through Video Conferencing
Place of Final Hearing: New Delhi

Charges in Brief:

1. The Committee noted that in the *Prima Facie* Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent was held *prima facie* guilty of Professional Misconduct falling within within the meaning of Item (8) of Part I of First Schedule and Item (1) of Part- II of Second schedule to the Chartered Accountants Act, 1949 read with

Chapter VII of the Council Guidelines 2008. The said Items to the Schedule and Council Guidelines state as under: -

Part I of the First Schedule:

"(8) Accepts a position as auditor previously held by another Chartered Accountant without first communicating with him in writing"

Part II of the Second Schedule read with Chapter VII of the Council Guidelines 2008

"(1) contravenes any of the Act/Regulations and Guidelines issued by the Council"

Council Guidelines No.1-CA(7)/02/2008, dated 8th August,2008

Chapter VII

Appointment of an Auditor in case of non-payment of undisputed fees

"A member of the Institute in practice shall not accept the appointment as auditor of an entity in case the undisputed audit fee of another Chartered Accountant for carrying out the statutory audit under the Companies Act, 1956 or various other statutes has not been paid"

Charges against the Respondent

2. It is alleged against the Respondent that he had accepted the tax audit of M/s Amba Pipe & Sanitary and M/s Prince Marketing for financial year 2017-18 without communicating with the Complainant and when his outstanding audit fees was pending.

Proceedings:

3. At the time of hearing on 11th August 2021, the Committee noted that neither the Complainant nor the Respondent was present before it for hearing. However, both the Complainant and the Respondent vide their e-mails dated 9th August 2021 and 6th August 2021 respectively submitted their responses in the matter while stating that they would not be appearing before the Committee for hearing. Since submissions of both the parties were received, the Committee decided to proceed ahead in the matter.

Based on the documents and submissions available on record, the Committee concluded hearing in the matter.

Findings of the Committee:

4. The Committee at the outset noted that though the Complainant had vide his email dated 9th August 2021 informed his intention not to harm CA fraternity member and that pending fees

(10)

matter had been resolved with the client. However, considering merits of matter, the Committee decided to proceed in the matter.

5. The Committee noted that the **first charge** against the Respondent was that he failed to communicate in writing with the Complainant before accepting the tax audit of M/s Amba Pipe & Sanitary and M/s Prince Marketing for financial year 2017-18. It was noted that the Respondent submitted that during survey proceedings, the Complainant was in Singapore so they orally communicated relating to taking over the audit instead of sending the written communication through registered post as the communication address of the Complainant was also not available with him which led to delay in sending the communication. He also stated that in any case, the matter had been resolved amongst the parties.

6. The Committee, in this regard noted that as per the Code of Ethics- 2009, 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 normal course provide such evidence. In the extant case, the Respondent had clearly admitted having failed to communicate with the previous auditor i.e. Complainant in writing. The Committee viewed that even if the Complainant was outside the country, there were other means to communicate in writing viz email but the Respondent failed to provide any document on record to demonstrate compliance of the requirements of Code of Ethics. Thus, the Committee was 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.

7. The Committee noted that the **second charge** alleged against the Respondent was that he had accepted the tax audit of M/s Amba Pipe & Sanitary and M/s Prince Marketing for financial year 2017-18 when the undisputed audit fees of the Complainant was pending. The Respondent in this regard submitted that the fee for both the audits had been paid by the assessee to the Complainant and brought on record copy of the bank statement in this regard

9
10

wherein an amount of Rs. 70,800/- and Rs. 1,18,000/- were being reflected to have been paid to the previous auditor i.e. the Complainant on 13th July 2018.

8. The Committee, however, noted that the Respondent in his Written submissions made vide e-mail dated 6th August 2021, had clearly submitted that earlier he had spoken to the Complainant and assured him about settlement of his outstanding dues clearly. However, it was on receipt of the complaint filed by the Complainant with ICAI on 12th November 2019, he came to know that the pending fee of the Complainant was not then settled. In view of the said fact, the Committee, noted that till November 2019, the undisputed audit fee was pending and thus entries amounting to Rs. 70,800/- and Rs. 1,18,000/- being reflected in the copy of the bank statement on 13th July 2018 could not be accepted as payment made towards outstanding undisputed audit fee as alleged in the matter. The Committee further noted from the Rejoinder of the Complainant that the Respondent had submitted his tax audit reports in respect of both the Companies not later than 28th February 2019, hence if the undisputed fees was outstanding till 12th November 2019, it is well established on record that the Respondent had accepted the appointment as Tax auditor of both the Companies in violation of the provisions of Chapter VII of the Council General Guidelines 2008. Thus, in light of the same, the Committee is of the considered opinion that the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Item (1) of Part- II of Second schedule of Chartered Accountants Act, 1949 read with Chapter VII of the Council Guidelines 2008.

Conclusion:

9. Thus, in conclusion, in the considered opinion of the Committee, the Respondent is held **GUILTY** of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule and Item (1) of Part- II of Second Schedule to the Chartered Accountants Act, 1949 read with Chapter VII of the Council Guidelines 2008.

Sd/-

[CA. Nihar N Jambusaria]
Presiding Officer

Sd/-

[Smt. Anita Kapur]
Member(Govt. Nominee)

5

Sd/-
[CA. Chandrashekhar Vasant Chitale]
Member

Sd/-
[Shri Ajay Mittal]
Member (Govt. Nominee)

DATE: 17th December, 2021

PLACE: New Delhi

प्रमाणित सत्य प्रतिलिपि / Certified true copy
श्री. मोहिता खन्ना / CA. Mohita Khanna
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