



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

[PR-249/18-DD/261/2018] -DC/1383/2020]

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-249/18-DD/261/2018] -DC/1383/2020

In the matter of :

Dr. Sarvabhoom Bagali

Basaveshwar Circle

Indi - 586209

Vijayapur - Karnataka

...Complainant

Versus

CA. C V Kittur (M No. 006970)

M/s C V Kittur & Company

Anu Vir Park Basav Nagar,

Club Road,

Belagavi (Karnataka) -590 001

...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: 25.04.2022 through Video Conferencing

Place of Hearing: New Delhi

1. That vide report dated 8th February, 2022 (copy enclosed), the Disciplinary Committee was of the opinion that CA. C V Kittur (M No. 006970), was **GUILTY** of Professional Misconduct falling within the meaning of Items (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 with respect to the three allegations as discussed hereunder: -

i. the Respondent had issued two audit reports for year ending 31.03.2017 - first audit report was issued on 05.05.2017(C-5 to C-7) and thereafter another audit report was issued on 28.05.2018 (C-8 to C-10) i.e. after receiving a letter dated 25.05.2018 from Chairman/Trustee of the Trust. It was alleged that in the first audit Report dated 05/05/2017 an amount of Rs. 36,52,650/- was shown as an advance to Chairman of the Shri Shanteshwar Dev & Hire Indi Hanmant Dev, Indi (hereinafter referred as the 'Trust') which was changed to expenses on building construction in second audit report dated 28/05/2018

CA

P



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

[PR-249/18-DD/261/2018] -DC/1383/2020]

on the pretext that there was a mistaken impression and the advance standing in the name of President of the Trust was utilized for building construction purpose.

ii. The Respondent had failed to point out the lapse that amount of Fixed deposit of Rs. 15,00,000/- that was required to be kept in nationalized banks or scheduled bank only was kept in co-operative Society.

iii. The Respondent had failed to report error in showing opening balance of Income and Expenditure Account for the 2016-17. The Opening balance of Income and Expenditure Account was reported at Rs.51,15,504.70/- whereas the closing balance as on 31st March 2016 was Rs.44,76,260.63/-.

It was noted that Item (7) and (8) of Part I of Second Schedule states as under:-

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

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

“(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;

(8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion”

2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated **11th April, 2022** was addressed to him thereby granting him an opportunity of being heard in person and/or to make oral/ written representation before the Committee on **25th April, 2022** through video conferencing.

3. The Committee noted that the Respondent was not present before it during hearing on **25th April 2022**. However, the Respondent had vide his submission dated **20th April, 2022**, expressed his inability to attend the hearing stating that he was 87 years old and that he recently had paralytic attack. Thus, due to health issues as well as not being well versed with the video conferencing, he could not appear in person before the Committee. Accordingly, the Respondent requested the Committee that his written representation dated 20th April, 2022 be taken on record to decide on the matter.

4. The Committee considered the written representation as submitted by the Respondent on the findings of the Committee wherein he, at the outset stated that the extant complaint was filed because the Complainant had dispute with the management of the Trust. Further, in respect of allegations made, he submitted that

2

9



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

[PR-249/18-DD/261/2018] -DC/1383/2020]

- i. He had neither examined the financial statements nor he had expressed any opinion in this regard in terms of the requirements of SA-700. The Respondent had issued a report on the audit of accounts of the Trust, as per books of account and other relevant records pertaining thereto produced before him.
- ii. That the fixed deposits of the Trust were made as per the requirement of the Trust Act. There was no bar in having FDRs in cooperative Society under Trust Act.
- iii. That as regard discrepancy in opening balance of Income and Expenditure account, it is the duty and responsibility of the management of the Trust and the person those are charged with the governance for the preparation and presentation of the financial statements.

5. The Committee considered the written representations submitted by the Respondent on the findings of the Disciplinary Committee. The Committee noted that the Respondent had revised audit report merely based upon the receipt of a letter dated 28/05/2018 which was just sd/- copy of Trustee/Chairman. The fact that the advance standing in the name of President of the above Trust was utilized for building construction had been stated to have been verified from the cash-book produced Cash Book Folio No. 30 to 32 which alone could not be considered as reasonable evidence to issue another audit report on revised financial statements. Although the Respondent took the plea regarding non-applicability of SA 700 and audit report, so issued, being not an auditor's report in terms of SA-700, it was noted that the contents of the audit reports clearly establishes that the observations were made after auditing the books of accounts and other records and that the Income Expenditure Account as well as the Balance Sheet of the Trust were indeed certified by him after conducting its audit. Hence, in the absence of any convincing evidence, the revision of material figures did not appear justified in issuing revised report.

5.1 With respect to the plea of the Respondent that there is no requirement for keeping Fixed Deposits with nationalized banks or scheduled bank only, the Committee viewed that after Bombay Trust Act ceased to exist in Karnataka, Guidelines of Indian Trust Act were to be followed which provided that the bank accounts of the Trust should be opened in scheduled or nationalized bank only and not in Co-operative Society. Further, on perusal of records, the Committee noted from the Audited Financial Statements of the Trust brought on record by the Complainant that this practice of keeping Fixed Deposits of the Trust in Shri Shanteshwar Souhard co-operative Society was in force since Financial Years 2010 to 2017 and although the Respondent in his Written Statement before the Director(Discipline) had accepted to have given instruction to the Trust to withdraw the same from the said Society and re-invest in any nationalized Bank but he failed to bring on record any documentary evidence in support of the statement that he had raised his objection or made repeated reminders to Trust that fixed deposits of the Trust were not maintained in compliance to the provisions of the Trust Act.

W
A



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

[PR-249/18-DD/261/2018] -DC/1383/2020]

5.2 With respect to discrepancy in opening balance of the Income & Exp A/c' as reported in the Balance Sheet for the period vs a vs the closing balance in the immediately preceding period i.e. as on 31st March 2016, it was noted that the Respondent tried to wash his hands of the opening balances stated in the balance sheet by stating that it is the duty and responsibility of the management of the Trust as well as those charged with governance to ascertain the opening balances, but the Committee noted that the Respondent was himself the auditor of the Trust for both the alleged periods. Further, such discrepancy could not be regarded as an un-intentional/arithmetical error when the two sides of the balance sheet perfectly tallied despite such material discrepancy. It clearly reflect failure on the part of the Respondent to exercise due diligence in performing his professional duties when he failed to report on overstated opening balance of Income and expenditure account in Balance Sheet.

6. The Committee thus viewed that the misconduct on the part of the Respondent has been held and established within the meaning of Item (7) and Item (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and keeping in view the facts and circumstances of the case as aforesaid, ordered that the name of the Respondent **CA. C V Kittur (M No. 006970)** be removed for a period of 6 (Six) months from the Register of members.

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. जयसिंह
सहायक सचिव
अनुशासन विभाग
इंस्टीट्यूट ऑफ
The Institute of Chartered Accountants of India
आसपास का पता: इंदिरा 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

Ref. No.PR-249/18/DD/261/2018/DC/1383/2020

In the matter of:

Dr. Sarvabhoun Bagali
Basaveshwar Circle
Indi - 586209
Vijayapur
Karnataka

.....Complainant

Versus

CA. C V Kittur (M No. 006970)
M/s C V Kittur & Company
Anu Vir Park Basav Nagar,
Club Road,
Belagavi (Karnataka) -590 001

.....Respondent

MEMBERS PRESENT:

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

Date of Final Hearing: 18th October, 2021 (through video-conferencing)

Place of final Hearing: Mumbai

The following Parties were present:

Counsel for Respondent: Adv. (Dr.) S. S. Sharma

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 the meaning Items (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The said Items to the Schedule state as under: -

Part I of the Second Schedule

"(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties and

(8) fails to obtain sufficient information which is necessary for expression of an opinion"

Charges alleged against the Respondent:

2. The Committee noted that the Respondent has issued two audit reports for year ending 31.03.2017. First audit report was issued on 05.05.2017(C-5 to C-7) and thereafter another audit report was issued on 28.05.2018 (C-8 to C-10) i.e. after receiving a letter dated 25.05.2018 from Chairman/Trustee of the Trust. The Complainant in the extant case had raised following allegations against the Respondent:-

- a) The **first allegation** was that in the first audit Report dated 05/05/2017 (C-5) an amount of Rs. 36,52,650/- was shown as an advance to Chairman of the Trust which was changed to expenses on building construction in second audit report dated 28/05/2018 issued by the Respondent (C-8) on the pretext that there was a mistaken impression and the advance standing in the name of President of the above trust was utilized for building construction purpose.
- b) The **second allegation** was that the Respondent had failed to point out the lapse that the Fund Box with Collection of Rs.98,295/- was not opened in presence of witnesses and one government servant. Panchanama for counting of cash was not drawn by the Trust Committee.
- c) The **third allegation** was that the Respondent had failed to point out the lapse that amount of Fixed deposit of Rs. 15,00,000/- that was required to be kept in nationalized banks or scheduled bank only was kept in co-operative Society and
- d) The **fourth allegation** was that the Respondent had failed to report the error in showing opening balance of Income and Expenditure Account for the 2016-17. The Opening balance of Income and Expenditure Account was reported at Rs.51,15,504.70/- (R-8) whereas the closing balance as on 31st March 2016 was Rs.44,76,260.63/- (R-11).

2.1 The Committee noted that out of the four above stated allegations, the Director (Discipline) in his *prima facie* Opinion had held the Respondent guilty of misconduct

in respect of three allegations only and, accordingly, the Committee proceeded ahead with the enquiry against first, third and fourth allegation only.

Proceedings:

3. At the time of hearing, the Committee noted that the Counsel for the Respondent was present for hearing and at the time of last hearing held on 9th September 2021, he was directed to submit, within a period of 7 days, rationale/relevance for each witness which he intend to examine/cross examine before the Committee so that it might decide upon his application accordingly. It was noted that he had requested for cross examination of Director (Discipline) besides desiring to present other witnesses namely (i) President of Trust and (ii) CEO of the Trust for examination before the Committee

The Committee noted that the Counsel for the Respondent could not provide the required relevance of his application and thus the Committee felt that in the absence of requisite information, there was no grounds to consider the application of the Respondent for examination/cross examination of the witnesses and thus rejected the said application and decided to proceed ahead in the matter.

The Counsel for the Respondent was asked to make his submissions on the merits of the case. He, thereafter, submitted defense of the Respondent in the matter and was examined by the Committee. The Counsel for the Respondent made his final submissions in the matter.

Thereafter, based on the documents and after considering the oral and written submissions available on record before it, the Committee concluded hearing in the matter. Accordingly, the matter was heard and concluded.

Findings of the Committee:

4. At the outset, the Committee noted that the Respondent had conducted the audit of Shri Shanteshwar Dev & Hire Indi Hanmant Dev, Indi (hereinafter referred as **the Trust**) for the F.Y. 2016-17. The Complainant had raised certain allegations against the Respondent as enumerated in Para 2 above.

4.1 The Committee noted the preliminary objections of the Respondent wherein he submitted that

(i) the Director (Discipline) had extended the scope of complaint without going into the facts of the case as the audit report issued by the Respondent in the extant case could not be treated as an Independent Report for which the vital parameters should have been examination of financial statements, expressing the opinion and Report on true and fair view of the Financial Statements. He further stated that the so-called audit report issued by the Respondent had mentioned certain comments on accounts as well as observations, which were never a part of statutory audit report. Therefore, the audit report in the present case was different from the statutory audit report. It was noted that the Respondent had issued audit report after auditing the accounts of the Trust for the F.Y. 2016-17, as explicitly mentioned in his report when it stated as under:

"I have audited the accounts of the trust for the period from 01-04-2016 to 31-03-17, as per the Books of Account and other relevant records pertaining thereto produced before me, and I have to make the following observations"

It was viewed that issuance of audit report is in itself an indicator of an independent examination of books and accounts being conducted by the Respondent and any observation reported therein would be regarded as part of the audit report. Accordingly this objection of the Respondent was ruled out by the Committee as non-maintainable.

4.2 With respect to the Respondent's request for a fresh certified copy of charges framed by the Disciplinary Committee, the Committee noted that there is no provision of framing fresh charges by the Committee and the allegations dealt with in the *Prima Facie* Opinion of the Director (Discipline) dated 22nd July 2020 was considered and accepted by the Committee were taken as charges against the Respondent. The same was communicated to the Respondent vide letter dated 10th December 2020 which inter-alia stated as below:

*"The Committee on consideration of the same, concurred with the reasons given against the charge(s) and thus, agreed with the prima-facie opinion of the Director (Discipline) that the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Item (7) and (8) of Part I of the Second Schedule to the*

Chartered Accountants Act, 1949 and accordingly, decided to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigations of professional and Other Misconduct and Conduct of cases) Rules 2007”

4.2.1 The Committee thus was of the view that it was explicitly informed to the Respondent that on consideration of the *prima-facie* opinion of the Director (Discipline), it concurred with the reasons given against the charge(s) and thus decided to proceed further with the enquiry in the matter under Chapter V of the Chartered Accountants (Procedure of Investigations of professional and Other Misconduct and Conduct of cases) Rules 2007. The Committee, accordingly, ruled out the said plea of the Respondent as not maintainable as the charges framed/grounds raised in the allegations against him were duly communicated to the Respondent.

5. In view of above discussion, the Committee decided to consider the merits of the matter. The Committee noted that in the **first charge**, it was alleged against the Respondent that in the first audit Report dated 05/05/2017 (**C-5**) advance to Chairman of the Trust was reported at Rs. 36,52,650/- which was changed to expenses on building construction in second audit report dated 28/05/2018, both reports issued by the Respondent (**C-8**), on the ground that there was a mistaken impression and the advance standing in the name of President of the above trust was utilized for building construction which was stated to be verified from the cash-book produced Cash Book Folio No. 30 to 32. The Committee noted the submission of the Respondent that the revised financial statements i.e. Income and expenditure Account and Balance Sheet dated 28-05-2018 as issued by the Respondent on only after the Respondent received written submission from Trustee/Chairman (**W-9**) in order to reflect the correct item of expenditure.

5.1 The Committee noted that the Respondent clarified his position stating that revised financial statement i.e. Income and expenditure Account and Balance Sheet reporting expenses on building construction amounting to Rs. 36,52,650/- instead of advance to Chairman of the Trust was issued by him on 28/05/2018 after receiving written submissions of Trustee/Chairman vide letter dated 25/05/2018(**W-9**)

The contents of said letter were noted to be as under:

"In the Balance Sheet, Rs. 36,56,650/- has been shown as advance account. The said advance amount has been shown in ledger folio 30 to 31 as advance to building construction account. The said advance account shown may be corrected and shown under advance to building construction account and amended copy of the Balance Sheet may be please sent to our records".

5.2 In view of above letter and submissions of the Respondent, the Committee noted that the Respondent had revised audit report merely based upon the receipt of the said letter which was just sd/- copy of Trustee/Chairman. The Respondent, however, failed to clarify the basis on which he was convinced that the said advance to Chairman of the Trust was indeed an advance for building construction as reported in his first audit report dated 05.05.2017. The Committee noted that the Respondent had failed to bring on record any corroborative evidence in form of copies of ledger account, voucher or invoice which could corroborate his said statement that same was not an advance to Chairman but advance for construction of building beside the above mentioned letter stated to have been received from Trustee/Chairman of the Trust **(W-9)**. The Committee was thus of the view that it was quite evident that while issuing the audit reports, he not only had failed to exercise due diligence but also failed to obtain sufficient documentary evidence to warrant a professional opinion on the accounts of the Trust and accordingly held the Respondent Guilty of professional misconduct falling within meaning of Items (7) and (8) Part I of Second Schedule to Chartered Accountant Act 1949.

6. The Committee noted that in the **second charge**, it was alleged against the Respondent that he failed to point out the lapse that, as per the requirements of Trust Act, Fixed deposit of Rs. 15,00,000/- was to be kept in nationalized banks or scheduled bank only and could not be kept in co-operative Society. The Committee noted the submissions made by the Respondent before the Committee that the Director (Discipline) failed to examine the relevant sections of the Trust Act even though the Respondent had admitted the lapse.

6.1 The Committee in this regard noted that the after Bombay Trust Act ceased to exist in Karnataka, Guidelines of Indian Trust Act were to be followed which provided

that the bank accounts of the Trust should be opened in scheduled or nationalized bank only and not in Co-operative Society. Further, on perusal of records, the Committee noted from the Audited Financial Statements of the Trust brought on record by the Complainant that this practice of keeping Fixed Deposits of the Trust in Shri Shanteshwar Souhard co-operative Society was in force since Financial Years 2010 to 2017 (R-6 to R-28) and although the Respondent in his Written Statement before the Director(Discipline) had accepted to have given instruction to the Trust to withdraw the same from the said Society and re-invest in any nationalized Bank but he failed to bring on record any documentary evidence in support of the statement that he had raised his objection or made repeated reminders to Trust that fixed deposits of the Trust were not maintained in compliance to the provisions of the Trust Act.

6.2 The Committee on the basis of above was thus of the view that it was well within the knowledge of the Respondent that the fixed deposits of the Trust were not being maintained in compliance with the requirements of Trust Act still he failed to point out the same in his audit report and thus failed to exercise due diligence while performing professional duties casted upon him. Accordingly, the Respondent was held Guilty of professional misconduct falling within meaning of Item (7) of Part I of Second Schedule to Chartered Accountant Act 1949.

7. The Committee noted that in the **fourth charge**, it was alleged against the Respondent that he had failed to report the error in opening balance of 'Income & Exp A/c' as reported in the Balance Sheet for the period at Rs.51,15,504.70/- whereas the closing balance in the immediately preceding period i.e. as on 31st March 2016 was reported at Rs.44,76,206.63/-The Committee noted the submissions of the Respondent made before it wherein he stated that it was the responsibility of the management of the Trust and the persons charged with the governance to prepare and present the financial statements. In the present case, the Respondent had not audited the Financial Statements but had dealt with the accounts of the Trust, hence the burden of charge relating of opening and closing balances ought not to have been put on Respondent. The Committee, however, noted that the Respondent had accepted in his Written Statement before the Director

(10)

A2

(Discipline) that it was an inadvertent arithmetical error that had crept in and was not shown intentionally.

7.1 The Committee in this regard perused the audited Financial Statements of the Trust for financial year 2016 -17 **(R-8/ C-6)** and noted that opening balance of Income and expenditure account carried forward in Balance Sheet of year 2017 was overstated by Rs. 6,39,240.07/- but both the sides of the balance sheet audited by the Respondent had tallied perfectly at Rs. 1,98,48,499.70/- which could not have been possible if the mentioning of the wrong amount was merely an arithmetical /unintentional error. The Committee further could not comprehend the basis to balance both the assets and liabilities side of the balance sheet for year ended 31.03.2017 **(R-8)** at Rs. 1,98,48,499.70/- when opening balance of Income and expenditure account carried forward in Balance Sheet of year 2017 was overstated by Rs. 6,39,240.07/-.

7.2 Accordingly, it was viewed that the same could not be an unintentional/arithmetical error but reflected failure on the part of the Respondent to exercise due diligence in performing his professional duties. The Committee, with respect to Respondent's plea that he had not audited the Financial Statements but had dealt with the accounts of the Trust, viewed that the such submission did not hold much ground as the Respondent had certified the Income Expenditure Account as well as the Balance Sheet of the Trust after conducting its audit . If the carried forward opening balance of Income and expenditure account in Balance Sheet was overstated by Rs. 6,39,240.07/-, the Respondent was bound to report on the same. The failure on the part of the Respondent to report such discrepancy, clearly reflects failure of the Respondent to exercise due diligence in performing his professional duties. Thus in light of the same, the Committee was of the considered view that the Respondent was Guilty of professional misconduct falling within meaning of Items (7) Part I of Second Schedule to Chartered Accountant Act 1949 for extant charge.

Conclusion:

8. Thus in conclusion, in the considered opinion of the Committee, the Respondent is **GUILTY** of professional misconduct falling within the meaning of Items (7) and (8) of

Ⓜ

A2

Part I of the Second Schedule to the Chartered Accountants Act, 1949 for all the three charges.

(M)

Sd/-
[CA. Nihar N Jambusaira]
Presiding Officer

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

Sd/-
[CA. Chandrashekar Vasant Chitale]
Member

Date: 8th February, 2022
Place: New Delhi

प्रमाणित सत्य प्रतिलिपि / Certified true copy
Mohita Khanna
सीए. 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
आइसीएआइ भवन, विश्वास नगर, शहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shadra, Delhi-110032