

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/256/16-DD/336/2016/BOD/524/19****CORAM (in person):****CA. Prasanna Kumar D., Presiding Officer****Ms. Dolly Chakrabarty (IAAS, retd.), Government Nominee****CA. (Dr.) Raj Chawla, Member****In matter of:****Shri Hariom Goel****House No. 34, Suvidha Kunj****Pitampura****Delhi-110034****...Complainant****-vs-****CA. Yogesh Gupta (M. No. 519953)****62/454 First Floor Shrivastava Market****Hauz Qazi****Delhi-110006****...Respondent**

DATE OF FINAL HEARING : 26th April 2022
PLACE OF FINAL HEARING : New Delhi/ through video conferencing

PARTIES PRESENT (through Video Conferencing):**Respondent : CA. Yogesh Gupta****FINDINGS:****Charge Alleged:**

- 1.1 The Complainant was in the business of real estate by the name of M/s Chirag Enterprises (hereinafter referred to as the 'firm') (closed in 2012). He entrusted all documents relating to his business affairs to the Respondent. He availed the services of the Respondent against a sum of Rs. 23,500/- per year since 2001 to 2012 when

the firm was closed. However, the Respondent prepared false and fake TDS return of Rs. 10 Lakhs on behalf of the aforesaid closed firm of the Complainant and submitted the same before the Income Tax Department. In this regard, when the Complainant received notice from the Income Tax Department on 06.09.2016, the Complainant made personal visit to the Income Tax Department and got to know that the Respondent had prepared false Income Tax return and statement of account of the Complainant wherein it was shown that the Complainant had paid a sum of Rs. 1 crore as fees to the Respondent.

- 1.2 The Respondent prepared a false Challan no. 01415 on behalf of the Complainant for Assessment Year 2016-2017 (BSR Code 0510308) of TDS of Rs. 36,000/- and had shown that the Complainant had paid Rs. 36,000/- to the Respondent for depositing the same with the Income Tax Department. However, the Respondent deposited only Rs. 100/- instead of Rs. 36,000/- and committed fraud. It is also alleged that the Respondent filed his Income Tax return with the Income Tax Department to the tune Rs. 22,50,000/- by adopting the same modus operandi.

The Board at its meeting held on 04th October 2019 considered the Prima Facie Opinion formed by the Director(Discipline) alongwith the Complaint and additional documents on record. On consideration of the same, the Board observed that the Respondent had not submitted his written statement and had also admitted his mistake vide his letter dated 26th September 2016 brought on record by the Complainant. Accordingly, the Board did not agree with the Prima Facie Opinion formed by the Director(Discipline) and decided to proceed under Chapter IV of the Chartered Accountants(Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

Brief of Proceedings held:

2. During the hearing held in the case on 26th April 2022, the Board noted that the Respondent was present before it through video conferencing. However, the Complainant was not present before it despite the due delivery of the notice for the hearing. The Board noted that on earlier occasions also when the case was listed for hearing, it had been adjourned on account of non-appearance of parties and even today the Complainant chose not to appear before it despite the due service of the notice of hearing, therefore, the Board decided to proceed ahead with the hearing in the case. Thereafter, the Respondent was put on oath and he confirmed that he has read and understood the contents of the modalities and protocols of e-hearing and follow them. Thereafter, 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 made his 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 of the Submissions of the Respondent:

3. The Respondent, in his defense, inter alia submitted as under:-
 - a. He was suffering from brain disorder from 2016. He had been on bed rest since last 3.5 years due to which he could not attend previous hearings and apologized for the same. He also attached his medical reports from the year 2017 till 2021 where he has been under medications for seizure.
 - b. He had been providing Tax Audit service to the Complainant till 2012 after which they closed their business operations. After 2012, the Complainant got his returns filed directly from the Respondent's office staff without his knowledge. There was some wrong posting of entry in their TDS return by his staff. The total amount of TDS was around Rs.10,000/- Rs. 20,000/- approx.
 - c. He has not received any fees since last 4 years. The Respondent had already settled the issue in January 2017. He was not medically fit to appear in front of the Government authorities and to argue with the Complainant. The Respondent paid Rs. 1 lakh to the Complainant through HDFC Bank via cheque number 000394 and the same was credited to the Complainant's Bank Account in 2017. He also attached proof of cheque and his Bank Account statement of Jan 2017 showing debit of the amount in his account. The matter was closed with the mutual consent of the Complainant. After that, the Complainant never contacted the Respondent.

Observations and Findings of the Board:

4. The Board noted that the Complainant basically alleged the following against the Respondent:
 - (a) The Respondent prepared false and fake TDS return of Rs. 10 Lakhs on behalf of the closed firm of the Complainant and the Income Tax return of the Complainant showing that he had paid a sum of Rs. 1 crore as fees to the Respondent during the FY 2015-16.
 - (b) The Respondent prepared a false Challan no. 01415 on behalf of the Complainant for Assessment Year 2016-2017 (BSR Code 0510308) of TDS of Rs. 36,000/-, but deposited only Rs. 100/- with the Department and thus, committed fraud.
5. The Board further noted that the Complainant brought on record the Income Tax return of the Respondent for the A.Y. 2016-17 filed on 6th August 2016 wherein it was shown that Rs. 10 lakh had been deducted by the Complainant as TDS for the

professional fees paid to the Respondent. He further brought on record a Certificate dated 26th September 2016 signed by the Respondent stating therein as under:

"This is to certify that M/s Subhash P.L. Agarwal & Co. (prop. Yogesh Gupta), PAN No. ABWPY9720G had not received/ not supposed to receive professional fees of Rs. 1,00,00,000/- from Hari Om Goyal (AAAPG2848N) for FY 2015-16.

The TDS Challan number 01457 dated 30.04.2016 was submitted in error by my office.

I hereby declare that I do not have any receivable from Hari Om Goel and he is not supposed to pay any tax on account of the above mentioned professional fees for FY 2015-16."

6. The Board also noted that the Complainant brought on record the revised Statement of TDS under section 200(3) of the Income Tax Act 1961 filed on 21st September 2016 for the fourth quarter of the F.Y. 2015-16 with respect to his firm.
7. The Board also noted that the Respondent in his defence stated that he had been providing Tax Audit service to the Complainant till 2012 after which they closed their business operations. After 2012, the Complainant got his returns filed directly from the Respondent's office staff without his knowledge. There was some wrong posting of entry in their TDS return by his staff. The total amount of TDS was around Rs. 10,000/- -Rs. 20,000/- approx. The Board also noted that the Respondent paid Rs. 1 lakh to the Complainant to amicably settle the matter, through cheque no. 000394 dated 07.01.2017 which was duly credited in his account as per the copy of the bank statement of the Respondent. The Board also perused the medical reports of the Respondent and observed that he had been admitted in hospital in February 2017, March 2017, January 2019, February 2021 and December 2021 due to which he could not file his Written Statement at the Prima Facie Opinion stage and also was not able to appear before the Board on earlier dates of hearing.
8. The Board observed that both the Complainant and the Respondent admitted that the Respondent rendered professional services to the Complainant till 2012. The Board further observed that the Complainant did not bring on record any evidence to show that there was any professional relationship with the Respondent thereafter. Also, he did not bring on record any evidence to show that the said alleged act of filing fake and false TDS return/Challan of the Complainant had been at the instance of the Respondent or he had been directly involved in the same. The Board also was of the view that there was no evidence to attribute malafide intent on the part of the Respondent in issuing the affirmation dated 29th September 2016. Accordingly, the Board held the Respondent not guilty in respect of the charges alleged as there was no documentary evidence to substantiate the charges alleged.

CONCLUSION:

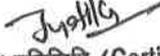
9. Thus, in conclusion, in the considered opinion of the Board, the Respondent is held **NOT GUILTY** of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act. Accordingly, the Board passed Order for closure of the case in terms of Rule 15(2) of the Chartered Accountants (Procedure of Investigations of Professionals and Other Misconduct and Conduct of Cases) Rules, 2007.

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

Sd/-
Ms. DOLLY CHAKRABARTY (IAAS, retd.)
(GOVERNMENT NOMINEE)

Sd/-
CA.(Dr.) RAJ CHAWLA
(MEMBER)

DATE: 10th June 2022


प्रमाणित सत्य प्रतिलिपि / Certified true copy

सीए. ज्योतिका ग्रोवर / CA. Jyotika Grover
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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