

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/G/153/2019-DD/163/2019/BOD/583/2020]**

**CORAM (present in person):**

CA. Prasanna Kumar D., Presiding Officer  
Ms. Dolly Chakrabarty (IAAS, Retd.), Government Nominee  
CA. (Dr.) Raj Chawla, Member

**In the matter of:**

Deputy Director,  
Income Tax (Inv.) III,  
Room No. 246, Income-Tax,  
New Central Revenue Building  
State Circle, Bhagwan Dass Road,  
**Jaipur – 302005**

.....Complainant

Versus

CA. Desh Nidhi Gupta (M. No. 078560)  
B-11, Saket Colony,  
Adarsh Nagar  
**Jaipur –302004**

.....Respondent

**DATE OF FINAL HEARING : 25<sup>th</sup> April 2022**

**PLACE OF FINAL HEARING : New Delhi / through video conferencing**

**PARTIES PRESENT(in person):**

**Respondent : CA. Desh Nidhi Gupta**

**FINDINGS:**

**BRIEF BACKGROUND OF THE CASE:**

1. The Complainant mentioned that CA. Abhinav Rajvanshi appeared at his office as an authorized representative of Shri Abhishek Godha. He was asked the reason for his appearance. In turn, he stated that he was appearing in compliance with the summons under Section 131 of the Income Tax Act 1961 which he claimed were issued by the Complainant. The Complainant expressed that he has not issued any Summons Shri Abhishek Godha. CA. Abhinav Rajvanshi handed over the copy of Summons which was the printout of the photo of the original summons. The Complainant mentioned that the Signature on the Summons is not his. Further, the email ID and phone number on the Summons are not that of the Department. The Complainant mentioned that somebody has created fake Summons and sent in his name and mentioned the wrong email ID and phone number to ensure that Shri Abhishek Godha would not be able to contact him directly either through email or over phone. Thereafter, Shri Abhishek Godha was informed on phone and he was asked to come to Income Tax Office. Shri Abhishek Godha explained the entire sequence of event which is as under:-
  - a) On receipt of summons, Shri Abhishek Godha contacted the Respondent who was regularly filing the Income Tax returns of Shri Abhishek Godha and his family.
  - b) The Respondent called Shri Abhishek Godha at his residence in the evening of 25.03.2019. The Respondent took the summons along with the envelop in his possession.
  - c) The Respondent informed Shri Abhishek Godha that it would cost around Rs. 1,00,000/- to 1,50,000/- to settle the case.
  - d) Shri Abhishek Godha got suspicion on hearing such as a huge amount and approached CA. Abhinav Rajvanshi through his friend.
  - e) CA. Abhinav Rajvanshi called Shri Abhishek Godha to come to his office on 26.03.2019.
  - f) Thereafter, on checking documents of Shri Abhishek Godha, CA. Abhinav Rajvanshi told him that this was the routine summon and he will not charge anything and would assist him in the matter.
  - g) Shri Abhishek Godha authorized CA. Abhinav Rajvanshi to appear before the Income Tax authority as his authorized representative.
  - h) CA. Abhinav Rajvanshi appeared before Income Tax Department on 26.03.2019 in the evening.
  - i) When CA. Abhinav Rajvanshi appeared before the Income Tax Department, the whole picture of issue of fake Summons came to light.

Thus, the Respondent hatched a conspiracy to sign a fake summons in the name of Deputy Commissioner of Income Tax and arranged to send the same to Shri Abhishek Godha in order to extract money on pretext of settling the matter. The Respondent was

confident that as soon as Shri Abhishek Godha will receive the summons, he would contact the Respondent.

**CHARGE ALLEGED:**

2. The Respondent created fake Summons of Income Tax Department and got issued to his client Shri Abhishek Godha in order to extract money on the pretext of settling the matter with Income Tax Department.

**BRIEF OF PROCEEDINGS HELD:**

3. At the time of hearing held in the case on 25th April 2022, the Respondent was present in person before the Board. However, neither any authorised representative of the Complainant Department was present before the Board nor was there any intimation as regard their non-appearance. Since there was a change in the composition of the Board since the last hearing, the Board gave an option to the Respondent as to whether he would like to have a De -Novo enquiry or continue from the last proceedings to which he stated that he would like to continue from the last proceedings. Thereafter, the Respondent made his detailed submissions before the Board. The Respondent was examined by the Board. On consideration of the documents and submissions on record, the Board directed the Respondent to provide the following with a copy to the other party to the case to provide his comments thereon, if any:

**The Respondent:**

- (a) The copy of the RTI application made to the concerned Police Department seeking the copy of the complete FIR no. 89 dated 28<sup>th</sup> March 2019 and FR no. 330/19 dated 31<sup>st</sup> December 2019 alongwith the statement of the witnesses recorded and its annexures together with their reply thereon.

The Board also directed the office to seek from the concerned Police Department the copy of the complete FIR no. 89 dated 28<sup>th</sup> March 2019 and FR no. 330/19 dated 31<sup>st</sup> December 2019 alongwith the statement of the witnesses recorded and its annexures and share the same with the parties to the case. The Board also decided that a decision as to whether further hearing is required in the case shall be taken on the basis of response so received from the Respondent/Police Department.

- 3.1 At the time of its meeting held on 23<sup>rd</sup> August 2022, the Board noted that the Respondent vide his e-mail dated 5th May, 2022 submitted the certified copy of the First Information Report and Final Report which he had obtained under the RTI Act from Police along with application filed by him for the same and the copy of covering letter issued by Assistant Commissioner of Police (South) Jaipur and State RTI officer. The office also sent a letter to the Police Station, Ashok Nagar, Jaipur on 13th May 2022 and in response they sent a certified copy of desired FIR and FR. A copy of the response so

received from the Respondent and the police station was also shared with the Complainant. However, no response was received. On consideration of the submissions and documents, thus, on record, the Board decided that no further hearing is required in the case and accordingly, concluded the hearing in the case.

**BRIEF SUBMISSIONS OF THE RESPONDENT:**

4. The Respondent in his written submissions, inter-alia, stated as under:
  - 4.1 The complaint was made by the Complainant on the basis of Affidavits of Sh. Abhishek Godha and Sh. Abhinav Rajvanshi without taking any counter reply from the Respondent. The Respondent also furnished his Affidavit and Affidavits of two independent witnesses (Sh. Monish Goyal and Sh. CS Choudhary) who were present at the time when Sh. Abhishek Godha visited Respondent's house to seek professional advice. Both the persons had confirmed to the Police, the Respondent's contention that he had neither taken the original notice and envelope nor any kind of settlement money was ever advised by him nor paid by Sh. Abhishek Godha.
  - 4.2 The Complainant had lodged FIR on 28th March 2019 on the same grounds, material and evidences stating that either the Respondent or somebody else was involved in the issuance of the Notice. Thus, the Complainant made his complaint to police and the Institute of Chartered Accountants of India based on suspicion. As per the ruling of Honourable Supreme Court suspicion cannot take place of proof (AIR 1964 SC page 365 para 2). The police after thorough independent and unbiased investigation of around more than 9 months by effectively trained personnel submitted their Final Report in which no charges as alleged against the Respondent were proved and framed against him. Thus, the police closed the case against the Respondent.
  - 4.3 The Copy of the Visitor Register whose copy was received in the paper book sent by ICAI appears to be a rough unofficial document. It is not even signed by whom it was maintained and by whose permission and authority. The rough note book submitted by the Complainant appears to be a rough draft book kept outside his entry gallery and in no way it goes to show that it was kept at reception of the Income Tax Office and is not a conclusive proof of Respondent's entry and exit time from the Income Tax Office. The Entry Register at the Income Tax office is not manual but computerized and is maintained at reception office at entry gate of the Income Tax Office. The Complainant had not shown any entry in the computerized system maintained at main entry. The Complainant has not submitted any other evidence to prove that Respondent had visited the Income Tax office at around 10.00 AM and again at 1.00 PM and the burden to prove the same lies on the Complainant. Further there is no documentary evidence that the rough book was prepared on real time basis.

- 4.4 Notice was received by Sh. Abhishek Godha through speed post on 25<sup>th</sup> March 2019 and not delivered by the Respondent. Police verified the same that the Respondent was nowhere involved. Bank Statement and other documents were produced before the Respondent for verification on 26<sup>th</sup> March 2019 whereas notice was received on 25<sup>th</sup> March 2019 by Sh. Abhishek Godha. When the financial documents came to Respondent's knowledge on 26<sup>th</sup> March 2019 then how can he be involved in issuance of the alleged notice. Further, Sh. Abhishek Godha visited the Respondent's house for the first time on 25<sup>th</sup> March 2019. The client after taking the professional advice on 26<sup>th</sup> March 2019 took all his documents for which the Respondent never objected.
- 4.5 The Income Tax Department had issued Passes to the Chartered Accountants and Tax Consultants in the year 2015 and the holder of this Pass was not required to make any entry in the Visitors Register till June 2020 on account of COVID 19. The Respondent enclosed the copy of the Pass issued to him.
- 4.6 The Complainant has not produced any documentary evidence to prove that the Respondent had called Sh. Abhishek Godha or his father at 12:35 pm.
- 4.7 Neither the Complainant nor Sh. Abhishek Godha produced the original copy of the alleged notice or envelope and nor provided any evidence of handing it over to the Respondent or somebody else.
- 4.8 No proof of timings as mentioned in the Affidavits of Sh. Abhishek Godha and Sh. Abhinav Rajvanshi was produced by the Complainant.
- 4.9 The Complainant has failed to produce any documentary evidence that can prove Respondent's involvement in hatching the conspiracy of issuing or dispatching the alleged notice.

**OBSERVATIONS OF THE BOARD:**

5. On perusal of the documents and submissions on record, the Board noted that the bone of contention in the instant case is the fake Summon dated 22<sup>nd</sup> March 2019 purportedly issued by the Income Tax Department wherein the Complainant has specifically said that the email id, phone number and signature on the same do not belong to him.

The Respondent, in his defence, brought on record the following documents:

- (a) Copy of FIR
- (b) Copy of Final report of Police in Hindi
- (c) Translated copy of final report of police in English
- (d) Copy of his Affidavit as submitted to Police
- (e) Copy of Affidavit of Sh. Monish Goyal and Sh. C.S. Chaudary who were present when Sh. Abhishek Godha came to seek professional advice as submitted to the police

- 5.1 The Board noted that the Complainant had filed a FIR against the Respondent on 28<sup>th</sup> March 2019 stating that either the Respondent or somebody else was involved in the issuance of the fake Summon. During Investigation, for confirmation of facts mentioned therein, the Statement of the Complainant, Sh. Abhishek Godha, Sh. Pankaj Godha, Sh. Abhinav Rajvanshi, Respondent's investigation evidences Sh. Chandra Shekhar Choudhary and Sh. Monish Goyal were recorded. Call records of the mobile number were also analysed. Subsequent to the detailed Investigation carried in the above matter by the police, the Final report dated 10<sup>th</sup> January 2020 issued by the Assistant Sub-Inspector of police and submitted in the Court, inter-alia, provided as hereunder:

"In the above matter after investigation following facts were found:

*1. Abhishek Godha and his Father Pankaj Godha had informed that the disputed original notice and envelope were handed over to Desh Nidhi Gupta and Desh Nidhi Gupta had informed an expenses of around 1 to 1.50 Lacs but in the reply notice they have failed to prove that the above notice and envelope were actually handed over to Desh Nidhi Gupta and no proof in relation to expenses were also submitted by them whereas Desh Nidhi Gupta had submitted his reply. In support of the reply Desh Nidhi Gupta had presented two evidences Sh. Monish Goyal and Sh. Chandra Shekhar Choudhary. These two evidences in their affidavit and statements had stated that original notice and envelope was not handed over to Desh Nidhi Gupta and further so far as amount is concerned Desh Nidhi Gupta had informed only the amount of tax, penalty around Rs 1.00 Lacs as per the provisions of the Income Tax Act to opponent.*

*2. To clarify the above matter and to find the actual culprit the original envelope in which notice was received or photocopy of original envelope was required but during Investigation neither the original envelope nor its photocopy was found in order to trace that from where and by whom the notice was sent.*

*3. In the above situation there is no clear picture that who is actual culprit whether Desh Nidhi Gupta or somebody else and in absence of notice and envelope it is not possible to obtain a clear picture in near future also. A long time has passed after registration of case, In such situation it is not appropriate to keep the case unnecessary pending.*

*It shall be tried to find the culprit under the status "unknown culprit". In future if any culprit is found the case may be investigated.*

*Requested to accept the Final Report under the status" Culprit not found" and in the matter FR No 330/19 dated 31/12/2019 under the status culprit not known is presented before your honour."*

- 5.2 The Board further noted that the Respondent brought on record Affidavit of Sh. Monish Goyal and Sh. C.S. Chaudhary who were present when his client Sh. Abhishek Godha came at his residence. The relevant portion of the said Affidavits is as under:

Affidavit of Sh. Monish Goyal :



*"1. I went to the residence of Sh Desh Nidhi Gupta on 25 March 2019 around 07.10 PM. and at that time Sh Desh Nidhi Gupta was not at his residence and after some time two persons arrived and thereafter Sh Gupta arrived from somewhere to his residence, Mr. Gupta introduced these both persons as his neighbours and in front of me these persons while returning back handed a photocopy of income tax notice in plain envelope, Mr Gupta asked them to come in morning.*

*2. That my son Veer and son of Mr Gupta named Raghav were going to watch cricket match of Rajasthan Royals at 08.00 PM on 25th March 2019 and Mr Gupta were going to drop them to stadium. Mr Desh Nidhi Gupta asked these both person to come on next day and we left for stadium around 7.45 PM. and Mr Gupta were together till 9.00 PM.*

*3. The above stated affidavit is sworn in relation to FIR No 89/2019 Ashok Nagar Police Station Jaipur. "*

Affidavit of C.S. Chaudhary :

*"I often visit Sh Desh Nidhi Gupta's residence for seeking professional advice in relation to Income Tax and GST matters.*

*2. That on 26 March 2019 around 9.00 AM -9.30 AM went to the residence to seek professional advice for some income tax and GST matter. At that time a boy came to whom Mr Gupta was calling with name Abhishek, along with bank pass book. Since the pass book was incomplete the boy showed the statement on his mobile through net banking. The statement was having entries of Cash deposits withdrawals and some foreign trip. Mr. Gupta asked him about the source of these entries and Abhishek told that there were no proper sources. Then on asking of Mr Abhishek Mr Gupta informed him that estimated amount of tax and penalty as per the provisions of Income Tax Act. Except above no other talks relating to settlement amount or any other amount was held between Abhishek and Mr Gupta in front of me. After seeking the estimated amount of tax, penalty and interest Abhishek went from the place.*

*3. That the above stated affidavit is submitted in relation to FIR No 89/2019 reported at Ashok Nagar Police Station Jaipur."*

5.3 The Board also noted that even the alleged Original Summon or the original/photocopy of the envelope in which it had been received by the client of the Respondent was not brought on record before the police authorities to carry out its investigation. Even the Charge Sheet filed after the thorough investigation of 9 months has nothing against the Respondent and the police case against the Respondent was closed.

5.4 The Board also noted that the Respondent brought on record copy of a temporary Pass( valid upto 2015) that had been issued to him in the capacity of a Chartered Accountant

by the Income Tax Department on account of which he was not required to make an entry in the Visitors Register maintained at the said office. He also brought on record copy of the computerised Pass issued to him on 4<sup>th</sup> June 2020 and 22<sup>nd</sup> July 2021 by the Income Tax Department. The Board also noted that the Complainant brought on record at the prima facie stage copy of the Visitors Register for 26<sup>th</sup> March 2019 wherein the Respondent's name was also appearing with the purpose to visit the Complainant. However, the Board was of the view that since there were no convincing evidences to indicate the name of the Assessee in respect of whom the Respondent had gone to meet the Complainant, much credence to the same cannot be given.

- 5.5 The Board also noted that despite several opportunities given to the Complainant at hearing stage, he did not bring on record any evidence to substantiate the charges alleged against the Respondent. Thus, in view of the above, the Board observed that there are neither direct nor circumstantial evidences on record to suggest the involvement of the Respondent in the issue of fake Summon in the name of the Complainant. Accordingly, the Board held the Respondent not guilty in respect of the charge alleged.

**CONCLUSION:**

6. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **NOT GUILTY** of Other Misconduct falling within the meaning of Clause (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 the provisions of Rule 15 (2) of the Chartered Accountants (Procedure of Investigations of Professional 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: 02<sup>nd</sup> November, 2022

प्रमाणित सत्य प्रतिलिपि / Certified true copy

मुकेश कुमार मिश्रा / Mukesh Kumar Mittal  
सहायक सचिव / Assistant Secretary  
अनुशासनशास्त्रिक निदेशालय / Disciplinary Directorate  
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
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