

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-220/18-DD/250/2018/BOD/534/2019

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:

Mr. Kanhaiya Singhal
S.D. Windlesh, Adv,
C4/155, Yamuna Vihar,
Delhi -110053

....Complainant

Versus

CA. Shailendra Singh (M. No. 416765)
Office at : 2475, New Patel Nagar,
Orai (Jalaun), Uttar Pradesh,
Pin code - 285001

...Respondent

DATE OF FINAL HEARING : 25th May, 2022

PLACE OF FINAL HEARING : New Delhi / through video
conferencing

PARTIES PRESENT(through video conferencing):

Complainant	:	Shri Kanhaiya Singhal
Respondent	:	CA. Shailendra Singh
Counsel for the Respondent	:	CA. Dinesh Chand Shukla

FINDINGS:

Charge Alleged:

1. The Respondent has wrongfully accessed Complainant's personal information from the Income Tax website without his verbal or written authorization and has certified and furnished the same to one of his client Mr. Sumit Gupta causing wrongful loss to him and wrongful gain to himself by selling the information on heavy premium to his client.

Brief of Proceedings held:

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2.1 At the time of hearing held on 25th April, 2022, the Board noted that the Complainant and the Respondent alongwith his Counsel were 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 Complainant and the Respondent were put on oath. The charges alleged against the Respondent were taken as read with the consent of the parties present. On being asked by the Board as to whether the Respondent pleaded guilty in respect of the charges alleged against him, he replied in negative and his Counsel made his detailed oral submissions before the Board. The Complainant also made his submissions to substantiate the charges alleged against the Respondent.

On consideration of the documents and submissions on record, the Board adjourned the hearing in the case with the direction to the Complainant to provide his comments on the written submissions submitted by the Respondent vide email dated 20th April 2022.

2.2 Thereafter, at the next date of hearing held on 25th May, 2022, wherein the Complainant and the Respondent alongwith his Counsel were present before the Board through video conferencing, the Counsel for the Respondent made his detailed oral submissions before the Board. The Complainant also made his submissions in support of the allegations alleged against the Respondent. The Respondent was examined by the Board.

On consideration of the documents and submissions on record, the Board concluded the proceedings in the case.

Brief of Submissions of parties:

A: Respondent

3. The Respondent in his defence, inter-alia, submitted as under:-

- i. The Complainant is the husband of Smt. Archana and brother-in-law of Shri Sumit Gupta. The wife of the Complainant along with her brother approached the Respondent for an Income certificate of the Complainant. She provided details about Complainant's Form no. 26AS, login id and passcode to verify records from the Income Tax site on the pretext that the same is required for taking some loan. The Respondent verified the records from the Income Tax site on the basis of the id and password provided by the Complainant's wife and thereafter, issued an Income Certificate dated 14.04.2018 to the Complainant's wife. Later, the Respondent came



to know that the Certificate was used by the Complainant's wife to claim alimony from the Complainant.

- ii. The Respondent issued the Certificate after taking a request letter from the wife of the Complainant. Information as regards PAN, id and password were provided by the Complainant's wife. He issued the Certificate in his professional capacity on professional fees of Rs. 1,000/-.
- iii. The Complainant has no locus to complain that information from Income Tax site is hacked in the circumstances when no complaint is made by CBDT. The Complainant has made unwarranted comments of security of data of Income Tax site without any tangible evidences. No authorization was required from Income Tax Department as the Certificate was issued on the request of wife of the Complainant. Smt. Archana is the legally wedded wife of the Complainant. It is a well settled principle that the spouse has a right to know income details of her husband. It has been postulated in several High Court and Supreme Court cases. Recently, in case of Amrita Chatterjee -vs- CCIT case(18/1/2021), directions have been given to disclose the income details to wife for claiming alimony.
- iv. It is a clear case of family dispute. Several cases- criminal, dowry are going on between the Complainant and his wife. The Respondent has also been made a party in those Criminal cases as he has certified the income of the Complainant. The Complainant has also tried to file FIR against the Respondent alongwith his wife and brother-in-law but it was not registered.
- v. The Complainant has already submitted in the Family Court that his wife had the PAN card details and misused the same.
- vi. As regard the submission of the Complainant that there is a difference in the date of issue of the Certificate, the Respondent submitted that there is only one day difference 12th of April 2018 and 13th of April 2018. The person came on 12th of April 2018 and after that the certificate was issued on 13th of April 2018. There may be some typographical mistake but the content is the same, basic essence is the same.

B. Complainant :

4. The Complainant in his submissions, inter-alia, submitted as under:-
 - i. As per Board's Order dated 8th Nov 2019, the following instructions were given to the Respondent:
 - (a) in terms of Rule 14(4), the Respondent was required to submit his written statement along with supporting documents, if any, to the Director (Discipline) and the

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Complainant within 14 days of the receipt of the prima facie opinion. In case written statement is not received within the aforesaid period of 14 days, it shall be presumed that you have no further submissions to make and the Board of Discipline shall decide the case on merits.

Since no submissions were made within the stipulated period, it is presumed that the Respondent agreed with the Prima Facie Opinion of the Director (Discipline). It is a great surprise that the Respondent submitted his reply after 2 years vide letter dated 24/04/2022 by email.

- ii. The Respondent was never appointed by the Complainant as his advisor or legal consultant. He has never authorized him to act on his behalf for any legal proceedings like to issue any Certificate or disclose any information to any person without his pre-permission or information to him.
- iii. The Complainant has never met the Respondent. Both parties are unknown to each other. Then how the Respondent can login his Income Tax profile and verify his valuable documents and issue his Income Certificate to an unknown person without his pre-permission or information to him.
- iv. In his statement, the Respondent has accepted that he verified documents on the basis of information available on Income Tax site and issued Certificate and received Rs. 1,000/- toward professional fees which proves that all allegations are true.
- v. As per the submissions made by the Respondent, it was the Complainant's wife who provided him ID and password. This is fictitious and manipulated as she left the Complainant's house on 11.07.2015 and the Complainant started filing ITR from 2016. Therefore, she cannot know the password and ID. This proves that Respondent has hacked the Income Tax Site and stolen his valuable documents.
- vi. The date on which the Certificate was issued by the Respondent to Mr. Sumit Gupta is dated 12.04.2018 whereas the Certificate submitted before the Board is dated 13.04.2018. If the documents were received on 13.04.2018 then how the Certificate was prepared on 12.04.2018.
- vii. The Respondent has raised the bill in favor of the Complainant and his wife even when they were not known to each other.
- viii. In his Statement dated 15th June 2018, the Respondent stated that Ms. Archana appointed him verbally whereas in his last statement, he stated that Ms. Archana appointed him with request letter.
- ix. When the Respondent was asked to provide the copy of the bill raised for the assignment and the mode of receipt of fees vide letter dated 19th November 2018, he did not submit that bill in his reply vide letter dated 15th June 2019. Now, he has submitted a fake bill which is created on MS-Word without serial number in favour of the

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Complainant and Ms. Archana Gupta. When the Complainant and the Respondent are unknown to each other then how he raised the bill in favour of the Complainant ? Also, in his reply, the Respondent has stated that the Certificate was issued to Ms. Archana Gupta.

Observations of the Board:

5. Before dealing with the case on merits, the Board observed that the Complainant objected to the delay in the submission of the written statement by the Respondent pointing towards non-compliance with the requirements of Rule 14(4) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules 2007. In this regard, the Board was of the view that all the Rules of procedure are the handmaid of justice and the object of prescribing procedure is to advance the cause of justice. Thus, it would not be just to preclude the Respondent from making his defence in the case merely on account of non-submission of the further written statement by him within the prescribed period.
6. The Board further noted that the bone of contention in the instant case is the alleged Certificate dated 14th April 2018 issued by the Respondent wherein he certified as under:

"It is to certify that we have verified the following mentioned income tax return from income tax department database. Details given as under:

Name	PAN	A.Y.	Acknowledgement No.	Date of Return Filing	Gross Income
Kanhaiya Singhal	BVXPS0450H	2017-18	941901440270717	27/07/2017	As per 26AS- Rs.723484 As per ITR V- Rs.699208

Above certification has been given on the basis of information and explanation given to us and documents available on income tax site (i.e. www.incometaxefiling.com). Required documents has been attached herewith (certified by us)."

B.S.L.

The Board further observed that the date of 12th April 2018 is printed on the bottom left hand side of the said Certificate and also a hand-written date of 14th April 2018 has been specified on the top right hand side of the said Certificate. Thus, the Certificate is presumed to be issued on 14th April 2018 i.e. as per the hand-written date and the pre-printed date seems to be a typographical error. Further, although, the Respondent in his written submissions brought on record another similar Certificate dated 13th April 2018, but, since the same is unsigned, no cognizance has been given to the same.

7. The Board also perused the copy of the Order dated 15th May 2019 passed in the Upper Family Court(Fast Track Court) wherein the Complainant's wife is the applicant and the Complainant herein, is the Respondent as regards the amount of maintenance to be paid to her and noted that the Upper Family Judge observed that the Complainant (herein) stated that his wife by misusing his PAN number, has obtained access to the Income Tax website and obtained his TDS form and other important bank papers for which an application has been made before the Chief Magistrate, Kanpur under Article 156 (3) and subsequently, FIR has been lodged. The Judge also observed that the same establishes that whatever documents have been filed by the Complainant's wife in respect of the income details of the Complainant are correct.
8. The Board also noted that the Respondent in his submissions also categorically stated that the Complainant's wife provided details about Complainant's Form no. 26AS, login id and password to verify records from the Income Tax website. Also, a copy of his Form 26AS, ITR acknowledgement screenshot was sent through whatsapp on 13th April 2018 to the Respondent. Thus, the Board held that the provision of the login-id and password of the Complainant's account on the Income Tax site to the Respondent by the Complainant's wife has been corroborated by the own submission of the Complainant. The Board thus observed that the same is also in consonance with the mention in the Certificate that the Respondent has given the Certificate on the basis of information and explanation given to him and documents available on the Income Tax site.
9. The Board also noted that a FIR had been filed on the complaint of the Complainant against the Respondent, his wife and his brother-in-law on 25th December 2018 as regard hacking of his account on Income Tax site and misuse of his personal documents.
10. The Board also perused the copy of the bill dated 13th April 2018 raised by the Respondent on the Complainant and his wife to the tune of Rs. 1,000/- and observed

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that there was no evidence to show that the Respondent was aware of the existence of any dispute between the Complainant and his wife at the time of issuance of the Certificate and that there was any malafide intent on the part of the Respondent in issuing the said Certificate or obtaining any unlawful gain.

11. Thus, having regard to the attendant circumstances, the evidences and submissions on record, the Board observed that due diligence had been exercised by the Respondent while issuing the alleged Certificate, access to the income details of the Complainant on the Income Tax site were through the credentials provided by his wife and there was no malafide intent on his part to cause any wrongful loss to the Complainant while issuing the said Certificate.

CONCLUSION:

12. The Board of Discipline, in view of the above, is of the considered view that 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: 10th October, 2022

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

बिष्णु नाथ तिवारी / Bishnu Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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