

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – III (2022-23)]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]

Findings under Rule 18(17) and 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

Ref. No. PR/87A/2018/DD-129/2018/DC/1573/2022

In the matter of:

CA. S.V. Ramana Murthy
M/s SVR Murthy & Co., Chartered Accountants
7-1-621/80, Flat No. 202 Second Floor,
Sree Guru Datta Residency,
Sanjeeva Reddy Nagar,
Hyderabad (Telangana) – 500038

...Complainant

Versus

CA. Settypally Hemantha Reddy
M/s HRS & Associates, Chartered Accountants
Flat No. 202, Sri Sai Balaji Towers,
Matrusri Nagar Main Road,
Above Canara Bank, Miyapur, Telangana
Hyderabad (Telangana) – 500049

...Respondent

Members present:

CA. Aniket Sunil Talati, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
Dr. K Rajeswara Rao, Member (Govt. Nominee)
CA. Vishal Doshi, Member
CA. Sushil Kumar Goyal, Member

Date of Final Hearing: 7th October, 2022 through Video Conferencing

PARTIES PRESENT:

- (i) CA. S.V. Raman Murthy – the Complainant
- (ii) CA. Settypally Hemantha Reddy – the Respondent
- (iii) CA. P R Suresh – Counsel for the Respondent

(all appeared from personal location through video-conferencing)

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 of Item (8) of Part-I of First Schedule and Item (5), (6) and (7) of Part – I of Second Schedule to the Chartered Accountants Act, 1949. The said Items state as under: -

Part I of the First Schedule:

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-

...

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

Part I of Second Schedule:

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-

...

"(5) fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity

(6) fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity and

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

Brief background and the allegations against the Respondent:

2. The Complainant has stated that he was appointed as the Tax Auditor of 'Sri Mahalaxmi Eye Hospital' ('Firm') (under the proprietorship of Dr. K. Subba Rao) for the Financial Years 2006-07 to 2014-15 (C-15 to C-23). It is stated that upon asking the Firm to produce Books of accounts and other related documents by the Complainant to complete the audit for Financial Years 2012-13 to 2014-15, the Firm did not provide the same. After giving repeated reminders

to the Firm and constrained by their lenient approach, it is stated that the Complainant issued Legal notice on 08th January, 2015 (C-102 to C-108) to the firm through registered post.

The allegations levelled by the Complainant against the Respondent are as under:-

- a) That the Respondent had, without any communication or without giving any intimation/ notice to the Complainant, issued tax audit reports and audited the financial statements of the Firm for the FY 2012-13 and 2013-14 (C-176 to C-197) while the Complainant's appointment as the Tax Auditor of the Firm, was not terminated officially. In this regard, the Complainant also alleged that the Respondent had colluded with another Chartered Accountant (who acted as the tax auditor of the Firm only for a short/nominal/certain period) to cover-up the irregularities.
- b) That the Complainant had provided various professional services to the Firm including certification of their accounts including FYs 2012-13 and 2013-14 on the basis of which the Firm had availed loans from various banks and financial institutions. Thus, in lieu of various professional services, the professional fee was pending to be paid by the Firm to the Complainant which had not been paid by the Firm due to which the Complainant had also filed a suit for money recovery against the Firm in the City Civil Court, Hyderabad (C-169). It is alleged that despite the professional fees of the Complainant was payable, the Respondent had accepted the tax audit assignment of the Firm.
- c) That the Respondent had not ensured the compliance of the requirement of Section 139 to 141 of Companies act, 2013.
- d) The Complainant has also raised the allegation against the Respondent about solicitation or lobbying of clients either directly or indirectly by personal communication or by other means.
- e) That the Respondent had not disclosed the material facts and by not reporting the material misstatements in his tax audit report issued on the audited accounts of the firm for the FYs 2012-13 and 2013-14, there was violation of the provisions of SA-710, SA-510 and SA-700.

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2.1 The Committee noted that out of the above five (5) allegations leveled against the conduct of the Respondent, he was *prima facie* guilty with respect to allegations discussed in paragraphs (a) and (e) above. The Committee held the extant inquiry with respect to the said allegations only.

Proceedings

3. During the hearing held on 7th October, 2022, the Committee noted that while the Respondent alongwith his Counsel appeared before it from their respective personal location through video-conferencing, the Complainant appeared although neither his audio nor video was switched on. The Office made several attempts by coordinating with his daughter and the Respondent himself to enable him to join with audio/video facility. In any case, the Committee noted that the proceedings were audible to the Complainant and that the matter had been adjourned on August 25, 2022 as well as on September 13, 2022 on the request of the Complainant. Accordingly, it was viewed that due opportunity had been given to the Complainant as per the principles of natural justice. Further, he had been given an option to appear from the Institute's premises- Centre of Excellence, Hyderabad which he failed to avail. Hence, the Committee decided to proceed in the matter. Thereafter, the Respondent and his Counsel gave declaration that there was nobody present except them in the room from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form.

The Committee noted that the matter was part-heard and accordingly asked the Respondent's Counsel to proceed ahead in the matter and make his submissions. The Counsel for the Respondent made his submissions in the matter. The Committee, thereafter, examined him on the facts of the case.

Based on documents and information available on record and after considering the oral and written submissions made by the Respondent, the Committee concluded the hearing. The Committee directed the Counsel for the Respondent to submit the following:

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- An Affidavit with regard to the opening balances which the Respondent had considered for the purpose of tax audit for the financial year ending on 31st March 2012 and 31st March 2013.
- To submit a copy of the reconciliation of the Capital Account as mentioned in the Financial Statements viz a viz the tally trial balance and
- Copy of Affidavit filed by the client 'Dr. Subba Rao' who stated that the signatures were forged by the previous auditor i.e. the Complainant.

Accordingly, hearing in the matter was concluded and judgment in the matter was reserved.

3.1 Thereafter, on 3rd November, 2022, the Committee noted that the Respondent vide his e-mail dated 19th October 2021, submitted the information as required by the Committee. Further, it is noted that the Respondent vide his email dated 7th Oct, 2022 at 14:17hrs requested for adjournment of the hearing. It is viewed that adjournment request could be considered only if received before the scheduled time of hearing. Hence, such request made was void. Accordingly, the Committee considered the documents available on record and oral and written submissions made by the Counsel for the Respondent and, thereafter, decided the matter.

Findings of the Committee

4. The Committee noted that the **first charge** against the Respondent was that he had, without any communication or without giving any intimation/ notice to the Complainant, issued tax audit reports and audited the financial statements of the Firm for the FY 2012-13 and 2013-14 (**C-176 to C-197**) while the Complainant's appointment as the Tax Auditor of the Firm, was not terminated officially. It was noted that the Complainant had also alleged that the Respondent had colluded with another Chartered Accountant (who acted as the tax auditor of the Firm only for a short/nominal/certain period) to cover-up the irregularities. With respect of said second leg of allegation, it was noted that the Respondent was found *prima facie* not guilty in the *prima facie* opinion formed by the Director (Discipline). Accordingly, the matter was proceeded further only with respect to first leg of allegation pertaining to non-communication with the Complainant.

4.1 It is noted that the Respondent has submitted that their Client, Dr. Subba Rao, had contacted him regarding the tax audit of his Firm for the financial years 2012-13 and 2013-14.

The client had informed him that at that point of time his auditor was CA. Naveen Kumar K who was recently appointed. Further, he was informed that before appointment of CA. Naveen Kumar K, the Complainant was handling his tax filing work that had cheated the Client by not remitting his Income tax for several years from FY 2007 onwards and also not filed the Income Tax returns properly. As per the Client, the Complainant had uploaded Firm's tax returns without remitting taxes and not filling the complete information. Income tax returns were uploaded with only profit figures and fake challan numbers. However, he made the Client to believe that his returns were being filed by producing uploaded acknowledgment challans and financials but the fact was that the returns were not filed. On coming to know about the said fraud, the Client appointed CA. Naveen Kumar K as tax auditor for the financial years 2012-13 and 2013-14 and filed FIR with Cyber-crime Police station.

4.2 When the Respondent had approached CA. Naveen Kumar K, he confirmed fraud committed by the Complainant on verification of details produced to him. Accordingly, CA. Naveen Kumar had accepted the audit assignment to control the further damage. He had done some work but was not in a position to finish it due to busy schedule with other assignments. Accordingly, the Respondent accepted the assignments and continued the audit work after taking no objection certificate (NOC) from CA. Naveen Kumar K. Further. The Respondent submitted that as per the information received from the Client, the Complainant had never conducted any tax audit. Similar situation is evident from the returns uploaded on the Department of Income Tax website. No tax audit reports were furnished till date of detection of fraud. Therefore, the Respondent argued that the allegation made against him to issue audit report without communicating to the previous auditor was totally false and baseless.

4.3 The Committee noted that a member is deemed to be guilty of professional misconduct only if he accepts a position as auditor previously held by another chartered accountant without first communicating with him in writing. In the extant case, it was noted that the Complainant had never conducted tax audit u/s 44 AB of the Income Tax Act, 1961. In fact, it is noted that the Form 3CB and Form 3CD brought on record by the Complainant from AY 2007-2012 to contend to have conducted audit did not show any sign of the same being submitted to the Income Tax Department which strengthens the contention of the Respondent that the Complainant had

never conducted tax audit of the Firm. It was observed that the Respondent has brought on record Affidavit submitted by the Client stating that he had engaged the Complainant only for the purpose of bookkeeping and filing income tax returns. He had never been appointed to conduct tax audit either for the Firm or for himself as individual assessee. In fact, his signature had been forged on the annexure, attachments, evidences, financial statements and engagement letters furnished by the Complainant along with his complaint. Accordingly, it is viewed that the Complainant had never been the tax auditor of the firm and as such the question of communicating with the Complainant does not arise. Accordingly, the Committee was of the considered opinion that the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (8) of Part- I of First schedule to the Chartered Accountants Act, 1949.

5. As regards the next allegation that the Respondent had neither disclosed the material facts nor reported the material misstatements in his tax audit report issued on the audited accounts of the firm for the FYs 2012-13 and 2013-14, it is noted that a large variation was observed in the closing and opening balances of 'Capital Account' in the balance sheets of the Firm as on 31.03.2013 and 31.03.2014 which was a misstatement that the Respondent being auditor had failed to report in his tax audit reports for the said periods (C-176 & C-187).

5.1 In this regard, the Respondent had submitted that being first tax auditor, there was no tax audit report of his Client's Firm. He exercised due diligence and also cross checked from tax portal to confirm if there was any previous tax audit report of the Firm u/s U/s 44AB of the Income tax Act, 1961. There was none. So he took the financial statements prepared by the accountant of his Client for the FY 12-13 and verified the closing balances of FY11-12 with the opening balances of the FY 12-13 which were matching. As per him, the financial statements for the year ended 31st March 2013 was tallying with the books of accounts verified by them. He noticed a typo error in the financial statement furnished by the accountant of the Client wherein the opening balance as of capital account as on 1st April, 2012 was taken as Rs.48,64,849.12 whereas the actual balance as per the outer column of the Financial Statement furnished was tallying with the books of accounts and Trial Balance furnished to him for audit. He contended

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that the figure of capital account including the profit for the year ended 31.3.2013 of Rs.5,58,077 was tallying with the books of accounts audited by him.

5.2 The Committee observed that in the balance sheet as at 31st March 2013 the figure of capital account when added with the profit of the year, it amounted Rs.43,50,250 which was exactly shown as opening balance of capital account in the balance sheet of 31st March 2014. Moreover, when the said figure was reduced by profit of the FY 2012-13 i.e. Rs. Rs.5,58,077 the opening capital was determined as Rs. 37,92,173 which tallied with the accumulated figures of capital and net profit of the previous year i.e. FY 11-12. Hence, it was evident that there was typo error in the opening capital as shown in the balance sheet as at 31st March 2013. Accordingly, the Committee was of the considered opinion that the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (5), (6) and (7) of Part-I of the Second Schedule to the Chartered Accountants Act 1949. However, the Respondent was advised to be more careful in his future assignments with respect to presentation of information in the financial statements.

Conclusion

9. Thus, in conclusion, in the considered opinion of the Committee, the Respondent is held **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule and Item (5), (6) and (7) of Part- I of Second Schedule to the Chartered Accountants Act, 1949.

Order

7. Accordingly, in terms of Rule 19 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passed an Order for closure of this case against the Respondent.

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

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

Sd/-
[Dr. K. Rajeswara Rao]
Member (Govt. Nominee)

Sd/-
[CA. Vishal Doshi]
Member

Sd/-
[CA. Sushil Kumar Goyal]
Member

Date: 7th December, 2022

Place: New Delhi


प्रमाणित सत्य प्रतिलिपि / Certified true copy

सीए. ज्योतिका ग़ोवर / CA. Jyotika Grover
सहायक सचिव / Assistant Secretary
अनुशासनात्मक विभाग / Disciplinary Committee
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