

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2022-2023)]

[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.

File No. : [PPR/P/125/16-DD/163/INF/18-DC/1262/2020]

In the matter of:

CA. Prashant Purushottam Khavte (M.No.042935), Pune in Re:

M/s Prashant Khavte & Co.,
Chartered Accountants,
433/7/2, Saraswat Colony,
Somwar Peth,
Pune- 411 001

..... Respondent

MEMBERS PRESENT:

1. CA. (Dr.) Debashis Mitra, Presiding Officer (Present through Video Conferencing)
2. Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (Present through Video Conferencing)
3. Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (Present in person)
4. CA. Rajendra Kumar P, Member (Present through Video Conferencing)
5. CA. Cotha S Srinivas, Member (Present in person)

DATE OF FINAL HEARING : 23.08.2022 (Through Physical/ Video Conferencing)

PARTIES PRESENT :

Respondent: CA. Prashant Purushottam Khavte

Counsel for Respondent : CA. Sharad Vaze

CHARGES IN BRIEF:-

1. The Committee noted that in the present case the Director (Discipline) in his Prima-facie opinion had held the Respondent Prima-facie Not Guilty of Professional Misconduct falling within the meaning of Clauses (7) & (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 on the charge that the Respondent has furnished false audit report, of M/s Hindavi Developers, Proprietor - Mr. Tanaji Parilal Gawade for the Assessment Year 2013-14, without verifying the proper books of accounts of the assessed and simply conducted the audit based on bank accounts furnished during the audit without proper verification.
2. The matter was accordingly placed before the Board of Discipline for its consideration. The Board of Discipline on consideration of the same, along with the Information, Written Statement and Additional Documents on record, was of the view
 - a. That the Respondent as the tax auditor of the auditee was required to give a true and correct report on the financial position of the company and ought to be more careful while auditing the cash and bank balances which are easily susceptible to manipulation and not merely rely upon the inclusion of the same in the books of accounts of the assessee on the basis of the previous audit report.
 - b. That as per the copy of the Assessment Order dated 07th March, 2016, there were unexplained cash deposits of Rs. 1,13,23,000/- which were added back to the total income of the assessee.
3. Accordingly, the Board did not concur with the reasons given against the charge(s) and thus, did not agree with the prima facie opinion of the Director that the Respondent is Not Guilty of Professional Misconduct falling within the meaning of Clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and decided to refer the matter to the Disciplinary Committee under Chapter V of the Chartered Accountants (Procedure of

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Investigations of Professional and Other Misconduct and Conduct of Cases) Rules,2007.

BRIEF FACTS OF THE PROCEEDINGS:

4. On the day of the final hearing held on 23rd August 2022, the Committee noted that the Respondent along with his Counsel CA. Sharad Vaze was present through video conferencing mode. The Respondent was administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges. On the same, the Respondent replied in the affirmative and pleaded Not Guilty to the charges leveled against him. Thereafter, the Respondent's Counsel presented his line of defense by presenting the arguments. After consideration of the same, the Committee gave directions to the Respondent to submit the following documents and decided to conclude the hearing by reserving its judgement.
 - a. Breakup of amount of Rs. 73,646.74 (page C-14 of Prima-facie opinion) is shown against bank accounts in the Financial Statement.
 - b. Bank Statement of the alleged bank account of the F.Y. 2012-13.
 - c. Closing bank balances of all the banks along with their reconciliation, if any, for F.Y. 2012-13.
 - d. Bank certificate for the bank accounts held by the entity during the F.Y. 2012-13.
- 4.1 Thereafter, this matter was placed before the Committee in the meeting held on 19th September 2022. The Committee noted that documents called from the Respondent were submitted by him vide letter dated 30th August 2022. The Committee, after consideration of the same vis-a-vis facts of the case, was of the view that to arrive at a conclusion in the instant case, following further clarification/ documents are required to be called from the Respondent:
 - a. Whether any appeal was made with CIT(Appeals)/ ITAT by the Assessee against the additions made by the Assessing officer in the Assessment Order for the A.Y.2013-14. s

- b. Copy of such appeal along with the order of CIT(Appeals)/ ITAT (If any).

Accordingly, the Committee directed the office to call the above-mentioned clarification/documents from the Respondent.

- 4.2 Thereafter, this matter was considered in the meeting held on 07th November 2022 wherein the same members, who heard the case earlier on 23rd August 2022, were present. The Committee noted that the Respondent, vide his letter dated 18th October 2022, had submitted the clarification/ documents sought from him in the meeting held on 19th September 2022. Keeping in view the facts and circumstances of the case, material on record and the submission of the party, the Committee passed its judgment.

FINDINGS OF THE COMMITTEE

5. The Committee noted that the background of the present case is as under:
- That, after tax audit done by the Respondent for the FY 2014-15, the assessment was concluded by the Assessing Officer (AO) by making additions of some unexplained cash deposit into the bank.
 - Thereafter, the AO sent notices to the bankers for attachment of accounts for payment of the tax liability. The notices were sent to 4-5 banks.
 - One of the bank, namely Janta Sehkari Bank informed the Income Tax Authorities that the name of the entity and account number was correct, but the name of the account holder is different, as the Permanent Account Number (PAN) and the name of the assessee mentioned in the notice is not of the same account holder.
 - Based on the information received from the Bank, the Assessing Officer (AO) called for further information from the Bank about the KYC i.e., Account Opening Forms.
 - The Bank provided the Account Opening Form (Page A-5 of the Prima Facie Opinion). As per the KYC of the Bank, the alleged account was opened in the name of Sham Gawade (brother of the assessee) on 17th November 2018.

6. The Counsel for the Respondent with regards to the charge against the Respondent submitted as under:
- a. That said bank account was appearing in the books of the proprietary business from F.Y. 2008-09 and hence the alleged account has been appearing in the balance sheet of the proprietary concern for almost 3½ years.
 - b. That for Assessment Year 2013-14 the Respondent simply confirmed the opening balance as on 31.03.2012.
 - c. That the liability of the Respondent is limited as to whether the closing balance is properly there or not and, accordingly, all transactions were done through that alleged bank account.
 - d. That cheque of the entity bears the name M/s. Hindavi Developers. The cheque does not carry the name of the proprietor and only word "authorised signatory" is mentioned. Therefore, no suspicion had arisen in the mind of the Respondent which could have given an indication that something was wrong, or something was missing. He also submitted a copy of the cheque also.
7. The Committee on perusal of the Account Opening Form (KYC) (annexed as A-5 of Prima facie opinion) noted that the alleged current account was opened in the name of M/s Hindavi Developers by one Mr. Sham Gawade who was the brother of Mr. Tanaji Gawade (i.e. assessee). The Committee further noted that Mr. Sham Gawade had opened an account in the name of M/s Hindavi Developers and signed the account opening form in the capacity of an authorised signatory.
8. The Committee observed that later on this account was operated by the assessee (Mr. Tanaji Gawade) and he continued to show the same in his books. The Committee observed that as regards disclosure of alleged bank accounts in the financial statements is concerned, the Respondent relied on audit report of previous auditor.

9. The Committee as regards to diligence adopted by the Respondent in the conduct of his duties as tax auditor is concerned, noted that as per the Assessment Order dated 7th March 2016, there were unexplained cash deposits of Rs. 1,13,23,000/- which were added back to the total income of the assessee. The Committee noted that Counsel of the Respondent in this regard submitted that the Respondent was the tax audit for the alleged period only and as he was not the Tax Consultant or Tax Advisor, therefore he had not filed the tax return for the same proprietor. He further submitted that this was the reason that the matter before the Commissioner (Appeal) was adjudicated for non-prosecution. It was also contended by him that the matter then went on appeal before the Income Tax Appellate Tribunal (ITAT) and the ITAT remanded the matter back to the CIT(Appeals) for its consideration on merits.
10. The Committee as regards to diligence adopted by the Respondent in the conduct of his duties as tax auditor is concerned, noted that as per the Assessment Order dated 7th March 2016, there were unexplained cash deposits of Rs. 1,13,23,000/- which were added back to the total income of the assessee. The Committee noted that the assessee approached Commissioner (Appeals) and ITAT. The Committee noted CIT(Appeals) due to the non-appearance of the assessee dismissed the appeal of the appellant (client). The Committee noted that after the order of Commissioner (Appeals), the assessee preferred to appeal before ITAT, and surprisingly nobody appeared from the Appellant's side. The ITAT remanded the matter back to the Commissioner (Appeals) for fresh adjudication by mentioning:

"6. Before the Ld. CIT(Appeals), the first notice was issued on 24.07.2017 in respect of which the Ld. AR filed adjournment petition seeking time and from time to time adjournment petitions were filed stating the assessee was not available and he was hospitalized. Accordingly, the Ld. CIT(Appeals) has given many opportunities to the assessee but the assessee could not avail the same in prosecuting the grounds raised before it. Thus the Ld. CIT(Appeals) by placing reliance on the decision in the case of M/s Chemipol Vs. Union of India & Ors. in Central Excise Appeal No. 62 of 2009, dismissed the grounds raised by the assessee for non-prosecution which clearly shows the grounds were not disposed of by the Ld. CIT(Appeals) on merits but for non-

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appearance of the assessee or his Authorized Representative. Therefore, it clearly shows the rights and liabilities of the assessee were not adjudicated upon by placing reliance on documentary evidences. Therefore, in our opinion one more opportunity is to be given to the assessee to prosecute the grounds raised before the Ld. CIT(Appeals) as grounds raised by the assessee regarding disallowance made by the Assessing Officer, requires, in our opinion, assistance of the assessee by relevant documentary evidences.

7. The Ld. DR did not report any objection in remanding the matter to the file of the Ld. CIT(Appeals). Therefore, in the facts and circumstances and in the interest of justice, we deem it appropriate to remand the matter to the file of the Ld. CIT(Appeals) for its fresh adjudication. The assessee shall file necessary evidences, if any, in support of its claim. Thus, grounds raised by the assessee are allowed for statistical purposes."

The Committee noted that subsequent order passed by the Commissioner (Appeals) was not brought on record by the Respondent.

11. The Committee observed that the tax audit report was prepared by the Respondent without exercising due diligence and without obtaining sufficient information which was necessary for expressing his opinion. The Committee noted that it was true that the KYC, bank statements, and cheque leaf were in the name of M/s Hindavi Developers did not arise any suspicion in his mind, but at the same time the Respondent was duty bound to check the veracity of the various/numerous transactions through various detailed check/ confirmations and also liable to report the same in his audit report.
12. The Committee with regard to unexplained cash deposits mentioned in the order of the Assessing Officer observed that the Respondent being the tax auditor should be prudent enough to obtain, the sufficient information about these cash entries from the assessee and, accordingly, was expected to report the same in his tax audit report. The failure of the Respondent in non-reporting leads to the belief that he had not raised any question about these entries and failed to obtain sufficient information for forming an opinion. The Committee viewed that the Respondent as a Tax auditor failed to report unexplained cash

entries which lead to additions of Income by the IT department and may leads to loss of revenue to the Government exchequer.

CONCLUSION

13. In view of the above findings, the Committee in its considered opinion holds the Respondent is **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.

Sd/-

(CA. (Dr.) DEBASHIS MITRA)
PRESIDING OFFICER

Sd/-

(MRS. RANI NAIR, I.R.S., RETD.)
GOVERNMENT NOMINEE

Sd/-

(SHRI ARUN KUMAR, I.A.S., RETD.)
GOVERNMENT NOMINEE

Sd/-

(CA. RAJENDRA KUMAR P)
MEMBER

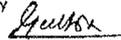
Sd/-

(CA. COTHA S SRINIVAS)
MEMBER

DATE: 16.01.2023

PLACE: NEW DELHI

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गीता अनिरुध कुमार / GEETHA ANIRUDHA KUMAR
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
भारतीय सनदी लेखाकार संस्थान
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032



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

[PPR/P/125/2016/DD/163/INF/18/1262/2020/DC/1262/2020]

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.

[PPR/P/125/2016/DD/163/INF/18/1262/2020/DC/1262/2020]

In the matter of:

CA. Prashant Purushottam Khavte (M.No.042935), Pune in Re:

M/s Prashant Khavte & Co.,
Chartered Accountants,
433/7/2,
Saraswat Colony,
Somwar Peth,
Pune- 411 001

..... Respondent

MEMBERS PRESENT:

1. CA. Ranjeet Kumar Agarwal, Presiding Officer (Present in person)
2. Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (Present in person)
3. Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (Present in person)
4. CA. Sanjay Kumar Agarwal, Member (Present in person)
5. CA. Sridhar Muppala, Member (Present in person)

DATE OF MEETING : 16.03.2023 (Through Physical/Video Conferencing Mode)

1. That vide findings under Rule 18 (17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 dated 16th January 2023, the Disciplinary Committee was inter-alia of the opinion that **CA. Prashant Purushottam Khavte (M.No.042935)**, (hereinafter referred to as the **Respondent**) 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.

2. The Committee noted that the charge against the Respondent was that he had furnished a false audit report, of M/s Hindavi Developers, Proprietor - Mr. Tanaji Parilal Gawade, for the

CA. Prashant Purushottam Khavte (M.No.042935), Pune in Re:



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[PPR/P/125/2016/DD/163/INF/18/1262/2020/DC/1262/2020]

Assessment Year 2013-14, without verifying the proper books of accounts of the assessee and simply conducted the audit based on bank accounts furnished during the audit without proper verification and did not exercise the diligence expected from him.

3. The Committee noted that the Respondent was present through Video Conferencing Mode. The Respondent relied on his written submissions dated 11th March 2023. He, in his submissions before the Committee, has submitted as under:

- a. That the impugned Bank Account was opened in F.Y. 2008-09 whereas he performed the audit for F.Y. 2012-13.
- b. That the findings of the Committee do not indicate under which clause the cash deposits were required to be disclosed in Form 3CD by the Tax Auditor for A.Y. 2017-18.
- c. That no mala-fide intention was attributable to him, and the Director (Discipline) had also held him not guilty.

He, accordingly, requested the Committee to take a lenient view in his matter considering his submissions and his unblemished carrier.

4. The Committee, while considering his oral and written submissions on record, noted that there were unexplained cash deposits mentioned in the order of the Assessing Officer and that the Respondent as a Tax auditor failed to report unexplained cash entries. The Committee further noted that the Respondent being the tax auditor was required to be prudent enough to obtain the sufficient information about these cash entries from the assessee and, accordingly, was expected to report the same in his tax audit report.

5. The Committee, looking into the gravity of the charge *vis-a-vis* submissions of the Respondent before it, observed that the failure of the Respondent in non-reporting leads to the belief that he had not raised any question about these entries and failed to obtain sufficient information for forming an opinion and hence the tax audit report was prepared by the Respondent without exercising due diligence and without obtaining sufficient information, which was necessary for expressing his opinion. Accordingly, the Committee decided to give reasonable punishment to the Respondent in the instant matter.

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[PPR/P/125/2016/DD/163/INF/18/1262/2020/DC/1262/2020]

6. Therefore, keeping in view the facts and circumstances of the case, the material on record, and the submissions of the Respondent before it, the Committee ordered that the Respondent CA. Prashant Purushottam Khavte (M.No.042935), be reprimanded along with fine of Rs.25,000/- (Rupees Twenty Five Thousand Only).

sd/-
(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

sd/-
(MRS. RANI NAIR, I.R.S. RETD.)
GOVERNMENT NOMINEE

sd/-
(SHRI ARUN KUMAR, I.A.S. RETD.)
GOVERNMENT NOMINEE

sd/-
(CA. SANJAY KUMAR AGARWAL)
MEMBER

sd/-
(CA. SRIDHAR MUPPALA)
MEMBER

DATE: 13th MAY, 2023
PLACE: NEW DELHI

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Arun Kumar
अरुण कुमार / Arun Kumar
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनालयक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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ICAI Bhawan, Vasant Nagar, Shahdara, Delhi-110032